

# Albania

## Law On Public Procurement No. 9643 dated 20.11. 2006,

consolidated with Amendment no. 9800, date 10. Sept. 2007, no.9855, date 26.Dec.2007, no. 10170 date 22. Oct. 2009 **and no.10 309, date 22.07.2010**

The People's Assembly of the Republic of Albania in accordance with Art. 78 and 83, point 1 of the Constitution with a proposal of the Council of Ministers, decided:

### TABLE OF CONTENTS

<b>CHAPTER I</b>	<b>GENERAL PROVISIONS</b>	<b>4</b>
Article 1	Purpose of the law	4
Article 2	Awarding Principles	4
Article 3	Definitions	4
Article 4	Scope of application	8
Article 5	Defense procurement	8
Article 6	Secret contracts and contracts requiring special security measures	8
Article 7	Specific exclusions	8
Article 8	International obligations	9
Article 9	Service contracts awarded on the basis of an exclusive right	9
Article 10	Consultancy services	9
Article 11	Centralized purchasing	9
<b>CHAPTER II</b>	<b>PUBLIC PROCUREMENT ORGANISATION</b>	<b>10</b>
Article 12	Responsibility of the CA	10
Article 13	The Public Procurement Agency (PPA)	10
Article 14	Public Procurement Advocate (PPAd)	12
Article 15	Appointment of the PP Advocate	12
Article 16	Incompatibility	12
Article 17	Termination	13
Article 18	Reports	13
Article 19	PP Advocate's Office Staff and Budget	13
<b>CHAPTER III</b>	<b>COMMON PROCUREMENT RULES</b>	<b>16</b>
Article 20	Non-discrimination	16

Article 21	Access to relevant information.....	16
Article 22	Forms of communication.....	16
Article 23	Technical specifications.....	17
Article 24	Termination of an awarding procedure.....	17
Article 25	Confidentiality .....	18
Article 26	Corruption and Conflict of Interests.....	18
Article 27	Thresholds .....	18
Article 28	Methods for calculating the estimated value of public contracts.....	19
Article 29	Choice of standard procedure .....	19
Article 30	Open Procedure.....	19
Article 31	Restricted Procedure .....	20
Article 32	Negotiated procedure with prior publication of a contract notice.....	20
Article 33	Negotiated procedure without prior publication of a contract notice .....	21
Article 34	Request for proposals.....	23
Article 35	Design contest .....	23
<b>CHAPTER IV</b>	<b>ELECTRONIC PROCUREMENT .....</b>	<b>25</b>
Article 36	Rules applicable to electronic communications.....	25
Article 37	Electronic auctions and dynamic purchasing systems .....	26
<b>CHAPTER V</b>	<b>CONDUCT OF THE PROCEDURES .....</b>	<b>26</b>
Article 38	Notices.....	26
Article 39	Content of the notices.....	26
Article 40	Invitation to tender.....	27
Article 41	Tender documents.....	27
Article 42	Clarifications and modification of tender documents.....	28
Article 43	Time-limits for receipt of requests to participate and for receipt of tenders.....	28
Article 44	Economic operators.....	29
Article 45	Exclusion criteria of candidates or tenderers.....	30
Article 46	Qualification of tenderers.....	30
Article 47	Disqualification of tenderers .....	31
Article 48	Submission and Receipt of Tenders.....	31
Article 49	Tender security .....	32
Article 50	Period of effectiveness of tenders, modification and withdrawal of tenders.....	33
Article 51	Prohibition to modify tenders .....	33
Article 52	Opening of tenders .....	33
Article 53	Examination of tenders .....	34
Article 54	Alternatives.....	34
Article 55	Contract award criteria.....	35
Article 56	Abnormally low tenders .....	35
Article 57	Confidentiality of the process.....	36
Article 58	Notification of award and signing of contract.....	36
<b>CHAPTER VI</b>	<b>PERFORMANCE OF CONTRACTS .....</b>	<b>43</b>
Article 59	Conditions for performance of contracts.....	43
Article 61	Sub-contracting .....	43
Article 62	Obligations valid throughout the performance of the contract.....	44
<b>CHAPTER VII</b>	<b>ADMINISTRATIVE REVIEW PROCEDURES .....</b>	<b>44</b>

Article 63 Rights of interested persons.....	44
Article 64 Competencies of the PPA .....	45
<b>CHAPTER VIII ADMINISTRATIVE INVESTIGATION .....</b>	<b>48</b>
Article 65 Administrative Investigation Procedure.....	48
Article 66 Actions following the conclusion of administrative investigation.....	48
<b><u>CHAPTER IX</u> THE ACTIVITY OF THE PUBLIC PROCUREMENT ADVOCATE (PPAD).....</b>	<b>48</b>
Article 69 Monitoring function and complaints.....	48
Article 70 Investigation Procedure .....	49
Article 71 Actions following the conclusion of investigation.....	49
Article 72 Administrative Offences .....	50
Article 73 Sanctions for lack of cooperation.....	50
<b><u>CHAPTER X</u> FINAL PROVISIONS .....</b>	<b>51</b>
Article 75 Procurement rules .....	51
Article 75/1 Special provision .....	51
Article 76 Appointment of the PP Advocate .....	51
Article 77 Abrogations .....	52
Article 78 Entry into force .....	52

## **CHAPTER I GENERAL PROVISIONS**

### **Article 1 Purpose of the law**

1. This law sets out the rules applying to the procurement of goods, works and services by contracting authorities **(CA)**.
2. The objectives of the law are:
  - (a)** to promote efficiency and efficacy in public procurement procedures carried on by **CA**;
  - (b)** to ensure a better use of public funds and reduce procedural costs;
  - (c)** to encourage economic operators to participate in public procurement procedures;
  - (d)** to promote competition among economic operators;
  - (e)** to guarantee an equal and non-discriminatory treatment for all economic operators participating in public procurement procedures;
  - (f)** to guarantee integrity, public trust and transparency in public procurement procedures.

### **Article 2 Awarding Principles**

3. The award of public contracts is governed by the following general principles:
  - (a)** non discrimination and equality of treatment of actual and potential tenderers;
  - (b)** transparency of procurement procedures;
  - (c)** proportionality of requirements and obligations imposed to actual and potential tenderers;

### **Article 3 Definitions**

For the purpose of this law, the following definitions shall apply:

1. **'Awarding procedures'** are the procedures carried out by **CA** in order to award a public contract for works, supplies or services.
2. **'Public contracts'** are contracts for pecuniary interest concluded by exchange of written communication between one or more economic operators and one or more **CA** and having as their object the execution of works, the supply of goods or the provision of services within the meaning of this law.
  - 2.1 **'Sectoral contracts'** are public contracts awarded by contracting authorities that operate in the water, energy, transport and postal sectors to one or more economic operators, for the purposes of performing any of the activities referred to in Article 58/1.
3. **'Consultancy contracts'** are contracts for public consulting services of intellectual and advisory nature, to the exclusion of other types of services, where the physical aspects of the activity predominate.

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 implementation of other procedures different from this law;
- d) 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 realization, by whatever means, of a work corresponding to the requirements specified by the **CA**.

8.1 **‘Framework agreement’** means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantities envisaged.

9. A **‘work’** means the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfill 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 **CA**, 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’** means 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 a 'tenderer'.

**b)** One which has sought an invitation to take part in a restricted or negotiated procedure shall be designated as a 'candidate'.

**14. 'Contracting authorities' (CA)** 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.

**14.1 'Contracting authorities'** shall also mean:

**a.** any contracting authority within the meaning of paragraph 14, when it performs one of the activities referred to in Article 58/1 of this law;

**b.** public undertakings if the contract is awarded for the purposes of exercising any of the activities referred to in Article 58/1 of this law. For the purpose of this provision "public undertaking" is any undertaking over which contracting authorities listed in paragraph 14 may exercise, directly or indirectly through another entity, a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence is presumed when contracting authorities listed in paragraph 14, directly or indirectly, in relation to an undertaking:

**i.** hold the majority of the entity's subscribed capital, or

**ii.** control the majority of the votes attached to shares issued by that entity, or

**iii.** can appoint more than half of the entity's administrative, management or supervisory body."

**c.** Any other entity not mentioned in items a) or b), when they pursue any or a combination of the activities referred to in Article 58/1 of this law on the basis of special or exclusive rights granted by a competent authority.

**15. 'Special or exclusive rights'** are rights granted by a competent authority of Albania by way of any legislative, regulatory or administrative provision the effect of which is to limit the exercising of activities referred to in Article 58/1 to one or more entities, and which substantially affects the ability of other entities to carry out such an activity.

**16. A 'central purchasing body'** is a CA, which:

**(a)** acquires supplies and/or services intended for CA, or

**(b)** awards public contracts for works, supplies 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 **CA** may submit a tender.

**19. 'Negotiated procedures'** are those procedures whereby the **CA** 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 **CA** 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 **CA** to acquire a study or design of a merely aesthetic nature, selected by a jury after being put out to competition.

**22. 'Written communications'** mean 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, by optical means or other electromagnetic means.

**24. 'Procurement regulations' (PP-rules)** mean any implementing regulation issued by the **Council of Ministers**, within the scope of the **PPL**.

**25. 'Public Procurement 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 **CA** 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 **CA** 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 **CA**, in compliance with the **PPL** and the public procurement rules.

**29. "Postal services"** means services consisting of the clearance, sorting, routing and delivery of postal items.

**30. "Postal item"** means an item addressed in the final form in which it is to be carried, irrespective of weight; in addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value, irrespective of weight.

#### **Article 4 Scope of application**

The **PPL** applies to all awarding procedures. The only applicable exceptions are set out in Art. 5, 6, 7, 8 and 9 of this Law and those, which are regulated with other laws.

#### **Article 5 Defense procurement**

1. The **PPL** shall apply to all public contracts awarded in the field of defense, subject to para 2 of this Article.
2. The provisions of the **PPL** shall not apply in the following cases:
  - (a) when **CA** shall be obliged to supply information whose disclosure is contrary to the essential interests of national security;
  - (b) for the purchase of arms, munitions and war material, or related services. This exception shall not adversely affect the conditions of competition regarding products not specifically intended for military purposes;
  - (c) in specific circumstances caused by natural disasters, armed conflicts, war operations, military training and participation in military missions outside the country.

#### **Article 6 Secret contracts and contracts requiring special security measures**

The **PPL** shall not apply to public contracts when their performance must be accompanied by 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 7 Specific exclusions**

The **PPL** shall not apply to public service contracts for:

- (a) the acquisition or rental, by whatever financial means, of immovable property or concerning rights thereon; nevertheless, financial service contracts concluded at the same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to the **PPL**;
- (b) the acquisition, development, production or co-production of program material or commercials intended for broadcasting by broadcasters or publication in the media, and contracts for broadcasting time;
- (c) arbitration and conciliation services;
- (dh) all services referred to in Articles 58/3, 58/4, 58/5, 58/6, 58/7, of "Chapter V/1, "Procedures for awarding sectoral contracts".
- (d) financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, in particular transactions by contracting authorities to raise money or capital, and central bank services;
- (e) research and development services, which outcome is used by all in a non-discriminatory basis, other than those, where the benefits accrue exclusively to the **CA** for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by contracting authorities.



The excluded cases, as per letters from “a” to “d” in this Article, shall be regulated with other legal provisions or implementing regulations.

#### **Article 8 International obligations**

To the extent that the **PPL** conflicts with an obligation of the State under, or arising out of, an agreement with one or more other states or with an international organization, the provisions of that agreement shall prevail. In all other respects, public procurement activities shall be governed by the **PPL**.

#### **Article 9 Service contracts awarded on the basis of an exclusive right**

The **PPL** shall not apply to public service contracts awarded by a **CA** to another **CA**, or to an association of **CA**, on the basis of an exclusive right which they enjoy pursuant to the published legislation.

#### **Article 10 Consultancy services**

Consultancy services are awarded according to the procedures provided in the **PPL**, as better specified in the **PP-rules**.

#### **Article 11 Centralized purchasing**

1. When more than one **CA** needs the same kind of goods, works or services, if they so decide they may:  
    **(a)** assign to one of them the task of procuring such items on behalf of the others;  
    **(b)** instruct the **Central Purchasing Body** established pursuant to the **PP-rules** to carry out the relevant awarding procedures.

2. **CA** may ask the **Central purchasing body** to carry out a specific awarding procedure or a series of awarding procedures on their behalf, when centralized purchasing would benefit from substantial economies of scale, for instance regarding supplies of homogeneous goods, which are offered on the market under similar conditions;

In carrying out the awarding procedures assigned to it, the **Central Purchasing Body** is subject to the provisions of the **PPL**.

3. In any case, with a request of a **CA**, or on its own initiative, the **Council of Ministers** may assign a **CA** as the **Central purchasing body** for certain procurement procedures.

## **CHAPTER II PUBLIC PROCUREMENT ORGANISATION**

### **Article 12 Responsibility of the CA**

**1.** Each **CA** is responsible for procurement with public funds at its disposal subject to the provisions of the **PPL**, to any further conditions set forth in the **PP-rules**.

**2.** **CA** must keep available records and documents regarding the awarding procedures carried out. The documents and records must contain sufficient information, so as to allow the control of enforcement of **PPL**. For each awarding procedure, the procurement records shall contain at least the following information:

- (a)** a brief description of the goods, construction or services to be procured, or of the procurement need, for which the **CA** launched the awarding procedure;
- (b)** the names and addresses of tenderers that submitted tenders and the name and address of the tenderer - if any - to whom the contract is awarded and the contract price;
- (c)** information on the qualifications, or lack thereof, of tenderers or candidates;
- (d)** the price, or the basis for determining the price, and a summary of the other principal terms and conditions, of each tender and of the procurement contract;
- (e)** a summary of the evaluation and comparison of tenders;
- (f)** if all tenders were rejected pursuant to Article 24 **PPL** a statement to that effect and the grounds therefore;
- (g)** the information required by Article 47 **PPL**, if a tender was rejected pursuant to that provision;
- (h)** the reasons for choosing a specific awarding procedure;
- (i)** a summary of any requests for clarifications of the tender documents, the responses thereto, as well as a summary of any modification of those documents;
- (j)** a summary of any complaints and the resolution thereto.

**3.** Each **CA** shall establish a Register for the records kept, tender documents and any other documents relating to awarding procedures.

**3.1.** In the case of electronic procurement, the administration of data and records shall be realized automatically by the system, according to the definitions set out in the rules of procurement by electronic means.

**4.** Each **CA** must submit every 4 (four) months a report on its procurement activities to the **PPA**. Procurement regulations shall specify the format and contents of such reports.

**5.** Each **CA** establishes a procurement unit within its structure, whose duties and responsibilities are defined in the public procurement rules. **CA** may request support in the form of advice or instruction from the **PPA** when setting up their individual or joint procurement units.

### **Article 13 The Public Procurement Agency (PPA)**

1. The **PPA** is a central body, with a legal and public personality **reporting to the Prime Minister**, and financed by the State Budget.

2. In the performance of its tasks, the **PPA**:

(a) submits proposals for procurement regulations to the **Council of Ministers**;

(b) promotes and organizes training of central and local government officials engaged in public procurement activities;

(c) edits and issues a Public Procurement Bulletin (**PP Bulletin**), as described in the procurement regulations. The **PPA** shall publish in the **PP Bulletin** the list of economic operators excluded pursuant to Article 45 **PPL**;

(ç) prepares standard tender documents to be used in awarding procedures, in accordance with the public procurement rules;

(d) on request, gives advice and provides technical assistance to **CA**, when launching and conducting awarding procedures;

(dh) presents an annual report to the **Council of Ministers** regarding the overall functioning of the public procurement system;

(e) co-operates with international institutions and with other foreign entities on issues related to the **PP**-system;

(ë) plans and coordinates foreign technical assistance to Albania in the field of **PP**;

(f) encourages and supports the use of international technical standards for the preparation of national technical specifications, as well as maintains an ongoing relationship with the **National Directorate of Standardizations**;

(g) monitors the public procurement system through information reported periodically from Contracting Authorities, and reports of Central Purchasing Body, or Procurement Advocate. The Monitor procedures should be approved with Decision of Council of Ministers;<sup>1</sup>

<sup>2</sup>(gj);

<sup>3</sup>(h);

(i) in case of misconduct, in compliance with Article 72 **PPL**, penalizes with fines or proposes to the head of **CA** or higher bodies disciplinary measures against the individual in the **CA**, who committed the infringement.

(j) prepares and adapts its internal regulations.

(k) carries out any other task, as specified by law.

3. The **PPA** can exclude an economic operator from participation in awarding procedures – without prejudice of criminal proceedings, which may have started – for a period of 1 to 3 years in the cases of:

(a) serious misrepresentation and submission of documents containing false information for purposes of qualification, according to Article 45 and 46 **PPL**; or

---

<sup>1</sup> Amended with the law no. **10 309, date 22.07.2010**

<sup>2</sup> Abrogated with the law no. **10 309, date 22.07.2010, (gj)** monitors the application of public procurement procedures in compliance with the requirements established by the law, requiring the **CA** to submit all the relevant information;

<sup>3</sup> Abrogated with the law no. **10 309, date 22.07.2010, h)** carries out, every 6 months controls of the awarding procedures carried out by the **Central purchasing body**;

- (b) corruption within the meaning of item a), para 1, Article 26; or
- (c) conviction for any of the crimes listed in Article 45, para 1 PPL.
- (d) non fulfillment of contractual obligations for public contracts during the last 3 years.

4.<sup>4</sup> The **PPA** expert staff are recruited and promoted in accordance with law "On the status of the civil servant". The Director of the **PPA** appoints the other members of the staff and their status is regulated by the Labour Code.

#### **Article 14 Public Procurement Advocate (PPAd)**

1. The **PPAd** safeguards the legal rights and interests of candidates, bidders or suppliers against irregular actions or lack of actions by the **CA** in the field of public procurement, by monitoring and investigating the administrative procedures in public procurement (**PP**).

2. The **PPAd** monitors the procedures against irregular and illegal actions or lack of actions, caused by the **CA**, as provided in Articles 69 and 70 PPL.

3. The **PPAd** carries out investigations on potential infringements of the **PPL**, as determined in article 70 herein.

#### **Article 15 Appointment of the PP Advocate**

1. The **PPAd** can be any person, who meets the following conditions:

- a) he/she is an Albanian citizen;
- b) he/she has a legal or economic profile, and should have knowledge and, at least 2 years of experience, in the field of **PP**;
- c) he/she distinguished him/herself for good professional skills and a good ethical and moral profile;
- d) he/she has not been dismissed from previous employment or civil service function, for disciplinary reasons.

2. The **PPAd** is elected by the Parliament upon a proposal by the **Council of Ministers**.

3. The **PPAd** is appointed for a duration of **five years**, with a possibility for immediate reelection.

#### **Article 16 Incompatibility**

The **PPAd** is not allowed:

- to be a member of any political party or political organization;
- to carry out other political state or professional activities, excluding his/her right as lecturer, and
- to participate in the managing bodies of social, economic or commercial organizations.

---

<sup>4</sup> This is the new paragraph 4, which was 5 before. The old paragraph 4 is abrogated. (translator's note)

## **Article 17 Termination**

1. The function of the **PPAd** terminates when:

- a) he/she resigns;
- b) a five years term ends;
- c) he/she is dismissed;
- d) he/she passes away.

2. The **PPAd** shall be dismissed by the Parliament only in the following cases:

- a) he/she is convicted with a final court decision;
- b) he/she is physically or mentally disabled to perform his/her functions;
- c) he/she is involved in activities, which do not comply with the provisions of Article 16 of the **PPL**;
- d) he/she does not attend work for more than 30 days, without proper justification.
- e) acts or behaves in a way, which discredits his/her public personality and function.
- f) infringes the law.

The new **PPAd** shall be appointed within 30 days.

## **Article 18 Reports**

1. The **PPAd** submits an annual report to the Parliament within the first quarter of every year.

2. The **PPAd** reports to the Parliament every time the latter requires it, or on his/her own request.

3. A copy of the reports in Parliament is sent to the President of the Republic, the Prime Minister and the highest body in hierarchy, whose subordinates are mentioned in the report.

4. The annual report and the special reports shall be published and displayed on the website, not later than seven days after their presentation in Parliament.

## **Article 19 PP Advocate's Office Staff and Budget**

1 The staff of the **PPAd's** Office is included in the civil service of the Republic of Albania.

2. Its structure and personnel shall be approved by the Parliament.

## **Article 19/1 The Public Procurement Commission**

1. The Public Procurement Commission is the highest body in the field of procurement, which examines complaints on public procurement procedures in compliance with the requirements established by this law.
2. Upon completion of the complaints examination, the Public Procurement Commission takes decisions which are administratively final.
3. The Public Procurement Commission is a public legal body subordinate to the Council of Ministers and financed by the State Budget.
4. The Public Procurement Commission submits an annual report to the Council of Ministers. The contents of the report are set forth in the public procurement rules.

#### **Article 19/2 The composition, election and the mandate of the Public Procurement Commission**

1. The Public Procurement Commission is composed of 5 members, of which at least 3 are lawyers by profession.
2. The members of the Public Procurement Commission are elected by the Council of Ministers, upon a proposal of the Prime Minister, with the right of only one re-election. The Council of Ministers appoints a chair and a deputy chair from the members of the Public Procurement Commission.
3. The chair moderates the sessions and represents the institution in relation to the third parties. In his/her absence he/she is replaced by the deputy chair.
4. The chair and the deputy chair shall be lawyers by profession.
5. The members of the Public Procurement Commission have a five year mandate.

#### **Article 19/3 Criteria to be selected a member of the Public Procurement Commission**

A member of the Public Procurement Commission can be any Albanian citizen that meets the following criteria:

- a) he/she has full capability to act;
- b) he/she holds a tertiary education;
- c) he/she has at least 3 years of experience in the field of public procurement, and at least 5 years of work experience;
- d) he/she has never been/is convicted by a final court decision for carrying out a criminal offence;
- e) he/she has not been dismissed from previous employment or a civil service function, for disciplinary reasons.

#### **Article 19/4 Incompatibility of the function of the Public Procurement Commission member**

The Public Procurement Commission member is not allowed:

- a. to be a member in any political parties or participate in their activities;
- b. to manage or administer economic or commercial organizations, neither personally nor through a representative;
- c. to carry out any other profitable activity, excluding his/her right of lecturing.

## **Article 19/5**

### **Termination of the function of the Public Procurement Commission member**

1. The function of the Public Procurement Commission member terminates when:
  - a) he/she resigns;
  - b) he/she is convicted by a final court decision for carrying out a criminal offence;
  - c) he/she is unable to perform his/her functions for a period of 6 months.
  - d) his/her mandate terminates
2. The member of the Public Procurement Commission shall be dismissed by the Prime Minister, when a final court decision states that:
  - a) he/she has infringed the clauses of this law or other legal provisions;
  - b) he/she is involved in activities that cause a conflict of interests;
  - c) cases of his/her function incapability are discovered.
3. From the identification to the reaching of a final court decision, according to paragraph 2 of this Article, the member of the Commission is dismissed with a decision by the Council of Ministers.
4. If the position of the Public Procurement Commission member remains vacant, the Council of Ministers appoints, within 30 days of his/her absence, the new candidate.

## **Article 19/6 The structure and the organization chart of the Public Procurement Commission**

1. The structure and the organizational chart of the Public Procurement Commission shall be decided upon an order by the Prime Minister.
2. The personnel of the Public Procurement Commission is included in the civil service, whereas the supporting personnel is appointed by the chair and their work relationships are regulated by the Labor Code of the Republic of Albania.
3. The decisions of the Public Procurement Commission are examined in sessions attended by at least 3 (three) members, one of which is the chair or his/her deputy. Upon completion of the examination, the decision taken by the Commission is published on its website.
4. Detailed rules of the organization and functioning of the Public Procurement Commission are approved by the Council of Ministers.

## **Article 19/7**

Nobody should influence the decision-making of the Commission's members. Every effort, either direct or indirect to influence shall be penalized with a fine in accordance with this law, irrespectively of the civil or penal proceedings that might have already started.

## **CHAPTER III COMMON PROCUREMENT RULES**

### **Article 20 Non-discrimination**

**CA** shall establish no criterion, requirement or procedure with respect to the qualification of economic operators that discriminates against or among suppliers or contractors or against categories.

### **Article 21 Access to relevant information**

**1.** The relevant information recorded by the **CA** according to Article 12 of the **PPL** shall, on request, be made available to any interested person after a tender has been awarded, or after awarding procedures have been terminated without resulting in a procurement contract. Such request may be submitted anytime and the **CA** is obliged to make the information available within 5 days following the receipt of a request.

**2.** **CA** shall inform, as soon as possible, but not later than 5 days from the taken decision:

- any unsuccessful candidate of the reasons for the rejection of his application,
- any unsuccessful tenderer of the reasons for the rejection of his tender;
- any unsuccessful tenderer who has made a valid tender, on the characteristics and relative advantages of the selected tender.

**3.** Without prejudice of the provisions of this Art., **CA** may decide not to disclose some of the relevant information provided for in para 1 and 2 of this Art., if its disclosure would be contrary to law - in particular, privacy law -, would impede law enforcement, would not be in the public interest, would prejudice legitimate economic interests of the parties or would inhibit fair competition.

### **Article 22 Forms of communication**

**1.** All documents, notifications, decisions, relevant information and other communications referred to in the **PPL** shall be written communications.

**2.** All communications between economic operators and **CA** may be made by other means than by written communications provided that, immediately thereafter, confirmation of the communication is given in writing.

**3.** **CA** may decide that communications may be made by electronic means. In this event, the tools to be used for communicating by electronic means, as well as their technical characteristics, must be non-discriminatory, generally available and interoperable with the information and communication technology products in general use. The rules applying to this kind of communication shall be set forth in the **PP-rules**.

**4.** Communication, exchange and storage of information shall be carried out in such a way as to ensure that the integrity of data is preserved and the confidentiality of tenders and requests to participate is secured. The chosen methods of communication, exchange and storage of information shall also ensure that **CA** examine the content of tenders and requests to participate only after the time-limit set by the **PPL** for their submission has expired.



## **Article 23 Technical specifications**

1. Technical specifications setting forth the characteristics of the goods, works or services to be procured shall be prepared for the purpose of giving a correct and complete description of the object of procurement and for the purpose of creating conditions of fair and open competition between all candidates and tenderers. Whenever possible these technical specifications should be defined to take into account accessibility criteria for people with disabilities or design for all users.
2. Technical specifications shall afford equal access to candidates and tenderers and not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.
3. Technical specifications shall clearly describe the **CA's** requirements by reference to:
  - (a) national standards transposing international accepted standards, international accepted technical approvals, common technical specifications, international standards, other technical reference systems established by international standardization bodies or — when these do not exist — to national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the products;
  - (b) requirements in terms of performance, even when this requires making a reference to national or international standards as means of presuming conformity with such performance or functional requirements;
  - (c) both methods under (a) and (b) of para 3 of this article, for different products, services or works included in the same contract.
4. If needed, the description of works, goods or services should contain the technical specifications to be achieved, including plans, drawings, models, etc. In cases of functional description of works or goods, the technical specifications should clearly and neutrally describe the scope of the works, in order to indicate all the conditions and circumstances which are important to the preparation of the bid. The description shall indicate not only the scope of work, but also the requirements related to the named work from the technical, economic, aesthetic and functional aspect. In order to guarantee the comparison of bids in relation to the contract object's requirements for these goods or for their functions, the competitors and bidders shall be provided with precise requirements for the functions or performance, thus helping them during the bid preparation. Specifications for the supply of appropriate goods or services for the environment shall also be indicated in the description of works.
5. There shall be no requirement or reference in the technical specifications to a particular trademark or name, patent, design or type, specific origin, producer or service provider, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the specifications.

## **Article 24 Termination of an awarding procedure**

1. **CA** shall discontinue the awarding procedures only:
  - a) for reasons of public interest, in compliance with the principles of equality and transparency;
  - b) when the Public Procurement Commission decides to terminate it, pursuant to letter b) paragraph 3, Article 64 of this law.

**2. CA** shall incur no liability towards tenderers, who submitted tenders solely by virtue of their invoking para 1 of this Art.

**3.** Pursuant to Article 21 **PPL**, **CA** shall communicate to all candidates or tenderers the decision and the reasons to discontinue the awarding procedure within 5 (five) days from this decision.

**4. CA** shall publish a notice about the discontinuation of the awarding procedure in the same way as the contract notice was previously advertised during the 10 (ten) days following the decision.

#### **Article 25 Confidentiality**

Without prejudice to the provisions of the **PPL** concerning the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out respectively in Art. 21 and 57 **PPL** **CA** shall not disclose information forwarded to them by economic operators labeled as confidential. Such information includes, in particular, technical aspects, trade secrets and confidential information of tenders.

#### **Article 26 Corruption and Conflict of Interests**

**1. CA** 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 **CA** 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 the record of the procurement proceedings provided for in Article 12 **PPL** and promptly communicated officially to the candidate or tenderer concerned. The decision may be subject to judicial review.

**2.** Decisions taken by **CA**, pursuant to para 1 of this 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.

#### **Article 27 Thresholds**

**1.** The applicable thresholds for the purposes of the **PPL** are:

**(a)** high value thresholds;

**(b)** low value thresholds.

**2.** The value of the thresholds is set forth in the procurement rules.

**3.** The value of the thresholds shall be reviewed by the Council of Ministers every two years.

## **Article 28 Methods for calculating the estimated value of public contracts**

1. The calculation of the estimated value of a public contract shall be based on the total amount payable, excluding VAT, as estimated by the **CA** at the moment when the contract notice is sent for publication, as provided for in Article 38 **PPL**, or, in cases where such notice is not required, at the moment when the **CA** starts the awarding procedure. This calculation shall take account of the estimated total amount to be paid, including any form of option and any renewals of the contract.
2. No public contract may be divided to prevent its coming within the scope of the provisions of the **PPL**.
3. The methods for calculating the value of each type of public contract shall be set forth in the **PP rules**.

## **Article 29 Choice of standard procedure**

1. In awarding their public contracts, contracting authorities shall apply the procedures set forth in the **PPL**. The types of procedures to be used for the award of public procurement contracts shall be:
  - (a) open procedures;
  - (b) restricted procedures;
  - (c) negotiated procedures, with or without prior publication of a contract notice;
  - (d) request for proposals;
  - (e) design contests.
2. For all 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 shall be provided in the **PP rules**.
3. For contracts above the low value thresholds, contracting authorities shall use open procedures, restricted procedures, design contests. Negotiated procedures may be used only in the specific circumstances set forth in Art. 32 and 33 of the **PPL**.
4. For contracts of a value lower than the low value thresholds, contracting authorities may use negotiated procedures with or without prior publication and requests for proposals in accordance with the conditions provided in this law.
5. For small value procurement of goods, services or works, below the low threshold, **CA** may use simplified procedures, as provided in the **PP rules**.

## **Article 30 Open Procedure**

1. The open procedure shall be the preferred procurement procedure.

2. In open procedures contracting authorities publish a notice - as provided for in Article 38 **PPL** - containing the description of the contract to be awarded and the procedural rules specific to that procedure.

3. All tenderers shall submit their tenders, namely the economic offer, the technical offer and evidence of the satisfaction of selection criteria as per Articles 45 and 46 **PPL**.

4. After the time-limit to submit tenders - as set in the contract notice according to Art. 43 **PPL** - expired, **CA** open tenders, verify the qualifications of tenderers and the absence of disqualifying circumstances - according to the criteria set out in Art. 45 and 46 of the **PPL** - and award the contract after comparing the offers on the basis of the criteria set out in Art. 55 **PPL**.

### **Article 31 Restricted Procedure**

1. **CA** may use the restricted procedure to carry out a procurement activity which leads to the award of a public contract, when:

a) the respective good, service or work – having a rather complicated and special character – may be supplied, obtained or executed by economic operators, who possess the proper technical, professional and financial capacities;

b) it would be economically more effective for the **CA** to examine the capacities and the qualifications of the interested economic operators first and then, to invite those operators who possess specific minimal qualifications to submit their tenders.

2. In restricted procedures **CA** shall publish a notice, as provided in Article 38 **PPL**, which must contain the following:

a) a description of the object of the contract to be awarded;

b) an indication of the selection criteria, as per Articles 45 and 46 **PPL**;

c) an invitation to express interest in participating to the awarding procedure.

3. After the published time-limit to submit requests to participate - as set in the contract notice according to Art. 43 **PPL** – expired, **CA** proceed to the selection of candidates - according to the criteria set out in Articles 45 and 46 **PPL**.

4. **CA** issue an invitation to tender - according to Article 40 **PPL** – to the selected candidates requesting an offer to be submitted.

5. After the time-limit to submit tenders has expired, **CA** open the tenders and award the contract after comparing them on the basis of the criteria set out in Article 55 **PPL**.

### **Article 32 Negotiated procedure with prior publication of a contract notice**

1. When the value of the contract to be awarded is above the low value thresholds, **CA** 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 two consecutive open or restricted procedures, insofar as no substantial alteration is included in the contract, as provided in the **PP-rules**;

b) in exceptional cases, when the nature of works, supplies 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 purposes 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, **CA** 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. **CA** shall negotiate with tenderers the tenders submitted by them 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 **PPL**.

4. During the negotiations, while dialogue is carried on with each candidate individually, **CA** 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. **CA** 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.

### **Article 33 Negotiated procedure without prior publication of a contract notice**

1. For all contracts of a value above or below the low value thresholds, **CA** may use negotiated procedure without prior publication of a contract notice only on the specific circumstances expressly provided for in this Article and in the public procurement rules. Such circumstances shall be strictly construed. This procedure shall not be used in order to avoid competition or in a manner that would discriminate among candidates.

2. Negotiated procedures without prior publication of a contract notice may be used for all types of public contracts:

a) when minimal conditions for competition have not been met in response to two consecutive open or restricted procedures, provided there is no substantial alteration to the initial conditions of the contract;

b) when for technical or artistic reasons, or for reasons connected with exclusive rights or intellectual property rights, the contract may be executed only by a particular economic operator;

c) when for reasons of extreme need, brought about by causes unforeseeable and uncontrollable by the **CA**, and when the time limit, as foreseen in Art. 43 provided for in open, restricted or negotiated procedures, with prior publication of notice, cannot be complied with. The circumstances invoke to justify urgency must not, in any event, be attributed to the action or lack of action of the **CA**. The conditions and circumstances for the use of this procedure are determined in the PP-rules.

**(c 1)** for goods quoted and purchased on a commodity market in compliance with the **PP-rules**;

**(c 2)** for purchases that allow the procurement of goods within a very short time, or in particular advantageous cases that are observed within a short period of time and with a considerable lower price than normal prices in the market and in compliance with the criteria set in the **PP-rules**.

**(c 3)** for contracts that will be awarded based upon framework contracts as long as the requirements of in Article 35/1 of this law are met.<sup>5</sup>

3. Negotiated procedures without prior publication of a contract notice may be used for supply contracts:

a) when the goods involved are manufactured purely for the purpose of research, experimentation, study or development; this provision does not extend to quantity production to establish commercial viability or to recover research and development costs;

b) for additional deliveries by the original supplier, intended either as partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the **CA** to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. In this case, the additional contract shall be signed within a time limit of 3 months from the end of the original contract.

4. Negotiated procedures without prior publication of a contract notice may be used for service contracts with the successful candidate, following the design contest, in accordance with Article 34 of the **PPL**.

5. Negotiated procedures without prior publication of a contract notice may be used for works and service contracts:

a) 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:

i) when such additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the **CA**;

ii) when such works or services, although separable from the performance of the original contract, are strictly necessary for its completion.

b) for new works or services consisting in the repetition of similar works or services entrusted to the economic operator, to whom the same **CA** 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

---

<sup>5</sup> Replaced the wording as per the Final President's decree. Green paragraph needs to be checked against the consolidated Albanian version and referenced accordingly.

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 **CA**. The procedure set up by this sub-paragraph 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.

6. The selection of the economic operators, who shall be invited, should never be discriminatory. The **CA** should, as frequently as possible, change the invited entrepreneurs.

#### **Article 34 Request for proposals**

1. **CA** may use the request for proposals procedure for contracts of a value below the low thresholds. Pursuant to this procedure, **CA** may seek offers from a limited number of economic operators of their choice, or may use the electronic communication, as provided in Art. 36 **PPL**, and evaluates them according to the criteria of quality and price. The comparison must be made among at least 5 contractors, 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.

The **CA** should, in any case, accept tenders from tenderers other than the ones invited by him.

2. When **CA** use electronic communications, they shall publish an electronic notice, in accordance with Art. 38, para 4 **PPL**, as determined in the **PP rules**.

#### **Article 35 Design contest**

1. Design contest may be organized by **CA** for contracts of a value above the low value thresholds for services.

2. Design contest may be organized:

- (a) as a part of a procedure leading to the award of a public service contract;
- (b) for the purposes of obtaining the design only, which is rewarded with a prize or a payment.

3. **CA** wishing to launch a design contest shall make known their intention by means of a contest notice, which shall be published according to the provisions of Art. 38 **PPL** and contain at least the information set forth in Art. 39 **PPL**.

4. Specific rules for the organization of design contests of both types under para 2 of this Art. shall be laid down in **PP-rules**.

5. The rules governing each individual contest shall be communicated to those interested in participating in the contest. Participation in a contest may be limited to a number of selected candidates, provided that the selection is made on the basis of clear and non discriminatory criteria made known to all interested persons and that the number of candidates invited to participate is sufficient to ensure genuine competition.

6. The admission of participants to a contest shall not be limited:

- (a) by reference to the nationality, territory or residence;
- (b) on the grounds that they would be required to be either natural or legal persons.

7. The 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 conduct the contest autonomously. The commission's decisions shall be based on the criteria set out in the contest notice and respect the principle of anonymity of participants.

### **Article 35/1 Framework Agreements**

1. For public contracts, the contracting authorities may conclude a framework agreement after conducting the open, restricted or negotiated procedure with prior publication of a contract notice. Whereas for sectoral contracts, contracting authorities can also conclude a framework agreement after a negotiated procedure without prior publication of a contract notice.

2. The parties to the framework agreement shall be chosen by applying the award criteria set in accordance with Article 55 of this law.

3. Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down in paragraphs 5 and 6 of this Article. These procedures may be applied only between the contracting authorities and the economic operators originally party to the framework agreement. When awarding contracts based on a framework agreement, the parties may under no circumstances make substantial amendments to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 5 of this article.

4. The term of a framework agreement may not exceed four years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

5. Where a framework agreement is concluded with a single economic operator, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement. For the award of these contracts, contracting authorities communicate in writing with the economic operator, party to the framework agreement, requesting it to submit its tender in accordance with the requests.

6. Where a framework agreement is concluded with several economic operators, the latter must be at least three in number, insofar as there is a sufficient number of economic operators to satisfy the selection criteria and/or of admissible tenders which meet the award criteria, in accordance with Article 55 of this law.

Contracts based on framework agreements concluded with several economic operators may be awarded either:

- a. by application of the terms laid down in the framework agreement without reopening competition, or
- b. where not all the terms are laid down in the framework agreement, when the parties are again in competition on the basis of the same and, if necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specifications of the framework agreement, in accordance with the following procedure:
  - i. for every contract to be awarded, contracting authorities shall consult in writing the economic operators capable of performing the contract;
  - ii. contracting authorities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in the tenders;



- iii. tenders shall be submitted in writing, and their content shall remain confidential until the stipulated time limit for reply has expired;
  - iv. contracting authorities shall award each contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the specifications of the framework agreement.
7. Contracting entities may not misuse framework agreements in order to hinder, limit or distort competition.
8. In any case the framework agreement shall be implemented in accordance with the requirements set forth in public procurement by-laws.

## **CHAPTER IV ELECTRONIC PROCUREMENT**

### **Article 36 Rules applicable to electronic communications**

1. Without prejudice of the general principle of non discrimination, and the provisions of Art. 22 **PPL**, the following rules are applicable to devices for the electronic transmission and receipt of tenders and to devices for the electronic receipt of requests to participate:

- (a)** information regarding the specifications necessary for the electronic submission of tenders and requests to participate, including encryption, shall be available to interested parties. The devices for electronic receipt of tenders and requests to participate shall conform to the requirements established in the public procurement rules and in compliance with the relevant legislation;
- (b)** electronic tenders **must be accompanied by an advanced electronic signature**, in conformity with international standards;
- (c)** procurement rules may introduce voluntary accreditation schemes aiming at enhanced levels of certification service provision for these devices;
- (d)** tenderers shall undertake to submit, before expiry of the time-limit laid down for submission of tenders or requests to participate, the documents, certificates and declarations referred to in Art. 45 and 46 **PPL**, if they do not exist in electronic format.

2. Without prejudice of the general principle of non-discrimination, and Article 22 **PPL**, the following rules are applicable to electronic signatures required for the transmission and receipt of tenders and all related documents:

- (a)** Where the **PPL** requires a signature of a person, that requirement is met in relation to all tender documents, if an electronic signature is used that is as reliable as was appropriate for the purpose for which the electronic document was generated or communicated, in the light of all the circumstances, or in compliance with relevant laws or rules of general application to electronic commerce;
- (b)** An electronic signature shall be considered reliable and in compliance with the procurement law, if:
  - (i)** The signature is on its face and within the context, in which it is presented, logically linked to the signatory and to no other person;

(ii) The original documents or data used to create the electronic signature were, at the time of signing, under the exclusive control of the signatory and are maintained for the duration of the procurement and for a reasonable time thereafter, or as provided by legislation or **PP-rules**;

(iii) Any alteration to the electronic signature, made after the time of signing, is detectable with reasonable diligence;

(iv) None of the provisions in this para are intended to limit the ability of any person or legal entity to establish in any other way allowed by law or regulation the reliability of an electronic signature or to produce evidence of the non-reliability of an electronic signature.

### **Article 37 Electronic auctions and dynamic purchasing systems**

In order to set up electronic awarding procedures, **CA** shall follow the rules of electronic auctions and dynamic purchasing systems provided in the **PP-rules** and in the relevant legislation in force, pursuant to the principles set in article 2 and the international and European standards.

## **CHAPTER V CONDUCT OF THE PROCEDURES**

### **Article 38 Notices**

1. **CA** wishing to award a public contract by open, restricted or negotiated procedure with prior publication or by request for proposal procedure according to Art. 30, 31, 32 and 34 **PPL**, respectively, or to launch a design contest according to Art. 35 **PPL**, shall make known their intention by contract notices.

2. Contract notices for contracts of a value above the high value thresholds shall be published on the **PP Bulletin**, on at least one newspaper of European distribution.

3. Contract notices for contracts of a value lower than the high value thresholds, but above the low value thresholds, shall be published in the **PP Bulletin**.

4. All procurement notices are published on the web-site of the **PPA**.

### **Article 39 Content of the notices**

1. The notices to be published under the provisions of Art. 38 **PPL** shall contain all relevant information as to allow economic operators to decide whether or not to participate in the awarding procedures.

2. In case of an open procedure, the notice shall also contain the time-limit for the receipt of tenders, the address to which tenders must be sent, the language, or languages, in which tenders must be drawn up. The notice must contain all indications to obtain the tender documents, as provided for in Art. 41 **PPL**.

3. The content of notices shall be determined in the **PP-rules**.

#### **Article 40 Invitation to tender**

1. In restricted procedures and negotiated procedures with publication of a contract notice within the meaning of Art. 31 and 32 **PPL**, **CA** shall simultaneously and by written or by electronic means communication invite the selected candidates to submit their tenders or to negotiate.

2. The invitation to the candidates shall include either:

- a copy of the tender documents and any supporting documents;
- a reference to accessing the tender documents and the other documents indicated in the first indent, by electronic means.

3. The invitation to tender, to negotiate is drafted according to the models established in the **PP**. Such invitation shall, in any case, contain at least:

- (a) a reference to the contract notice published;
- (b) the time-limit for the receipt of tenders, the address to which tenders must be sent and the language, or languages, in which tenders must be drawn up;
- (c) a reference to any possible additional documents to be submitted, either in support of verifiable declarations by the tenderer, in accordance with Art. 45 and 46 of the **PPL**, or to supplement the information referred to in those articles;
- (d) the relative weighting of the criteria identified for the award of the contract or, where appropriate, the descending order of importance for such criteria, if they are not given in the contract notice, the specifications or the descriptive document.

4. In case of restricted procedures and negotiated procedures, **CA** may not limit the number of candidates to be invited to tender. In this case, the minimum number of candidates invited shall be not less than 5 economic operators, for restricted procedures, and not less than 3 economic operators for negotiated procedures. In cases where the number of candidates who have expressed their interest is lower than the fixed minimum, **CA** can proceed with the awarding procedure provided that there are at least 2 candidates, with the exception of the negotiated procedure without prior publication of notice. **CA** shall indicate in the contract notice the objective and nondiscriminatory criteria or rules they intend to apply, the minimum number of candidates they intend to invite.

#### **Article 41 Tender documents**

1. In elaborating tender documents, **CA** shall use standard tender documents provided in the **PP-rules**.

2. In open procedures, **CA** shall make tender documents available to economic operators, upon request, in an expeditious manner, at a price not exceeding the cost of reproduction and delivery, in the manner specified in the contract notice. The complete tender documentation shall be made available cost free by electronic means.

3. In restricted procedures and negotiated procedures, tender documents are included in the invitation to tender or the invitation to negotiate. They should be readily available even in electronic form, in which case all the necessary indication to download them are provided with the invitation.

4. The names and number of economic operators, who express their interest in purchasing the tender documentation or in reading it, shall be kept confidential.

#### **Article 42 Clarifications and modification of tender documents**

1. Potential tenderers may request clarifications of the tender documents from **CA**. **CA** shall respond to any request for clarification of the tender documents by economic operators, providing it is received within 5 days prior the deadline for the submission of tenders. **CA** shall respond within 3 days from the request so as to enable economic operators to make a timely submission of their tenders, and shall, without identifying the source of the request, communicate the clarification to all economic operators, to which **CA** have provided the tender documents. Should economic operators not agree with the **CA's** final decision, they can bring a complaint before the **PPC**.

2. At any time prior to the deadline for submission of tenders, **CA** may, for any reason, whether on their own initiative or as a result of a request for clarification by an economic operator, modify the tender document by issuing an addendum. The addendum shall be communicated promptly to all economic operators to which **CA** have provided the tender documents and shall be binding on those economic operators. The addendum shall be made available also by electronic means.

**2/1** In any case, when tender documents are modified, contracting authorities shall extend the time limit for the submission of tenders, by 5 days, whereas for procurements above the high monetary thresholds by 10 days.

3. If **CA** convene a meeting of economic operators, they shall prepare minutes of the meeting containing the requests submitted at the meeting for clarification of the tender documents and their responses to those requests, without identifying the sources of the requests. The minutes shall be provided promptly to all economic operators to which **CA** provided the tender documents, so as to enable them to take the minutes into account in preparing their tenders.

#### **Article 43 Time-limits for receipt of requests to participate and for receipt of tenders**

1. When fixing the time-limits for the receipt of tenders and requests to participate, **CA** shall consider, in particular, the complexity of the contract and the time required for drawing up tenders, according to the proportionality principle, without prejudice to the minimum time-limits set by this Art. Unless otherwise specified, time-limits set in this law are in calendar days.

2. In case of open procedures above the high value thresholds, the minimum time-limit for the receipt of tenders shall be not less than 52 days from the date, when the contract notice was published on the Public Procurement Agency website.

3. In case of restricted or negotiated procedure with publication of a contract notice with a value above the high monetary threshold:

(a) the minimum time-limit for receipt of requests to participate shall be 20 days from the date, when the contract notice was published on the Public Procurement Agency website;

(b) in case of restricted procedures, the minimum time-limit for the receipt of tenders shall be 20 days from the date, when the invitation to tender was sent to the candidates.

4. If, for whatever reason, tender documents and supporting documents or additional information, although requested in good time, are not supplied within the time-limits specified in the contract notice, or where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the tender documents, the time-limits for the receipt of tenders shall be extended by 10 days so that all economic operators concerned may be aware of all the information needed to produce tenders.

5. In case of open procedures between the high and the low value thresholds, the minimum time-limit for the receipt of tenders shall be 30 days from the date when the contract notice was published on the Public Procurement Agency website.

6. In case of restricted or negotiated procedure with publication of a contract notice between the high and the low value thresholds:

(a) the minimum time-limit for receipt of requests to participate shall be 15 days from the date, when the contract notice was published on the Public Procurement Agency website;

(b) in case of restricted procedures, the minimum time-limit for the receipt of tenders shall be 15 days from the date, when the invitation to tender was sent.

7. In case of awarding procedures below the low value threshold, the minimum time-limit for the receipt of tenders shall be 10 days from the publication of the contract notice.

8. In case notices are prepared and published by electronic means, in compliance with the format and procedure for the transmission that are provided in the **PP-rules**, the time limits for the receipt of tenders, as set in para 2 and 5 of this Article, may be reduced by seven days for the open procedure, whereas the time limits for the receipt of requests for participation, as provided in para 3 (a), (b) and 6 (a), (b) of this article, may be reduced by 5 days, for the restricted and negotiated procedures.

#### **Article 44 Economic operators**

1. Candidates or tenderers, entitled to provide the relevant services, shall not be rejected solely on the ground that they would be required to be either natural or legal persons. In case of public service and public works contracts as well as public supply contracts covering in addition services and/or sitting and installation operations, **CA** may require legal persons to indicate, in the tender or the request to participate, the names and relevant professional qualifications of the staff to be responsible for the performance of the contract in question.

2. Groups of economic operators may submit tenders or put themselves forward as candidates. In order to submit a tender or a request to participate, they should be required by the **CA** to assume specific legal form, as provided in the **PP-rules**.

## **Article 45 Exclusion criteria of candidates or tenderers**

**1.** Any candidate or tenderer, convicted by final judgment of which the **CA** is aware for any of the reasons listed below, must be excluded from participation in awarding procedures:

- (a)** participation in a criminal organization;
- (b)** corruption;
- (c)** fraud;
- (d)** money laundering
- (e)** forgery

**CA** may ask tenderers to supply the documents referred to in para 3 of this Art. and may, where they have doubts concerning the personal situation of such tenderers, also apply to the competent authorities to obtain any information they consider necessary on the personal situation of the tenderers concerned. Where the information concerns a tenderer established in a foreign country, contracting authorities may seek the cooperation of the competent authorities.

**2.** Any candidate or tenderer must be excluded from participating in awarding procedures where he:

- (a)** is gone bankrupt and his own capital is being executed by the bailiffs;
- (b)** is the subject of proceedings for 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;
- (c)** has been convicted by a definitive judgment of any offence concerning his professional conduct;
- (d)**<sup>6</sup> 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;
- (f)** is guilty of supplying false information when it was required under this section or has not supplied such information and documentation at all, or just partially.

**3.** **CA** shall accept the following evidence as being sufficient to demonstrate that none of the cases specified in the para above applies to the candidate or tenderer:

- (a)** as regards of para 1, 2 (a), (b) and (c): the production of an extract from the judicial record or failing that, of an equivalent document issued by a competent judicial or administrative authority showing that these situations do not apply;
- (b)** as regards para 2 (e) and (f): a certificate issued by the competent authority.

## **Article 46 Qualification of tenderers**

---

<sup>6</sup> This is the new item ç) after the old one has been abrogated. The following items change accordingly in alphabetical order.

1. In order to participate in awarding procedures, economic operators must qualify by meeting all the following criteria as **CA** consider appropriate, insofar as they are proportionate to the nature and size of the contract to be awarded and are not discriminatory:

(a) professional qualification: any economic operator is requested to prove its enrolment, as prescribed in his/her State of establishment, on one of the professional or trade registers or to provide a declaration on oath or a certificate as for his/her suitability to pursue the professional activity required by the contract to be awarded;

(b) technical ability: economic operators are requested to prove they have the necessary technical qualifications, professional and technical competence, organizational capacity, equipment and other physical facilities, managerial capability, reliability, experience and reputation and the personnel to perform the contract as indicated by the **CA** in the contract notice;

(c) economic and financial standing: economic operators are requested to prove they have the economic and financial capability to enter the contract. This may be proven by providing appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance; the presentation of balance-sheets or extracts from the balance-sheets; a statement of the undertaking's overall turnover and, where appropriate, of turnover in the area covered by the contract for a maximum of the last 3 financial years available, as far as the information on these turnovers is available;

(d) legal capacity: economic operators are requested to prove they have the legal capacity to enter the contract, or – in the case of groups of undertakings - that they have such capacity, when they enter such contract.

2. Contracting authorities may also require the production of certificates drawn up by independent bodies stating the compliance of the candidate or tenderer with certain quality assurance standards, including, among others, environmental management standards.

3. The qualification requirements should be drawn in a manner that encourages the participation of small and medium business companies.

#### **Article 47 Disqualification of tenderers**

**CA** shall disqualify candidates, or tenderers, who submit documents containing false information or documents forged for purposes of qualification at any time, namely as soon as the discovery takes place until the contract has been awarded. **CA** shall report the disqualification to the **PPA** for the purposes of Article 13, para 3 of the **PPL**.

#### **Article 48 Submission and Receipt of Tenders**

1. **CA** shall fix a specific place, date and time as the deadline for the submission of tenders.

2. If, pursuant to Article 42 of the **PPL**, **CA** issue clarifications or modifications of the tender documents, they shall, extend the deadline for not more than 10 days, if necessary to allow economic operators reasonable time to take the clarification or modification, into account in their tenders. When providing

clarifications or making changes on the tender documentation, CA shall act in compliance with Art. 42 PPL.

3. Notice of any extension of the deadline shall be given promptly to each economic operator, to which CA provided the tender documents.

4. The submission of tenders shall be consistent with the following:

(a) subject to sub-paragraph (b), tenders shall be submitted in writing directly or by mail, signed and in a sealed envelope;

(b) without prejudice to the right of economic operators to submit a tender in the form referred to in sub-paragraph "a", a tender may alternatively be submitted in any other form specified in the invitation to tender, which provides a similar degree of authenticity, security and confidentiality, including by electronic means;

(c) CA shall, on request, provide the tenderer a receipt showing the date and time when its tender was received.

5. A tender received by CA after the deadline for its submission shall not be opened and be returned to the tenderer, who submitted it.

#### **Article 49 Tender security**

1. CA must require tenderers to provide tender securities. When CA require tender securities from tenderers, the following conditions shall apply:

(a) the amount of the security shall be proportionate to the value of the contract to be awarded;

(b) CA shall specify in the tender documents any requirements with respect to the nature, form, amount and other principal terms and conditions of the required tender security. Any requirement that refers directly or indirectly to conduct of the tenderer shall not relate to conduct other than:

(i) withdrawal or modification of the tender after the deadline for submission of tenders, or before the deadline, if so stated in the tender documents;

(ii) failure to sign the procurement contract, if required by the CA do to so;

(iii) failure to provide a required security for the performance of the contract after the tender has been accepted or to comply with any other condition precedent to signing the procurement contract specified in the tender document.

1/1 Contracting authorities may require tenderers to provide tender securities during the award procedures of sectoral contracts.

2. CA shall make no claim to the amount of the tender security, and shall promptly return, or procure the return of the tender security document, after one of the following events:

(a) expiry of the time-limit of the tender security;

(b) entry into force of the contract object of the awarding procedure and the provision of a security for the performance of the contract, if such a security is required by the tender documents;

(c) termination of the awarding procedure without awarding a successful candidate.



## **Article 50 Period of effectiveness of tenders, modification and withdrawal of tenders**

1. Tenders shall be in effect during the time specified in the tender documents.
2. Prior to the expiry of the period of effectiveness of tenders, **CA** may request tenderers to extend the period for an additional specified period of time. In this case:
  - (a) tenderers may refuse, without forfeiting their tender security. The effectiveness of their tenders will terminate upon the expiry of the un-extended period of effectiveness; or
  - (b) tenderers may agree to the extension, in which case the period of effectiveness of tender securities provided by them shall be extended accordingly. Alternatively, new tender securities are provided to cover the extended period of effectiveness of their tenders. A tenderer whose tender security is not extended, or that has not provided a new tender security, is considered to have refused the request to extend the period of effectiveness of his/her tender.

## **Article 51 Prohibition to modify tenders**

1. After the receipt of the tender, no negotiation shall take place between contracting authorities and tenderers with respect to a tender submitted, without prejudice to Article 53, para 1 **PPL**.
2. Tenderers shall not be required, as condition for award, to undertake responsibilities not stated in the tender documents, to change their price or otherwise to modify, in any manner, their tenders.
3. The provisions of this Article are without prejudice of the application of Articles 32 and 33 **PPL**.

## **Article 52 Opening of tenders**

1. Tenders shall be opened by the **CA** at the date, time and address specified in the tender documents after the time-limit for the submission of tenders, or after the deadline specified in any extension of the time-limit, in accordance with the procedures specified in the tender documents.
2. All tenderers shall be invited by **CA** to be present at the opening of their tenders. Tenderers may attend through a representative.
3. The name and address of each tenderer, whose tender is opened, the legal documentation and any other document required by the **CA**, and the tender price shall be announced to those persons present at the opening of tenders, and recorded immediately in the report of the tendering proceedings required by Article 12 **PPL**.
4. The report shall be, upon request, immediately made available to any bidder and a notice shall be sent to the tenderer, who submitted the tender, but who is neither present, nor represented in the opening of tender session.

5. The report on the opening of tenders shall be published on the website and made available together with the tender documentation.

6. In cases of procurement by electronic means, the opening of tenders shall be done as follows:

In cases of procurement by electronic means, the opening of tenders shall be carried out as follows:

- a) Tenders shall be opened by the contracting authority at the date, time and place specified in the tender documents after the time-limit for the submission of tenders, or after the deadline specified in any extension of the time-limit, in accordance with the procedures specified in the tender documents, in compliance with the electronic public procurement rules.
- b) The documentation submitted by tenderers in cases of award procedures by electronic means is automatically recorded in the system. Therefore, paragraphs 2,3,4 and 5 shall not be applicable.

### **Article 53 Examination of tenders**

1. When deemed as appropriate, **CA** may require tenderers to clarify their tenders in order to assist the examination, evaluation and comparison of tenders. Without prejudice of the procedures under Articles 32 and 33 **PPL**, no change in a matter of substance in the tender, including changes in price and changes aimed at making an unresponsive tender responsive, shall be sought, offered or permitted.

2. Notwithstanding para 1 of this Article, **CA** shall correct purely material errors, discovered during the examination of tenders, provided there is no evidence of an attempt to fraud. **CA** shall give prompt notice of any such correction to the tenderer concerned.

3. Subject to para 4 of this Article, **CA** may consider a tender responsive only, if it conforms to all specifications and requirements set forth in the contract notice and in the tender documents, without prejudice of Art. 54 **PPL**.

4. **CA** may regard a tender as responsive, even if it contains minor deviations that do not materially alter or depart from the specifications, terms, conditions and other requirements set forth in the tender documents or, if it contains mistakes or oversights capable of being corrected without altering the substance of the tender.

5. **CA** shall not accept a tender in case that:

- (a) the tenderer is not qualified;
- (b) the tenderer does not accept a correction of a material error made pursuant to paragraph 2 of this Article;
- (c) the tender is not responsive to the specifications set out in tender documents, without prejudice of Article 54 **PPL**;
- (d) in cases, where Article 26 **PPL** is applicable.

### **Article 54 Alternatives**

1. When the awarding criterion is of the most economically advantageous tender, **CA** may authorize tenderers to submit alternatives.
2. **CA** shall indicate in the contract notice whether or not they authorize alternatives: variants shall not be authorized without this indication.
3. **CA** authorizing alternatives shall state in the tender documents the minimum requirements to be met by the variants and any specific requirements for their presentation.
4. Only alternatives meeting the minimum requirements laid down by **CA** shall be taken into consideration.

#### **Article 55 Contract award criteria**

1. **CA** may award public contracts to the offer, which meets the qualification criteria and is the responsive offer with the lowest value.

**CA** may use various criteria, for example: quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion, provided these criteria are:

- (a) closely linked to the subject-matter of the public contract to be awarded;
  - (b) objective, proportionate and non-discriminatory;
  - (c) clearly set out in the contract notice or in the tender documents;
  - (d) clearly set out in quantity and quality terms aiming at the evaluation of tenders, and expressed in monetary terms or using the “fail/pass” criteria.
2. **CA** shall evaluate and compare admitted tenders in order to select the successful tender, in accordance with the procedures and criteria set forth in the tender documents. No criterion shall be used that has not been set forth in the tender documents.
  3. Offers shall be assessed on economic and technical grounds only.
  4. A brief description of the evaluation phase is contained in the records to be kept by **CA** pursuant to Article 12 **PPL**. In cases of electronic awarding procedures, the system shall automatically manage the data, evaluations and respective comments by notifying the tenderers electronically.
  5. After comparing and evaluating tenders, **CA** identifies the successful tender.

#### **Article 56 Abnormally low tenders**

1. If, for a given contract, one or more tenders appear to be abnormally low in relation to the goods, works or services, **CA** shall, before they may reject those tenders, request in writing details of the constituent elements of the tender. Those details may relate in particular to:

- (a) the economics of the construction method, the manufacturing process or the services provided;
- (b) the technical solutions chosen and/or any exceptionally favourable conditions available to the tenderer for the execution of the work, for the supply of the goods or services;
- (c) the originality of the work, supplies or services proposed by the tenderer;
- (d) compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed.

2. **CA** shall verify those constituent elements by consulting the tenderer concerned, taking account of the evidence supplied. If, after examining the elements provided by the tenderer, **CA** are not satisfied that the tender is regular in all relevant aspects, **CA** may reject it.

#### **Article 57 Confidentiality of the process**

1. Without prejudice of the obligations imposed upon **CA** by the provisions of Article 21 **PPL**, after the opening of tenders, information relating to the examination, clarification, and evaluation of tenders must not be disclosed to tenderers or other persons not officially concerned with this process until the contract is signed.

2. Following the opening of tenders, and until the award of the contract is announced, no tenderer shall make any unsolicited communication to the **CA** or try in any way to influence the examination and evaluation of tenders.

#### **Article 58 Notification of award and signing of contract**

1. Notice of the award of the contract shall be given promptly to the tenderer, who has submitted the tender identified as the successful tender pursuant to Article 55 of the **PPL**.

2. Within 10 days from the notification of award, **CA** send a notice to the **PPA** for publication in the **PP Bulletin**. The notice shall contain as follows:

- a) the names of the candidates;
- b) the prices of their offers;
- c) the names of disqualified tenderers and their offered prices;
- d) the name of the successful tenderer and his offered price.

3. The **CA** and the tenderer shall sign the contract within 30 days after the publication of award in the **PP Bulletin**. The period shall not be considered reasonable, if it exceeds the period of effectiveness of the tender, as set in the contract notice or the tender documents.

4. The contract enters into force upon its signing by the successful tenderer and the **CA**.

5. 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 -, **CA** shall forfeit the tender security and award the contract to the next tender in the list of the remaining selected offers (tenders), where the difference between the first listed tender and the second one, shall not exceed the value of the tender security. This provision is without prejudice of the right of **CA**, in accordance with Article 24 **PPL**, to reject all remaining tenders and discontinue awarding procedures. The notice provided for in para 1 of this Article shall be dispatched to the tenderer, whose tender is chosen pursuant to this para.

6. Where the contract is signed before the end of the deadline for the classification notice or before termination of the administrative review, in accordance with Chapter VII of the **PPL**, the contract is considered null and void.

## **CHAPTER V/1 PROCEDURES FOR AWARDING SECTORAL CONTRACTS**

### **Article 58/1 Sectoral Contracts**

1. This Chapter contains special provisions applied by the contracting authorities operating in the water, energy, transport and postal services sectors when awarding sectoral contracts. For the purpose of this Chapter, sectoral contracts are public contracts awarded by the contracting authorities referred to in Article 3 paragraph 14/1, if the contract is awarded for the purposes of performing any of the following activities:

- a. the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity, gas or heat or supply of electricity, gas or heat to such networks;
- b. exploitation of geographical area for the purpose of exploring, prospecting for or extracting oil, gas, coal or other solid fuels, or the provision of airports and maritime or inland ports or other terminal facilities to air, sea or inland waterway carriers;
- c. the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water or supply of drinking water to such networks or management of such networks;
- d) the provision or operation of fixed networks intended to provide a service to the public in the field of transport by railway, automatic systems, tramway, trolley bus, or cable;
- e) the provision or operation of fixed networks intended to provide a service to the public in the field of transport by bus;
- f) the provision of postal services.

2. The contracting authorities awarding sectoral contracts shall apply the clauses of other headings of this law, unless otherwise stated in this Chapter.

3. Contracting authorities awarding the contracts referred to in item c) of paragraph 1 shall apply the provisions of this Chapter also to the award of contracts which:

- a) are connected with hydraulic engineering projects, irrigation or land drainage, provided that the volume of water to be used for the supply of drinking water represents no more than 20 % of the total volume of water made available by such projects or irrigation or drainage installations, or

b) are connected with the disposal or treatment of sewage, related to sewage systems and waste water treatment, and to the activities related to obtaining drinking water.

4. As regards transport services referred to in items c) and d) of paragraph 1, a network is considered to exist where the service is provided under operating conditions laid down by a competent authority, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

5. The contracting authorities awarding the contracts referred to in item dh) of paragraph 1 shall apply the provisions of this Chapter also to contracts related to the provision of the following services: mail service management services both preceding and subsequent to dispatch, transmission of coded documents using electronic means of communication, management of address databases, transmission of registered electronic mail, financial, philatelic and logistical services, particularly the transportation of commodity shipments and their confectioning and storage.

#### **Article 58/2 Procurement comprising several activities**

1. A contract which is intended to cover several activities shall be subject to the rules applicable to the activity for which it is principally intended.

However, the choice between awarding a single contract and awarding a number of separate contracts may not be made with the objective of excluding it from the scope of this Chapter or, where applicable, other provisions of this Law.

2. If one of the activities for which the contract is intended is subject to this Heading and the other two Headings of this Law and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with Headings I and V.

3. If one of the activities for which the contract is intended is subject to this Chapter and the other is not subject to either this Chapter or Headings I and V, and if it is objectively impossible to determine for which activity the contract is principally intended, the contract shall be awarded in accordance with this Chapter.

#### **Article 58/3 Contracts awarded for purposes of resale or lease to third parties**

This Chapter shall not apply to sectoral contracts awarded by the contracting authorities for the purposes of resale or lease of the object of the contract to third parties, provided that the contracting authority does not have a special or exclusive right to sell or lease the object of contract, and that other entities may sell or lease it without restrictions and on the same conditions as the contracting authority.

#### **Article 58/4 Contracts awarded to affiliated undertakings, to a joint venture or to a contracting entity forming part of a joint venture**

1. This Chapter shall not apply to sectoral contracts awarded by the contracting authority to an affiliated undertaking or to a joint venture, formed exclusively by a number of contracting authorities for the purpose of carrying out activities within the meaning of Article 58/1, to an undertaking which is affiliated

with one of these contracting entities, provided that conditions referred to in paragraph 3 of this Article are fulfilled.

2. For the purpose of this Article “affiliated undertaking” means any undertaking:

the annual accounts of which are consolidated with those of the contracting authority in accordance with accounting regulations, or

over which the contracting authority may exercise, directly or indirectly, dominant influence within the meaning of item b) paragraph 14/1 of Article 3 or which may exercise a dominant influence over the contracting authority or which, together with the contracting authority is subject the dominant influence of another undertaking, by virtue of ownership, financial participation, or the rules which govern it.

3. Paragraph 1 of this Article applies if at least 80% of the average turnover of the affiliated undertaking in the previous 3 years derives from providing such services, supplies or works to undertakings with which it is affiliated. Where, because of the date on which and affiliated undertaking was created or commenced its activities, the turnover is not available for the preceding 3 years, it is sufficient for that undertaking to show that the turnover referred to above is credible, particularly by means of business projections. Where more than one undertaking affiliated with the contracting entity provides the same or similar services, supplies or works, the above percentages shall be calculated taking into account the total turnover deriving respectively from the provision of services, supplies or works by those affiliated undertakings.

4. This Chapter shall not apply also to contracts awarded:

by a joint venture, formed exclusively by a number of contracting entities for the purpose of carrying out activities within the meaning of Article 58/1 of this law, to one of these contracting entities, or

by a contracting entity to such a joint venture of which it forms part, provided that the joint venture has been set up in order to carry out the activity concerned over a period of at least three years and that the instrument setting up the joint venture stipulates that the contracting authorities, which form it, will be part thereof for at least the same period.

#### **Article 58/5 Exemptions specific for energy and water sector**

1. This Chapter shall not apply to sectoral contracts awarded by contracting authorities referred to in item b) and c) item 14/1 of Article 3, for the purposes of performing an activity consisting in providing gas or heat to the networks referred to in paragraph 1, item 1, Article 58/1, if:

the production of gas or heat is a necessary consequence of conducting an activity other than that described in Article 58/1 of this law; and

the purpose of the provision of gas or heat is only to utilize the production for economic purposes, and it does not exceed 20% of the economic operator’s average turnover over the period of the previous three years, including the year in which the contract is awarded.

2. This law shall not apply to sectoral contracts awarded by contracting authorities referred to in items b) and c) paragraph 14/1 Article 3, for the purposes of performing an activity consisting in providing electricity to the networks referred to in item a), paragraph 1, Article 58/1, if:

the production of electricity is necessary to conduct an activity other than that defined in Article 58/1 of this law; and

the provision of electricity is dependent solely on own consumption, and it does not exceed 30% of the total production over the period of the previous three years, including the year in which the contract is awarded.

3. This Chapter shall not apply to sectoral contracts awarded by the contracting authorities referred to in items b) and c), paragraph 14/1 of Article 3, for the purposes of performing an activity consisting in providing drinking water to the networks referred to in item c) paragraph 1, Article 58/1 of this law, if: production of drinking water is necessary to conduct an activity other than that defined in Article 58/1 of this law; and the provision of drinking water is solely dependent on own consumption, and does not exceed 30% of the total production over the period of the previous three years, including the year in which the contract is awarded.

#### **Article 58/6 Exemption of purchase of energy, fuels and water**

1. Contracting authorities conducting the activity referred to in item a), paragraph 1, Article 58/1, shall not apply provisions of this Chapter to award sectoral contracts for supplies of electricity, heat or fuels used for the production of energy. This activity will be regulated by other laws or by-laws.
2. The contracting authorities conducting the activity referred to in item c), paragraph 1, Article 58/1 of this law shall not apply provisions of this Chapter to award contracts for supplies of water.

#### **Article 58/7 Exemption of bus transport services**

The contracting authority conducting the activity referred to in item dh), paragraph 1 of Article 58/1, on the basis of special rights shall not apply provisions of this Chapter if regular transportation services may be also provided by other carriers in the same area and on the same conditions.

#### **Article 58/8 Procedures of awarding sectoral contracts**

1. To award all sectoral contracts, contracting authorities may always use open, restricted or negotiated procedure with publication of notice.
2. Contracting authorities may award sectoral contracts through a negotiated procedure without publication of notice:
  - a. when no tender or no suitable tenders or no applications have been submitted in response to an open, restricted or negotiated procedure with publication, provided there is no substantial alteration to the initial conditions of the contract;
  - b. when for technical or artistic reasons, or for reasons connected with exclusive rights or intellectual property rights, the contract may be executed only by a particular economic operator;
  - c. insofar as it is strictly necessary when, for reasons of urgency brought about by causes unforeseeable by the contracting authority, the time limits referred to in Article 43 of this law, for the publication of contract 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. The conditions and circumstances for the use of this procedure are determined in the procurement regulations;
  - d) where a contract based on the framework agreement is awarded, provided that requirements of Article 58/9 are complied with.
3. Negotiated procedures without prior publication of a contract notice may be used for sectoral contracts, subject of which are as follows:



- a. when the goods involved are manufactured purely for the purpose of research, experimentation, study or development; this provision does not extend to quantity production to establish commercial viability or to recover research and development costs;
  - b. for additional deliveries by the original supplier, intended either as partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. In this case, the additional contract shall be signed within a time limit of 3 months from the end of the original contract and shall not exceed 20% of the total value of the initial contract;
  - c. for supplies quoted and purchased on commodity market;
  - d. for bargain purchases, where it is possible to procure supplies by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices;
  - e. for purchases of supplies under particularly advantageous conditions from either a supplier definitively winding up his business activities or the receivers or liquidators of a bankruptcy, an arrangement with creditors or a similar procedure under national laws or regulations;
4. Negotiated procedures without prior publication of a contract notice may be used for sectoral contracts, subject of which are as follows:
- a) 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 total value of the initial contract:
    - i) when such additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authority;
    - ii) when such works or services, although separable from the performance of the original contract, are strictly necessary for its completion.
  - b) for new works consisting in the repetition of similar works 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 a procurement 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. The procedure set up by this sub-paragraph 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.

#### **Article 58/9 Call for competition**

1. The contracting authority is obliged to inform about its intention of awarding a sectoral contract by means of call for competition which may take a form of:
- a) a contract notice as referred to in Article 38 of the law, or
  - b) a notice on the existence of a qualification system as referred to in Article 58/10 of this law.

## **Article 58/10 Qualification systems**

1. Contracting authorities, which so wish, may establish and operate a qualification system for the qualification of economic operators. Contracting authorities which establish or operate a system of qualification shall ensure that economic operators are at all times able to request qualification.

2. Where contracting authorities choose to establish a qualification system, the system shall be subject to a publication of notice indicating the purpose for its establishment and the way in which the rules for participation in it are applied. If the validity of the system is more than three years, the notice shall be published each year. If the system has a shorter validity, an initial publication of notice is sufficient.

3. The qualification system may involve different qualification stages. The criteria and rules for qualification shall be established by the contracting authority on the basis of objective criteria. When required, the criteria and rules may be changed. The criteria and rules shall be made available to economic operators on request. The updating of these criteria and rules shall be communicated to all interested economic operators.

4. The qualification criteria and rules set out in paragraph 3 may include the exclusion criteria listed in Article 45 and 46 of the law, on the terms and conditions set out therein. Where the contracting authority is a contracting authority within the meaning of paragraph 14 of Article 3 of the law, these criteria and rules shall include the exclusion criteria listed in paragraph 1 of Article 45.

5. Where the criteria and rules for qualification referred to in paragraph 3 of this Article include requirements relating to the economic and financial capacity of the economic operator, the latter may where necessary rely on the capacity of other operators, whatever the legal nature of the link between itself and those operators. In this case the economic operator must prove to the contracting authority that these resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking that will receive those means by other economic operators to that effect.

Under the same conditions, a group of economic operators as referred to in paragraph 2 of Article 44 may rely on the capacity of participants in the group or of other entities.

6. Where the criteria and rules for qualification referred to in paragraph 3 of this Article include requirements relating to the technical and/or professional abilities of the economic operator, the latter may where necessary rely on the capacity of other entities, whatever the legal nature of the link between itself and those entities. In this case the economic operator must prove to the contracting authority that those resources will be available to it throughout the period of the validity of the qualification system, for example by producing an undertaking by those entities to make the necessary resources available to the economic operator. Under the same conditions, a group of economic operators referred to in paragraph 2, Article 44 may rely on the abilities of participants in the group or of other entities.

7. A written record of qualified economic operators shall be kept; it may be divided into categories according to the type of contract for which the qualification is valid.

8. When a call for competition is made by means of a notice on the existence of a qualification system, tenderers in a restricted procedure or participants in a negotiated procedure shall be selected from the qualified candidates in accordance with such a system.

9. Contracting authorities, which establish and operate a qualification system shall inform the candidates on their decision regarding qualification within a period of six months. If the decision will take longer than four months from the moment when an application is submitted, the contracting authority shall inform the candidates, within the first two months from the submission of the application, on the reasons justifying the longer period for decision and on the date when the application shall be accepted or rejected.

10. Candidates which shall not qualify, shall be notified on this decision and the reasons for their rejection, as soon as possible and under no circumstance later than 15 days since the day when the decision is made. The reasons shall be provided on the basis of the qualification criteria set out in paragraph 3 of this Article.

11. The contracting authorities which establish and operate a qualification system may reject the qualification of an economic operator only on the basis of the qualification criteria referred to in paragraph 3 of this Article. Every notice for the rejection of an application shall be notified in written to the economic operator, at least 15 days prior to the estimated completion date of the qualification, including the reasons justifying the proposed action.

## **CHAPTER VI PERFORMANCE OF CONTRACTS**

### **Article 59 Conditions for performance of contracts**

1. **CA** may lay down special conditions relating to the performance of a contract, provided these are lawful and indicated in the invitation to tender or in the tender documents.
2. The conditions governing the performance of a contract must have a non-discriminatory nature or effect and be proportionate to the scope of the contract.

### **Article 60 Rules applicable to contracts**

1. The terms of the contract awarded pursuant to the **PPL** shall not differ from the prescriptions established in the tender documents and in the successful tender.
2. All terms of the contract awarded pursuant to the **PPL** shall be performed in good faith by both parties.
3. Without prejudice of the provisions of the **PPL** and any other legislative provisions applicable to contracting authorities, contracts awarded pursuant to the **PPL** shall be subject to **Albanian Civil Law**.

### **Article 61 Sub-contracting**

1. **CA** shall, in the invitation to tender or in the tender documents, require tenderers to indicate in their tenders the percentage of the contract they may wish to subcontract to third parties and any proposed sub-contractors.
2. **CA** may also indicate in the invitation to tender or in the tender documents that they will impose on the successful tenderer an obligation to sub-contract a certain percentage of the contract to third parties.

In this event, the percentage which is bound to be sub-contracted shall be proportionate to the value of the contract and shall not exceed 40 % of the contract value.

**3.** Without prejudice to the principles stated in para 4 of this Article, prospective subcontractors must be approved by **CA** before entering the sub-contract with the economic operator, who has been awarded the public contract following the provisions of the **PPL**.

**4.** The provisions of this Article are without prejudice to the question of the principal economic operator's liability, by which **CA** remain third parties vis-à-vis the contractual relationship between the economic operator and his/her sub-contractors and by which the principal economic operator is liable for the entire performance of the contract, regardless of any part of it being performed by sub-contractors.

#### **Article 62 Obligations valid throughout the performance of the contract**

**1.** **CA** state in the tender documents the body or bodies, from which a candidate or tenderer may obtain appropriate information on the obligations relating to taxes, environmental protection, employment protection provisions and working conditions in force in Albania, or in the region or locality, where the contract is to be performed.

**2.** Tenderers or candidates may be asked to indicate they have taken account, when drawing up their tender, the obligations attached to the performance of the contract as indicated by the competent bodies pursuant to para 1 of this Article.

**3.** The obligations referred to in para 1 of this Art. and in Article 46 **PPL**, are valid throughout the performance of the contract. Any failure to comply with such obligations and conditions shall lead to termination of the contract.

### **CHAPTER VII ADMINISTRATIVE REVIEW PROCEDURES**

#### **Article 63 Rights of interested persons**

**1.** Any person having or having had an interest in obtaining a public contract and who has been or risks being harmed by a decision taken by a **CA**, which infringes the **PPL**, may challenge such decision.

**2.** Objections shall be filed in the first instance with the concerned **CA** in writing within 7 days from the day the complainant became aware or should have become aware of the alleged breach of the **PPL**.

**3.** Upon receiving the complainant's written objection, the **CA** shall suspend the ongoing contract award procedure until the objection is fully examined and a decision is taken before the expiry of the time-limit stated in para 5 of this Article.

4. The **CA** must, if needed, extend the time-limit of the contract award procedure for the period of suspension referred to in para 3 of this Article. In case the time limits of the contract award procedure notified to the tenderers are changed due to consideration of objections, the **CA** shall dispatch to the tenderers a notice to the effect, indicating the reasons for the extension of the time-limits.

5. The **CA** must examine the objection and take a justified decision within 7 days after the receipt of the objection and must inform the complainant of the taken decision and the justification thereof not later than on the next working day.

6. If the **CA** fails to examine the objection within the time-limit specified in para 5 of this Article, or rejects the objection, the complainant may file a written appeal with the **PPC** within 7 days from the first working day after the expiry of the time-limit specified in para 5 of this Article, or, in case the objection in the first instance is rejected by the **CA**, from the day the complainant was informed thereof by the **CA**. It is obligatory that a written copy of the appeal is simultaneously notified to the **CA**.

7. The complaint to the **PPC** should be completed using the respective template, containing the name and address of the complainant, the reference to the concrete procedure, the legal ground and a description of the violation, the claimant's objection on the final decision, the appeal stages accompanied by the respective documentation and the decision of the contracting authority. The above elements are essential to the examination of complaints. The **PPC** examines the complaint, following this law, the Code of Administrative Procedures and the **PP-rules**. Failure in following all complaining stages makes the named complaint invalid.

8. Upon receiving the complainant's written appeal, the **CA** shall suspend the ongoing contract award procedure, unless the **PPC** instructs otherwise in writing according to Article 64, par. 2 **PPL**. The contracting authority shall immediately notify the Public Procurement Commission when it receives information that the appeal has been submitted to the Commission.

9. Upon receiving the complainant's written appeal, the **PPC** shall respond within 7 days. When the **CA** requires information for the review of the complaint, the **PPC** shall respond in writing, in accordance with the **PP rules**, but not later than 20 days.

10. Each complaint lodged at the Public Procurement Commission incurs a fee. The respective methods of payment and amounts are established upon a decision by the Council of Ministers.

#### **Article 64 Competencies of the PPA**

1. Upon receiving the complainant's written appeal, the **PPC** shall assure itself that the **CA** has suspended the ongoing contract award procedure. Upon a preliminary examination of the appeal, the **PPC** shall take a decision whether or not to issue an interim order according to para 2 of this Article, and inform the **CA** thereof.

2. At any time following the receipt of the complaint and before the conclusion of the contract, the **PPC** may, when it does not decide for a suspension allow by interim order and pending its final decision on the case, the **CA** to continue the contract award procedure when:

- a) on the basis of the information available to the **PPC**, it appears likely that the complainant will not succeed in the complaint, and/or
- b) the suspension would cause disproportionate harm to the public interest, the **CA** or the tenderers.

**3.** Prior to the conclusion of a public procurement contract, if the **PPC** is satisfied that a decision or action taken by the **CA** was in breach of the **PPL**, it has the power to:

- a) make a declaration with regard to the legal rules or principles which apply to the subject matter of the complaint;
- b) annul the whole or part of any act or decision of the **CA** inconsistent with the **PPL**. This includes the power to remove any technical or other type of specifications, which do not comply with the **PPL**;
- c) instruct the **CA** to correct any breaches and to proceed with the contract award procedure, after such correction;
- d) order the termination of the contract award procedure.

**4.** Following the conclusion of the public procurement contract, if the **PPC** is satisfied that a decision or action taken by the **CA** was in breach of any of the obligations of this Law, it has the power to:

- a) make a declaration with regard to the legal rules or principles which apply to the subject matter of the complaint;
- b) issue a declaratory decision based on which the complainant, who suffered loss or damage, as a result of a breach of the **PPL** may claim damages before the Court.
- c) take measures against responsible persons, in accordance with the provisions of the **PPL**.

Where the **PPC** is satisfied that an officer of the **CA** has committed a deliberate and intentional breach of the **PPL** with the effect of jeopardizing its purpose as set in Art. 1, it may, in addition to the remedial powers referred to in para 1 to 4 of this Art., report the offence to the competent authority.

#### **Article 64/1 Administrative Investigation Procedure**

1. The Public Procurement Commission may start an administrative investigation procedure, upon receipt of complaints by persons that have an interest in public procurement procedures.
2. In the course of an investigation, the Public Procurement Commission is entitled:
  - a) to request documentation or information from all parties in order to support their claims.
  - b) to request information and explanations from all central or local administrative bodies, and to take possession of all files and documents related to the administrative investigation case;
  - c) to interrogate any person, who it deems to be connected to the case, under investigation;
  - d) to request relevant expertise from third party licensed experts
3. The Public Procurement Commission reserves the right to set a deadline for its requests regarding information and submission of relevant documents, in accordance with the legislation that regulates administrative procedures.

#### **Article 64/2 Decisions of Public Procurement Commission**

1. Upon completion of the administrative investigation, the Public Procurement Commission may take the following decisions:

a) to close the investigation, as the actions, or failure to act, of the contracting authority under investigation, did not infringe this law, nor any other administrative or criminal provision. In this case, the Public Procurement Commission explains to the complainant in writing the reasons for closing the investigation;

b) to issue to the concerned contracting authority a written decision instructing it to stop acting against the law, within a given deadline.

2. Contracting authorities shall implement the decision or request an appeal for the decision issued by the Public Procurement Commission within 10 days of its receipt.

In case these acts have already produced their effects, the Public Procurement Commission recommends the damaged persons to file a suit before the Courts or to seek penal prosecution.

3. Where the Public Procurement Commission is satisfied that an officer of the contracting authority has committed a deliberate and intentional breach of this law, shall inform the competent authority about this violation.

#### **Article 64/3 Complaints before the Courts**

1. In cases, when the complainant or the contracting authority claim that the decision taken by the Public Procurement Commission does not comply with this law, within 5 days, upon receipt of the decision notice or upon the completion of the respective time-periods, or when the Public Procurement Commission has not taken the complaint into consideration, reserves the right to bring the administrative conflict before Tirana District Court. The Court examines the case in accordance with procedures and deadlines set forth in the clauses of the Civil Procedure Code, Chapter 2 "Administrative Conflict Court"

2. The examination of complaints by the Court shall not make the grounds for suspension of procurement procedures, for the conclusion of public contracts for goods, services or works by contracting authorities, or execution of obligations, according to procurement contracts between the respective parties.

## CHAPTER VIII ADMINISTRATIVE INVESTIGATION

### Article 65 Administrative Investigation Procedure<sup>7</sup>

### Article 66 Actions following the conclusion of administrative investigation<sup>8</sup>

## CHAPTER IX THE ACTIVITY OF THE PUBLIC PROCUREMENT ADVOCATE (PPAD)

### Article 69 Monitoring function and complaints

**1.** The **PPAd** deals with complaints notified to him by any individual or group of individuals, legal person, public authority, or any candidate, tenderer, or economic operator, complaining about illegal and irregular actions, or lack of action of contracting authorities.

---

<sup>7</sup> Abrogated with the law no. **10 309, date 22.07.2010** “**1.** The **PPA** may start an investigation procedure, if it observes that there has been a violation of the **PPL**.”

**2.** In the course of an investigation, the **PPA** is entitled:

- a)** to carry out on-the-place investigations, including offices of public institutions, and to perform on-the-place examination of all acts and documents related to the concrete investigation procedure;
- b)** to request information and explanations from all central or local administrative bodies, and to take possession of all files and documents related to the case;
- c)** to interrogate any person, who is deemed to be connected to the case, and to summon for a hearing all persons without immunity;
- d)** to request relevant expertise from third party experts.

**3.** To these ends, the **PPA** is entitled to enter in all offices of the public administration institutions which are considered as **CA** within the meaning of the **PPL**.

**4.** The **PPA** has the right to set a time-limit for the response to its requests for information and for the submission of relevant documents, in accordance with the legislation, which regulates the administrative procedures.

<sup>8</sup> <sup>8</sup> Abrogated with the law no. **10 309, date 22.07.2010** “**1.** Once the investigation is over, the **PPA** may take the following decisions:

- a)** to close the investigation as the actions, or failure to act, of the **CA** under investigation, did not infringe the **PPL**, nor any other administrative or criminal provision.
- b)** to issue a reasoned opinion in writing to the **CA** involved, ordering to stop the illegal behaviour within a set time-limit.

**2.**<sup>8</sup> Where the **PPA** deems that an officer of the **CA** has committed a deliberate and intentional breach of the **PPL**, it may report the offence to the competent authority.



2. Where required by the person submitting the request, the **PPAd** provides confidentiality of requests, if it deems as necessary.

3. In all cases, the **PPAd** notifies the interested parties over its actions within 5 days from receiving the complaint.

## Article 70 Investigation Procedure

1. Based on a complaint, or on its own initiative, the **PPAd** may start an investigation procedure, if he/she observes or suspects that there has been an infringement of the **PPL**.

<sup>9</sup>2. In the course of an investigation, the **PPAd** is entitled:

- a) to make on-the-place investigations, including offices of public institutions and to perform on the-place examination of all acts and documents related to the said investigation procedure;
- b) to request information and explanations from all central or local administrative bodies, and to take possession of all files and documents related to the case;
- c) to interrogate any person, who is deemed to be connected to the case, and to summon for a hearing in the **PPAd's** Office all persons without immunity;
- d) to request relevant expertise from third party experts.

3.<sup>10</sup> To these ends, the **PPAd**, or his/her agents, are entitled to enter in all offices of the public administration institutions, which are recognized as **CA** within the meaning of the **PPL**.

4<sup>11</sup>. The **PPAd** has the right to set a time-limit for the response to his/her requests for information and submission of relevant documents.

## Article 71 Actions following the conclusion of investigation

1. Once the investigations are finished, the **PPAd** may take the following decisions:

- a) to close the investigation as the actions, or failure to act, of the **CA** under investigation did not infringe the **PPL**, nor any other provision. In this case, when there is a complainant, the **PPAd** explains in writing to the **complainant** the reasons for ending the investigation, and when appropriate, sends information to the **PPA**;
- b) for any case of law infringement, it should immediately send relevant information to the **PPA**<sup>12</sup>,

---

<sup>9</sup> This is the new paragraph 2 as the old one is abrogated, (in numeric order). Was para 3 before.

<sup>10</sup> This is the new paragraph 3 as old para 2 is abrogated, (in numeric order). Was para 4 before.

<sup>11</sup> This is the new paragraph 4 as old para 2 is abrogated, (in numeric order). Was para 5 before.

<sup>12</sup> Abrogated with the law no. 10 309, date 22.07.2010 " in order to support the latter in decision-taking and complaints' examination, or in taking administrative measures against responsible persons".

2. Where the **PPAd** is satisfied that an officer of the **CA** has committed a deliberate and intentional breach of the **PPL**, or a criminal offence, he/she may report the offence to the competent authority.

### **Article 71/1 Legislative Recommendations**

If, during the investigation of the complaint the Public Procurement Advocate, realizes that the grounds for infringements of public procurement procedures lie in the content of the law itself or other legislative provisions for its implementation, he/she has the right to:

recommend proposals for change, amendments and/or improvements to the laws;

propose amendments or improvement of administrative regulations to contracting authorities that adopted them, when such regulations are in violation with this law.

### **Article 72 Administrative Offences**

1. Infringement of the procurement rules, in compliance with the clauses of this law, when it does not constitute a penal offence, constitutes an administrative offence and is penalized with fines as follows:

a) contracting authorities that fail to fulfill their obligations set forth in paragraph 2 of Article 12 of this law, are penalized with fines ranging from Leke 50,000 to Leke 100,000;

b) contracting authorities that fail to fulfill their obligation to establish a Register, as determined in paragraph 3 of Article 12 of this law are penalized with fines ranging from Leke 30,000 to Leke 50,000;

c) contracting authorities that fail to fulfill their obligation to submit reports on their procurement activities according to the timeline referred to in paragraph 4 of Article 12 of this law, are penalized with fines ranging from Leke 15,000 to Leke 30,000;

d) contracting authorities that fail to fulfill their obligation regarding the form of communication, exchange and storing of information as provided in paragraph 3 of Article 21, and in Article 22 of this law, are penalized with fines ranging from Leke 50,000 up to Leke 100,000;

e) contracting authorities that fail to fulfill their obligations referred to in Article 23 of this law, are penalized with fines ranging from Leke 30,000 to Leke 50,000;

f) contracting authorities that fail to fulfill the obligation set forth in Article 25 of this law, are penalized with fines ranging from Leke 50,000 to Leke 80,000;

g) contracting authorities that fail to fulfill their obligation set forth in Article 38 of this law are penalized with fines ranging from Leke 50,000 to Leke 100,000;

h) contracting authorities that fail to fulfill their obligation set forth in Article 42 of this law are penalized with fines ranging from Leke 50,000 to Leke 100,000.

i) persons trying to influence the decision-making of the Public Procurement Commission, in violation of Article 19/7 are penalized with fines ranging from Leke 50,000 to Leke 100,000.

2. The decision of fine may be challenged within 5 days from the notification of the contracting authority in the Court, in compliance with the Civil Procedures Code.

### **Article 73 Sanctions for lack of cooperation**

Refusal of the civil servant, or contracting authorities' representatives, or public authority to cooperate with the Public Procurement Commission, the Agency of Public Procurement and the Public Procurement Advocate constitutes the grounds for these institutions to require from the competent authorities to take disciplinary measures.

## **CHAPTER X FINAL PROVISIONS**

### **Article 75 Procurement rules**

1. The **Council of Ministers** is authorized to promulgate procurement regulations to implement the provisions of the **PPL** within one month from the entry into force of the **PPL**.

### **Article 75/1 Special provision**

1. The Procedures initiated pursuant law no. 7971, dated on 26.7.1995 "On Public Procurement" with all amendments, including complaining, shall be addressed following this law.

2. Article 13, para 3, letter d, shall be applicable even for contracts concluded prior to the entry into force of this law.

3. Article 33, para 2 (a) and para 5, shall be applicable even for contracts that were concluded after the termination of procurement procedures, base on law no. 7971, dated on 26. 7. 1995 "On Public Procurement" with all its amendments, even when this is not provided with the initial contract.

### **Article 75/2**

Awarding procedures for sectoral contracts initiated before the entry into force of this Law shall be carried out in compliance with the Law 9643, date 20.11.2006 "On public procurement", amended.

### **Article 76 Appointment of the PP Advocate**

Within one month from the entry into force, the Parliament should appoint the **Public Procurement Advocate**, and approve the structure and personnel of the Office.

#### **Article 76/1 Appointment of the Public Procurement Commission members**

The Council of Ministers shall be assigned the task to appoint the members of the Public Procurement Commission, within 1 month from the moment this law shall enter into force.

#### **Article 76/2**

Examination of complaints shall begin to be carried out by this Commission four months after its establishment. Until then the examination of complaints shall be carried out by the Agency of Public Procurement, in accordance with the rules and timelines referred to in this law.

#### **Article 77 Abrogations**

The law nr. 7971, dated on 26.07.1995 "On Public Procurement" together with amendments and any other provision in contradiction with this law, are abrogated.

#### **Article 78 Entry into force**

The PPL enters into force on January 1, 2007.  
SPEAKER Jozefina Topalli (Çoba)