

**Republic of Albania**

**Law**

No. 9643 dated 20.11.2006

**On Public Procurement**

the People's Assembly of the Republic of Albania

in accordance with Articles 78 and 83, point 1 of the Constitution with a proposal of the Council of Ministers,

decided:

**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.
2. The objectives of the law are:
  - (a) to promote efficiency and efficacy in public procurement procedures carried on by contracting authorities;
  - (b) to ensure a better use of public funds and reduce procedural costs;
  - (c) to encourage economic operators to participate in public procurement procedures;
  - (c) to promote competition among economic operators;
  - (d) to guarantee an equal and non-discriminatory treatment for all economic operators participating in public procurement procedures;
  - (dh) 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 contracting authorities in order to award a public contract for works, supplies or services.
2. 'Consultancy contracts' are contracts for consulting services of intellectual and advisory nature, to the exclusion of other types of services, where the physical aspects of the activity predominate.
3. 'Public contracts' are contracts for pecuniary interest concluded by exchange of written communication between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of goods or the provision of services within the meaning of this law.
4. "Public Funds" means:
  - a) any monetary value of the State Budget determined to be used for public contracts;
  - b) any monetary value of the local budget determined to be used for public contracts;
  - c) aid or credit funds provided by foreign donors, based on international agreements, which do not require implementation of other procedures different from this law;
  - ç) incomes from State, local enterprises, marketing associations and any other entity, where the State has the majority of the capital shares.
5. 'Public service contracts' are public contracts having as their object the provision of services. A public contract having as its object both goods and services shall be considered to be a 'public service contract' if the value of the services in question exceeds that of the goods covered by the contract. A public contract having as its object services and including works that are only incidental to the principal object of the contract shall be considered to be a "public service contract".
6. 'Public supply contracts' are public contracts having as their object the purchase, lease, rental or hire purchase, with or without option to buy, of goods. A public contract having as its object the supply of products, which covers also, as an incidental matter, sitting and installation operations shall be considered to be a 'public supply contract' where the value of 'goods' exceeds the value of sitting and installation.
7. A 'good' is any material thing which can be economically evaluated.
8. 'Public works contracts' are public contracts having as their object either the execution, or both the design and execution of works or a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority.
9. A 'work' means the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function.
10. 'Dynamic purchasing system' is a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting authority, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.

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

12. 'Contractor', 'supplier' and 'service provider' 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' mean all those entities subject to the PPL for the execution of their public contracts. Namely, the following:

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

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

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

(a) acquires supplies and/or services intended for contracting authorities, 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 contracting authority may submit a tender.

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

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

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

22. 'Written communications' 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' 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 contracting authorities to candidates and prospective tenderers as a basis for the preparation of their tenders.

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

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

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

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

#### **Article 5** **Defence procurement**

1. The PPL shall apply to all public contracts awarded in the field of defence, subject to paragraph 2 of this Article.

2. The provisions of the PPL shall not apply in the following cases:

(a) when contracting authorities 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 programme material or commercials intended for broadcasting by broadcasters or publication in the media, and contracts for broadcasting time;

(c) arbitration and conciliation services;

(c) 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;

(d) 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 contracting authority 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 contracting authority to another contracting authority, or to an association of contracting authorities, 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 public procurement rules.

#### **Article 11**

##### **Centralized purchasing**

1. When more than one contracting authority 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 procurement regulations to carry out the relevant awarding procedures.

2. Contracting authorities may ask the Central purchasing body to carry out a specific awarding procedure or a series of awarding procedures on their behalf when centralised 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 contracting authority, or on its own initiative, the Council of Ministers may assign a contracting authority as the central purchasing body for certain procurement procedures.

## **CHAPTER II**

### **PUBLIC PROCUREMENT ORGANISATION**

#### **Article 12**

##### **Responsibility of the contracting authority**

1. Each contracting authority 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 procurement regulations.

2. Contracting authorities 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 contracting authority 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;
- (c) 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;
- (d) a summary of the evaluation and comparison of tenders;
- (dh) if all tenders were rejected pursuant to Article 24 of the PPL a statement to that effect and the grounds therefore;
- (e) the information required by Article 47 of the PPL if a tender was rejected pursuant to that provision;
- (è) the reasons for choosing a specific awarding procedure;
- (f) 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;
- (g) a summary of any complaints and the resolution thereto.

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

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

5. Each contracting authority establishes a procurement unit within its structure, whose duties and responsibilities are defined in the public procurement rules. Contracting authorities may request support from the Public Procurement Agency when setting up their individual or joint procurement units.

### **Article 13 The Public Procurement Agency**

1. The Public Procurement Agency 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 Public Procurement Agency:

- (a) submits proposals for procurement regulations to the Council of Ministers;
- (b) promotes and organises training of central and local government officials engaged in public procurement activities;
- (c) edits and issues a Public Procurement Bulletin, as described in the procurement regulations. The Public Procurement Agency shall publish in the Bulletin of Public Procurement the list of economic operators excluded pursuant to Article 45 of the PPL;
- (c) 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 contracting authorities 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 public procurement system;
- (è) plans and coordinates foreign technical assistance to Albania in the field of public procurement;
- (f) encourages and supports the use of international technical standards for the preparation of technical specifications, as well as maintains an ongoing relationship with the National Directorate of Standardisations;
- (g) monitors the reports that contracting authorities submit at least every 4 months pursuant to Article 12, paragraph 4 of the PPL;
- (gj) verifies the application of public procurement procedures in compliance with the requirements established by the law, requiring the contracting authorities to submit all the relevant information;
- (h) carries out, every 6 months controls of the awarding procedures carried out by the central purchasing body;
- (i) in case of misconduct, in compliance with article 72 of the PPL, penalizes with fines or proposes to the head of contracting authorities or higher bodies disciplinary measures against the individual in the contracting authorities who committed the infringement.
- (j) carries out the administrative review of complaints, as provided in Chapter VII of the PPL.
- (k) prepares and adapts its internal regulations.



3. The Public Procurement Agency 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 of the PPL; or
- (b) corruption within the meaning of Article 26 of the PPL; or
- (c) conviction for any of the crimes listed in Article 45, paragraph 1 of the PPL.
- (c) non fulfilment of contractual obligations for public contracts during the last 3 years.

4. The Public Procurement Agency is the highest body in the field of public procurement. Its decisions and instructions are administratively final.

5. The Public Procurement Agency expert staff are recruited and promoted in accordance with law “On the status of the civil servant”. The Director of the Public Procurement Agency appoints the other members of the staff and their status is regulated by the Labour Code.

#### **Article 14**

##### **Public Procurement Advocate**

1. The Public Procurement Advocate safeguards the legal rights and interests of candidates, bidders or suppliers against irregular actions or lack of actions by the contracting authority in the field of public procurement, by monitoring and investigating the administrative procedures in public procurement.
2. The Public Procurement Advocate monitors the procedures against irregular and illegal actions or lack of actions, caused by the contracting authority, as provided in articles 69 and 70 of the PPL.
3. The Public Procurement Advocate carries out investigations on potential infringements of the PPL, as determined in article 70 herein.

#### **Article 15**

##### **Appointment of the PP Advocate**

1. The PP Advocate 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 public procurement;
  - 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 PP Advocate is elected by the Parliament upon a proposal by the Council of Ministers.
3. The PP Advocate is appointed for a duration of five years, with a possibility for immediate re-election.

#### **Article 16**

##### **Incompatibility**

The PP Advocate 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.

#### **Article 17 Termination**

1. The function of the PP Advocate terminates when:
  - a) he/she resigns;
  - b) a five years terms ends;
  - c) he/she is dismissed;
  - d) he/she passes away.
2. The PP Advocate 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;
  - ç) he/she does not attend work for more than 30 days, without proper justification.
  - d) acts or behaves in a way which discredits his/her public personality and function.
  - dh) infringes the law.

The new Public Procurement Advocate shall be appointed within 30 days.

#### **Article 18 Reports**

1. The PP Advocate submits an annual report to the Parliament within the first quarter of every year.
2. The PP Advocate 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 PP Advocate's Office is included in the civil service of the Republic of Albania.
2. Its structure, personnel and remuneration shall be approved by the Parliament.

### **CHAPTER III**

## **COMMON PROCUREMENT RULES**

### **Article 20**

#### **Non-discrimination**

Contracting authorities 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 contracting authority 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 contracting authority is obliged to make the information available within 5 days following the receipt of a request.

2. Contracting authorities 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 article, contracting authorities may decide not to disclose some of the relevant information provided for in paragraphs 1 and 2 of this Article 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 contracting authorities may be made by other means than by written communications provided that, immediately thereafter, confirmation of the communication is given in writing.

3. Contracting authorities 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 public procurement 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 contracting authorities 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 contracting authority'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 standardisation 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 paragraph 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. Contracting authorities are allowed to discontinue the awarding procedure, for public interest, provided that the principles of equality and transparency are complied with. Contracting authorities are not obliged to award a contract in any case.
2. Contracting authorities shall incur no liability towards tenderers who have submitted tenders solely by virtue of their invoking paragraph 1 of this Article.
3. Pursuant to Article 21 of the PPL, contracting authorities 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. Contracting authorities 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 Article 21 and Article 57 of the PPL contracting authorities shall not disclose information forwarded to them by economic operators labelled as confidential. Such information includes, in particular, technical aspects, trade secrets and confidential information of tenders.

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

1. Contracting authorities shall reject a tender, or a request to participate, if:
  - a) the tenderer or candidate gives, or promises to give, directly or indirectly, to any current officer a gratuity in any form, an employment or any other good or service of value, as an inducement with respect to an act or decision of, or procedure followed by, the contracting authority in connection with the awarding procedure.
  - b) the tenderer or candidate is in circumstances of conflict of interest.

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

2. Decisions taken by contracting authorities, pursuant to paragraph 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 contracting authority at the moment when the contract notice is sent for publication, as provided for in article 38 of the PPL, or, in cases where such notice is not required, at the moment when the contracting authority 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 procurement 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;
  - (c) request for proposals;
  - (d) 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 public procurement 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 Articles 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.
5. For small value purchase of goods, services or works, below the low threshold, contracting authorities may use simplified procedures, as provided in the public procurement 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 of the 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 of the PPL.
4. After the time-limit to submit tenders - as set in the contract notice according to the rules provided for in Article 43 of the PPL - has expired, contracting authorities open tenders, verify the qualifications of tenderers and the absence of disqualifying circumstances - according to the criteria set out in Articles 45 and 46 of the PPL - and award the contract after comparing the offers on the basis of the criteria set out in Article 55 of the PPL.

**Article 31**  
**Restricted Procedure**

1. Contracting authorities 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 contracting authority 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 contracting authorities shall publish a notice, as provided in Article 38 of the 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 of the 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 the rules provided for in Article 43 of the PPL – has expired, contracting authorities proceed to the selection of candidates - according to the criteria set out in Articles 45 and 46 of the PPL.
4. Contracting authorities issue an invitation to tender - according to Article 40 of the PPL – to the selected candidates requesting an offer to be submitted.
5. After the time-limit to submit tenders has expired, contracting authorities open the tenders and award the contract after comparing them on the basis of the criteria set out in Article 55 of the 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, contracting authorities may use the negotiated procedure with prior publication of the contract notice, in the following cases:

a) in the event of irregular tenders or the submission of tenders which are unacceptable under national legal provisions, in response to an open or restricted procedure, insofar as no substantial alteration is included in the contract, as provided in the public procurement rules;

b) in exceptional cases, when the nature of 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, contracting authorities may use negotiated procedures with prior publication of a contract notice in any case which they deem appropriate, provided that the procedure complies with the principles of equal treatment, proportionality and transparency.

3. Contracting authorities shall negotiate with tenderers the tenders submitted by 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 of the PPL.

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

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

### **Article 33**

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

1. For all contracts of a value above the low value thresholds, contracting authorities 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 no tender or no suitable tenders or no applications have been submitted in response to an open or restricted procedure, 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, such as earthquakes, floods, and when the time limits provided for in open, restricted or negotiated procedures with publication cannot be complied with. The circumstances invoked to justify urgency must not in any event be attributed to the contracting authority and in no case must be used to justify the realization of complex investments, which have a longer duration than one budgetary year.

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 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.

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 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 or services consisting in the repetition of similar works or services entrusted to the economic operator to whom the same contracting authorities awarded the original contract, provided that such works or services are in conformity with a basic project for which the initial

contract was awarded on the basis of open or restricted procedure. As soon as the first project is up for tender, the possible use of this procedure shall be disclosed in the contract notice for the initial contract, and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authority. 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 contracting authority should, as frequently as possible, change the invited entrepreneurs.

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

1. Contracting authorities may use the request for proposals procedure for contracts of a value below the low thresholds. Pursuant to this procedure, contracting authorities may seek offers from a limited number of economic operators of their choice, or may use the electronic communication, as provided in article 36 of the PPL, and evaluates them according to the criteria of quality and price. The comparison must be made among at least 5 offers, unless this proves impossible for technical reasons or for lack of sufficient competition. This procedure shall not be used in order to circumvent competitive awarding procedures.

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

2. When contracting authorities use electronic communications, they shall publish an electronic notice, in accordance with article 38, paragraph 4 of the PPL, as determined in the public procurement rules.

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

1. Design contest may be organized by contracting authorities 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. Contracting authorities 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 Article 38 of the PPL and contain at least the information set forth in Article 39 of the PPL.

4. Specific rules for the organisation of design contests of both types under paragraph 2 of this Article shall be laid down in procurement 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.

#### **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 Article 22 of the 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;

(c) 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 Articles 45 and 46 of the PPL if they do not exist in electronic format.

2. Without prejudice of the general principle of non-discrimination, and the provision of Article 22 of the 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 public procurement 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 paragraph 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**

1. In order to set up electronic awarding procedures, contracting authorities shall follow the rules of electronic auctions and dynamic purchasing systems provided in the public procurement 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. Contracting authorities wishing to award a public contract by open, restricted or negotiated procedure according to Articles 30, 31 or 32 of the PPL, respectively, or to launch a design contest according to Article 35 of the PPL, shall make known their intention by means of contract notices.

2. Contract notices for contracts of a value above the high value thresholds shall be published on the Public Procurement 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 on the Public Procurement Bulletin.

4. All procurement notices are published on the web-site of the Public Procurement Agency.

### **Article 39**

#### **Content of the notices**

1. The notices to be published under the provisions of Article 38 of the 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 Article 41 of the PPL.

3. The content of notices shall be determined in the public procurement rules.

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

1. In restricted procedures and negotiated procedures with publication of a contract notice within the meaning of Article 31 and 32 of the PPL, contracting authorities shall simultaneously and by written 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 public procurement rules. 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 Articles 45 and 46 of the PPL, or to supplement the information referred to in those articles;

(c) 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, contracting authorities 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, contracting authorities can proceed with the awarding procedure provided that there are at least 2 candidates. Contracting authorities shall indicate in the contract notice the objective and non-discriminatory 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, contracting authorities shall use standard tender documents provided in the public procurement rules.

2. In open procedures, contracting authorities 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 contracting authorities. Contracting authorities 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. Contracting authorities 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 contracting authorities have provided the tender documents. If necessary, contracting authorities shall extend the time-limits for submission for not more than 10 days. Should economic operators not agree with the contracting authority's final decision, they can bring a complaint before the Public Procurement Agency.

2. At any time prior to the deadline for submission of tenders, contracting authorities 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 contracting authorities have provided the tender documents and shall be binding on those economic operators. The addendum shall be made available even by electronic means.

3. If contracting authorities 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 contracting authorities 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, contracting authorities 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 Article. 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.

3. In case of restricted or negotiated procedure with publication of a contract notice:

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

(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.

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;

(b) in case of restricted procedures, the minimum time-limit for the receipt of tenders shall be 15 days from the date when the contract notice was published.

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.

#### **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, contracting authorities 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, these groups should be required by the contracting authorities to assume specific legal form, as provided in the public procurement rules.

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

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

- (a) participation in a criminal organisation;
- (b) corruption;
- (c) fraud;
- (c) money laundering.

Contracting authorities may ask tenderers to supply the documents referred to in paragraph 3 of this Article 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 bankrupt or is being wound up, if his affairs are being administrated by the court, if he has entered into an arrangement with creditors, if his business activities have been suspended and are subject of legal proceedings for any of the foregoing in paragraph 1 of this article;
- (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;
- (c) has been guilty of grave professional misconduct according to Albanian law, proven by any means the contracting authority can demonstrate;
- (d) has not fulfilled his obligations to pay social security contributions in accordance with Albanian law or the applicable provisions in the country of origin;
- (dh) 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;
- (e) 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. Contracting authorities shall accept the following evidence as being sufficient to demonstrate that none of the cases specified in the paragraphs above applies to the candidate or tenderer:

- (a) as regards of paragraphs 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 paragraph 2 (d) and (dh): a certificate issued by the competent authority.

#### **Article 46**

##### **Qualification of tenderers**

1. In order to participate in awarding procedures, economic operators must qualify by meeting all the following criteria as contracting authorities 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 contracting authority 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;

(c) 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**

1. Contracting authorities 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. Contracting authorities shall report the disqualification to the Public Procurement Agency for the purposes of Article 13, paragraph 3 of the PPL.

#### **Article 48**

##### **Submission and Receipt of Tenders**

1. Contracting authorities 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, contracting authorities 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.
3. Notice of any extension of the deadline shall be given promptly to each economic operator to which contracting authorities 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) contracting authorities shall, on request, provide the tenderer a receipt showing the date and time when its tender was received.
5. A tender received by contracting authorities after the deadline for its submission shall not be opened and be returned to the tenderer who submitted it.

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

1. Contracting authorities must require tenderers to provide tender securities. When contracting authorities 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) contracting authorities 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 contracting authority 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.

2. Contracting authorities 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, contracting authorities 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, paragraph 1 of the 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 of the PPL.

#### **Article 52**

##### **Opening of tenders**

1. Tenders shall be opened by the contracting authority 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 contracting authorities 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 contracting authority, 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 of the 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 and evaluation of tenders shall be published on the website and made available together with the tender documentation.

### **Article 53**

#### **Examination of tenders**

1. When deemed as appropriate, contracting authorities 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 of the 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 paragraph 1 of this Article, contracting authorities shall correct purely material errors, discovered during the examination of tenders, provided there is no evidence of an attempt to fraud. Contracting authorities shall give prompt notice of any such correction to the tenderer concerned.

3. Subject to paragraph 4 of this Article, contracting authorities 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 Article 54 of the PPL.

4. Contracting authorities 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. Contracting authorities 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 the provisions of Article 54 of the PPL;

(c) in cases where Article 26 of the PPL is applicable.

### **Article 54**

#### **Alternatives**

1. When the awarding criterion is of the most economically advantageous tender, contracting authorities may authorise tenderers to submit alternatives.
2. Contracting authorities shall indicate in the contract notice whether or not they authorise alternatives: variants shall not be authorised without this indication.
3. Contracting authorities authorising 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 contracting authorities shall be taken into consideration.

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

1. Contracting authorities may award public contracts to the offer which meets the qualification criteria and is the responsive offer with the lowest price.
2. Contracting authorities 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;
  - (c) 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. Contracting authorities 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 contracting authorities pursuant to Article 12 of the PPL.
5. After comparing and evaluating tenders, contracting authorities identify 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, contracting authorities 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;

(ç) 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. Contracting authorities 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, contracting authorities are not satisfied that the tender is regular in all relevant aspects, contracting authorities may reject it.

#### **Article 57**

##### **Confidentiality of the process**

1. Without prejudice of the obligations imposed upon contracting authorities by the provisions of Article 21 of the 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 contracting authorities 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, contracting authorities send a notice in the Public Procurement Agency for publication in the Public Procurement 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;

ç) the name of the successful tenderer and his offered price.

3. The contracting authority and the tenderer shall sign the contract within 30 days after the publication of award in the Public Procurement 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 contracting authority.

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 -, contracting authorities shall forfeit the

tender security and award the contract to the next tender in the list of the remaining selected 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 contracting authorities, in accordance with Article 24 of the PPL, to reject all remaining tenders and discontinue awarding procedures. The notice provided for in paragraph 1 of this Article shall be dispatched to the tenderer whose tender is chosen pursuant to this paragraph.

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 VI**

### **PERFORMANCE OF CONTRACTS**

#### **Article 59**

##### **Conditions for performance of contracts**

1. Contracting authorities 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. Contracting authorities 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 sub-contract to third parties and any proposed sub-contractors.

2. Contracting authorities 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 paragraph 4 of this Article, prospective subcontractors must be approved by contracting authorities 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 contracting authorities 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. Contracting authorities 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 paragraph 1 of this Article.

3. The obligations referred to in paragraph 1 of this Article, as well as the conditions stated in Article 46 of the 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 contracting authority which infringes the PPL, may challenge such decision.

2. Objections shall be filed in the first instance with the concerned contracting authority in writing within 5 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 contracting authority 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 paragraph 5 of this Article.

4. The contracting authority must, if needed, extend the time-limit of the contract award procedure for the period of suspension referred to in paragraph 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 contracting authority shall dispatch to the tenderers a notice to the effect, indicating the reasons for the extension of the time-limits.



5. The contracting authority must examine the objection and take a justified decision within 5 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 contracting authority fails to examine the objection within the time-limit specified in paragraph 5 of this Article, or rejects the objection, the complainant may file a written appeal with the PPA within 5 days from the first working day after the expiry of the time-limit specified in paragraph 5 of this Article, or, in case the objection in the first instance is rejected by the contracting authority, from the day the complainant was informed thereof by the contracting authority. A written copy of the appeal shall simultaneously be notified to the contracting authority.

7. The complaint to the PPA 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 above elements are essential to the examination of complaints. The PPA examines the complaint, following this law, the Code of Administrative Procedures and the public procurement rules. Failure in following all complaining stages makes the named complaint invalid.

8. Upon receiving the complainant's written appeal, the contracting authority shall suspend the ongoing contract award procedure, unless the PPA instructs otherwise in writing according to Article 64, par. 2.

9. Upon receiving the complainant's written appeal, the Public Procurement Agency shall respond within five days. When the contracting authority requires information for the review of the complaint, the Agency shall respond in writing, in accordance with the public procurement rules, but not later than 20 days.

#### **Article 64 Powers of the PPA**

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

2. At any time following the receipt of the complaint and before the conclusion of the contract, the PPA may, by interim order and pending its final decision on the case, allow the contracting authority to continue the contract award procedure when:

- a) on the basis of the information available to the PPA, 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 contracting authority or the tenderers.

3. Prior to the conclusion of a public procurement contract, if the PPA is satisfied that a decision or action taken by the contracting authority 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 contracting authority 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 contracting authority to correct any breaches and to proceed with the contract award procedure, after such correction;

ç) order the termination of the contract award procedure.

4. Following the conclusion of the public procurement contract, if the PPA is satisfied that a decision or action taken by the contracting authority 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.

5. Where the PPA is satisfied that an officer of the contracting authority has committed a deliberate and intentional breach of the PPL with the effect of jeopardising its purpose as set in Article 1, it may, in addition to the remedial powers referred to in paragraphs 1 to 4 of this Article, report the offence to the competent authority.

## **CHAPTER VIII**

### **ADMINISTRATIVE INVESTIGATION**

#### **Article 65**

##### **ADMINISTRATIVE INVESTIGATION PROCEDURE**

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 Public Procurement Agency 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;

ç) to request relevant expertise from third party experts.

3. To these ends, the Public Procurement Agency is entitled to enter in all offices of the public administration institutions which are considered as contracting authorities within the meaning of the PPL.

4. The Public Procurement Agency 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.

#### **Article 66**

##### **Actions following the conclusion of administrative investigation**

1. Once the investigation is over, the Public Procurement Agency 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 the PPL, nor any other administrative or criminal provision. In this case, when there is a complainant, the PPA explains in writing to the complainant the reasons for closing the investigation;
- b) to issue a reasoned opinion in writing to the contracting authority involved, ordering to stop the illegal behaviour within a set time-limit.

2. Contracting authorities must implement the given decision or review the PPA decision within 10 days from being informed on the decision. In case these acts have already produced their effects, the PPA recommends the damaged persons to file a suit before the Courts.

3. Where the PPA deems that an officer of the contracting authority has committed a deliberate and intentional breach of the PPL, it may report the offence to the competent authority.

#### **Article 67**

##### **Sanctions for lack of cooperation with the Public Procurement Agency**

1. Refusal of the civil servant or contracting authorities' representatives, or public authority representatives to cooperate with the PPA constitutes the grounds for the PPA to require from the competent authorities to start administrative procedures and take disciplinary measures.

#### Article 68

##### Complaint before the Courts

1. Following the notification of the decision or the termination of the determined time limit, as provided in article 63 of the PPL, when the PPA did not examine the complaint, the complainant shall have the right to denounce the administrative conflict in the District Court of Tirana. Following the procedure, the Court shall carry out a judicial examination within the time limits provided in the provisions of the Civil Procedures Code, Chapter II, "On the assessment of administrative conflicts".
2. The examination of this complaint by the Court shall not make the grounds for suspension of procurement procedures, for the conclusion of public contract for goods, services and works by the contracting authorities, or for the execution of obligations, according to the procurement contract between the parties.

### **Chapter IX**

#### **The activity of the Public Procurement Advocate**

#### **Article 69**

##### **Monitoring function and complaints**

1. The PP Advocate deals with complaints notified to the PP Advocate 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.
2. Where required by the person submitting the request, the PP Advocate provides confidentiality of requests, if it deems as necessary.
3. In all cases, the Public Procurement PP Advocate 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 PP Advocate may start an investigation procedure, if he/she observes or suspects that there has been an infringement of the PPL.
2. The PP Advocate notifies its decision to open an investigation to all interested persons and to the PPA within 5 days from the receipt of the complaint, or immediately after the decision to start an investigation on his/her own initiative is taken.  
Where the PPA is evaluating the same complaint, the PP Advocate is obliged to coordinate its actions with the PPA, in order to complete the investigation process.
3. In the course of an investigation, the PP Advocate 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 PP Advocate's Office all persons without immunity;
  - ç) to request relevant expertise from third party experts.
4. To these ends, the PP Advocate, or his/her agents, are entitled to enter in all offices of the public administration institutions which are recognized as contracting authorities within the meaning of the PPL.
5. The Public Procurement Advocate 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 PP Advocate 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 the PPL, nor any other provision. In this case, when there is a complainant, the PP Advocate explains in writing to the complainant the reasons for ending the investigation, and when appropriate, sends information to the Public Procurement Agency;

b) for any case of law infringement, it should immediately send relevant information to the PPA, in order to support the latter in decision-taking and complaints' examination, or in taking administrative measures against responsible persons.

2. Where the PP Advocate is satisfied that an officer of the contracting authority 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 72** **Administrative offences**

In cases of infringement of this law and of the procurement rules, the Director of the PPA is entitled to put fines with a value from 50.000 to 100.000 AL and to propose disciplinary measures to the head of the contracting authority.

The decision of fine may be challenged within 5 days from the notification of the contracting authority in the District Court.

#### **Article 73** **Sanctions for lack of cooperation with the PP Advocate**

Refusal of the civil servant or contracting authorities' representatives, or public authority to cooperate with the PP Advocate constitutes the grounds for the PP Advocate to require from the competent authorities to start administrative procedures and take disciplinary measures.

#### **Article 74** **Legislative recommendations**

If the PP Advocate realises that the grounds for infringements of public procurement procedures lie in the content of the PPL itself or other legislative provisions, and not in its implementation, he/she has the right to:

- a) recommend proposals for change, amendments and/or improvements to the laws;
- b) propose amendments or improvement of administrative regulations to contracting authorities that adopted them, when such regulations are in violation with the PPL.

### **CHAPTER X** **FINAL PROVISIONS**

#### **Article 75** **Procurement rules**

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

#### **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 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)