

LAW

NO 7971 date 26.07.1995

ON PUBLIC PROCUREMENT

THE PEOPLE' ASSEMBLE OF THE REPUBLIC OF ALBANIA

DECIDED:

CHAPTER I. GENERAL PROVISIONS

Article 1. Purpose of this Law

The purpose of this Law is to promote economy and efficiency in the use of public funds by procuring entities while ensuring that public procurement procedure are fair, transparent and non-discriminatory.

Article 2. Definitions

In this Law :

“procurement” means the purchasing, hiring or obtaining by any other contractual means of goods, construction and services;

“procuring entity” means any organ of the State or regional and local authorities as well as any other juridical person to whom public funds have been allocated for use in public procurement;

“public procurement” means procurement by procuring entities;

“goods” means raw materials, products, machineries and equipments, objects in solid, liquid or gaseous form and electricity, as well as transport, installation, maintenance or similar obligations related to the supply of the goods if their value does not exceed that of the goods themselves;

“construction” means all work associated with the construction, reconstruction, demolition, repair or renovation of a building or structure, such as site preparation, excavation, installation of equipment and materials, decoration, as well as services incidental to construction, if the value of those services does not exceed that of the construction itself;

“services” means any object 4(pa)4.45W5U1.3(e)o. TTselt6(e)1.5(an)-4(e)o. TTselt7port, inst so 6ao 6atiyan

“open tendering” means a procurement procedure whereby all interested candidates may submit tenders;

“restricted tendering” means a procurement procedure whereby only those candidates which are invited by the procuring entity may submit tenders;

“two-stage tendering” means a procurement procedure whereby the procuring entity invites tenders in two stages, in the first stage tenders with full information without prices and in the second stage tenders with prices;

“request for proposals” means a procurement procedure whereby the procuring entity invites proposals from selected candidates;

“direct procurement” means a procurement procedure whereby the procuring entity contacts and seeks a proposal from one candidate;

“request for quotations” means a procurement procedure whereby the procuring entity invites quotations from candidates selected by it;

“candidate” means a physical or juridical person invited to take part in public procurement or seeking to be so invited;

“procurement regulations” are the regulations issued by the competent authority under this Law;

“supplier” means a physical or juridical person under contract with a procuring entity to supply goods, construction or services;

“tender documents” means the documents provided by the procuring entity to tenderers as a basis for preparation of their tenders;

“tenderer” means a physical or juridical person submitting a tender;

“public funds” means every monetary value originated from the state budget, from revenues of state enterprises and companies with the Government as a majority shareholder.

Article 3. Scope of application

This Law applies to public procurement, except the cases where the Council of Ministers, for the reason of national security or national defence, may define an other procedure for public procurement of goods, constructions or services.

Article 4. International obligations

To extent that this Law conflicts with an obligation of the State under or arising out of an agreement with one or more other states or with an international organisation, the provisions of that agreement shall prevail; but in all other respects, public procurement shall be governed by this Law.

Article 5. Procurement regulations

1. The Council of Ministers is authorised to promulgate procurement regulations to fulfil the objectives and to carry out the provisions of this Law.

2. If more than one procuring entity needs the same kind of goods, construction or services, the Council of Ministers may assign to one of those entities the task of procuring such items on behalf of the other entities.

Article 6. Public accessibility of legal texts.

This Law, the procurement regulations and all instructions of the Agency shall be promptly made accessible to the public and systematically maintained.

CHAPTER II. PUBLIC PROCUREMENT ORGANIZATION

Article 7. Responsibility of the procuring entity

1. The procuring entity is responsible for procurement with public funds at its disposal subject to the provisions of this Law and to any such further condition as may be laid known in the procurement regulations and the instructions of the Agency.

2. With respect to contracts above thresholds stated in the procurement regulations, the procuring entity shall submit to the higher central or local authority or to the Council of Ministers for prior review and approval, before a contract is awarded or concluded, a summary report containing:

- a) justification for the choice of procurement procedure, if other than open tendering,
- b) the evaluation of tenders of proposals received, and
- c) the proposed award or conclusion of contract.

3. Procuring entities must make records and documents regarding their public procurement available for inspection by the Agency and must submit reports regarding their procurement activities in such detail and at such intervals as the Agency may require.

Article 8. The public Procurement Agency

1. The Public Procurement Agency is reporting to the Council of Ministers and is the central organ for co-ordination and perfection of the public procurement process.

2. In the performance of its tasks, the Agency;

- a) submits proposals for procurement regulations to the Council of Ministers;
- b) promotes and supports training of central and local government officials engaged in public procurement;
- c) edits and issues a Public Procurement Bulletin to be used for invitations to tender and other announcements relevant to public procurement;
- c) prepares standard documents to be used in connection with public procurement;
- d) gives instructions, and, or request, advice and assistance to procuring entities in undertaking procurement;
- dh) presents an annual report to the Council of Ministers regarding the overall functioning of the public procurement system;
- e) inspects the records of procuring entities to the extent it deems appropriate in order to check on the proper application of this Law by them;
- e) performs administrative review of complaints as foreseen in Chapter VIII;
- f) cooperates with international institutions and with other foreign entities on matters associated with the public procurement system; and
- g) plans and coordinates foreign technical assistance to Albania in the field of public procurement.

3. The Director of the Agency is appointed and dismissed by the Prime Minister.

4. The Prime Ministers also appoints an inter-disciplinary consultative board, composed

CHAPTER III. COMMON PROCUREMENT RULES

Article 9. Non-discrimination on the basis of nationality

Physical or juridical persons shall not be excluded from participation in public procurement on the basis of nationality.

Article 10. Records of procurement

(1) Procuring entities shall maintain records of public procurement in sufficient detail to allow control and verification that the provisions of this Law have been respected. With respect to each transaction the record shall contain, as a minimum, justification of the procurement procedure chosen, if other than open tendering, information concerning the goods, construction or services procured, the names of candidates, the name of the supplier to whom the contract was awarded, and the contract price.

(2) The minimum information to be recorded according to paragraph (1) shall, on request, be made available to interested persons after a contract has been awarded. Other information shall remain confidential.

(3) The procuring entity shall preserve and keep the record and documents relating to any procurement available for inspection by the competent authorities during a period of time stated in the procurement regulations.

Article 11. Form of communications

Communications between candidates and procuring entities shall be only in writing. If the communication is made in any other form, it shall referred only to the written documents and the content of that communication shall be confirmed in writing, immediately after that communication.

Article 12 Qualification of candidates

(1) In order to participate in public procurement, candidates must qualify by meeting such of the following criteria as the procuring entity considers appropriate under the circumstances:

(a) that they possess the necessary professional, technical and organisative capacity, personel, financial resources, maschineries and other physical facilities, reputation and reliability to perform the contract;

(c) that they are not insolvent, in receivership, bankrupt or being wound up, their business activities have not been suspended, and they are not subject of legal proceedings for any of the foregoing;

(d) that they have fulfilled their obligations to pay taxes and social security contributions. Documentary evidence to be provided by a foreign candidate to demonstrate that it meets the criterion in this paragraph may consist of a written declaration to that effect by the candidate;

(2) The procuring entity may require candidates to provide such appropriate documentary evidence or other information as it may deem useful to satisfy itself that the candidates are qualified in accordance with the criteria referred to in paragraph (1).

(3) Any requirement established pursuant to this Article shall be set forth in the prequalification documents, if any, and in the tender documents or other documents for solicitation of proposals, and shall apply equally to all candidates.

(4) The procuring entity shall evaluate the qualifications of candidates in accordance with the criteria and procedures set forth in the documents referred to in paragraph (3).

(5) The procuring entity shall disqualify a candidate who submits a document containing false information for purposes of qualification. In such case the procuring entity can propose to the Public Procurement Agency that the candidate be expelled from all public procurement for a period up to one year. If the Public Procurement Agency shall approve this proposal, this shall be published in the Public Procurement Bulletin.

(6) The procuring entity has the right to disqualify a candidate, if it, at any time up to the signing of the contract will find out that the information submitted related to the qualification or other data presented by and for the candidate are inaccurate or incomplete.

Article 13. Prequalification proceedings

(1) The procuring entity may engage in prequalification proceedings with a view towards identifying, prior to the submission of tenders, that candidates are qualified. The use of prequalification proceedings is indispensable as a preliminary to open tendering or two-stage tendering in the case of large or complex contracts for goods and construction.

(2) If the procuring entity engages in prequalification proceedings, it shall prepare a set of prequalification documents containing as minimum the following information:

(a) instructions for preparing and submitting prequalification applications;

(b) the nature and quantity of goods, construction or services to be procured;

(c) the desired time for delivery of the goods or completion of the construction or services;

(ç) the criteria and procedures to be used for evaluating the qualifications of the candidates, following the provisions of Article 12;

terminology, packaging, marking and labelling or the processes and methods for their production and requirements relating to conformity assessment procedures.

(3) Technical specifications prescribed by procuring entities shall, where appropriate:

(a) be in terms of performance rather than design or descriptive characteristics; and

(b) be based on international standards, where such exists, or otherwise recognised national standards or building codes.

(4) 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

c) within limits defined in the procurement regulations, when additional

Article 21 Conditions for use of request for proposals.

The procuring entity may engage in procurement by means of request for proposals in accordance with Article 39 when it seek to obtain consulting services or other services for which tendering is not suitable because of the difficulty in defining precisely the services.

Article 22 Conditions for use of request for quotations.

The procuring entity may engage in procurement by means of request for quotations in accordance with Article 40 for the purchase of readily available goods or for procurement of construction or services for which there is an established market, so long as the estimated value of the contract does not exceed an amount stated in the procurement regulations.

CHAPTER V. OPEN TENDERING

Article 23 Basic provision regarding open tendering

Open tendering shall be used when the estimated contract value exceeds an amount stated in the procurement regulations. Procuring entities may engage in open tendering whenever goods, construction or services to be procured are obtainable from domestic sources and in sufficient competition within the country, always subject to the rule of no-discrimination in Article 9. The following basic provision shall apply to open tendering procedures.

Article 24 Invitation to tender.

The invitation to tender shall contain, as a minimum,

- (a) the name and address of the procuring entity,
- (b) a brief description of the goods, construction or services to be obtained, including desired time limit for delivery or completion,
- (c) the means and conditions for obtaining the tender documents and the place from which they may be obtained,
- (ç) the place and deadline for the submission of tenders, and,
- (d) the place and time for opening of tenders, along with an announcement that tenderers' representatives are allowed to attend the opening of tenders.

Article 28 **Modifications to tender documents.**

At any time prior to the deadline for submission of tenders, the procuring entity may, on its own initiative or in response to an inquiry by a candidate having purchased the tender documents, modify the tender documents by issuing an addendum. Any addendum shall be communicated promptly to all candidates having purchased the tender documents. If the procuring entity considers it necessary to amend the tender documents, and if that amendment is made less than one- third of the time allowed for the preparation of tenders remains until the closing date, the procuring entity shall postpone the closing date by a number of days, depending on the procurement object.

Article 29 **Tender security**

(1) The procuring entity shall include in the tender documents a condition that tenders must be accompanied by security in the form of a deposit or bank guarantee. The amount of such security shall be sufficient to discourage irresponsible tenders and shall remain within limits stated in the procurement regulations.

(2) Tender security shall be forfeited if a tenderer withdraws his tender within the validity period therefor or, in the case of a successful tenderer, if the tenderer repudiates the contract or fails to furnish performance security, if so required.

Article 30. **Submission and receipt of tenders.**

(1) Tenders shall be submitted in writing, signed and in a sealed envelope. They should be submitted at the place, time and date specified in the invitation to tender. The tender envelope should contain the documentation for the qualification of the candidates and the technical-economic tender closed in two separate envelopes. In international tender procedures the tenders can be received before the designated opening date, but the invitation to tender should specify the deadline for tender submission. In those cases, the procuring entity, after a request, should give to the tenderer a document specifying the date and time that he has submitted the proposal.

(2) Tenders received after the deadline for submission shall be returned unopened to the tenderer.

Article 31 **Opening of tenders.**

(1) At the time stipulated in the tender documents for opening of the tenders, which for international tender procedures should follow shortly after the deadline for submission of tenders, the procuring entity shall open all tenders received before the deadline.

(2) Tenderers, or their authorised representatives, shall be allowed to attend the opening of tenders.

(3) The name of the tenderer and the total amount of each qualified tender shall be read

CHAPTER VI. OTHER PROCUREMENT METHODS

Article 36 Restricted tendering procedure

Restricted tendering procedures are the same as those applied in open tendering, except that:

(a) the invitation to tender is addressed to a limited number of qualified candidates - for the purpose of obtaining not less than three tenderers - which have declared an interest in submitting tenders. The selection should be made in a nondiscriminatory manner, and the number of candidates invited should be, if possible, sufficient to ensure effective competition;

(b) procuring entities maintaining updated lists of qualified suppliers may select candidates to be invited to tender from among those listed. Any selection shall allow for equitable opportunities for suppliers on the list;

(c) the time allowed for preparation of tenders shall not be less than a minimum number of days stated in the procurement regulations; and

(c) the procuring entity may decide, depending on the circumstances, if tender

(3) In the second stage, the procuring entity shall invite final, priced tenders on the basis of final technical specifications from candidates which have presented satisfactory tenders in the first stage.

(4) For award of a contract based on tenders submitted in the second stage, the provisions of Chapter V shall apply.

Article 39 Request for proposals procedure

(1) Request for proposals shall be addressed to not less than three, not more than seven candidates selected by the procuring entity.

(2) A request for proposals shall contain at least the following information:

(a) name and address of the procuring entity;

(b) a description of the services required, normally through terms of reference;

(c) in case of consultancy assignments which may involve potential conflict of interest, a reminder that candidates for such assignment must exclude themselves from procurement of goods and construction which may follow as a result of, or in relation to, the assignment;

(c) the criteria for evaluating the proposals, the relative weight to be given to price and other criteria, and the manner in which they will be applied in the evaluation of proposals;

(d) place and deadline for the submission of proposals.

(3) The procuring entity may negotiate with candidates with respect to the content of their proposals and may seek or permit revision thereof.

(4) Any award by the procuring entity shall be made to the candidate whose proposal is most advantageous, determined in accordance with the criteria and procedures for evaluating proposals set forth in the request for proposals.

Article 40 Request for quotation procedure.

(1) The procuring entity shall request quotations from as many candidates as practicable, but from at least three.

(2) The request shall contain a clear description of the requirements of the procuring

(3) Any award by the procuring entity shall be placed with the candidate who meets the requirements of the procuring entity stipulated in paragraph(2) and who quotes the lowest price.

(4) The procuring entity shall place a contract with successful candidate.

CHAPTER VII. INTERNATIONAL PROCEDURES

Article 41 Open international tendering

(1) The procuring entity shall use "Open international tendering" whenever in open tendering an effective competition cannot be obtained unless foreign firms are invited to tender.

(2) Open international tendering shall respect the provisions of Chapter V as well as the following provisions:

(a) The invitation to tender and the tender documents shall be in Albanian language and in a language generally used in international trade.

(b) The invitation to tender shall be advertised in a newspaper using the same foreign language as the invitation and being of sufficient circulation to attract foreign competition.

(c) The deadline for submission of tenders, stated in the procurement regulations, shall be sufficient for the invitation to reach candidates and for enabling them to prepare and submit tenders.

(c) Technical specifications shall, to the extent compatible with national requirements, be based on international standards or standards widely used in international trade.

(d) Candidates shall be permitted to express their tenders,as well as any security documents to be present by them,in their respective home currencies, or in a currency widely used in international trade and stated in the tender documents

(dh) General and special conditions of contract shall be of a kind generally used in international trade.

Article 42. Other international procedures

Whenever international competition cannot be obtained unless foreign firms are invited to participate in procedures other than open international tendering,such as restricted

or two-stage tendering, the provisions of Article 42 (2) shall apply to the extent practicable in addition to the stipulations of Chapter VI.

Article 45 Review by the Agency

(1) Upon receipt of a complaint, the Agency shall promptly give notice of the complaint to the procuring entity. Such action automatically suspends further action by the procuring