



**REPUBLIC OF ALBANIA
COUNCIL OF MINISTERS**

DECISION

No. _____, dated on _____ 2008

ON

**SOME ADDENDA AND AMENDMENTS TO DECISION NO. 1, DATED ON
10.1.2007, OF THE COUNCIL OF MINISTERS “ON THE APPROVAL OF
PUBLIC PROCUREMENT RULES”, AMENDED WITH DECISION NO. 153,
DATED ON 22.3.2007”**

Based on Article 100 of the Constitution, on Article 75 of Law no. 9643, dated on 20.11.2006, “On Public Procurement”, as amended, (below as PPL), with a proposal of the Prime Minister, the Council of Ministers

DECIDED:

Decision of the Council of Ministers no. 1, dated on 10.01.2007, “On the approval of public procurement rules”, amended with Decision no. 153, dated on 22.3.2007”, undergoes these addenda and amendments, as follows:

1. Item 3, in chapter I, “Public Announcement Bulletin”, undergoes the following amendments, with this content:

a) In letter a) the first bullet: “standard content of notices and tender documents” shall be removed;

b) In the fourth bullet, after the wording “.....for contracts of a value above...” the words “and below...” shall be added;

c) In letter (b) “Public Procurement Forecast Register”, at the end of the paragraph, the following sentence shall be added:

”The additions and changes to the forecast registers shall be published in electronic version on the PPA website”;

d) In letter c), “Publication of contract notices”, after the words “...negotiated procedures” in the first sentence, this wording shall be added: “with prior publication of the notice, request for proposal ...”;

In the last sentence of this item, before the word “newspaper” the word “international” shall be added, thus becoming “...one international newspaper of wide European distribution”;

dh) In letter ç) “Publication of award public notices and of notices of signed contracts”, the following paragraph shall be added, with this content:

“Contracting Authorities shall conclude the procurement procedures for goods, services and works, with the funds that are foreseen in the state budget for that calendar year, within October 31 of each year, including in this time limit the conclusion of respective contracts. The PPA shall not publish the notices of signed contracts, if the latter are received after the above-mentioned set date.

The Council of Ministers, with a special decision, may authorize the publication of any notice, exceeding this time limit.”

e) In letter d) “Register of Procurement Activity” in the second sentence, the time limit “December 20” becomes “January 20”;

ë) Letter dh) “National Public Procurement Realization Register”, undergoes the following amendments:

“no later than January 15th” becomes “no later than January 20th”;

“no later than January 20th” becomes “no later than January 30th”;

The phrase “the PPA shall prepare and publish in the Public Announcement Bulletin” becomes “the PPA shall prepare and publish electronically...”;

f) Letter ë) shall be rephrased as following:

“The Contracting Authority shall be obliged to send to the PPA in an official manner, accompanied by an explanatory paper, a written copy of the contract notice and an electronic copy of the Tender Documents. The Contracting Authority shall be responsible in providing the equivalency of the above-mentioned copy, which shall be submitted to the PPA together with the tender documentation, after being compiled by the procurement unit and being administered by the contracting authority for tender purposes. The PPA shall be obliged to simultaneously make the award of the Contract Notice and the Tender Documentation in the Bulletin and in its official Website. Electronic consulting and downloading of the tender documents shall be easy to use for the public. The use of these documents for tendering purposes shall be allowed with no restriction. The same publication, consulting and downloading procedure shall be followed even in cases of required clarification or amendment of tender documents, which take place following their first publication. The electronic publication of the tender documents shall

be saved in the electronic database and on the PPA official website, at least one year from their first date of publication.”

2. Chapter II, “Common Procurement Rules”, undergoes the following amendments:

a) In letter b), item 1, the wording “small purchase procedure” shall be replaced with “small value procurement procedure”;

b) At the end of letter b), item 2, “Calculation of estimated value”, the following paragraph shall be added:

“In all cases, the Contracting Authority shall justify the application of the multi-year contract and shall make an accurate calculation of the fund, which specifies the investment to take place, the amortization for each year, and other similar elements/components”.

c) The second paragraph of letter b) shall become paragraph i);

ç) The last paragraph in letter b) shall become the second paragraph, thus paragraph ii);

3. Chapter III, “Tender Documents”, undergoes these amendments, as following:

a) In the second paragraph of letter ë) “Contract Security Forms”, in item 2 “General Information”, at the end of the sentence, after the words “of its amount...”, the words “...of security.” shall be added;

b) In letter f, and in the first paragraph of letter g), the words “Public Procurement Bulletin” shall be replaced with “Public Announcement Bulletin”;

c) In letter g) “Contract Award Notice Form”, in the second paragraph, the words “tender number” shall be replaced with “procedure reference number”;

ç) In the seventh paragraph of letter a) “Works Contracts”, in item 3, “Specific Information”, the words “...of operator’s activity” shall be omitted;

d) In the eighth paragraph of letter a), “Works Contracts”, in item 3 “Specific Information”, the word “work” shall be omitted; The word “minimally” shall be replaced by the words “not higher than”;

dh) In letter i) “Regarding the financial and economic situation”, of letter a), “Works Contracts”, in item 3 “Specific Information”, after each bullet point, the conjunctions “and/or” shall be added;

e) In the second paragraph of this letter, after the second sentence, the following sentence shall be added:

“No definition of disqualifying monetary thresholds, exceeding the limit value of the contract to be procured, shall be allowed”.

ë) In letter ii), the second bullet point: “declaration of availability for contract execution by the experts, who do not directly belong to the economic operator; or/and” shall be no longer in force;

f) In letter b), “Supplies Contracts”, of item 3, fifth paragraph, the second sentence shall be amended, as follows:

“In any case, the required amount shall be not more than 40% of the calculated value of the contract to be procured, and which has been carried out in the last three years”;

g) Following the sixth paragraph of letter b), “Supplies Contracts” of item 3, the paragraph with the following content shall be added:

“The Contracting Authority may request the economic operators to submit evidence, proving that they meet the minimal requirements, as specified in the tender documents, such as:

i) Regarding the financial and economic situation:

- certified copies of one or more balance sheets, submitted to the relevant authorities; and/or;
- copies of the annual turnover declarations and/or financial management reports, certified by an external licensed auditing body; and/or;
- a certificate of the financial situation from one or more banks.

The above requirements shall be proportionate and strictly related to the contract subject matter. They shall serve the contracting authority to be aware of the economic operators’ financial situation and their potential to successfully execute the contract. No definition of disqualifying monetary thresholds, exceeding the limit value of the contract to be procured, shall be allowed. Consequently, negative balance sheets for a three years period shall serve as indicators of economic operators’ inability to carry out the contract”.

gj) In the first bullet point of the seventh paragraph in letter b), “Supplies Contracts”, in item 3, the conjunctions “and/or” shall be added;

h) In the eighth paragraph, of letter b), “Supplies Contracts” in item 3, at the end of the third sentence, the following sentence shall be added:

“If the procurement procedure is cancelled, the samples shall be returned to the tenderer, together with his request, within 30 days after the final decision for cancellation has been taken”.

i) In letter c), “Services Contracts” of item 3, the third paragraph shall be changed as follows: “In any case, the required amount shall be not more than 40% of the calculated value of the contract to be procured, and which has been carried out in the last three years”.

j) The fourth paragraph of letter c), “Services Contracts” in items 3, shall be listed as i), and reformulated as follows:

”i) Regarding the financial and economic situation”

- certified copies of one or more balance sheets, submitted to the relevant authorities; and/or;
- copies of the annual turnover declarations and/or financial management reports, certified by an external licensed auditing body; and/or;
- a certificate of the financial situation from one or more banks.

The requirement for the financial situation serves as an indicator of the monetary values owned by the economic operator, in order to cover preliminary expenses for the initiation of the contract execution. Such a request shall not be discriminatory, nor include financial limits, which exceed the needs to cover preliminary expenses”.

k) The fifth paragraph, letter c), “Services Contracts”, in item 3, shall be added and listed as ii), with the following content:

“ii) On the technical and professional capacities:

- professional licenses in relation to the performance of works, contract object;
- educational and professional qualifications of the responsible staff for the management of works;
- declaration on the average labor capacities of the economic operator and the number of managing staff during the last three years;
- declaration on the means and the technical equipment at the economic operator’s disposal for the execution of the contract.

In case the most economic advantage award criterion is applied, the list and weighting of the awarding criteria must be clearly expressed.

In any case, the above requirements shall be justified by the contracting authority”.

4. Chapter IV, “Types and selection of procedures”, undergoes these amendments:

a) In letter a) of item 1, the “small value purchase” procedure shall become “small value procurement”;

b) The first sentence of the first bullet point, in letter b), item 4 “Negotiated Procedure with prior publication of the contract notice” shall be reformulated as follows:

“Only irregular or unacceptable tenders, with reference to the specific selection criteria have been received in response to two consecutive procedures, above or below the low monetary threshold.”

In the same bullet point, the words “...or are abnormally low” shall be replaced with the words “unjustified in cases of abnormally low tenders”.

c) The first sentence of the first bullet point in letter a), item 5, “Negotiated Procedure without prior publication of the contract notice”, shall be reformulated as follows:

“No tender has been submitted in response to two consecutive procedures, above or below the low monetary threshold.”

d) The second bullet point of letter a), item 5, shall be reformulated as follows:

“For technical or artistic reasons, or for reasons connected with the protection of exclusive rights or copyrights, the contract can be awarded only to a particular economic operator. This condition is met only in the case of procurements, for which there is no competition in the market, and when the latter is certified by the contracting authority”.

dh) In the third bullet point of letter a), items 5, the word “...emergency” shall be replaced with the words “...extreme need”;

e) Point iv) of the third bullet point shall be changed as follows:

“It has been impossible and it continues to be impossible to follow the standard procedure, above or below the low monetary threshold”.

The following paragraphs are added:

“In all cases, the contracting authority shall prove, justify and document that the extreme need or the emergency situation are not consequences of its actions or lack of actions.

Negligence or delays in starting normal procurement procedures shall not be considered as causes that justify the implementation of this procedure.

This procedure shall not be adopted to justify the conclusion of long-term contracts, but only to cope with the situation of emergency.

In the event of emergency, the contracting authority shall simultaneously take all measures to carry out the normal procurement procedures”.

ë) At the end of letter a), in item 5, the following text shall be added:

“For new works or services, having to do with the repetition of similar works or services, which had been entrusted to an economic operator, to whom the initial contract was allocated by the contracting authority, provided that these works or services comply with the original project with which it was awarded the initial contract, following one of the procedures in the law. The possible use of this procedure shall be included in the notice of initial contract and the contracting authority shall assess the general estimated cost for the following works or services. The above procedure may be used only within a period of three years from the conclusion of the original contract. In any case, the additional contracts shall not exceed 20 percent of the general value of the initial contract”.

5. Chapter V, “Conduct of Procedures” undergoes these amendments, as follows:

a) In letter c), item 1, “Procurement Unit and Order to Procure”, the words “...responsible for preparation...” shall be replaced with the words “responsible to provide the required data from the respective structures and for preparation of ...”;

b) At the end of letter ç) the words “– Names of procurement unit members” shall be added;

c) In the second sentence of letter a), in item 2, “Preparation of tender documents”, after the word “technical”, the words “...and, when necessary, the requirements for qualification, for the specification of which, the unit lacks proper capacities...”, shall be added;

d) In the third paragraph of letter a), in item 2, after the words “...may appoint...” the words “... with a contract... ” shall be added;

dh) The first sentence of letter b), item 2, shall be reformulated as follows:

“After the preparation of tender documents, the head of the contracting authority or the authorized official shall convey the contract notice and tender documents for publication, in accordance with articles 38 and 39 of the PPL”;

e) In letter c) of item 2, the second and third sentence shall be rephrased as follows:

“In case of any complaint regarding the tender documents’ preparation or request for clarification by an economic operator, the head of the procurement unit shall communicate these in writing.

In case of modification of tender documents, the Contracting Authority shall extend the time limit for the tender submission with 5 days for procurements below the high monetary threshold, and with 10 days for procurements above the high monetary threshold, in compliance with article 42 of the PPL, as amended.”

ë) In letter ç) of item 2, after the first sentence, the following sentence shall be added:

“In case of complex contracts or contracts requiring special technical or legal knowledge, the contracting authority may contract external specialists, as members of the Commission.”

f) In letter a), item 3, “Submission of Tenders”, the following paragraph shall be added at the end: “With the submission of tenders/proposals, economic operators are invited to sign a declaration stating that they are not in the conditions of conflicts of interest, as per legislation in force”.

g) Letter d) of item 3, “Submission of Tenders” changes into: “Economic Operators shall submit a sealed envelope with the original tender. The envelope shall be submitted as per criteria defined in the standard tender documents”.

gj) Letter dh) is added after letter d) with the following content:

“dh) Economic Operators shall submit only one tender, except when alternative tenders are required”.

h) After letter b), in item 4, “Opening and evaluation of tenders”, letter b/i shall be added,

with the following content:

“b/i “No tenderer may participate in the tender of another tenderer, for the same contract, of whatever capacity. Participation of one tenderer in more than one tender, alone or together with another tenderer shall result in the exclusion from the process of all the tenders in which he has been involved.”

i) In the first paragraph of letter ç), item 4, “Opening and evaluation of tenders”, the following sentences:

“If necessary, the evaluation commission may ask clarifications to the tenderers, which should be only in written form or reflected in the procurement record”.

and

“On the basis of the admitted offers, the evaluation commission shall draft the final classification that must be communicated at the indicated time.”

are moved at the last paragraph of this item.

j) The second paragraph of letter ç), in item 4, “Opening and evaluation of tenders”, is amended as follows:

“Mathematical errors shall be corrected first and following this procedure: if there is any discrepancy between the unit price and the total price, the latter being a result of multiplication of unit price and quantity, the unit price shall prevail and the total price shall be corrected accordingly; tenders with mathematical errors shall be refused if the absolute values of all corrections are higher or lower than 2% of the value of the offered economic tender. Where there is any discrepancy between words and figures, the amount expressed in words shall prevail; where the Tenderer does not accept to correct errors, his tender shall be rejected, and his tender security consequently forfeited.”

k) In letter d), of item 4, “Opening and evaluation of tenders”, the words “procurement record” shall become “record kept to this purpose”.

l) In letter ë), in the last paragraph, the words “before excluding them” shall become “before taking a decision related to them”.

ll) In letter f), item 4, “Opening and evaluation of tenders”, the words “more than one economic offer presents...” shall become “When, two or more economic offers present....”.

m) Letter gj), in item 4, “Opening and evaluation of tenders”, shall be reformulated as follows:

“If there is any doubt, the contracting authority shall verify only information submitted by the first and second ranked tenderer. 5 days after communication of the final classification the head of the evaluation commission prepares a summary report and sends it for approval to the head of the contracting authority.

n) Letter h), in item 4, “Opening and evaluation of tenders”, shall be amended as follows:

“After approving the summary report, the head of the contracting authority shall send a notice, following article 58 of the PPL. Upon the conclusion of the contract, a notice of awarded contract shall be sent to the PPA within 5 (five) days”.

6. In the title of chapter VI, and everywhere else the words “small value purchase” shall become “small value procurement”;

a) At the end of letter a), in item 1, “Request for Proposals”, the phrase “The contract notice shall be published in the Public Announcement Bulletin”, in compliance with the PPI and with these rules”.

b) Letter b) of item 1, “Request for Proposals”, shall be reformulated as follows:

“b) The procurement unit shall send the invitation to at least 5 (five) economic operators with the aim to receive proposals. A commission, of not less than 3 members, shall compare the proposals and award the contract on the basis of the specifications and criteria set in the tender documents”.

c) In letter c), of item 1, “Request for Proposals”, the words “5 days after the above notification” shall be replaced with the words “after the termination of the complaining time limits”;

ç) Letter c), in item 2, shall be amended as follows:

“The members of the commission shall test the market in order to obtain the indication of prices for works, goods, or services that are reflected in the record, which is kept and signed by the three members. On the basis of the lowest price criterion, the commission shall award the contract. Members of commission shall address to the economic operator who offered the lowest price and buy the goods or services. Minutes of meeting shall be taken during the activity and shall be signed by all involved officials. A final report must be prepared with annex receipts of the purchase.”

d) In letter ç), of item 2, the sentence “This kind of services may be paid with cash, when their value does not exceed a total of 10.000 leke”, shall be replaced with the sentence “The payment for small value procurements shall be effected following the legislation in force”.

7. Chapter VII, “Terms of general applicability” undergoes these changes, as follows:

a) Letter b), in item 2, “Association of economic operators”, changes as follows:

“Before submitting the offer, the group must be formally established with a notarized agreement in which, the representative of the group, the percentage of participation or concrete work/service/supply for each member, are indicated. After the establishment of the association of economic operators, the members of the group appoint by power of attorney their representative, who will submit the tender and eventually sign the contract, if awarded. This written agreement and the power of attorney declaration must be delivered with the qualification stands and the economic offer, which shall be signed by the representative. Tender security - referring to the participation of the group of economic operators - shall be provided by the representative.”

b) In letter c), of item 2, the second sentence is changes as follows: “The group as a whole must satisfy the economic, financial, professional, and technical requirements, in

compliance with the respective percentage of participation in works, services, or supplies, as provided in the agreement.”

c) In letter ç), of item 2, after the word “... present” the words “simultaneously”

8. Chapter IX, “Review of complaints”, undergoes these changes:

a) In letter b), of item 1, “Complaints before the contracting authority”, before the word “... days” the word “working” shall be added”.

b) In letter c), of item 1, “Complaints before the contracting authority”, after the first sentence, the following text is added:

“When possible, a copy of the act being protested, is attached to the complaint. Is any of the above-mentioned elements is missing, or if the form was not filled properly, the Contracting Authority shall notify the complainant to meet the requirements of the law and those set in the public procurement rules. Such notification is sent by any available means, including the electronic ones, and in all cases shall be documented by the relevant official. If the complaint is not corrected within 48 hours after the notification, the complaint shall be considered as not submitted”.

9. In the third bullet of chapter X, “Administrative sanctions and disciplinary measures”, after the words “...as foreseen in...” the following is added “...42 and in article ...”;

10. This decision enters immediately into force and shall be published in the Official Journal.

PRIME MINISTER

SALI BERISHA