

YES

YES

YES

Bid opening and evaluation

Requesting tender dossier

NO

Bid Preparation

PUBLIC PROCUREMENT TOOLKIT

how to produce an eligible bid when applying for public contracts in Kosovo

Contract management

Signing a contract



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PUBLIC PROCUREMENT TOOLKIT


how to produce
an eligible bid
when applying for
public contracts in
Kosovo



Riinvest Institute
2014

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This toolkit aims at providing clear guidance to businesses on preparing successful bids. The application requirements vary for different types of contracts and procedures; therefore, this toolkit intends to provide sufficient information for businesses in preparing an eligible and competitive bid. The analysis draws from primary and secondary data sources. Primary data include interviews with companies' managers, public procurement officials and central procurement institutions, while secondary data include published reports from different academicians and organizations as well as an extensive review of primary and secondary legislation. Primary data are used for illustration purposes only. The instructions on how to prepare the bid are based exclusively on current legal framework (primary and secondary legislation).

This toolkit is part of a more comprehensive project that Riinvest is implementing with the support of Center for International Private Enterprise (CIPE). Riinvest is committed to play an active role in publicizing the importance of a sound public procurement which promotes fairness, efficiency and minimization of corruption and misuse of taxpayers' money while it maximizes the economic and social gains of public procurement. We would like to thank CIPE very much for supporting this project and related activities. We would like also to thank managers and business representatives, officials of the institutions, representatives of media and civil society for their cooperation during the implementation of our project. Riinvest wishes to thank all parties involved in preparation of this toolkit for their contribution while it assumes the sole responsibility for findings and conclusions of the toolkit.

ABBREVIATIONS

CIPE	Center for International Private Enterprise
CPA	Central Procurement Agency
EC	European Commission
EU	European Union
ISO	International Organization for Standardization
KIPA	Kosovo Institute of Public Administration
PPA	Public Procurement Agency
PPL	Public Procurement Law
PPRC	Public Procurement Regulatory Commission
PRB	Procurement Review Body
Riinvest	Riinvest institute for development research

OUTLINE OF THE TOOLKIT

This outline is designed to be a handy map of the Toolkit's contents. It will help you to navigate your way around and will allow you to access the information you need most. The column on the right shortly presents the content of sections.

<p>1 An introduction to the Toolkit</p> <p>This section sets out the parameters of the Toolkit. It shows the different ways the Toolkit can be used.</p>	<ul style="list-style-type: none"> ➤ Target audience ➤ Objectives of the toolkit ➤ Methodology
<p>2 Understanding public procurement in Kosovo</p> <p>This section briefly provides a background of the public procurement system in Kosovo.</p>	<ul style="list-style-type: none"> ➤ Legal and institutional background of public procurement system in Kosovo
<p>3 Things you should know before you start!</p> <p>This section provides information on important aspects of the procurement process. The aim is to familiarize you with key concepts, time limits and procedures set by the current primary and secondary legislation.</p>	<ul style="list-style-type: none"> ➤ Types of contracts ➤ Contract values classification ➤ Procurement Procedures ➤ Time limits ➤ Published notices
<p>4 Process flowchart</p> <p>This section is the central part of the toolkit. It serves as a guide for the rest of the toolkit but also as a reference that the reader can return to when unsure where they stand in the process and how to proceed.</p>	<ul style="list-style-type: none"> ➤ Getting started ➤ Bid or no bid? ➤ Requesting tender dossier ➤ Bid preparation ➤ Bid submission ➤ Bid opening and evaluation ➤ Contract signing ➤ Contract management ➤ Filing a complaint
<p>5 Other important bits</p>	<ul style="list-style-type: none"> ➤ Glossary ➤ Frequently Asked Questions ➤ Further reading ➤ Appendices

SPECIAL FEATURES THROUGHOUT THE TOOLKIT ARE NOTED BY THE FOLLOWING SYMBOLS:

			
<p>HIGHLIGHTS</p> <p>Highlighted information presented in different parts of the toolkit.</p>	<p>SUMMARY</p> <p>Summary of information to help you get things right throughout the procurement process. A summary is presented at the end of each section.</p>	<p>REAL CASES</p> <p>Stories from the people who have been through this process. Where they did it right, and where they went wrong?</p>	<p>IMPORTANT INFORMATION</p> <p>Important information about legislation, institutions, procedures, requirements or where you can find additional information.</p>

1. AN INTRODUCTION TO THE TOOLKIT

1.1 TARGET AUDIENCE

This toolkit targets all potential applicants for public tenders in the Republic of Kosovo. It is a resource that helps economic operators to build a structured approach in the bidding process. This toolkit is particularly relevant for businesses that are new in the procurement process, but its content will also be valuable to all businesses and anyone who wants to expand their understanding of the public procurement process in Kosovo and how the bidding process is organized. To take full advantage of the toolkit, you are advised to review another study prepared by Riinvest.¹



TARGET AUDIENCE

All potential applicants for public tenders in the Republic of Kosovo

1.2 OBJECTIVES OF THE TOOLKIT

This toolkit is designed to give businesses a single comprehensive source of information on all procurement related procedures in Kosovo. The idea is to address all concerns of potential applicants for public funds by providing information in a single document, to be used as a reference at any time.

As indicated, Riinvest conducted a study on Public Procurement in Kosovo in 2012 and one the main findings of that study was that businesses had difficulty gathering all the relevant information on

procurement procedures for the tenders they were bidding to win. In light of that research, Riinvest is preparing this detailed toolkit which should serve as reference point for all businesses whenever they require information on how to apply for public contracts.

Our research shows that businesses are looking forward to a comprehensive single source of information which would enable them to produce competitive bids. Businesses constantly complain that the bureaucracy involved in winning public tenders is too overwhelming to even comprehend how it works. As a response, this toolkit aims at providing clear guidance to businesses on preparing successful bids. The bidding process differs for different procedures and types of contracts. This toolkit aim to provide sufficient information for all types of contracts and procedures. We are well aware that the public procurement process in Kosovo is highly tainted with corruption, and this toolkit is unable to tackle this issue directly. This toolkit merely supports businesses in producing an eligible bid which will allow them to be able to compete. We hope that indirectly, it will lower corruption incidence by reducing the discretion of the public procurement officials to disqualify companies based on technicalities.

The toolkit starts by providing a summary of the public procurement process in Kosovo. It briefly reviews the legal and institutional set-up of the public procurement system. It also provides information that anyone applying for public contract should know. This information relates to types of contracts, contract value classification, award criteria, procurement procedures and time limits among others.

The toolkit then presents a flowchart which is a guide for the rest of the toolkit but also as a reference that the reader can return to when unsure where she/he stands in the process and how to proceed. The flowchart gives the general steps of the procurement procedure. It starts from the very beginning

¹ Riinvest 2012 – 'Improving Transparency and Governance of Public Funds: Public Procurement Process in Kosovo'. Accessible online: <http://riinvestinstitute.org>

TOOLKIT IN BRIEF



To help you on your way, the Toolkit explains public sector procurement rules, describes the way procurement process is typically carried out.

Users will find special features throughout the Toolkit that include 'highlighted information'; 'summaries', 'real cases', and other 'important information'. **Make sure you read the whole toolkit** before you start using it. It is important that you understand the whole process before you can start to successfully utilize this toolkit. Given that the toolkit draws from the current legal framework (primary and secondary legislation), you are advised to keep track of any change in legal framework since the publication date of this toolkit.

AUTHORS' NOTE: *we would like to thank CIPE very much for supporting the production of this toolkit and related activities as well as for their continued cooperation during the realization of this project. We would like also to thank companies' managers and other respondents from central procurement institutions for their cooperation during interviews. Riinvest wishes to thank all parties involved in preparation of this toolkit for their contribution while it assumes the sole responsibility for its findings and conclusions.*

of the process by analyzing whether you should bid or not for a particular contract. If you decide to apply for the contract, the toolkit than guides you through the process: how to obtain tender documents; how to prepare the bid; how to submit the bid; how is the opening/evaluation process organized and what is expected from you; when do you get so sign a contract if you are the winner; how do you manage an

awarded contract; if you were not successful, how do you file a complaint. All these steps are analyzed in details covering all relevant information as stipulated in primary and secondary legislation.

This toolkit is organized as follows: section 2 presents a summary of the public procurement in Kosovo. This is followed by section 3, where we present some information that you need to know before you start. In section 4, we detail the process in a mapped format using standard flowcharts which helps navigate through the document and help the reader understand where she/he stands in the process of obtaining public funds. Following that, the toolkit proceeds with more in depth information on all steps. Lastly, in section 5, we present some other important bits which include a glossary of terms, Frequently Asked Questions (FAQs), reference to further reading and appendices.

1.3 METHODOLOGY

The analysis draws from primary and secondary data sources. Primary data include interviews with companies' managers, public procurement officials and central procurement institutions, while secondary data include published reports from different academicians and organizations as well as an extensive review of primary and secondary legislation. The former is used only for illustration purposes only. The latter, (i.e. the primary and secondary legislation) are used for writing instructions on how to prepare an eligible bid.

2. UNDERSTANDING PUBLIC PROCUREMENT IN KOSOVO: INSTITUTIONAL AND LEGAL FRAMEWORK

This section provides a brief background summary of the public procurement process in Kosovo. For a more extensive analysis of the public procurement process in Kosovo readers are advised to see Riinvest (2012) publication, 'Improving Transparency and Governance of Public Funds: Public Procurement Process in Kosovo'.



For a more extensive analysis of the public procurement process in Kosovo readers are advised to see Riinvest (2012) publication, 'Improving Transparency and Governance of Public Funds: Public Procurement Process in Kosovo'.

As a transition country, Kosovo started building its new institutions that will facilitate a market-led economy only in 1999. However, this process started later than elsewhere in Eastern Europe following a decade of emergency ruling and a devastating war. Part of the transition course was the process of introducing public procurement process and practices. So, the public procurement system in Kosovo is very recent. The International Community made their first attempt at introducing public procurement as early as 1999², but the first Public Procurement Law (PPL)

with the involvement of the Provisional Self Governing Institutions was only brought up in 2004.

The new legal framework marked several advancements in public procurement process while aiming an alignment with EU directives. However, practical implementation was facing major difficulties. It was followed by delays in establishing central procurement institutions which in turn postponed the process of preparing secondary legislation which further perplexed putting it into practice. According to the EC (2005),³ the then enacted PPL proved to be very complicated to apply and incurred higher costs for the Kosovo Consolidated Budget. Also, EC (2005) finds that this law created conflicts of interest between the regulatory and judicial review functions of the PPRC. As such, law has been subject to great revisions and improvements. The new draft law was then presented to the Assembly in 2006 which intended to further align with EU *acquis* in this field; however, the alignment process was considered to be lagging behind (EC, 2006; p. 27).⁴

The new version of the law, amending the 2004 PPL was promulgated in June 2007. The aim was to make it more practical which increased conformity with EU *acquis* and best international standards and practices of public procurement.⁵

The new law changed, *inter alia*, the institutional structures for public procurement requirements, amending rules for appointing procurement officers

the World Bank and UNCITRAL.

³ EC, 2005. Kosovo Progress Report. European Commission. Brussels.

⁴ EC, 2006. Kosovo Progress Report. European Commission. Brussels

⁵ It has incorporated most of the provisions of two procurement directives of the European Commission, No. 17/2004 and 18/2004.

² These procurement procedures were similar to the procurement rules of

(including their training), and framework agreements, as well as providing for new rules on the three central procurement institutions in Kosovo: Public Procurement Regulatory Commission (PPRC), the Procurement Review Body (PRB), and the Public Procurement Agency (PPA) (EC, 2007; p.32).⁶ At the end of this section, a summary box presents the structure of the public procurement institutions in Kosovo.

Aiming at further improving the public procurement process, in 2010 the new law was presented by the government to the assembly. Even though that the process of drafting new legislation was highly supported by EU technical assistance, the input from this expertise was not reflected in the presented law. Accordingly the findings of the EC were that the new law, which entered into force on 1st of December 2010, diverged significantly from the *acquis*. This law has been consequently criticized heavily by the EU commission and other independent observers arising doubts about the motives of the government who did not internalize the proposals of technical working groups in the legislation. This law contained a number of provisions that exposed procurement officers to political interference and pressure, and thus undermining the transparency and accountability of the overall process and opening up opportunities for corruption (EC, 2011).⁷

Since the law was considered to be in conflict with some of the EC Procurement Directives there was a mounting pressure from the former towards the government. This raised the need for legislation changes which were authorized in 2011. So, the law remained in force for only 10 months until it was changed during 2011.⁸ The new Law on Public Procurement No. 04/L-042, was approved by the Assembly of Kosovo on August 29, 2011, was published in the Official Gazette of Kosovo, No. 18 on September 19, 2011, and entered into force on October 05, 2011. Under this law in Kosovo remain

Overall, the procurement legislation is largely in line with European standards ... however ... coordination mechanisms of the main stakeholders in the public procurement system need to be further strengthened, in particular to reduce the scope for corruption...

two central procurement bodies: Public Procurement Regulatory Commission and Procurement Review Body, and whereas the Central Procurement Agency passes under the Ministry of Finance. The training of public procurement practitioners is conducted by Kosovo Institute of Public Administration with the support of PPRC. PPRC has prepared around 90 percent of secondary legislation for the current law which were enacted in the beginning of 2012 (PPRC, 2012).⁹ Recently they have also developed a procurement procedures process flow chart which helps the practitioners not to miss out a step during the process. The new legislation has broadened the accountability for procurement processes to include not only procurement officers, but also their superiors, both at administrative and at political levels. While the independence of procurement officers was reinforced in the new version of the law (also by transferring more competences which aim at reducing bureaucracy and giving some degree of autonomy), still they remain in a weak position and subject to intimidation. What is more, the increased competences of public procurement

⁶ EC, 2007. Kosovo Progress Report. European Commission. Brussels

⁷ EC, 2011. Kosovo Progress Report. European Commission. Brussels

⁸ PPRC has not prepared at all secondary legislation to implement this law, but has instructed the contracting authorities that they can use secondary legislation according to the previous law on public procurement.

⁹ The secondary legislation includes among others: the tender dossier frameworks for all procurement procedures, contract notice and contract awarding notice, procurement ethical code, documents about the diplomatic missions as well as other templates used daily by procurement practitioners. PPRC, 2012. Report on Public Procurement Activities in Kosovo for 2011. Public Procurement Regulatory Commission. Prishtina

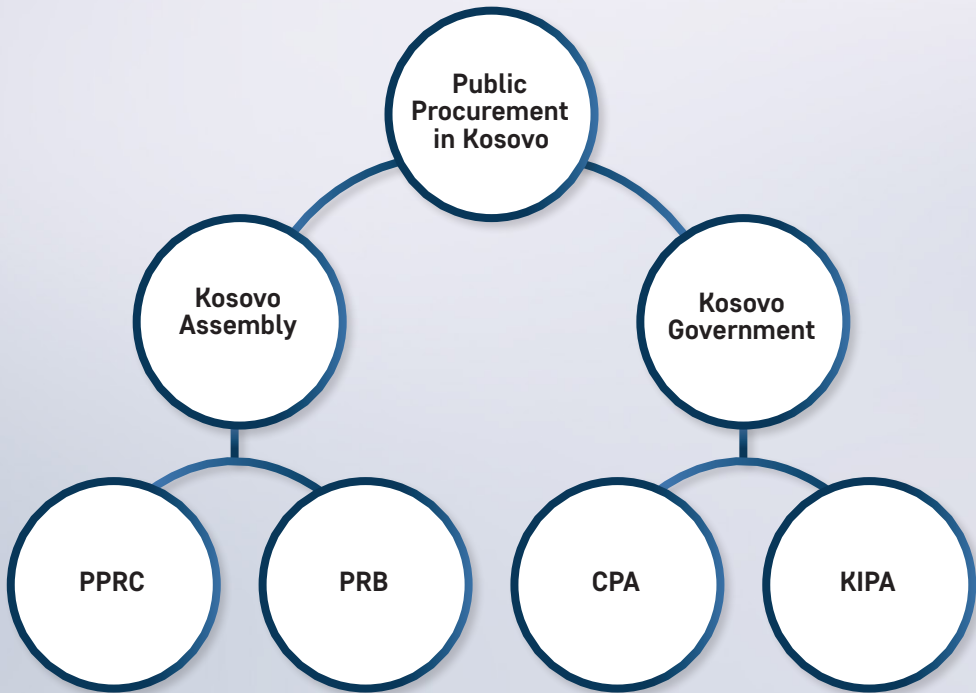
officials are expected to increase their exposure to greater pressure from their superiors.

Overall, the procurement legislation is largely in line with European standards however the compatibility has significantly increased only in the last version of the law. Kosovo still needs to improve the legal framework in the public procurement area and the amending process should be more comprehensive internalizing the input from other relevant stakeholders. The coordination mechanisms of the main stakeholders in the public procurement system need to be further strengthened, in particular to reduce

the scope for corruption. Awareness of public procurement procedures by contracting authorities and economic operators needs to be raised and independence as well as the professionalism of the public procurement officers needs to be further enhanced. Moreover, the monitoring and follow-up of procurement activities needs to be improved, including actions aimed at helping to ensure that oversight agencies' recommendations are implemented and that officials are held accountable for their actions. At the end of this section, another summary box presents the Legislation on Public Procurement in Kosovo.



THE STRUCTURE OF PUBLIC PROCUREMENT INSTITUTIONS IN KOSOVO



- 1** The Public Procurement Regulatory Commission (PPRC) is an independent regulatory agency. It is in charge of establishing the detailed implementing rules of the PPL and is responsible for the overall development, operation and supervision of Kosovo's public procurement system. It consists of three members nominated by the government and appointed by parliament for five years.
- 2** The Procurement Review Body (PRB) is an independent body responsible for implementing review procedures. It is a quasi-judicial body competent to review administrative decisions with regard to the conduct of procurement procedures, and to review appeals from bidders under the review procedure.
- 3** The Central Procurement Agency (CPA) is established within the Ministry of Finance and is in charge of central and coordinated purchasing but also supporting contracting authorities with professional expertise.
- 4** The Kosovo Institute of Public Administration (KIPA) is a government institution in charge of training and licensing the public procurement officers.



LEGISLATION ON PUBLIC PROCUREMENT IN KOSOVO

1 Public procurement law No. 04/L-042

2 Secondary legislation, which consists of 7 parts*:

PART A: Public Procurement Regulation, and Operations Guide

PART B: Rules on Procurement Procedures (53 forms, including: Notices, Tender Dossier, Opening and Evaluation reports, other standard documents among others)

PART C: Rules for Contract Management (Contract Management Plan)

PART D: Procurement Code of Ethics (Code of Ethics and 3 Declarations under oath)

PART E: Rules on sale of assets (Rules for the sale and 7 forms)

PART F: Rules for review of complaints (Standard Complaint Form)

PART G: Documents for Kosovo Diplomatic Missions (Instructions and 9 forms)

Public procurement legislation is published in three languages (Albanian, English and Serbian) on the following web-site

<http://krpp.rks-gov.net> 

* Dr. Sc. DULI, Ilaz " Public Procurement Reforms in the Western Balkans"; page 209; Publisher: "BPC – Balkan Procurement Consultancy"; May 2014 –Prishtina.

3. THINGS YOU SHOULD KNOW BEFORE YOU START!

The following section provides information on important aspects of the procurement process. The aim is to familiarize you with key concepts, time limits and procedures set by the current primary and secondary legislation. As you will be informed from the following section, most of these elements can be easily identified by looking at the procurement number (a unique number for each procurement activity) which serves for swift identification is codified using procurement details.¹⁰ It is part of the notices made public by the contracting authority.¹¹

3.1 TYPES OF CONTRACTS

There are three broad categories of contracts: **services, works, and supplies**.¹² However, it is possible for a public contract to be a combination of two or more types of contracts. In that case, the contracting authority decides how to classify the contract based on the costs of elements of the contract. In other words, whichever element of the contract has the highest estimated expenditure then the contract should be classified under that type of contract. The same is applied even when the contract is broken down in 'lots'; that is, the highest estimated expenditure of an element of the whole contract (all the lots) determines the type of contract.¹³ You will find the type of contract ticked in the Contract Notice, under section II 'Object of the contract', as presented in Figure 1. The type of contract will also be reflected in the Procurement Number which is at the top of the Contract Notice, which serves for a swift identification.

¹⁰ See Appendix 1 for more information on the Procurement Number which is composed of different elements such as: contracting authority identification, identification of the procurement year, procurement type, contract value and procurement procedure.

¹¹ See section 3.6 with details on the published notices

¹² There could be other types of specific contracts which are presented in Table A2.1. in Appendix 2.

¹³ See Table A2.2. in Appendix 2, for details on the rules that determine the type of mixed contract.



CODE FOR TYPE OF PROCUREMENT (AS PRESENTED IN THE PROCUREMENT NUMBER)*:

1-Supply

2-Service

3-Consulting service

4-Design contest

5-Works

6-Works concession

*

see Appendix 1 for details about the procurement identification number

FIGURE 1. TYPE OF CONTRACTS (THE CONTRACT TYPE IS TICKED)

II.1.2) Type of contract and location of works, place of delivery or of performance
 (Choose one category only - works, supplies or services - which corresponds to the main part of the specific object of your contract)

<input type="checkbox"/> Works	<input type="checkbox"/> Supplies	<input type="checkbox"/> Services
<input type="checkbox"/> Execution	<input type="checkbox"/> Purchase	
<input type="checkbox"/> Design and execution	<input type="checkbox"/> Lease	
<input type="checkbox"/> Realisation, by whatever means, of work, corresponding to the requirements	<input type="checkbox"/> Rental	
	<input type="checkbox"/> Hire purchase	
	<input type="checkbox"/> A combination of these	

SOURCE: PPRC SECONDARY LEGISLATION

3.2 CONTRACT VALUE CLASSIFICATION

Based on the estimated contract value the contracts are classified into four different types of contracts: minimal value contract; low value contract; medium value contract and large value contract. The classi-

fication of contracts based on the value of the contracts according to the Law on Public Procurement is as presented in Table 1. The value of the contract will also be reflected in the Procurement Number as indicated below.

TABLE 1. CONTRACT VALUE CLASSIFICATION

ESTIMATED VALUE	SUPPLY	SERVICES	DESIGN CONTEST		WORKS
			Award of a service contract	Prizes and payments to participants	
LARGE VALUE	≥ 125,000 €		≥ 125,000 €	≥ 100,000 €	≥ 500,000 €
MEDIUM VALUE	< 125,000 € ≥ 10,000 €		< 125,000 € ≥ 10,000 €	< 100,000 € ≥ 10,000 €	< 500,000 € ≥ 10,000 €
LOW VALUE	< 10,000 € ≥ 1,000 €		< 10,000 €		< 10,000 € ≥ 1,000 €
MINIMAL VALUE	< 1,000 €		*		< 1,000 €

* All minimal value design contests must be performed according to rules for low value design contests.



CODE FOR CONTRACT VALUE CLASSIFICATION (AS PRESENTED IN THE PROCUREMENT NUMBER)*:

1 - Large value

2 - Medium value

3 - Low value

4 - Minimum value

* see Appendix 1 for details about the procurement identification number

3.3 PROCUREMENT PROCEDURES

The procurement procedure is determined by the procurement department of the contracting authority depending on the type of the procurement activity.¹⁴ The following procedures are used by Contracting Authorities for awarding contracts:

Open procedure: provides the most competitive setting. When using an open procedure, any economic operator regardless of their technical qualification and capacity, can bid for the contract. This does not mean that prequalification is excluded. It merely means that prequalification is not a separate phase as in the case of restricted procedure. The eligibility requirement applies always in any procedure. In addition, it is of course possible also in an open procedure to set requirements concerning technical and financial capacity.

Restricted procedure: is a multi-stage procedure. It is a two stage process where only those economic operators who meet minimum requirements, in regard to professional or technical capability, experience and expertise and financial capacity to carry out a project, are invited to tender.

Design contest: is a procurement procedure under which economic operators are invited to submit their conceptual design of a physical project. The conceptual design forming the main component of the design contest is expected to highlight the aesthetic aspects of the project in addition to technical characteristics. The winning design is selected by an independent jury.

Negotiated procedure after publication of a contract notice: is an exceptional, multi-phased procedure that involves the contracting authority consulting with qualified economic operators to negotiate the terms of the contract under which services will be provided. It is a procedure carried out in three stages (i) prequalification, (ii) preliminary examination and evaluation, and (iii) negotiations and award stage.

¹⁴ The procedure is determined based on the estimated value of the request for tender or the circumstances pertaining to the request for tender. While the former is the main criteria, the latter can be used as additional criteria in specific circumstances (such as emergency situations; single supplier; continuity from an existing supplier; or the complexity of requirement).



CODE FOR CONTRACT VALUE CLASSIFICATION (AS PRESENTED IN THE PROCUREMENT NUMBER)*:

- 1 - Open procedure

- 2 - Restricted procedure

- 3 - Design contest

- 4 - Negotiated procedure after publication of a contract notice

- 5 - Negotiated procedure without publication of contract notice

- 6 - Price quotation procedure

- 7 - Minimal value procedure

*

see Appendix 1 for details about the procurement identification number

Negotiated procedure without publication of a contract notice: is a procedure that involves the Contracting Authority negotiating, without advertising, the terms of the contract directly with one or more economic operators. This is a departure from the core principles of openness, transparency and competition and is a very exceptional procedure.

Procedure for price quotations: the contracting authority may use price quotation procedures to conduct a procurement activity when awarding contracts with minimum or low value. This procedure is used when it comes to repairs or maintenance in the case of works contracts. In cases where the subject of the contract are goods or services, this procedure is used in cases where goods or services are available from economic operators; they do not need to be produced in particular way and when there currently exists a consolidated market for such goods or services.


Minimal value procedure: may be used for any public contract the estimated value of which is less than 1,000 Euros. At least three economic operators of the concerned goods/services/works shall be contacted. This does not mean that the Contracting Authority is obliged to receive three offers but the Contracting Authority is obliged to document that at least 3 economic operators were contacted.

Contract value	Number of days
Large Value	40 days
Medium Value	20 days
Low Value	5 days
Minimal value	1 day

3.4 TIME LIMITS

The usual time limits for tendering process are set by law and are based on the values of the contract as presented below¹⁵:

However, the contracting authorities has the right to revise the time limits if there is justifiable reason for such a revision. In any case, the time limits ought to be such that they allow sufficient time for economic operators to produce an eligible bid.



The time limits shall be calculated on the date of publication of the contract notice or on the date when all invitations to submit a tender/ quotation are sent.

¹⁵ Detailed time limits are presented in tables A3.1., A3.2., A3.3. in Appendix 3.

3.5 PUBLISHED NOTICES

There are 5 types of notices published by contracting authorities either for upcoming procurement activities or the results of the ongoing procurement process. All notices are published at least in the PPRC website. These notices include:

Indicative notice: is a notice that is published by a contracting authority in cases when the former intends to award a contract of 500,000 Euros or more. The indicative notice does not commit the contracting authority to purchasing or proceeding with a project if circumstances change. It merely intends to aid to transparency; informing economic operators and in some cases reducing the time limits discussed in previous section.

Contract notice¹⁶: is a notice to express the intention of a contracting authority to conduct a procurement activity using any procedure. The contract notice is prepared regardless of the type or of the estimated value of the contract.

Contract Award Notice: is a notice to inform the interested parties and the public at large about a contract that has been awarded, regardless of the

¹⁶ See Table A4.1. in Appendix 4 for detailed content of the contract notice.

procedure or the estimated value (apart from the minimal value contracts in which case there is no need to publish such a notice). The notice is published in the PPRC's website two days after it is received from the contracting authority.

Cancellation Notice: is a notice to inform the interested parties and the public at large that the procurement procedure has been canceled. The notice must contain the factual reasons and the legal basis of such cancellation. The notice is published in PPRC's website. The cancellation notice is also sent to all economic operators that expressed interest in that particular procurement activity.

Cancellation Notice of Contract Award: is a notice to inform the interested parties and the public at large that the contract awarded is canceled. This can occur if ordered by the Procurement Review Body. The notice is published in PPRC's website. The cancellation notice is also sent to all economic operators that expressed interest in that particular procurement activity.



All notices are completed in a manner that makes it possible for the you to understand the intentions of the contracting authority, which means that all relevant information must be given.



In case that the procurement procedure is cancelled, the contracting authority may proceed with the procurement activity by initiating a re-tendering process. In that case, the procurement number does not change but the word 'Re-Tender' is written after the title in the contract notice



The contracting authority incur no liability towards bidders, participants or candidates for cancellation of a procurement procedure apart when ordered by the PRB to pay compensation to a complainant.



THINGS YOU SHOULD KNOW BEFORE YOU START!

Types of contracts:

- Services
- Works
- Supplies

Contract value classification:

- Large value
- Medium value
- Low value
- Minimal value

Procurement procedures:

- Open procedure
- Restricted procedure
- Design contest
- Negotiated procedure after publication of a contract notice
- Negotiated procedure without publication of a contract notice
- Minimal value procedure

Time limits:

- Large value (40 days)
- Medium value (20 days)
- Low value (5 days)
- Minimal value (1 day)

Time limits:

- Indicative notice
- Contract notice
- Contract Award Notice
- Cancellation Notice
- Cancellation Notice of Contract Award

4. PROCESS FLOWCHART

The following flowchart is the central part of the toolkit. It serve as guide for the rest of the toolkit but also as a reference that the reader can return to when unsure where does he stand in the process and how to proceed. The flowchart gives the general steps of the procurement procedure. Flowchart in

Figure 2 summarizes the steps of the process using the open procedure, which is the most often used procedure. However, in Appendix 5, Figure A5.1. represents the steps of other procedures as well as those from the open procedure so that it is easy for you to spot differences.

GETTING STARTED

FIGURE 2.
Process
Flowchart

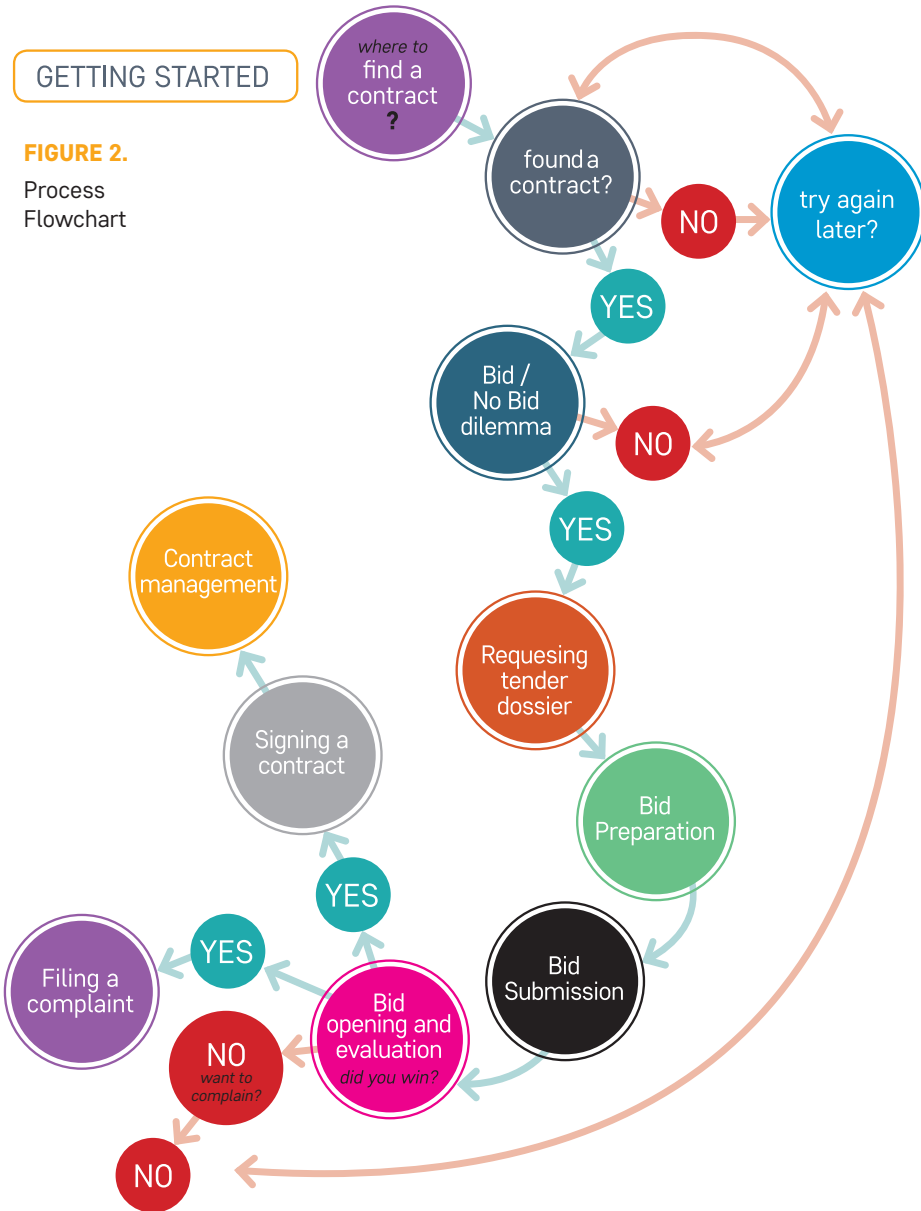
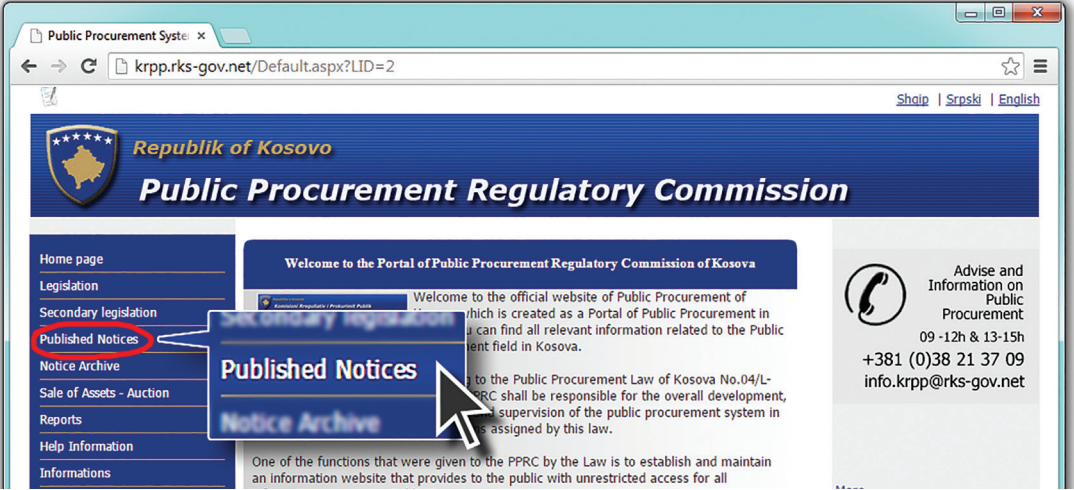


FIGURE 3. Link to public tenders




4.1 GETTING STARTED - WHERE TO FIND CONTRACTS?

Contracting authorities will publish the notice for all public tenders in the website of the Public Procurement Regulatory Commission. The link to the website is: www.krpp.rks-gov.net. Once you open the website, select the ‘Published Notices’ tab on the left hand side of the website (as indicated in Figure 3). Contracting authorities are strongly advised to publish notices in their website as well.

Note that most contracting authorities do not publish their tenders via daily newspapers or magazines as was the case until recently, therefore refer to the above link to search for available tenders. As you start working with public institutions, they will e-mail you notices for which you are likely to qualify.

“ We used to browse through daily newspapers for possible public projects. Now everything is pretty much centralized in the web, and as we win multiple projects from a certain public entity, they start e-mailing us notices for tenders they know we may be interested in.”



WHERE TO FIND CONTRACTS?

You don't have to pay to find public sector tendering opportunities.

4.2 BID OR NO BID?

Once you identify public contracts that you may be interested in, and before deciding to bid, you should carefully consider the decision to bid or not to bid. This process should balance the opportunity, against a realistic evaluation of the likelihood of success. The approach should be systematic, incorporating a scoring matrix or key bid/no bid questions which will help evaluate the decision and remove any emotion that may be associated with the opportunity.



BID OR NO BID!

Be patient and wait for the tender opportunity that is right for your business – it is a waste of time tendering for contracts that you are not going to win. The most common reason for lack of success is poor choice of tender opportunity.

-bid/no bid questions

The following list of questions is selective rather than exhaustive, focusing on the main questions that you need to ask yourself before deciding to bid or not to bid.

What are the mandatory requirements (for example financial stability, quality accreditations) and can you meet them?

Contracting authorities generally may ask for (audited) accounts from the last three years. Has your business seen year-on-year growth and if not is there a valid explanation for why not? If requirements are not mandatory then can you demonstrate that your business is operating to a set of standards that are equivalent? For example, your business may not be ISO accredited, but may use an internal quality system.

Can you show relevant experience? Have we done this type of work before? Do we need to partner?

Contracting authorities like suppliers who can prove they can do the job, therefore references from similar organizations for similar work are ideal. If you haven't got these, you will need to show you have transferable skills from customers with similar needs. If the experience is not a 'core competence' (in other words



“Whenever there was a tender opportunity we would bid. This went on for several years. What we realized later was that it was costing us too much to bid for all tenders; especially since we operate in construction sector and in most of the cases it involved a lot of work to produce the bid. In some cases we even knew before hand that we had slim chances of winning it, but still we kept applying. We are aware that we need to be more selective and we are planning to do so in the future.”

it represents only a small element your business's work) think carefully. If there are some areas that your business cannot manage, the chances of qualifying or winning the tender are seriously reduced. You may need to consider partnering (see section 4.4 for details for bidding as a group of operators).

Who is the competition?

Do you know how many others you will be competing with and who they are? How do your strengths and weaknesses compare with theirs? Does a competitor have an existing contract with the contracting authority? Who is currently servicing the contract?

Is the contract the right size for my business? Will this clash with any existing or upcoming work?

It is risky to bid if a tender value is more than 25% of turnover. Do not overstretch the business to the point where service or quality issues will arise.



BID OR NO BID – THAT IS THE QUESTION!

Carefully consider whether you should bid or not

Can you demonstrate that your business is capable of delivering

You may consider partnering

Know how many other will be competing

Analyze your strengths and weaknesses

Do not overstretch the business
(do not apply if the tender value is very large)

Assess the working capital requirements

Do you have sufficient financial and human resources

If you decide not to bid, inform the contracting authority,
but in such a way that does not prejudice your chances of being invited
to bid for other work in the future

What is the profit potential? What impact will there be on the business cash flow?

Winning a contract can put a strain on a business's financial resources. It is important to fully understand and assess the risk of the working capital requirements of the contract and whether your business can support any peaks that may occur. A careful assessment should be made at this point of the potential profit to be made. Is it likely that you will be

forced to bid low? If so, is it still worthwhile to take on the work, even at a marginal price to perhaps reinforce your position in the sector?

Do you have sufficient resource to respond professionally within the deadline?

Tender writing is time consuming – you will need to invest a significant amount of time and resource to creating a winning bid. Moreover, time limits are

very tight, so you will have to work against the clock. Depending on the type of contract and the contracting authority, the bid/no bid decision can be quite straightforward or may take some consideration, balancing a set of points for and against. To help with the process it is useful to have a consistent procedure in place to ensure that time and money are not spent wastefully on contract opportunities which are to no economic or strategic benefit.

If you decide not to bid, and you were invited to do so directly by the contracting authority, tell the contracting authority as soon as possible of your intention. Explain carefully, in a conscientious way, the reasons for your decision, being careful not to prejudice your chances of being invited to bid for other work in the future.

4.3 REQUESTING TENDER DOSSIER

Once you decided to apply for a particular public contract, you have to make a request for the tender document (or other applicable prequalification documents), unless the contract is of minimal value. The contracting authority may deliver the tender dossier electronically. In case that the electronic method is selected, you have to confirm the receipt within 24 hours.

The tender documents will be usually issued for free. However, the contracting authority may request payment fee in cases where the price of production of tender material is regarded as exceptional expensive i.e. the tender document contains models or large number of technical prints. This fee may not exceed the production costs of such material.

Keep in mind that the tender dossier contains all relevant information and it should serve as a basis for preparing the bid. It includes all specifications, requirements, criteria, time limits, methodologies, contract conditions, site visits or pre-tender meeting etc. connected with the contract award procedure. Make sure you read it carefully and if there is anything that is unclear, you may ask the contracting authority for additional information. You are eligible to request additional information on the tendering documents (however, the contracting authority can reject your request



Make sure you read the tender dossier carefully and if there is anything that is unclear, be aware that you are eligible to request additional information



“In couple of cases, the contracting authority has provided us with additional information upon our request. In one instance, the contracting authority did not provide us with additional information and our request was denied. Also, it happens quite often that we receive additional information as a response to approved request of other competitors”

on the basis that there is no need for providing additional information). To request information, you must submit a request in writing. A standard form for such a request is always part of the tender dossier named ‘Request for additional information’. You may send such a request electronically. However, be careful to send it within the time limits specified in the tender dossier¹⁷. If a request for clarification is sent after the

¹⁷ The time limits for the receipt of such requests are determined depending on the time limit for the receipt of the tenders and range from not less than 3 days to 20 days prior to the receipt of the tenders.



REQUESTING TENDER DOSSIER

You have to make a request for the tender document (apart from minimal value contracts)

You must confirm the receipt of the tender document if received electronically

Usually you will not pay any fee (apart from special cases)

You are eligible to request additional information using the standard form (make sure you send the request on time)

The contracting authority might extend the deadline for the tender submission (in that case you will be notified accordingly)

The contracting authority can also arrange a site visit or a pre-tender meeting for interested operators

designated last day for clarifications the request may be rejected (in which case you will be informed of the reason). If your request is denied, only you will be informed about the denial; otherwise, if the request is accepted (i.e. it is determined that there is a need for additional information), the contracting authority will provide additional information, in writing, to all economic operators who collected the tendering documents, but must not reveal the source of the enquiry. So, you may receive information from the contracting authority as a response not only to your approved request but also to that of other competing companies.

Depending on the type of contract, if the contracting authority, shortly before the deadline of the tender submission, provides additional or clarifying information (including an amendment of the tender dossier) the contracting authority might extend the deadline for the tender submission and accordingly send the notification to all economic operators who received the tender document.

The contracting authority can also arrange a site visit

or a pre-tender meeting for interested operators. If such a visit/meeting is organized, you will be afforded reasonable notice of, and a reasonable opportunity to attend, such visit/meeting (as indicated earlier, such a visit/meeting will be explained in the tender document itself).

4.4 BID PREPARATION

Managing the submission of a bid can be like managing a typical small project:

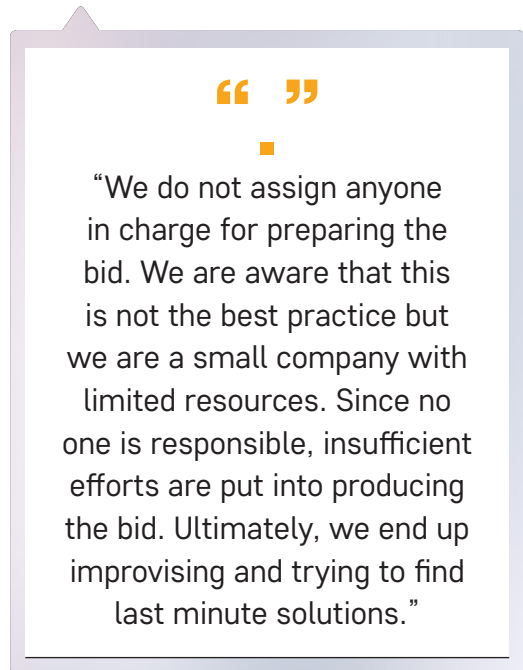
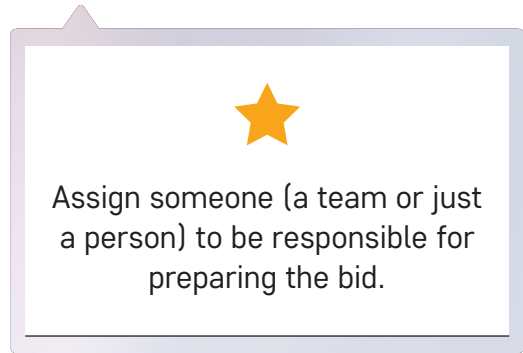
- There is a deadline
- There needs to be a clear understanding of the scope
- There is a process to be followed

As far as the timeline is concerned, as indicated in section 3.4, it is set based on the estimated values of the contract. Once you know the deadline for sub-

mission, plan the resources needed to produce the bid on time. You may want to analyze the number and quality of staff that will be involved in producing the bid. This largely depends on the complexity of the bid itself. Initially, start by setting up a team that will be involved in this process. A successful bid team should include a mixture of individuals who can bring different perspectives and expertise to the formulation of the best solution and proposal documentation. If you are a small company and you have limited resource, make sure that someone high in the hierarchy supervises the process. You need to assign someone (a team or just a person) to be responsible for preparing the bid.

Once you set up a team, make sure that you analyze the requirements of the tender dossier. These requirements should be listed so that you ensure compliance. You may be rejected on the basis of not complying with just one of these requirements. Disqualifying means that your bid will not be even evaluated. In turn, this is a very big loss for the company. Therefore, analyze the tender dossier very carefully. Every sentence in the tender dossier must be well-considered, as the tender dossier is the basic material, upon which you are supposed to prepare the bid. You must also carefully analyze the General Conditions of Contract as well as the Special Conditions of Contract. Keep in mind that wherever there is a conflict the Special Conditions of the Contract prevail.

The tender dossier provides details on technical specification, as well as makes it evident whether the technical specifications are obligatory or minimum requirements. Should a specific contract require the contract winner to meet certain quality assurance standards, whether they are local or international standards, this is stated in the tender dossier as well. The understanding of these specifications is crucial for preparing an eligible and potentially winning bid. Numbers of applications lose validity due to misunderstanding of the technical specifications, therefore it is crucial that you seek information whenever the requirements are not easily understood or not enough clearly elaborated. The technical specifications are mandatory require-



ments, which all tenders must comply with in order to be responsive.

Moreover, an economic operator is deemed to be qualified to participate in a procurement activity if it meets (i) eligibility criteria and (ii) the minimum qualification requirements. These two are jointly known as selection criteria. The eligibility criteria relate to issues such as conflict of interest, conduct and reliability of the economic operator. The minimum qualification requirements on the other hand, relate to professional suitability, financial stability, technical and/or professional capability. The selection criteria are clearly specified in the tender dossier

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“We have started to make a list of all requirements and then we go through the list to see where we stand. Once, we prepared the bid but because of some problems with tax compliance we were unable to meet the eligibility criteria and were disqualified as a consequence.”

and you must carefully analyze them. They should not be confused with - or used instead of - the award criteria! The selection criteria are either Pass or Fail. In other words, you either Pass the threshold to be considered for being awarded the contract or Not.

The tender dossier also clearly specifies the award criteria used by the contracting authority. The latter can award a contract on the basis of: (i) the lowest priced responsive tender or (ii) the most economically advantageous responsive tender. Note that other criteria are not allowed. In case of the former, the contract is awarded to the lowest priced tender complying with the specified requirements. In case of the latter, the contract is awarded to the tender which best meets the relevant criteria. In addition

★

**Selection criteria are either
PASS OR FAIL**

to price the contracting authority may include other criteria relevant to the subject of the contract (such as quality; maintenance; technical assistance; aesthetic etc.). The criteria must be weighted objectively according to the relative importance. In case a contract is being awarded on the most economically advantageous basis, criteria cannot, in any way, be discriminatory or favor a particular economic operator (or group of economic operators). If you suspect that the criteria are not objective, you can file a complaint even at this stage (see section 4.10 for details).

Keep in mind that the contracting authority may impose the tender security requirement. However it is optional and usually imposed for medium and large value contracts. If such a requirement is imposed, it applies to all bidders. The amount of the tender security cannot be less than 1000 Euros (in fact it is 3-5 percent of the estimated value of the contract). It is a legal requirement that the tender security remains valid for a period of thirty (30) days after the expiry of the tender validity period. It is submitted jointly with the tender dossier.

Also, the contracting authority also imposes a performance security requirement which is meant to support the fulfillment of the contract. The amount of the performance security will be to at least 10 percent of the value of the contract. If such a requirement is imposed, it becomes a precondition to signing the contract.

Contracting authority also specifies the required tender validity which can be between minimum 30 days to maximum 90 days. However, the contracting authority may require an extension if such an extension is justifiable.

If you consider that the scope of the contract is large for your capacities, you may consider joining another company (or companies) in a group and submit a bid jointly. Even if you apply as a part of the group, it is important to keep in mind that each member of the group must meet the eligibility requirements. However, the minimum qualification requirements can be met by the group as a whole. In case that you

“ ”

“When the lowest price is the criteria, the process is straightforward. However, when the award criterion is the most economically advantageous responsive tender, things become more complicated. At times, you have to be careful as some of the award criteria are discriminatory and largely intend to disqualify unwanted candidates. In one particular case, the contracting authority imposed such requirements that it was almost clear which bidder can fulfill them. In that case, we filed a complaint at the PRB and the process was suspended and it eventually restarted with different sets of requirements.”

decide to join a group of economic operators with the aim of bidding jointly, you must also (i) submit a clear statement that all members of the group are jointly and severally liable for the contents of the group's tender and, in the event the group is awarded the contract, the performance of the contract; (ii) submit a signed statement from each of the members, confirming their participation in the group and that they are not participating singularly and/or in any other group taking part in the same procurement procedure; and (iii) submit a statement signed by all members of the group authorizing the lead partner to act on behalf of the group. Also, you may consider subcontracting part of the contract obligations. Keep in mind that you are allowed to subcontract up to 40% of the contract value. However, as a contract



TENDER SECURITY REQUIREMENT

The amount of the tender security cannot be less than 1,000 Euros (in fact it is 3-5 percent of the estimated value of the contract)

“ ”

“We were very successful in bidding jointly with other companies. Especially in large value tenders, we partnered with international companies that helped us meet the minimum qualification requirements. In the energy sector, there is a small number of domestic companies that can implement large value contracts. In this sector, most of the contracts are of large value and partnering with other companies is a great option not just for short term profits but also for longer term knowledge transfer.”

“ ”

“We didn’t know that in case of joint bidding, each company has to meet eligibility criteria. We applied but we were disqualified as our partner did not meet the eligibility criteria.”

winner you bear all responsibility for the fulfillment of contract requirements. The tender dossier obliges you to identify the Economic Operators they are intending to subcontract, as well as the amount and activity they plan to subcontract. You must provide evidence for the eligibility of its intended subcontractors as well. If after submission of the tender the Economic Operator wants to change any of the subcontracting plans, it must notify the Contracting Authority, which chooses whether to accept the change or not.

Keep in mind that the tender dossier and the whole public procurement process is by law open to the public access. In other words, once the procurement activity is concluded (resulting in contract award or cancelation), all documents related to that procurement activity are open to the public. However, you can classify certain information so that they remain as confidential business information. The information that you may require to remain confidential include those related to economic and financial position of the company and the information regarding technical and/or professional capabilities. In order to be able to classify information as confidential, you must submit a written request using the standard form ‘Request for Confidentiality’; which is part of the tender dossier.

Once you carefully analyzed the technical specifications, selection criteria and the award criteria, as well as other important elements of the bidding process, you should start preparing the bid. Address

“ ”

“We never asked contracting authorities to keep any of our business information confidential. However, once, when we partnered with a foreign firm, they insisted that their financial data remain confidential. Once, we used the benefit of public access of the data to get to the dossiers of our competitors when preparing the complaint that we filed.”

“ ”

“Several years after we initially started to bid for public contracts, we started to organize and update generic information such as CVs, company profile, references and so on. This helped us a lot in saving time in future bidding processes.”

exactly what the contracting authority asks for, and only what the contracting authority asks for! When compiling your tender response, the most important thing is to do exactly as the contracting authority asks, and if you are unsure of anything – ask them. Always think about what the contracting authority is looking for when writing a tender, and write your response within that context. Documents should be presented in a way that makes it as simple as possible for the contracting authority to evaluate – if

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“Once, one of our employees that prepared the financial offer made a mistake by putting lower prices in the financial proposal. With those prices we could not break even. However, even though we were making loss, we did not withdraw from the contract as we wanted to keep good relations with that particular contracting authority, which is an important buyer in our industry.”



Once you submit the prices, you become contractually bound to those prices

‘look and feel’ and logo. It should also include the bidder’s organization name, title of the contract or tender and any reference codes.

When presenting the price make it clear whether it includes VAT or not. The calculation of the project pricing should be thought out very carefully and should be set or reviewed by a representative within the business with financial responsibilities. Once submitted the business is contractually bound by these prices. When preparing the financial costing for the proposal, there may be details on which you have to make assumptions. You should list these assumptions within the pricing section so the contracting authority is aware of them, reducing misunderstandings. If for reasons that are internal to your company, you compete with an exceptionally low price; your bid may be regarded as abnormally low. However, as such it cannot be rejected without further investigation. If you can explain the source of your price competitiveness, your bid will be treated as that of others. However, if your justification is not satisfactory, your bid may be rejected altogether.

you get too sophisticated or try to be different this often will not impress the evaluation team. Don’t forget the evaluation team is specifically asking for all proposals to be presented in a consistent way to make the evaluation process easier and quicker for them to complete. The overall design of the proposal document makes a statement to the contracting authority about the professional ability of your organization. The tender document should be divided into clear sections, either as specified by the contracting authority or created to provide a clear and logical presentation of the bid content.

Throughout the document there should be a consistent font, text size, alignment and numbering sequencing used. Paragraphs should be short and punchy with bullet points and images such as simple flowcharts used to break up the text. Appendices should be used for detailed information, removing this from the main document. The front cover of the proposal may be the first thing the Contracting authority sees, and should create an impression of the quality of the remainder of the document. The cover should clearly identify the owner by including the company corporate colors, an existing corporate



BID PREPARATION

There is a deadline	Contracting authority also specifies the required tender validity
Plan the resources, both financial and human	Consider teaming-up with another company (keep in mind that they also need to be eligible)
Set-up a team or assign someone in charge of bid preparation	Consider subcontracting certain tasks (up to 40 percent of the contract value); again, the subcontracting company has to be eligible
Analyse the requirements of the tender dossier (ALL OF IT!)	The tender documents are opened to the public (you may require that some parts remain confidential)
Analyze the selection Criteria (eligibility criteria and the minimum qualification requirements)	You can also use the access to the tender documents when preparing a complaint in case you were not successful
Keep in mind that these are PASS or FAIL criteria	Once you analyzed everything, start writing
Analyze the award criteria (lowest price or the most economically advantageous responsive tender)	Make sure you use same formatting throughout
If the criteria are discriminatory, you have grounds for filing a complaint	Try to respond exactly to what the contracting authority is asking for (keep it short and simple)
Contracting authority may impose a tender security requirement	Clearly explain the calculations related to prices (keep in mind that once submitted, you are contractually bound by these prices)
Contracting authority also imposes a performance security requirement	

4.5 BID SUBMISSION

Once you have prepared the bid, you need to put everything together and prepare for submission. Make sure you fill in and sign the tender forms required by the contracting authority. These forms include: (i) the economic operator's identification form; (ii) bidder's declaration(s) and (iii) tender price specification. These forms together with all other requested documents (as specified in the tender dossier), constitute the tender.

Once you have prepared the tender, make sure that all pages are bound together and numbered. To be on a safe side, please use 'page x of y' type of numbering. The number of copies to be submitted is already defined by the contracting authority in the tender dossier. So make sure that you submit one original copy and the number of copies as specified by the contracting authority. It is vital to follow precisely the delivery instructions – where the tender should be sent, the number of copies required and any packaging instructions. Failure to comply with the correct packaging instructions will lead to disqualification of your company, without your tender ever having been read. The most dependable method of delivery is by using a staff member to take the package personally to the delivery address. When you leave the package at the office of the contracting authority, always obtain an official signed receipt with the date and time of delivery recorded (a copy of the form 'Tender submission record'). Keep in mind that belated tender submission will result in disqualification.

Make sure to seal the original tender and each copy in separate envelopes and mark them accordingly with ORIGINAL or COPY label. In each of the envelopes, you should also indicate the procurement number as stated in tender dossier as well as your name and address. Once you do that, seal all the envelopes (original and copies) in an outer envelope. Here you put the address of place for tender submission; the procurement number; warning that the envelope should not be opened before the date and time of tender opening and your name and address.



Follow precisely the delivery instructions



“In one case, our driver was late to submit the bid and we were disqualified. Now we usually go couple of hours before the deadline.”

The deadline is extremely important and missing it will simply mean that you will be disqualified. In order to prevent such a disaster, do not leave things to the last minute. Plan the process well and make sure that you allow for all potential problems, such as ensuring all files are safely stored and backed up and printers are working and have a sufficient stock of ink or toner. Once you produced the final version, make an additional copy for yourself. Keep this in your records for future reference.



BID SUBMISSION

Make sure you fill in and sign the tender forms [These forms include: (i) the economic operator's identification form; (ii) bidder's declaration(s) and (iii) tender price specification]

Make sure that all pages are bound together and numbered (use 'page x of y' type of numbering)

Submit one original copy and the number of copies as specified by the contracting authority

Follow precisely the delivery instructions presented in tender dossier

Deliver the package in person in order to avoid any delays or problems

When you submit the tender, always obtain an official signed receipt

Keep in mind that belatedly tender submission will result in disqualification

Original tender and each copy must be sealed in separate envelopes (all of these are then put in an outer envelope)

In the outer envelope, apart from other details, write a warning that the envelope should not be opened before the date and time of tender opening

Once you produced the final version, make an additional copy for yourself

4.6 BID OPENING

The bids are usually opened publicly¹⁸ and the bidders have the right to send a representative to observe the process. The bids are opened by the procurement officer in presence of the opening commission.¹⁹ During this process, the procurement officer announces to those present, (i) the name and place of the bidder; (ii) the total tender price specified in the tender; and (iii) any other remarks, if any.

If the tender is composed of two-parts (technical and

financial proposal) the bidder has to submit both proposals, in separate envelopes, at the same time. In that case, the contracting authority will arrange separate public opening sessions for both proposals and the proposals will be opened in different dates. During the opening of the technical proposal, the procurement officer announces to those present only the name and place of the bidder as well as other remarks, if any. During the opening of the financial proposal, the procurement officer announces to those present the name, place and score of technical proposal of the bidder as well as the total tender price specified in the financial proposal.

¹⁸ It does not have to be public in cases of negotiated procedure after the publication of the contract notice or for price quotations.

¹⁹ The opening commission is appointed on ad hoc basis and must have at least three members.

All information that is announced during the opening process will be recorded in a standard form named 'Minutes of the tender opening'. If your representative is



BID OPENING

Bids are opened publicly and your representatives has the right to participate

During the opening process, the following information is announced: (i) the name and place of the bidder; (ii) the total tender price specified in the tender; and (iii) any other remarks, if any

If the tender is composed of two-parts (technical and financial proposal) the bidder has to submit both proposals, in separate envelopes, at the same time

The contracting authority will arrange separate public opening sessions for both proposals and the proposals will be opened in different dates

All information that is announced during the opening process will be recorded and disseminated to all those participating in the bidding process

After the opening session, the contracting authority may seek clarification for the tender

Request for clarification does not extend to include changes in price or delivery or additional materials

present in the opening session, she/he will also sign the form. Copies of the minutes will then be disseminated to all those participating in the bidding process.

After the opening session, the contracting authority may seek clarification for the tender if that is seen fit for facilitating the evaluation process. Any request for clarification will be made by the standard form named, 'Request for clarification of tender'. Keep in mind that the request for such clarification as well as your response must always be in writing only. Request for clarification does not extend to include changes in price or delivery or additional materials. You will be provided reasonable time for your response. Make sure you reply within the time limit; otherwise your bid may be rejected.

4.7 BID EVALUATION

The evaluation of the bid is conducted by the evaluation committee.²⁰ The appointment, duties and conduct of the committee members, is subject to precisely defined legal provisions. Evaluation committee at the end of the process produces a recommendation together with a report which supports that recommendation. The final decision on the award of the contract is the responsibility of the procurement officer who in turn might accept or reject the committee's recommendation if there are grounds for doing so.

The bids are evaluated against the criteria set in the tender dossier and the contract is awarded to the highest ranked bidder. The evaluation process must be completed within maximum of 30 days from the opening of bids. Only in exceptional and well justified cases, in particular with the contracts of a complex nature, this period may be extended. Keep in mind, that only responsive bids are evaluated.²¹ In cases when the contracting authority receives less than two responsive bids, it will

usually cancel the procurement activity.²²

During the evaluation process, bidders are informed, in writing, by the contracting authority about the result of the tendering process. You may receive different notification letter from the contracting authority depending on the results of the evaluation process. You can receive one of the following notifications, informing you what the title of the notification suggests:

- (i) 'Standard letter for eliminated bidders/candidates', in case when you have been eliminated
- (ii) 'Standard letter for non-qualified candidates', in case when you have been disqualified
- (iii) "Standard letter for qualified candidates", in case when you have been qualified
- (iv) "Standard letter for unsuccessful bidders", in case when you have been unsuccessful after the evaluation of the bid
- (v) 'Standard letter of successful bidder', in case when you have been successful after the evaluation of the bid and will be announced as the winner

In all cases, reasons for such an action and the rights to complain are presented in the notification itself. In case you receive a notification that you have been successful bidder, keep in mind that this does not constitute a contractual arrangement. It is a provisional decision pending the outcome of potential complaints from other competitors.

Once the procurement process has started, it can end up either by (i) canceling the process or (ii) awarding a contract.

- (vi) In cases of canceling the process, as described earlier, (section 3.5), contracting authority informs the all economic operators that expressed interest in that particular procurement activity. Here you need to have in mind circumstance that can lead to cancelation. Three situations are distinguished. First, the procurement procedure may be cancelled after the receipt of the offers. Second, the procurement procedure may be cancelled prior to

²⁰ The evaluation committee is established on a case by case basis. Depending on the complexity of the bid the number of members may differ, but it should have at least three members. Decisions are made based on simple majority vote.

²¹ A tender is considered to be responsive when it: (i) complies in administrative terms with the formal requirements of the tender dossier; (ii) is submitted by an EO meeting the selection criteria established in the tender dossier; and (iii) complies in technical terms with the description, requirements and specifications established in the tender dossier.

²² See Appendix 6 for cases when the contracting authority can proceed even with less than two responsive bids.



BID EVALUATION

**Bids are evaluated by the evaluation committee
(the final decision is made by the procurement officer)**

Bids are evaluated against the criteria set in the tender dossier

Contract is awarded to the highest ranked bidder

**The evaluation must be completed within 30 days
(may be extended in some cases)**

Only responsive tenders are evaluated

You will be informed about the result of the evaluation process at all stages

**If you are announced as the winner, this still does not constitute a
contractual arrangement, pending the outcome of potential complaints**

**Once the procurement process has started, it can end up either by (i)
canceling the process or (ii) awarding a contract**

**In any case you will be duly informed about the reasons and/or
your rights to file a complaint**

the opening of the offers.²³ Thirdly, notwithstanding the above, the contracting authority will cancel a Contract Award (i.e. after it has sent the notification for successful bidders), if ordered by the Procurement Review Body. Keep in mind that this list of reasons is exhaustive. Any cancellation that is not based on these reasons has grounds for complaint.

(vii) In case of awarding a contract, a contract award notice is prepared which is published in PPRC's website and sent to all economic operators in-

involved. From the day that the award contract notice is published (which is considered day 0), a 10 day 'stand-still' period is put in motion. During this period, unsuccessful bidders have the right to file a complaint (see section 4.10). If during the 10 days period a company files a complaint with the Procurement Review Body, the process is suspended, pending the ruling of PRB (see section 4.10 for details). Also during this period, all information related to procurement activity (apart from confidential business information) are open to the public access. These documents can be relevant when compiling your complaint.

²³ The detailed reasons that may lead to cancellation as explained in the first and the second circumstance are presented in Appendix 6.



SIGN A CONTRACT

You will be asked to sign the contract 10 days after you have been announced as the winner (given that no one filed a complaint; in which case, the process is suspended)

The tender dossier – with all its elements – is final and there is no room for negotiations of the contract terms

You will have to submit the performance security

Once signed, the contract enters into force and you become contractually obliged to it

4.8 SIGNING A CONTRACT²⁴

If you were awarded a contract and the 10 day 'stand-still' period has passed without anyone filing a complaint, you will be called by the contracting authority to sign the contract. Keep in mind that the tender dossier, including annexes, lays down all material terms and conditions of the contract and there is therefore no scope for any negotiation of contract terms before the signing. Further such negotiations

will establish a breach of the principle of equal treatment.

The procurement officer shall make a contract document ready for signing on the basis of the tender dossier and the winning tender. When the pre-conditions to the signing are fulfilled, for instance submission of the performance security, and the final contract is signed by both parties, it enters into force. The tender documents shall indicate the numbers of copies of the contract to be signed. Once signed, you are contractually bound to the contract.

²⁴ If you were not awarded with the contract, you can either stop here or file a complaint. See section 4.10 on how to file a complaint.



CONTRACT MANAGEMENT

You are obliged to execute the contract responsibilities in conformity with the terms and conditions and the contract management plan

The contracting authority appoints a project manager who is in charge of supervising the contract execution

The project manager prepares a contract management plan

Execute the contract within the time limit, agreed quality and budget

Failing to do so can result in penalties or termination of the contract

Project manager is your contact point

Contract amendments can be made if justifiable; amendments for additional quantities cannot exceed 10 percent of the original contract price

4.9 CONTRACT MANAGEMENT

Once the contract has been signed, you are obliged to execute the contract responsibilities in conformity with the terms and conditions and the contract management plan. Once the contract has been signed, the contracting authority appoints a project manager who is in charge of supervising the contract execution. The project manager prepares a contract management plan using a standard form adopted by the PPRC. This plan is prepared before the start of contract execution and is agreed between both parties, namely the Project Manager and your representative. The signed copy of contract management plan is sent to the procurement officer who in turn issues to you a confirmation giving you the green light to carry on with contract implementation.²⁵ Keep in mind that such a

confirmation becomes an integral part of the contract. Make sure that you allocate sufficient resources to execute the contract within the time limit, agreed quality and budget. Failing to do so can result in penalties or termination of the contract.

Keep in mind that the project manager is your contact point and acts on behalf of the contracting authority. It has all the authorizations related to the contract apart from amending and terminating the contracts which are remain the responsibility of the procurement officer. Contract amendments for additional quantities can be made given that the unit price is the same or lower as the original contract and that the amendment does not increase the total contract price by more than 10 percent of the original contract price.

The project manager can also recommend to the procurement officer to terminate the contract. If the contract is terminated, you will be informed of the reasons for the termination.

²⁵ In case of a works contract, you will receive a letter of commencement; in case of a service contract you will receive a letter of notification and in case of a supply contract, you will receive a purchase order.

4.10 FILING A COMPLAINT

If you feel that the officials of the contracting authority have discriminated against you, you may file a complaint. You are entitled to file a complaint at any stage of any procurement activity and with respect to any act or omission. To do so, you can use a standard form for complaints which can be found in the website of PPRC and PRB. Keep in mind that you may use any form that you deem fit. The form prepared by the PPRC is just a template. The complaint has to be submitted in original to the Procurement Review Body and, simultaneously, a copy of the complaint shall be submitted to the contracting authority.

If the complaint concerns the award criteria, which may be discriminatory or favor a particular economic operator, the complaint is submitted to the PRB during the time the procurement process is underway. On the other hand, if the complaint concerns the final decision of the award of the contract or cancellation of the procurement activity the complaint should be submitted only within ten days period following the date of the contract award notice or cancellation notice is sent to bidders.

The complaint should contain certain sets of information.²⁶ If such information is not provided when the complaint is filed, PRB will inform you as soon as possible to require the missing information. Once the complaint is filed, the procurement procedure is automatically suspended pending the ruling of PRB. PRB can decide one of the following: (i) approve the procurement activity when the contracting authority is not found guilty of violating procurement procedures; (ii) re-evaluation of the procurement activity, if the evaluation committee did not follow the criteria set in the tender dossier or that the evaluation was not objective; (iii) cancellation of the procurement activity, when the contracting authority is found guilty of violating procurement procedures; (iv) dismissal of the complaint, when the economic operator failed to file the complaint on time or pay the complaints fee. All complainants are required to pay a complaints

²⁶ See Appendix 7 for the basic content of the complaint.



“We file complaints very often. Usually our complaints concern the final decision for the procurement process. In some cases we are successful, in some we are not. One thing that we learned along the way is that we need to be ready to defend our position when called by the review panel to do so. Also, with time we managed to get better in compiling the complaint. We realized that if we keep it simple, it is easier for the review panel to evaluate it.”



The complaints fee is in the amount of €500

fee on the amount of €500 together with the filing of a complaint. The fee shall be reimbursed to the complainant whenever PRB approves the complaint as grounded. Keep in mind, that if you believe that the final decision of the PRB is not in line with the legal provisions or the facts presented, you may request the Special Chamber within the Administrative Court to review such decision. The request must be filed within 30 days from the date of the publication of the PRB’s decision. If the court rules in your favor, it gives you the right to compensation for the PRB’s decision but it does not stop the procurement process.



FILE A COMPLAINT

You have right to file a complaint at any stage of the procurement process

For your convenience, you should use the standard form for complaints (however, you can use any form you deem fit)

If the complaint concerns the award criteria the complaint is submitted to the PRB during the time the procurement process is underway

If the complaint concerns the final decision the complaint should be submitted only within ten days following the conclusion of the procurement process

Once you or your competitors file a complaint, the procurement activity is suspended

PRB can decide one of the following: (i) approve the complaint; (ii) ask for re-evaluation of bids; (iii) cancel the procurement activity or (iv) dismiss the complaint.

When filing a complaint, you are required to pay a fee on the amount of €500 (this money will be returned to you if PRB approves the complaint as grounded)

If you are not happy with PRB's ruling, you may request the Special Chamber within the Administrative Court to review such decision

5. OTHER IMPORTANT BITS

5.1 GLOSSARY

Using the definitions set in primary and secondary legislation, some of the terms used in this toolkit have the following meaning:

- **Bidder** - an economic operator that has submitted a tender.
- **Candidate** - an economic operator that has sought an invitation or has been invited to take part in a procurement activity that is being conducted with restricted or negotiated procedures.
- **CPA** - the Central Procurement Agency established pursuant to Title VII of LAW No. 04/L-042.
- **KIPA** - Kosovo Institute for Public Administration.
- **Large value contract** - a public contract falling within the Scope of Article 19(1) of LAW No. 04/L-042.
- **Complainant** - an interested party who is filing or has filed a complaint in accordance with the provisions of Article 111 of LAW No. 04/L-042.
- **Confidential business information** - information classified as such pursuant to Article 11.2 of LAW No. 04/L-042.
- **Contracting authority** - a public authority, public service operator, public undertaking and/or any person, committee, or private company operating on basis of a special or exclusive right, or undertaking carrying out a procurement activity on behalf of or for the benefit of a public authority, public service operator or public undertaking.
- **Contract management activity** - the activities required to ensure that provisions of a contract concerning timely and correct delivery and other rights of the contracting authority are effectively invoked.
- **Date of publication** – shall mean (i) with respect to an indicative notice or a contract notice, the date on which such notice is first published in accordance with Article 42(2), and (ii) with respect to a contract award notice, the date on which it has been dispatched to concerned economic operators in accordance with Article 42(3).
- **Economic operator** - a general term meaning and covering a supplier, service provider and/or a works contractor.
- **Large value contract** - a public contract falling within the Scope of Article 19(1) of LAW No. 04/L-042.
- **Low value contract** - a public contract falling within the scope of Article 19(3) of LAW No. 04/L-042.
- **Medium value contract** - a public contract falling within the Scope of Article 19(2) of LAW No. 04/L-042.
- **Minimal value contract** - a public contract falling within the scope of Article 19(4) of LAW No. 04/L-042.
- **Negotiated procedures** - procurement procedures allowing a contracting authority to invite and consult with the economic operators of its choice and to negotiate the terms of contract with one or more of these.
- **Non-responsive tenders** - tenders that are not in compliance with a) the tender dossier, including technical and contractual requirements, b) requirements of relevant legislation of Kosovo

or that are c) otherwise incapable of meeting the requirements of the contracting authority as specified in the tender dossier.

- **Open procedures** - procurement procedures allowing for any interested economic operator to submit a tender.
- **PPRC** - the Public Procurement Regulatory Commission established pursuant to Title VI of the LAW No. 04/L-042.
- **PRB** - the Procurement Review Body established pursuant to Title VIII of the LAW No. 04/L-042.
- **Procurement activity** - any activity connected with the initiation or conduct of a procedure or other activity that leads to or is intended to lead to the award of a public contract.
- **Procurement Officer** - the person who is designated as the director of the contracting authority's Procurement Department pursuant to paragraph 1 of Article 23.
- **Public contract** - a general term covering any and all of the following specific types of contract entered into by a contracting authority: (i) a service contract, (ii) a supply contract, (iii) a works contract including a works concession contract, and/or (iv) a public framework contract".
- **Public procurement rules** - the instructions, rules, documents, code of ethics, and standardized forms adopted and published by the PPRC in accordance with the LAW No. 04/L-042
- **Restricted procedures** - procurement procedures in which any economic operator may request to participate and where only those economic operators invited by the contracting authority may submit a tender.
- **Tender** - a document submitted to a contracting authority by an economic operator setting forth

the terms of the economic operator's offer in response to a specific contract notice, invitation to tender or other solicitation issued or made by such contracting authority. The term "tender" shall include, but not be limited to, a proposal or price quotation.

- **Tender dossier** - has the meaning specified in Article 27 of LAW No. 04/L-042.

5.2 FREQUENTLY ASKED QUESTIONS

Where can I find public sector tendering opportunities?

Contracting authorities will publish the notice for all public tenders in the website of the Public Procurement Regulatory Commission. The link to the website is: www.krpp.rks-gov.net.

How can I bid for a public contract that I am interested in?

Once you find a tendering opportunity that you might be interested in, you have to make a request for the tender dossier. Then follow the instructions in the tender dossier. The tender documents will be usually issued for free.

What do I do if some things are not clear in the tender dossier?

You are eligible to request additional information on the tendering documents (however, the contracting authority can reject your request on the basis that there is no need for providing additional information). To request information, you must submit a request in writing.

What if I do not meet the minimum qualification requirements?

You may consider joining another company (or companies) in a group and submit a bid jointly. Even if you apply as a part of the group, it is important to keep in mind that each member of the group must meet the eligibility requirements. However, the minimum qualification requirements can be met by the group as a whole.

Can I subcontract some parts of the contract?

You can subcontract part of the contract obligations. Keep in mind that you are allowed to subcontract up to 40% of the contract value, after getting an approval from the contracting authority. However, as a contract winner you bear all responsibility for the fulfillment of contract requirements. You must also provide evidence for the eligibility of its intended subcontractors as well.

Is it considered a violation of the procurement rules I submit two bids for a certain public procurement activity, one individually and the other as a group member, and how to act in that case?

You cannot tender for the same procurement activity with two tenders, and if that happens evaluation committee will eliminate you from the evaluation.

Can I have access in the dossiers of other bidders after the contract award notice as been published?

Contracting authority with the request of any person is obligated to allow the reasonable access in the data described in the section 9.1 and 9.2 of the LPP, except the confidential business information, regarding any procurement activity.

Within which time limit contracting authority shall carry on the payment for the received goods/services?

Contracting authority carries on the payments in the bank account given in the form for financial identification filled by you. The time limit for the payment shall be no longer than 30 calendar days from the date completed invoices are received by the contracting authority. The payment day will be the date in which the contracting authority's account is debited.

What happens if I submit the bid after the deadline?

Belated tender submission will result is disqualification.

Can I negotiate with the contracting authorities to change some of the terms of the contract after I have been awarded with the contract?

There is no scope for any negotiation of contract terms before the signing. Further such negotiations will establish a breach of the principle of equal treatment.

What can I do if I want to complain?

You are entitled to file a complaint at any stage of any procurement activity and with respect to any act or omission. To do so, you can use a standard form for complaints and submit it to the Procurement Review Body and, simultaneously, a copy of the complaint shall be submitted to the contracting authority.

5.3 MATERIALS AND SOURCES FOR FURTHER READING

Law on Public Procurement (LAW No. 04/L-042)

<http://krpp.rks-gov.net>



Secondary legislation (which consists of seven parts)

<http://krpp.rks-gov.net/>



Riinvest Institute. Improving Transparency and Governance of Public Funds: Public Procurement Process in Kosovo

<http://riinvestinstitute.org>



CIPE (Center for International Private Enterprise). Various materials on public procurement

www.cipe.org



SIGMA (a joint initiative of OECD and EU). Public Procurement Briefs

<http://www.sigmaweb.org/publications/public-procurement-briefs.htm>



EU commission. Various materials on public procurement

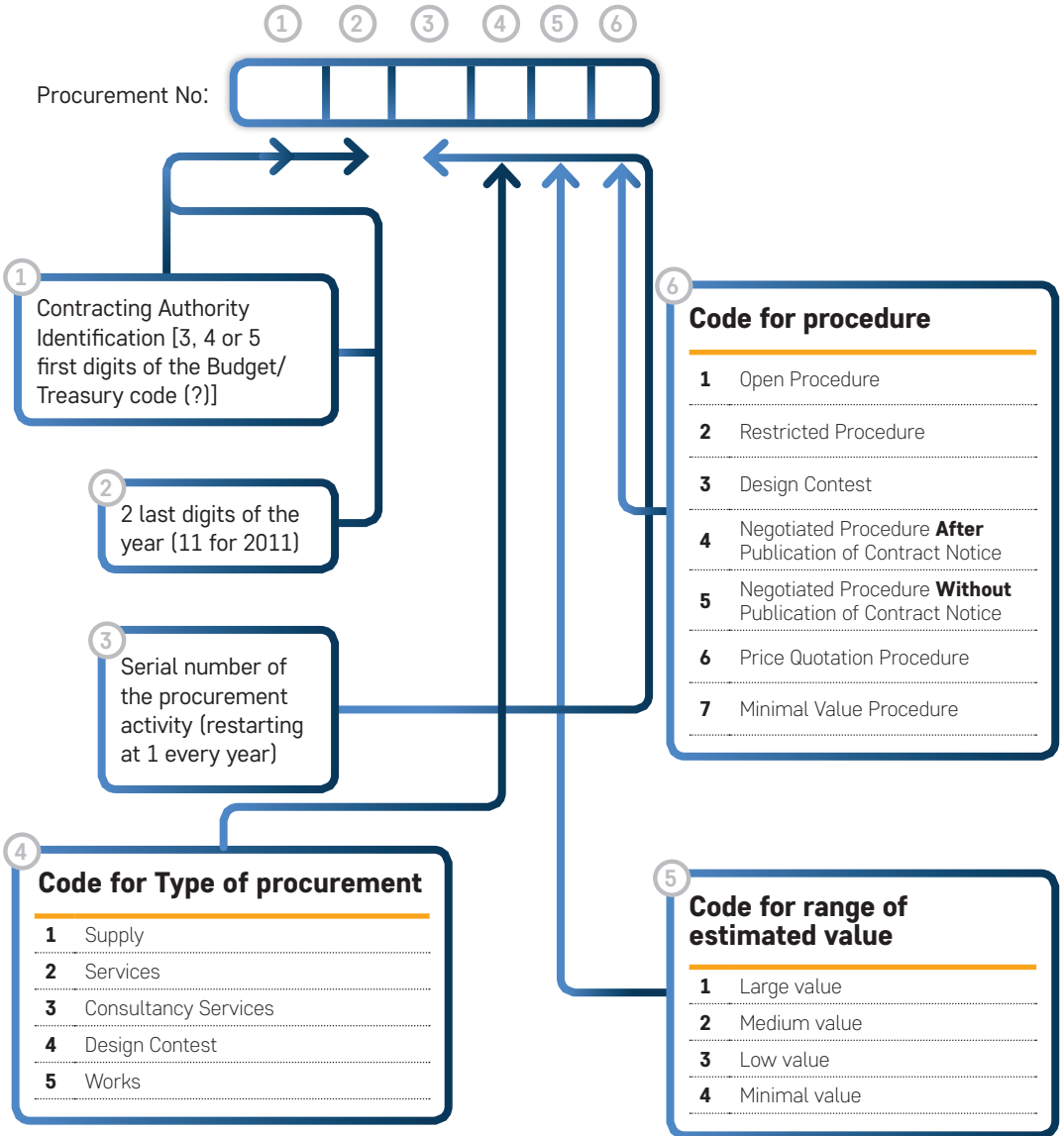
http://ec.europa.eu/internal_market/publicprocurement/index_en.htm



5.4 APPENDICES

APPENDIX 1. PROCUREMENT NUMBER

In all forms the procurement identification number is formed as follows:



APPENDIX 2. TYPES OF CONTRACT AND RULES DETERMINING MIXED CONTRACTS

TABLE A2. 1. Type of contracts

Type of contract	Definition
Supply contract	A supply contract relates exclusively or mainly to the purchase of one or more products; but also contracts on lease, rental or hire-purchase of products are supply contracts
Service contract	A service contract relates exclusively or mainly to the provision of services. Service includes and consulting services.
Works contract	<p>A works contract has as its principal object:</p> <ul style="list-style-type: none"> - execution, - design and execution, or - realization by whatever means of a work, construction or civil engineering activities, including: - construction, - restoration, - repairing or - demolition of buildings, facilities, civil engineering structures, or any part or parts thereof
Public framework contract	A public framework contract relates exclusively to the establishment of the framework for contracts to be awarded during a limited period
Immovable property contract	An immovable property contract relates exclusively to the acquisition of immovable property or an interest in immovable property
Works concession contract	A works concession contract is a works contract, the performance of which is compensated – in whole or in part – by a grant of a right to exploit the object of such contract
Service concession contract	<p>A service concession contract is of the same type as a service contract, except that the provision of the service is compensated either:</p> <p>With the right to exploit the service or</p> <p>With the right to exploit the service and payment.</p>

TABLE A2. 2. Rules for determining the mixed contract

Rules on mixed contracts	
Mix	Resulting contract
<p>A supply contract which includes:</p> <ul style="list-style-type: none"> - delivery, and/or - siting, and/or - installation 	Supply contract
<p>A contract on both supply of products and provision of services</p>	Service contract, if the estimated value of the services exceeds the estimated value of the products. (Otherwise a supply contract).
<p>A contract which has as its principal object the provision of professional construction-related service, and in addition the performance of one or more activities referred to in the definition of “works contract”</p> <p>Construction-related service may be:</p> <ul style="list-style-type: none"> - architectural and/or engineering services, - geotechnical or geodetic site investigation services, - structure or structure design assessment services, - construction supervision services or management services, etc. 	Service contract
<p>A contract which has as its principal object the conduct of works but includes professional construction-related service (as explained above) necessary for the performance of the contract</p>	Works contract
<p>A contract on both supply of products and conduct of works</p>	Works contract, if the works activities are not solely siting and/or installation. (Otherwise a supply contract).

APPENDIX 3. TIME LIMITS

TABLE A3.1. Normal time limits

	Procedures		
	Open	Restricted	Negotiated after publication of contract notice
Large Value	40 days	20 days receipt of requests 40 days receipt of tenders	20 days receipt of requests 40 days receipt of tenders
Medium Value	20 days	15 days receipt of requests 20 days receipt of tenders	15 days receipt of requests 20 days receipt of tenders
Low Value	5 days	/	/
Minimal value	1 day	/	/

TABLE A3.2. If Indicative notice*

	Procedures	
	Open	Restricted
Large Value	24 days	20 days receipt of requests 24 days receipt of tenders

* only if the date of the publication of the Indicative notice occurred no less than **40 days** and no more than **12 months** prior to the date of publication.

TABLE A3.3. Accelerated time limits

	Procedures		
	Open	Restricted	Negotiated after publication of contract notice
Large Value	15 days	15 days receipt of requests 10 days receipt of tenders	15 days receipt of requests 10 days receipt of tenders
Medium Value	10 days	15 days receipt of requests 10 days receipt of tenders	15 days receipt of requests 10 days receipt of tenders

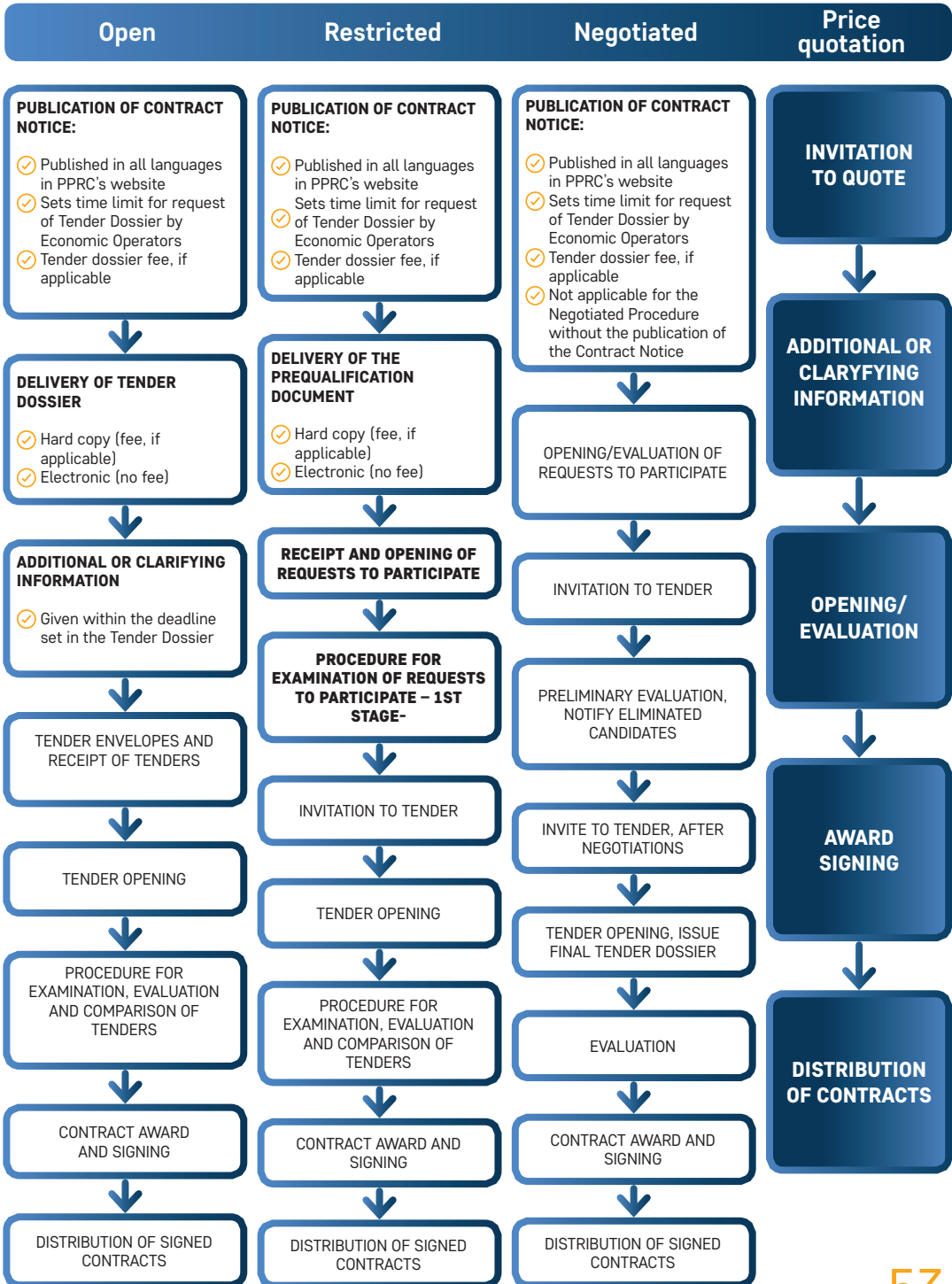
APPENDIX 4. DETAILED CONTENT OF THE CONTRACT NOTICE

TABLE A4.1. Content of Contract Notice

Content of contract notices	Comments
Contracting Authority	Identification of the CA
Object of the Contract	Title, type and place of execution Short description of the Contract (variants, lots, quantity, duration)
Technical specifications or indication where to find them	Where the technical specifications of the intended contract are relatively simple, they may be stated in the contract notice. Otherwise reference shall be made to the tender dossier, where all technical specifications shall be stated (in case of negotiated procedure after publication of contract notice, technical specifications shall be stated as far as possible).
Requirements on request to obtain the documents	Time limit, address, price etc. to obtain the documents
Any and all minimum qualification requirements	All qualification requirements (eligibility, professional, technical and financial requirements, no qualification which is not stated may not be used during the evaluation process
Any and all documents or other information relevant for the selection of the qualified candidates or bidders	The necessary documentary evidence on meeting minimum qualification requirements shall be specified
Procedure	Type of procedure used
Contract award criteria: either lowest price or economically most advantageous tender	If economically most advantageous tender all sub-criteria and their relative weighting shall be stated
Location and deadline for submission	Address, date and time
Location, date and time for the public opening	Address, date and time
Complaints	Information on complaints

APPENDIX 5. STEPS OF THE MOST OFTEN USED PROCEDURES

✓ PROCEDURES



APPENDIX 6. REASONS THAT MAY LEAD TO CANCELATION OF THE CONTRACT (I) AFTER THE RECEIPT OF THE OFFERS AND (II) PRIOR TO THE OPENING OF THE OFFERS

A procurement procedure may be cancelled **after the receipt of the offers** for the following reasons:

- (i) no tenders are submitted within the specified deadline;
- (ii) none of the received tenders are responsive;
- (iii) all responsive tenders contain prices which substantially exceed the CA's budget;
- (iv) the number of the received responsive tenders is less than 2 unless the CA waives this requirement in accordance with Article 32.5 of the PPL;
- (v) the number of the received responsive quotations is less than 3;
- (vi) the number of the responsive EO for public framework contract with more than one EO - is less than 3;
- (vii) no requests to participate, in restricted or negotiated procedures after the publication, are submitted within the specified deadline;
- (viii) the number of qualified candidates in restricted/negotiated procedure is less than 2 unless the CA waives this requirement in accordance with Article 32.5 of the PPL;
- (ix) no projects are submitted within the specified deadline;
- (x) none of the received projects in a design contest are responsive;
- (xi) if ordered by Procurement Review Body; or
- (xii) a violation of the law has occurred or will occur and it cannot be remedied or prevented through an amendment.

A procurement procedure may be cancelled **prior to the opening of the offers** for the following reason:

- (i) due to the demonstrable events and/or reasons that were beyond the CA's control and that were not predictable at the time of the initiation of the procurement procedure.

Procurement procedure **after the bid opening**, but before award of the contract, may be cancelled for the following reasons:

- (i) a breach of the PPL has occurred or will occur in the procurement procedure, which cannot be repaired
- (ii) all responsive tenders contain prices that substantially exceed the contracting authority's budget for the procurement activity

Procurement procedure after the award of the contract may be canceled for the following reasons:

- (i) if so ordered by the Procurement Review Body (PRB) for cancellation of the contract award.

APPENDIX 7. BASIC CONTENT OF THE COMPLAINT

The Complaint should contain the following elements:

- a. the name, the postal address, the electronic address, and contact information of the complainant;
- b. the name of the concerned contracting authority;
- c. sets forth a reasonably specific description of the concerned procurement activity;
- d. attaches a copy of the concerned contract award notice or design contest results notice, if such has been issued or published.
- e. demonstrates that the complainant qualifies as an “interested party,” as defined under Section 4 of the present law;
- f. describes the factual circumstances constituting or giving rise to the alleged violation;
- g. specifies the provision or provisions of the PPL law that is alleged to have been violated; and
- h. describes how the alleged violation has caused, or threatens to cause, material damage to the complainant in cases where the complainant includes a claim for compensation.

This toolkit aims at providing clear guidance to businesses on preparing successful bids. The application requirements vary for different types of contracts and procedures; therefore, this toolkit intends to provide sufficient information for businesses in preparing an eligible and competitive bid. The analysis draws from primary and secondary data sources. Primary data include interviews with companies' managers, public procurement officials and central procurement institutions, while secondary data include published reports from different academicians and organizations as well as an extensive review of primary and secondary legislation. Primary data are used for illustration purposes only. The instructions on how to prepare the bid are based exclusively on current legal framework (primary and secondary legislation).

This toolkit is part of a more comprehensive project that Riinvest is implementing with the support of Center for International Private Enterprise (CIPE). Riinvest is committed to play an active role in publicizing the importance of a sound public procurement which promotes fairness, efficiency and minimization of corruption and misuse of taxpayers' money while it maximizes the economic and social gains of public procurement. We would like to thank CIPE very much for supporting this project and related activities. We would like also to thank managers and business representatives, officials of the institutions, representatives of media and civil society for their cooperation during the implementation of our project. Riinvest wishes to thank all parties involved in preparation of this toolkit for their contribution while it assumes the sole responsibility for findings and conclusions of the toolkit.

