

Publication of Notices in a Procurement Procedure

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Abstract

The Contract Notice is an extremely important part of the procurement process. It marks the commencement of the formal procurement process for a specific contract and notifies potential economic operators of the concrete opportunity to participate in the procurement process. To ensure as much competition as possible and to comply with the basic requirements for transparency, the Contract Notice must be drafted in a way that clearly describes the nature, scope and estimated value of the contract and how economic operators can apply to participate in the process. The Contract Notice must also be completed fully and correctly. Failure to draft a clear, complete and compliant Contract Notice could result in a disappointing level of competition, poor quality or inappropriate tenders, or a flawed procurement process that might have to be re-started. In cases when there is a need for correction or changing of the contract notice and all the subsequent information, another notice should be published. This implies a requirement to notify all potential tenderers of any revision so as not to favor one tenderer in particular. In any case, it is important to consider carefully the impact of any changes that the contracting authority proposes to refer to in the amending notice. There are no specified minimum and maximum time periods for publishing a Contract Notice, but there are statutory time limits that start on the date of dispatch of the Contract Notice

Keywords: Contract Notice, procurement process, requirements for transparency

1. Introduction

Analyzing the requirement of the respective Directives for publication of notices, such as the place they should be published, the time scale, the language, CPV codes, etc, it is clearly understood that these requirements refer to the contracting authorities of Member States only. As such, they might not be applicable to a country,

which is not a Member State yet, meaning that a national law of such country cannot introduce such concrete requirement, even though it might be under an approximation process. Saying this, the Albanian PPL does not 'comply' with respective Directives, regarding the requirements on notice' publications, but on the other hand it is for sure that the respective PPL requirements does comply one hundred per cent with the overall requirements of the Directives regarding transparency. According the Albanian PPL, contract notices for contracts of a value above the high value thresholds (so called international procurement procedure) shall be published on the Public Notices Bulletin and on at least one journal of European distribution, while contract notices for contracts of a value lower than the high value thresholds (so called national procedures), but above the low value thresholds, shall be published only in the PNB. In any case, all procurement notices (despite their value) are published on the web-site of the Public Procurement Agency. This requirement goes even further in the secondary legislation, which does require that all contracting authorities (in Albania) should use the electronic procurement system not only to publish their procurement notices, but also to perform their procurement procedures, making the use of the electronic procurement system mandatory. In this case, the contract notice and tender documents accompanying it should be dispatched in the electronic platform by the contracting authority itself. The publication of such notice and relevant tender documents will be done by PPA in the following day, of the dispatching day (by the contracting authority).

The usage of this system is free of charge for both parties; the contracting authorities and the economic operators. As it is seen, the interaction between the contracting authority and the publisher (PPA in this case) is done in a very short time (only a working day). Also, using the e-procurement system does allow for a shorter time period of publication of the tender documents, compared to the paper based procedures. Using such an electronic system, the Albanian procurement system, (even though it does not publish the procurement notices in the Official Journal of EU), is quite an open system towards the international business community.

Once an economic operator is registered, registration is valid for bidding in all public procurement procedures delivered in Albania, at any time⁴. It is important to emphasize that the requirement to use the e-procurement system does refer to all kinds of procedures (except for the negotiated without prior publication procedure), despite their value. The requirement of the Albanian legislation in this regard goes further than the one of the relevant Directives, which oblige the contracting authorities to advertise only contracts of a certain value and type that are subject to the Directive. For public contracts that are not subject to an obligation to publish a notice, contracting authorities may choose to publish prior information notices, contract notices and contract award notices in the Official Journal.

Despite this option, when such a contract is advertised in accordance with the provisions of the Directive, however, that does not mean that the remaining provisions of the Directive apply. As far as they are not covered by the relevant Directives, in practice, EU Member States may opt to introduce their own rules for sub-threshold contracts and other contracts that are not subject to the detailed advertising requirements of the Directive and as discussed above this is not the case of the Albanian procurement system. The latter is stricter as it provides for the same advertisement rules for all kinds of public contracts falling under the scope of PPL.

This stricter requirement might raise a discussion on evaluating means and goals to be achieved. It might happen in practice that stricter requirement (as the obligation to publish a contract notice even for very low value contracts) might result to be a non cost-effective solution (by allowing everyone to submit an offer, the number of bids will be considerably high, which means that first you will need time to evaluate, second a lot of complaints can take place, etc). Despite this, taking into consideration the ‘need for transparency’ in the system, the procurement legislation does ‘insist’ on the advertising requirement.

Having analyzed all of the above, the answer to the question if the Albanian procurement legislation is fully approximated to the relevant EU Directive, regarding the publication of the notices, is that it is approximated at the highest level possible, considering the fact that it is a national law of a non-Member State.

1. Technical Specifications and the Qualification Criterion

This initial work of ‘identification of the needs’ and the final objective of ensuring ‘satisfactory completion of the contract’, are directly reflected on the technical specifications and qualification criteria. During the preparatory phase of a procurement procedure, a contracting authority should describe the characteristics of goods, services or works they want to purchase/realize through the implementation of the public contract. This description is done by the technical and service specifications. The purpose of technical and service specifications is to give instructions and guidance to tenderers at the tendering stage about the nature of the tender they will need to submit, and to serve as the economic operator’s mandate during contract implementation. On the other hand, after describing the characteristics of the object of the public contract, the contracting authorities will need to describe the criterion of the potential economic operators, which will be considered eligible to implement such a contract. This description is done by the qualification criteria of the economic operators. The qualification of economic operations refers to the process of assessing and deciding which economic operators are qualified to perform the contract (referred to also as the qualification stage). These two main components of the procurement procedure will be analyzed in details, below, in the light of relevant Directives and Albanian PPL, considering also the different environment context of their application.

1. 1 Technical Specifications

Technical specifications setting forth the characteristics of the goods, works or services to be procured shall be prepared for the purpose of giving a correct and complete description of the object of procurement and for the purpose of creating conditions of fair and open competition between all candidates and tenderers⁶. Specifying a requirement is a fundamental and early stage in the procurement process. If the specification is lacking in some way, what is delivered will also be lacking. As such, technical specifications should reflect correctly the needs of the contracting authority and the budget estimations made for the acquisition.

A set of precise and clear specifications is a prerequisite for tenderers to respond realistically and competitively to the requirements of the contracting authority. Incorrect or unrealistic specifications lead to problems that later occur during the tender and award process, such as the need for issuing amendments to the tender dossier, cancellation of tender proceedings, lodging of complaints and contract problems.

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As such thorough preparation of technical specifications is extremely important for the ultimate success of the contract implementation; therefore, greater effort during the preparation phase will save time and money in the later stages of the project cycle.

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Whenever possible, the technical specifications should be defined to take into account the accessibility criteria for people with disabilities or design for all users. In any case, the technical specifications shall afford equal access to candidates and tenderers, and not have the effect of creating unjustified obstacles to competitive tendering. The thrust of the rules in this context is to ensure the use of non-discriminatory specifications, which would allow all potential contractors, suppliers and service-providers to meet the requirements and would prevent the artificial restriction of potentially successful tenderers to one. Even in cases where a contracting authority makes a reference to a technical specification, it cannot reject a

tender on the grounds that the products and services tendered for do not comply with the specifications to which it has referred, once the tenderer proves in his tender to the satisfaction of the contracting authority, by whatever appropriate means, that the solutions which he proposes satisfy in an equivalent manner the requirements defined by the technical specifications. Also, where a contracting authority prescribes technical specifications in terms of performance or functional requirements, it may not reject a tender for works, products or services, which comply with a national standard transposing a European standard, with a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardization body, if these specifications address the performance or functional requirements, which it has laid down. In this respect, they do not more than confirm the application of the Treaty principle of free movement and other relevant principles deriving from it as are equal treatments, non-discrimination and mutual recognition, to the use of technical specifications.

Under this light, the contracting authorities must presume that products manufactured in accordance with the standards drawn up by the competent standards bodies conform to the essential requirements laid down in the Directive concerned.

They may not refuse products simply because they were not manufactured in accordance with such standards, if evidence is supplied that those products are in conformity to the essential requirements established by the Community legislative harmonization. If there are no common technical rules or standards, a contracting authority cannot reject products from other Member States on the sole grounds that they comply with different technical rules or standards, without first checking whether they meet the requirements of the contract. In accordance with the mutual recognition principle, a contracting authority must consider on equal terms products from other Member States manufactured in accordance with technical rules or standards that afford the same degree of performance and protection of the legitimate interests concerned as products manufactured in conformity with the technical specifications stipulated in the contract documents.

The importance of technical specification is, among others, at the fact that they are the core conditions of the contract that will be concluded at the end of the procurement process. As such they may be considered as the connection mechanism among three stages of the procurement process; identification of needs (there is no needs' identification without specification of what is needed), competition process (based on these technical specifications the competition is run) and contract implementation (the satisfactory implementation of the contract should meet these technical specifications). Having such a role in the procurement process, the technical specifications should be included in the tender documents and will become an annex of the eventual contract awarded as a result of the tender⁹.

1. 1. 1 References of Technical Specifications

According to the Albanian PPL10, technical specifications shall clearly describe the contracting authority' requirements by reference to:

1. national standards transposing international accepted standards, international accepted technical approvals, common technical specifications, international standards, other technical reference systems established by international standardization bodies or - when these do not exist - to national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the products;
2. Functional requirements with reference to national or international standards as means of presuming conformity with such functional requirements;
3. Both methods under (a) and (b), for different products, services or works included in the same contract. Each reference shall be accompanied by the words "or equivalent".

Relevant Directives, on the other hand, provide that without prejudice to mandatory national technical rules, to the extent that they are compatible with Community law, the technical specifications shall be formulated:

either by reference to technical specifications defined in the relevant Annex of the Directive and, in order of preference, to national standards transposing European standards, European technical approvals, common technical specifications, international standards, other technical reference systems established by the European standardization bodies or - when these do not exist - to national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the products. Each reference shall be accompanied by the words "or equivalent";

1. or in terms of performance or functional requirements; the latter may include environmental characteristics. However, such parameters must be sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow contracting authorities to award the contract;
2. or in terms of performance or functional requirements as mentioned in subparagraph (b), with reference to the specifications mentioned in subparagraph (a) as a means of presuming conformity with such performance or functional requirements;
3. or by referring to the specifications mentioned in subparagraph (a) for certain characteristics, and by referring to the performance or functional requirements mentioned in subparagraph (b) for other characteristics.

Comparing the respective provisions of the Albanian PPL and the relevant Directive, on the way of formulating the technical specifications, it is clearly noticed that, PPL has adopted the Directive provision and customized it into the Albanian context. As such, the PPL does not refer to the 'European standards' as Directive does, but it refers to the 'international standard', which does include the "European standards" but it is broader than that. This difference, once again, leads to the discussion of the differences between an EU Directive and a national law, especially when it is of a non-EU Member State.

Even in this case, when requiring that formulation of the technical specifications should be done only by reference to European standards, it is noticed that the aim of the Directive is to guarantee the principle of non-discrimination among Member States (economic operators, which comply with European standards). The Directive seeks to prevent the designation of technical requirements in a way, which intend to favor one or more products (especially national products and economic operators) without any objective reasons.

PPL, on the other hand, is more open in this regard, providing for the non-discrimination principle not only for European Member States (economic operators, which comply with European standards), but for all interested stakeholders, which do comply with relevant international standards. Another difference of the respective provisions is that the PPL requirements on technical specifications do not refer to the performance requirement and environmental characteristics at all. As such, the PPL is focused on technical specifications based only in functional requirements, giving less possibility to the contracting authorities, to fully describe their needs based also on performance and when it is the case on environment requirements. On the other hand, this legal requirement (preparing technical specifications based only on functional requirement), gives more space to the contracting authorities to define the technical specifications by reference to some specific functional requirements, orienting in this way the tender towards a specific product and/or provider.

This may be done for example by using a specific feature of a product, or by reading the part number of the item, or by looking up the details in a economic operator's catalogue and replicating them etc. As such, the use of a specification that favors a single economic operator will lead to reducing the options available to ensure that the best overall value is provided through the procurement process.

Contracting authorities may indicate that the products and services bearing the eco-label are presumed to comply with the technical specifications laid down in the contract documents; they must accept any other appropriate means of proof, such as a technical dossier of the manufacturer or a test report from a recognized body. The Albanian PPL, on the other hand, does not explicitly provide for the possibility of requiring labels as such, but gives the possibility to the contracting authorities to require certificates drawn up by independent bodies stating the compliance of the

candidate or tenderer with certain quality assurance standards, including, also environmental management standards.

There is a general ban on technical specifications that mention goods of a specific make or source, or of a particular process, and that have the effect of favoring or eliminating certain enterprises or products. Among the specifications that can have such a discriminatory effect and are therefore prohibited, the Directive mentions in particular the indication of trademarks, patents, and types or a specific origin or production.

Following the principle of non-discrimination and open competitions, procurement rules explicitly provide that while preparing technical specifications, contracting authorities (unless justified by the subject-matter of the contract) shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production with the effect of favoring or eliminating certain undertakings or certain products. An exception to this general ban is allowed where the subject matter of the contract cannot otherwise be described by specifications that are sufficiently precise and intelligible to all concerned.

1. 2 Definitions of Technical Specifications and Other Concepts Related to Them

As discussed above, the Albanian PPL has adopted partially the relevant provision of the procurement Directive, on technical specifications. As such, PPL has been satisfied with the adoption of basic concepts and requirements, which should be considered while preparing technical specifications, but does not explicitly provide neither for the definition of technical specifications depending especially on the type of the contract, nor for other concepts related to such specifications, such as for example the definition of 'standards', in the context of technical specifications.

1. "Technical specification", in the case of public works contracts, means the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfills the use for which it is intended by the contracting authority. These characteristics shall include levels of environmental performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labeling and production processes and methods. They shall also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions, which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts, which they involve;

2. "Technical specification", in the case of public supply or service contracts, means a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labeling, user instructions, production processes and methods and conformity assessment procedures;
3. "Standard" means a technical specification approved by a recognized standardization body for repeated or continuous application, compliance with which is not compulsory and which falls into one of the following categories:
 - International standard: a standard adapted by an international standards organization and made available to the general public,
 - European standard: a standard adopted by a European standards organization and made available to the general public,
 - National standard: a standard adopted by a national standards organization and made available to the general public;
1. "European technical approval" means a favorable technical assessment of the fitness for use of a product for a particular purpose, based on the fulfillment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use. European technical approvals are issued by an approval body designated for this purpose by the Member State;
2. "Common technical specification" means a technical specification laid down in accordance with a procedure recognized by the Member States, which has been published in the Official Journal of the European Union;
3. "Technical reference": any product produced by European standardization bodies, other than official standards, according to procedures adopted for the development of market needs.

1. 3 Types of Specification

According to the PPL, the description of works, goods or services should contain the technical specifications to be achieved, including plans, drawings, models, etc. In cases of functional description of works or goods, the technical specifications should clearly and neutrally describe the scope of the works, in order to indicate all the conditions and circumstances which are important to the preparation of the bid.

The description shall indicate not only the scope of work, but also the requirements related to the named work from the technical, economic, aesthetic and functional

aspect. In order to guarantee the comparison of bids in relation to the contract object's requirements for these goods or for their functions, the competitors and bidders shall be provided with precise requirements for the functions or performance, thus helping them during the bid preparation. Specifications for the supply of appropriate goods or services for the environment shall also be indicated in the description of works.

1. Generic specifications

A generic specification aims at describing the requirement in a way that does not restrict the number of economic operators that the contracting authority may attract. It can be based on national (European) or international standards (provided that equivalents are accepted) as a means of clearly opening the market. In the context of procurement, specifications need to be developed in such a way that the requirement described can be met by any number of economic operators that supply the goods or services identified.

A generic specification:

- makes economic operators responsible for proposing and delivering the requirement, meeting the contracting authority's needs;
- can be used to stimulate competition;
- can be used where there is no need to be specific.

1. Conformance specifications

A conformance specification lays down unambiguously the requirements that economic operators must meet. It allows no room for maneuvers. The specification describes the product or service required in great detail and can be based on national (European) or international standards (or equivalent) as a means of clearly specifying what is needed. In case of using such type of specification for goods for example, it may specify weight, size, finish, volume, circumference, and use with other goods. In case it is used for services, it may describe duration, number of people required, what will be done by the people, where they will do it and when they will do it. The economic operator is required to deliver the goods or services that meet this need and in this case they are not encouraged to do better.

While in some contexts conformance specifications can work appropriately, the following dangers exist:

- The economic operator may know of a better or more cost-effective way to meet the need. If discouraged from being concerned with this aspect, economic operators will not pass on the benefit of the experience they have to the contracting authority;

- Doubt may still exist concerning exactly what is required, because the specification is still not “clear”;
- Too much detail requiring “conformance” may lead to: an additional cost, while preventing economic operators from offering the benefit of their wider experience; confrontational relationships, particularly with services.

However, where for a given reason the specification *has* to be “just so”, a conformance specification may be appropriate. Additionally, if the contracting authority has a nationally recognized expert in the field they are specifying, then the economic operators may genuinely learn from this expert by attempting to meet the need specified.

1. Detailed design specifications

This option develops a conformance specification a step further. A design specification defines the technical characteristics of the requirement in great detail. The economic operator has no input into the design process and is not responsible for the benefits available to the contracting authorities. This option can be used where:

- The contracting authority has the nationally recognized expert in the field they are specifying;
- The economic operator innovation is not required;
- Non-experts will be asked to deliver the requirement;
- There is a risk of ambiguity.

As with conformance specifications, an economic operator may feel that different positions for the components will be more advantageous but not offer the preferable solution, for fear that noncompliance may result in their exclusion.

1. Performance specifications

Performance specifications are sometimes called output specifications because they focus on the output to be delivered. Performance specifications provide a clear indication of the purpose, for which the item is required and this requirement is fully communicated to the economic operators. The difference here is that the economic operators are then encouraged to use their expertise to offer solutions (products and/or services) which, in the expert view, best meet the need as specified by the contracting authority.

The use of a performance specification can lead to wider competition being stimulated than with a conformance specification.

2. Qualification Criteria

The 'exclusion criteria' and the 'selection criteria' are put at the same time under the 'qualification umbrella'. Procurement rules require the mandatory exclusion of economic operators, who are in a specific personal situation (for example, they have not paid social security contributions or taxes, or have been convicted of an offence relating to their professional conduct) and also give the possibility to the contracting authorities to require economic operators to meet minimum capacity levels relating to their economic and financial standing and technical or/and professional ability. Thus, a contracting authority may want to check, for example, the financial resources, experience, skills and technical resources of economic operators and disqualified from the procurement process those economic operators that do not satisfy such capacities.

This process of selection of economic operators must be carried out by applying objective, non-discriminatory and transparent criteria (referred to as selection criteria), which are set by the contracting authority in advance.

2. 1 Grounds for Exclusion of Economic Operators

Personal situation of the economic operators, participating in a procurement procedure should be considered first (even before the assessment of the financial and technical qualifications) in a selection process. In this perspective, it is clear that this personal situation of the economic operators is not directly linked to his capacities to successfully perform the contract. They are issues, which are personal to the tenderer, although it may be that some of these grounds will imply previous wrongdoing in respect of past performance in procurement procedures and may, therefore, imply a serious concern over the suitability of the tenderer to perform the contract at issue¹³. According to the procurement Directive, there are two categories of grounds for exclusion; a) mandatory grounds for exclusion and b) optional grounds for exclusion, which will be analyzed below.

1. 1 Mandatory Grounds for Exclusion

According to the Albanian PPL¹⁴, any candidate or tenderer, convicted by a final judgment, of which the contracting authority is aware for any of the reasons listed below, must be excluded from participation in the awarding procedures:

participation in a criminal organization;

- corruption;
- fraud;
- money-laundering
- forgery

The contracting authority may ask tenderers to supply the production of an extract from the judicial record or failing that, of an equivalent document issued by a competent judicial or administrative authority showing that these situations do not apply and may, where they have doubts concerning the personal situation of such tenderers, also apply to the competent authorities to obtain any information they consider necessary on the personal situation of the tenderers concerned. Where the information concerns a tenderer established in a foreign country, contracting authorities may seek the cooperation of the competent authorities.

In this regard, PPL has approximated the relevant provision of Directive 2004/18, nevertheless there are some differences, which should be emphasized. First, according to the PPL, the 'forgery' reason has been added to the list of mandatory grounds. Second, the Directive explicitly leaves it to the Member States to provide for derogation from the requirement of mandatory exclusion if there is an overriding requirement that is in the general interest, while PPL does not provide at all for such opportunity. This is still explained with the national context where this law is applicable, and in concrete with the low level of integrity. As such, PPL does not give space for any 'subjective' decision of derogation from the said rule, even though in cases of an overriding situation. The third difference is merely related to the fact that Albania is not an EU country and as such cannot approximate the relevant Directive in all its features. Thus, the Directive when asking for documents, which prove the personal situations of the economic operators, provide that 'in case the information concerns a candidate or tenderer established in a *State* other than that of the contracting authority, the contracting authority may seek the cooperation of the competent authorities.

Technical and/or Professional Ability

The specific technical and/or professional ability criteria must be aimed at assessing whether economic operators have the relevant technical and/or professional ability (skills, equipment, tools, manpower, past experience, etc.) to perform the contract to be awarded.

According to PPL, the contracting authority may require from the economic operators to prove they have the necessary technical qualifications, the professional and technical competence, the organizational capacity, the equipment and other physical facilities, the managerial capability, reliability, experience and reputation and the necessary personnel to perform the contract as indicated by the contracting authority in the contract notice. Further on in the secondary legislation, these requirements, related to the technical and/or professional ability, are divided and specified according to the nature of the contract: i) works, ii) supplies and iii) services, meaning that specific requirements depend and are different for works, supplies and services. The difference is not in the requirement as such, but mainly in time references and relevant proofs required. Here below, I will analyze the concrete

requirements and compare them with relevant requirements provided by the relevant Directives.

1. Technical and professional requirement for work contracts

With regard to previous experience, the contracting authority shall require similar works for one single object, of an amount not more than 50% of the estimated value of the contract to be procured, carried out in the last three years of the operator's activity; or similar works up to a total value of the last three years' work, not lower than the double of the limit value of the contract to be procured. Meeting one of the two above-mentioned conditions shall be the basis for considering a tender as qualified. As evidence of previous experience, the contracting authority shall require certificates of successful completion issued by any public or private entity, stating the value, time and type of work performed.

Regarding the technical and professional performance:

- Professional licenses in relation to the performance of works, contract object; and/or
- A statement on the average labor capacities of the economic operator; and/or
- A statement on the means and the technical equipment at the economic operator's disposal for the execution of the contract

This list of evidence is exhaustive; a contracting authority may apply only the criteria that are derived from such a list. However, within these limits, it is left to the discretion of the contracting authority to determine the specific criteria to apply. In any event, the contracting authority must determine the criteria relating to technical and/ or professional ability to be applied by taking into account the specific practical context of each case.

One of the differences noticed between the PPL and the Directive (s) concerns the required time for the past experience. While PPL requires past experience during past three years, Directive 2004/18, accepts it for the past five years, meanwhile Directive 2014/24, does not provide such time limitation at all.

1. Technical and professional requirement for supplies contracts

With regard to previous experiences, the contracting authority requires evidence of previous similar contracts carried out in the last three years of the business activity. In any case, the amount shall not be more than 40% of the value of contract to be procured.

Evidence of the delivery of supplies must be given by certificates issued by the recipient of goods, and/or sale tax invoices stating clearly dates, sums and the amount of supplies.

In case of supply contracts, the contracting authority may request from economic operators samples of supplies, descriptions and/or photographs/ catalogues, and evidence of authenticity. It may also require certificates drawn up by official quality control institutes or agencies attesting to the conformity of the products with clearly identified specifications. These are optional requirements, left on the discretion of the contracting authority on whether they should be required or not.

1. Technical and professional requirement for service contracts

With regard to previous experiences, the contracting authority requires evidence of previous similar service contracts carried out in the last three years of business activity. In any case, the amount shall not be more than 40% of the value of contract to be procured. Evidence of successful execution of the service must be given by certificates or other documents issued by the recipient of the service stating dates, the amount and the type of service.

In order to verify that works, goods and/or services meet the quality requirements, the contracting authorities may request tenderers to submit certificates issued by independent bodies, recognized by national or international standardization systems. This provision shall be applicable even when technical requirements refer to the candidates' or tenderers' qualifications. These shall be proportionate and strictly related to the contract object and shall observe the principle of non-discrimination. The same is generally provided by Directives too, but it is still adapted into the Albanian context with two typical changes; first, Albanian procurement rules do not provide for the possibility of economic operators to submit equivalent quality assurance measures (mainly in cases where the economic operator concerned had no possibility to obtain such certificates within the relevant time limits for reasons that are not attributable to that economic operator, provided that the economic operator proves that the proposed quality assurance measures comply with the required quality assurance standards) as Directives do, and second, the Albanian rules refer to the international standardization systems (logically including the European ones, but is broader any way), while Directives refer to the European standards.

Conclusions

Description of the characteristics of goods, services or works that a contracting authority needs, is a key step in a procurement procedure. This description is made by the technical and service specifications. Apart from the technical specification, another important step of the contracting authority is to describe the criteria of the potential economic operators, which will be considered eligible to implement such a contract. These are actions carried out by the contracting authority, under the preparatory stage, but have a direct and important (inevitable) effect on the selection stage. As such, a lot of attention must be given to this stage of a procurement procedure.

Generally speaking, the requirements of the PPL, on preparation of technical specifications and qualification criteria, are in the same line with those of the Directive (s). However, even in this case, it might not be said that the provisions at issue are fully approximated. The main feature, making the difference is 'flexibility'. PPL tends to be stricter than the Directive(s), because it does reflect in its provisions, the general context (such as economic, social, political considerations). As analyzed in details, above, PPL tends to minimize the situations, which leave decisions on the contracting authority discretion. This way of ruling the system gives more possibility to monitor and control the activities of contracting authorities in this regard, and aims at ensuring the good implementation of procedural rules. On the other hand, these "detailed ruled situations" might lead to situations that are not cost-effective (for example, a very good offer might be disqualified for an unessential non-compliance with set requirements, only because the contracting authority does not have the discretion to decide differently).

On the other hand, the requirements of the PPL on technical specifications and qualification criteria are applied for all public procurement procedures, despite the financial three shold, while the Directive does not apply to public procurement procedures relating to contracts that are below certain financial thresholds set by the Directive itself. This difference is explained by the different status and different objectives of the Directive from one side and PPL, as a national law of a non member country, on the other.

When deemed as appropriate, the contracting authority may require tenderers to clarify their tenders in aiming at an objective examination, evaluation and comparison of tenders. Without prejudice to the negotiated procedures, no change in a matter of substance in the tender, including changes in price and changes aimed at making an unresponsive tender responsive, shall be sought, offered or permitted. Directive 2004/18, on the other hand, does further, providing also the right of economic operators to even supplement submitted certificates and documents. Both cases do not indicate what is meant by "clarification" of evidence and "supplementary" evidences, or to what extent clarifications of the evidence submitted and/or supplementary evidence may be requested and accepted consequently. However, the 'clarification situation' is clearer than the 'supplementary situation'. In general terms, to assist in the assessment of the evidence submitted with a view to establishing whether economic operators meet the set selection criteria, a contracting authority may, at its discretion, ask economic operators to clarify this evidence. Clarifications may be requested, for example, when the evidence submitted contains inconsistent or contradictory information, is not clear, or contains omissions. Submitting supplementary evidences, on the other hand, is a much more delicate situation. Generally speaking, supplementary evidence means that additional information/evidence may be requested.

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