

PROCUREMENT PHASES IN THE PROCESS OF PROCUREMENT IN KOSOVO

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Abstract

Critical studies of the procurement process in Kosova, and comparisons with the best European and worldwide experiences, are a good base for developing an efficient procurement system. I conducted a Survey in the Office of Procurement. A particular part of the work has been dedicated to procurement procedures. Comprehensive Study of Procurement in Kosovo based on facts and statistical indexes figured through statistical software SPSS, MINITAB, EXEL (highlights author of study), created easiness in compiling of this study. Evidences proceeded at the program created possibility for real reflection in the procurement field, experiences, difficulties and problems as well as Law deformation of Procurement Institution in Kosova. The objective of study was double: First, focusing on empirical studies and few pioneer experiences in the field of procurement, in the years 2000-2006 which showed the reality of the situation - personal experiences, failures and actions or events beyond their control. Second, based on research results and theoretical/science achievements and positive experiences at the EU countries and worldwide in the procurement field, to suggest Kosova Institutions concrete models, practical and functional of Kosovo procurement. In order for the research to become much more resultant and conclusions more objective, theoretical science model and research base are laid down first. Due to this aim, the study is based on the method of direct interview. In the research are included 43 units of Procurement in Kosova Questionary is followed by associated paper in regard to make it clear at interviewers for object of research and ensure confidentiality of answers. In order to avoid problems in the evaluation of answers given from canvasser, for any question one by one is defined the manner of reporting of results. Compiled work of study is based on primary and secondary data. Primary data are provided through data collection with survey from Procurement Entities, while, Procurement Law, regulations and Guidance as well as relevant Literature in the field of Procurement have been used as secondary data.

Keywords: *procurement process in Kosovo, publication of contract notice, design contest, tender evaluation*

1. Introduction. Formal procedures of tendering and Procurement Procedures¹

Procedure whereof Government solicits offers, create condition and terms, as well as selects contractors is the essence of procurement process.

Planning procurement from the very first step on is very important². So, the compilation of a procurement plan constitutes an essential issue of the procurement process and it has the purpose

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¹ Sue Arrowsmith, John Linarell, *Methods of Procurement, Regulating Public Procurement National and International Perspectives*, p. 459.

² Sue Arrowsmith, *The Law of public and Utilities Procurement*, p. 355.

of stimulating competition and allowing the purchase of products with the more convenient prices. The procurement process starts with the procurement plan for various purchases (goods, works and services); it also starts with the provision of funds for procurement, which needs to be approved from persons duly authorized by the Law on Procurement and Finance. The Procurement Plan should describe certain projects, which have to be determined from Units or Departments, as a part of a Contracting Authority.

Units acts as an office guide for compilation of a procurement plan as much as exact of tendering.

Preparation of procurement year plan comprises the following activities:

- Describing quantity, quality and time for purchasing of supplies, services and works;
- Conducting a market research, in order to provide information for existing products and for actual suppliers able to provide these products;
- Defining the Procurement Method to be used;
- Managing the Procurement Process and the publication;
- Setting up the type of procedures;
- Setting up the type of procurement for supplies, services and works.

Preparing a good Procurement plan is very difficult. It is always important to consult experts in different field, who have experience in planning processes of contracts and request units which are beneficiary certain procurements.

2. Procurement phases

Publication of Contract Notice

The publication of the contract notice is considered an essential component of each regime of public procurement³. The aim of advertising or publishing a contract is to announce certain tender to Economic Operators, in order to create a proper competition. The Procurement Law anticipates certain regulations of contract notice. In Kosovo publication of contract notice it is regulated by the Public Procurement Law for contracts having a value equal or over 10.000 Euro.

Contract Notice can be loosed as the standard form as follows:

- Designation and subject of tender;
- Name and address of the Contracting Authority;
- Type of procedure;
- Deadline for submitting a tender;
- Main qualifications, professional, technical, economic and financial criteria;
- Awarding criterion (lowest-priced or most economically advantageous offer),
- Information regarding the delivery of goods, services or works,
- Notice of pre-bid conference, if necessary,
- Determinate price for the requirement of tender dossier, being the case,
- Contract value,
- Languages to be used for submission of the offer,
- Possibilities to ask for clarifications,
- Deadline within which tender dossier can be required,
- Common Procurement Vocabulary

Classic procedures for awarding contracts

³ Sue Arrowsmith , *Regulating Public Procurement National and International Perspectives*, p. 553.

Different methods of awarding public procurement contracts derive from the theory and practice of many countries. Local and International newspapers and advertising through electronic web pages. This procedure is realized through certain terms of tendering. Applying of these includes:

Open procedure. Open procedure is considered as the most transparent procedure for public procurement⁴ since it gives a possibility to present offers to all tenderers, on equal basis. Contracting Authorities will use an open procedure for awarding a public contract as much as possible and they will use other procedures only where necessary. The use of other procedures is feasible only when the conditions to make use of the open procedure are not fulfilled. The meaning of the open procedure stays in the possibility, given to all potential candidates, to submit a tender.

Fundamental Principles of the open procedure are: transparency, equal treatment, competition, non-discrimination. These principles are used at all procedure steps. For example, when preparing the tendering procedure, at the moment of publication of the contract notices, at the evaluation of tenders, etc.

Open procedure can be realized through publication of the contract notice at the local procedure, can come to the one tender which can be chosen based on evaluating of tenderers as per Kosovo actual procurement Law states: *'Contract is awarded to eligible, qualified who has submitted responsible tender with appropriate/low price and other conditions presented before from CA at the tender dossier'*.

The Contract shall be awarded to the Bidder whose tender has been determined by the Evaluation Committee to be substantially responsive to the bidding documents as required from Contracting Authorities and who has offered the lowest evaluated Bid Price⁵.

Open procedure do not create limitation at tenderers but contrariwise create a maximum of competition among tenderers. By using this form of procedure chances are very small to come across collusion, misuse or material benefit got by procurement officers or at any other level of management of Contracting Authorities.

Restricted procedure. Another method of procurement is the restricted procedure. GPA Article VII (3)/ defines this procedure as a *'selective tendering procedures'*, since only qualified suppliers can be invited to submit a tender⁶. Best practices of procurement enabled usage of this procedure, so the Public Procurement Law permits and foresees particular regulations for using it in very special cases. In these cases the contract can be awarded only to Economic Operators that have determined technical, professional and economical capabilities. The main characteristic of this method if compared to open procedure is that it can be made in two phases: the first part relates to the pre-qualification phase, while the second part relates to the real tendering phase.

In the first Phase unfortunate candidates shall be rejected and the only qualified tenderers can be selected. Minimal requirements for qualification of candidates are:

- (i) Eligible requirements
- (ii) Professional suitability requirements
- (iii) Economical financial standing
- (iv) Technical and/or professional capabilities

In the second phase all qualified candidates are invited to submit their tenders; previously tender dossier containing technical specifications and conditions of contract has been prepared. This procedure is not such as restricted due to all interested candidates enables to submit requirements for participation. However, restriction of the method can be seen in the second phase,

⁴ Sue Arrowsmith, *Regulating Public Procurement National and International Perspectives*, p. 460.

⁵ *Ibidem*.

⁶ *Idem.*, p. 468.

where the qualified candidates are invited to submit tenders and from all of them only one candidate can be awarded the contract. Open procedure also requires certain qualifications. The difference between the open procedure and the restricted procedure stays in the fact that in the first phase of the restricted procedure non qualified candidates can be eliminated, whereas in the open procedure all candidates have to be evaluated against administrative criteria, qualification and financial capabilities, and only Economic Operators that meet all criteria can be awarded the contract.

Negotiated Procedure after Publication of a Contract Notice. In general, negotiated procedure without of contract notice permits the procurement entity to avoid the application of the usual rules of open competition and transparency⁷. Negotiated procedure involves a procurement procedure which enables the Contracting Authority to invite Economic Operators and negotiate with them the contract conditions. At the first stage of procedure, similar regulations are applied as in the prequalification phase of the restricted procedure.

In the case of publication of contract notice for services, supplies or works without any discriminatory intent makes a nature of complex technical, financial or professional, negotiated procedure can be used in these cases as below:

- it is not possible to be prepare detailed technical specifications;
- the overall contract price cannot be envisaged.

This procedure includes two phases:

- Prequalification (open procedure) phase, and
- Negotiated (restricted) and tendering phase.

The Negotiated procedure after publication of a contract notice starts with the publication of the contract notice. The Contracting Authority invites candidates to submit a tender/proposal that complies with the minimum criteria specified in the contract notice and in the tender dossier, in accordance with clauses 47-52 of the current Procurement Law of Kosova (no.02/L-99, advertised with Regulation no. 2007/20). Non-qualified candidates shall be eliminated from the further participation. Afterwards the Contracting Authority will engage in negotiations with each qualified tenderer regarding the contract conditions (technical, economical, legal, etc.), in order to adjust tenderers' proposals to the concerned requirements contained in the contract notice and in the tender dossier.

After the tendering phase, the Contracting Authority has to identify and to award the contract to the bidder having submitted the best and most economically advantageous tender/proposal. Due to this, the negotiated procedure is not as transparent as the open or the restricted procedure and that explains why the application of this procedure is regulated in a categorical manner in the Procurement Law.

Negotiated Procedures without Publication of a Contract Notice. Contracting Authorities can make use of this procedure when only one possible supplier is available, or when the contract has to be awarded to the beforehand contractor⁸.

The rationale behind the negotiation and the tendering phases is practically the same used in the Negotiated Procedure after publication of a contract notice.

The main characteristics of this method are:

- It does not involve publication of the contract notice and it is not open to competition
- It is only used in certain specific cases and its use is regulated by Clause 34 of Law nr. 02/L-99 on Procurement in Kosova, published with Regulation No.2007/20.

⁷ Sue Arrowsmith , *Regulating Public Procurement National and International Perspectives*, chapter 9.

⁸ Sue Arrowsmith , *Regulating Public Procurement National and International Perspectives*, p. 625.

In the Negotiated procedures without publication of a contract notice the Contracting Authority negotiates the conditions of the contract with one or more candidates, who are invited directly without prior publication of contract notice. The Contracting Authority can use negotiated procedure without publication of contract notice when only one supplier is available:

- for objective and compelling technical reasons;
- for objective and compelling arctic reasons;
- for valid legal reasons requiring the respect of exclusive rights;
- in case of monopoly (ex: delivery of water, electricity, gas or heating services);
- in case of extreme urgency;
- when additional deliveries from a current supplier/service or works provider is required, since using a different supplier would result in a significant incompatibility or in technical difficulties.

Performances of negotiated procedure without publication of contract notice in any manner do not release the Contracting Authority from some obligations, such as:

- to play an active role in the preparation of the contract, particularly with regard to price, terms of submission, quantities, technical characteristics and guaranties;
- to insure that the contract price is not higher then due trade price;
- to assess carefully the concerned product, service or work quality;

The main steps in the Negotiated procedure without of publication of contract notice are:

- invitation of candidates;
- verification that candidates fulfill qualification criteria as specified in the invitation;
- negotiation with candidates of conditions of contract set out in the contract notice;
- contract award.

Design Contest⁹

When a Contracting Authority intends to conduct a design contest, it shall prepare a design contest notice and then the procedure can be conducted as an open or a restricted procedure. It is important to point out that this method can be conducted as a pre-qualification. After this, the procedure to be followed can be the contract award without publication of a contract notice. The objective of a design contest is to enable the Contracting Authority to obtain a plan or design/project selected by a jury, after set it in competition, with or without given prices.

This method find application in the fields of spatial planning, reconstructing, architectonic, engineering, data processing and works linked to designing.

Price Quotation Procedure. Price quotation procedure¹⁰ is permitted for the low and minimal value contracts, for supplies and services. Therefore, the use of this method is designed from the essential elements as supplies and services with procured by common nature do not need to be specially produced or customized.

The current Procurement Law of Kosova states that ‘each contract that has foreseen value equal or higher than 1,000 Euros, but lower than 10,000 Euros shall be considered ‘low contract value’, as well as each public contract that foreseen value is lower than 1,000 Euros shall be considered as ‘minimal contract value’.

The Price quotation procedure starts with sending a written request to at least 3 suppliers. Quotations should be obtained within not be less than 10 calendar days from the date of invoice of the request for price quotation. The selection of suppliers who will receive the price quotation

⁹ Regulation no. 2007/20 on the promulgation of the law amending Law no. 2003/17 on Public Procurement in Kosovo adopted by the Assembly of Kosovo ratified on 6 June 2007 by UNMIK/Regulation/2007/20.

¹⁰ Regulation no. 2007/20 on the promulgation of the law amending Law no. 2003/17 on Public Procurement in Kosovo adopted by the Assembly of Kosovo ratified on 6 June 2007 by UNMIK/Regulation/2007/20.

request shall be made in a neither way that no Economic Operator has to be discriminated nor favorite.

In order to conduct a price quotation procedure it is not compulsion to publish contract notice. Contracting Authorities directly send the written tender dossier to Economic Operators. Initially, the Contracting Authority prepares the tender dossier, which contains the following:

- description of the procurement object;
- selection criteria;
- technical specifications/terms of references;
- price specification (it will have to contain total and fix price);
- deadline for submission of quotations.

Tender Opening

Organizing the tenders' opening means that all interested contractors in the procurement can submit a tender¹¹.

Submitted tenders at the case of open procedures, restricted or negotiated after publication of contract notice can be only publicly opened. With these results opening of envelopes and identification of tenders submitted on the limited time. The Contracting Authority has to define in the contract notice and in the tender dossier the time and place for opening of public tenders. The opening of tenders has to take place immediately after the expiration of the deadline for submission, as defined in the tender dossier and in the contract notice.

Tender evaluation. Tender evaluation means responsively assessing of tenders, that is considering if the tender is acceptable and comparable, and which tender shall be accepted by the Procurement Entity for awarding¹².

The phase of procurement where there can be a selection of responsive tenders is the Evaluation of tender.

It is important that the tender dossier contains all requirements and conditions of tender indicated in a clear manner, since it will be on the basis of the indicated requirements that the successful bidder will be awarded the contract.

On the one side, the Contracting Authority will have to go through the evaluation of all tenders (no less than three tenders should be received to have a valid submission) which have met the set requirements. On the other side, the Contracting Authority will have to assess tenders between responsive tenders. So we can say that evaluation of tenders and require responsibility capacity and professionalism in the field of a concerned tender. Only persons qualified in that precise field can be members of the evaluation committee. These persons can be selected within the Contracting Authority but can be also contracted from outside. The procurement officer can be a member of the evaluation session in order to ensure compliance with the procurement rules.

For the each evaluation session a panel of evaluation has to be formed, with an odd number of members, who cannot be less than three. However, decision shall be unanimous.

An important rule is that tenders that are devoid of information shall be eliminated. Should the panel find any absence, unconformity or any minor irregularity, it has to ask tenderers for clarification.

The Chairman of the evaluation committee can also decide to disqualify/reject a tender, if he/she thinks the tender is not complete and cannot be complete even with additional clarifications.

Evaluation of tenders in general follows these steps:

- Assessment of tender submitted on time;
- Assessment of tenders submitted by qualified candidates;
- Assessment of complete tenders;

¹¹ Sue Arrowsmith , *Regulating Public Procurement National and International Perspectives*, p. 466.

¹² Sue Arrowsmith , *Regulating Public Procurement National and International Perspectives*, p. 649.

- Assessment of administratively complete tenders;
- Assessment of technically complete tenders;
- Comparison and evaluation of tenders;
- Listing of financial tenders (from the lowest to the higher price).

A key issue that has to be carefully addressed is that tenderers shall be treated equally. If a tenderer is given the chance to provide additional information, then all tenderers should be given the same opportunity.

Contracts - General Principles

The meaning of contract is linked to an agreement between two parties, as individuals or legal organizations that conveys their rights and obligations. Only a person or legal entity can be part to a contract, while immovability, premises, animals can be only the object of a contract.

The basis of a contract is the agreement or expression of bilateral consent. The parts can express their consent at the same time or through separate declarations.¹³

Some examples of agreements are:

- Treaties -agreements between Countries;
- Stakeholders Agreements between Stakeholder Companies;
- Supply contracts;
- Service Contracts;
- Work Contracts;
- Renting Contracts etc.

The final aim of procurement is arriving at signing a public contract. The main elements of this contract are: the title of the contract, the general and special conditions, the terms and the manner of payment and the date of signing of the contract.

3. Research findings and discussion of findings

In this part of work are reflected the main results that comes from research of main characteristics of the survey of procurement, level of procurement staff, number of certified staff of procurement.

Number and type of contracts based on Procurement Units. Regarding type, the biggest number of contracts contains supplies contracts 1.584 or 47, 28%, then service contracts 1.030 or 30, 8%, and 736 or 21, 97% work contracts. Looking base on Procurement units 1.249 contracts or 37, 28% from the realized total number at year 2006 contain realized contracts at Procurement Units into Public Enterprises. The higher number of contracts it is realized at two Public Enterprises, at KEK and PTK. After come realized contracts at Procurement Municipality Units, totally 850 contracts or 25, 4% from the total number of contracts realized at year 2006, and contract realized at Procurement Units at Other Authorities, in all 608 contracts or 18, 15%. Less numbers of contracts are realized at Ministries of Kosova Government, totally 246 or 7,34%, afterwards at Agencies and Regulatory 397 or 11,85%. This can be explained with fact that number of Procurement procedures at those units in general is small, and reason is low Budget.

Number and type of procurement procedure based on procurement units. Regarding research results through direct interviewing of 43 procurement units, derives that at year 2006 are realized totally 7.069 procurement procedures. From them the biggest number contains open procedure 2.403 or 33, 99%, the number of prove quotation procedure (no. of procurement procedures price quotation) 2.032 or 28, 75%, the number of minimal procedure (nr. of procurement procedures with minimal value) 2021 or 28, 58% and number of procedures without

¹³ Lotar Hofman(2006), Contracts-General Principals.

publication of contract notice 447 or 6, 32%. The number of other procedure based on this research is smaller, 111 or 1, 57% are restricted procedure, 31 or 0, 44% are design contest, and 24 or 0, 34% are procedures after publication of contract notice (no. of procurement procedures negotiated after publication of contract notice).

Contract value based on procurement units at year 2006¹⁴. Contract values based on procurement interviewed at year 2006 it is enough different. Extreme values of contracts particularly are registered at Public Enterprise and at other Procurement Authorities. Minimal and maximal values of contracts based on procurement units turns between 451.495,36 €, and 2.600.000€ at interviewing procurement units at Ministries, 35.000 € and 9.000.000€ at Municipality units of Procurement 84.474 € and 124.000.000 € at Procurement Public Enterprises Units and 70.000 and 12.000.000 at Procurement units at Other Authorities of Procurement.

Number of annulled procedures based on main reasons and Procurement Units. More than 80% of annulled contracts are registered at Public Enterprises (106) and in level of Procurement Units at Procurement Municipality Authorities (89). Analyzing specific reasons of annulling of contracts it worth to stress that it is relatively small number of Authorities which are ready to answer at this question lay. So, from 43 interviewed procurement units, only 18 from them are answered.

When plan was handed over in year 2006. Particularly stressing from 43 Interviewed Procurement Authorities, only 34 of them has been answered at question for the approving of Procurement Plan. From the analyze it is noticed that at interviewed at Procurement units, 88, 2% from them it is stressed that Procurement plan approve on time and 11, 8% of cases approve late. At this research Procurement Units it seems that more exact at plan approving are Public Enterprises. So, it is noticed that on time Procurement plan has been approved 11 of 13 Procurement Municipality units, 4 of 6 Agencies and Regulators, 3of 6 Ministry Procurement units, and 5of 8 Other Authority units.

Conclusions

The following are given conclusions and main recommendations that derive from this work, that can help at least a little to the Authorities in Kosova in order to create a vision and more real approach toward development of the procurement field in the future.

1. Procurement process in Kosova is rather new. The first cells of procurement units were established in the year 2000.

2. The number of contracts realized in the year 2006 was higher in Public Enterprises and Municipalities. This is presented as a derivation of high budget of the Public Enterprises and high needs for the large-scale procurements.

3. The Procurement Law in Kosova is very strict. According to this, I recommend that for Public Enterprises there should be a separate Procurement Law, as it is happening in the European Union Countries.

4. To have as fewer cancellations of tenders, and for this process to be characterized as a high efficiency scale, I recommend that in future more clear and exact technical specification and other tender conditions should be made, in a detailed manner in the tender dossier.

5. I recommend being more applied open procedure of tendering then price quotation procedure and minimal procedures.

6. Due to specific conditions that Kosova has, small trade etc, the Procurement law should be amended to require only two responsive tenders instead of three, in order to avoid the very often repeated tender cancellations.

¹⁴ Source: Research Rezults (author: 2007), Prishtina.

References

- Procurement Law in Kosova no.02/L-99, which is amended with Law no.2003/17
- Sue Arrowsmith (London 2005), *The Law of Public and Utilities Procurement*
- Presidenza Del Consigliere dei Ministry (2005). Public Procurement in Europe (edited by Stefania Zuccolot
- A. Field(2006), *Discovering Statistics Using SPSS*, Second edition
- R, Barbara & J,Brian(1994), *Minitab Handbook*, Third Edition
- Z. Gogola&Š, Vanja(2005). *Korišćenje statističkih metoda u Hrvatskim Preduzećima*, Zbornik Ekonomskog Fakulteta u Zagrebu)
- Research Rezults (author: 2007), Prishtina