

Article 33

Open and Restricted Procedures

1. Unless a provision of Articles 34 – 37 of this law specifically authorizes the use of different procurement procedures, a contracting authority shall select and use open or restricted procedure when conducting procurement activities leading to the award of a public contract.
2. A contracting authority may use restricted procedures to conduct a procurement activity leading to the award of any public contract on the basis of objectively verifiable factors and without any discriminatory intent.
3. Following the receipt of requests to participate, a contracting authority shall in writing invite to submit a tender all candidates that fulfils the minimum selection criteria specified in the contract notice and the tender dossier in accordance with Article 51 of this law. Candidates not so selected shall be eliminated from further participation.

Article 34

Negotiated Procedures after Publication of a Contract Notice

1. In exceptional cases, a contracting authority may use negotiated procedures after publication of a contract notice to conduct a procurement activity. The responsible Procurement Officer, on the basis of objectively verifiable factors and without any discriminatory intent, must in advance make a formal written determination that:
 - 1.1. it is due to the nature of certain insurance, banking and investment, management, consultancy or other intellectual services not possible to establish contract specifications for them in a manner that would permit the award of the contract by selecting the best tender according to the rules governing open or restricted procedures;
 - 1.2. the nature of the services or the risks attaching thereto do not permit prior overall pricing;
 - 1.3. the nature of financial services, services involving the design of works or other intellectual services is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selection of the best tender according to the rules governing open or restricted procedures.
2. The written determination required by paragraph 1 of this Article shall be included in the tender dossier.
3. Following the receipt of requests to participate, a contracting authority shall invite to submit a tender/proposal all candidates that fulfill the minimum selection criteria specified in the contract notice and the tender dossier in accordance with Article 49-54 of this law. Candidates not so selected shall be eliminated from further participation.
4. The contracting authority shall then negotiate with each tenderer to try to adapt its tender/proposal to the requirements that the contracting authority has set out in the contract notice and the tender dossier. During this process the contracting authority shall be required to identify and award the contract to the tenderer submitting the best and most economically advantageous tender/proposal.
5. During the negotiations, a contracting authority shall ensure that all tenderers are treated in an equal and fair manner and that all tenderers have equal and

timely access to the same information, with the exception of information relating to or contained in any competing tender.

6. Provided that the possibility has been indicated in the contract notice or the tender dossier, a contracting authority may provide for the negotiated procedure to take place in successive stages in order to reduce over time the number of tenders to be negotiated by applying the award criteria that have been specified in the contract notice or the tender dossier.

Article 35

Negotiated Procedures without Publication of a Contract Notice

1. A contracting authority that is a public authority or a public undertaking may use negotiated procedures without publication of a contract notice to conduct a procurement activity only after it has complied with this Article and received a written authorization from the PPA. If the contracting authority is the PPA, it shall also comply with this Article; however, in such a case, the authorization request and the statement required by this Article shall be submitted to the PPA's CAO, and the written authorization required by this Article may be issued only by such officer. A contracting authority that is not a public authority or a public undertaking is not required to obtain the PPA's consent to utilize the provisions of this Article.

2. A contracting authority that is a public authority or a public undertaking may seek an authorization from the PPA to use negotiated procedures without prior publication of a contract notice to conduct a procurement activity having as its object the award of:

2.1. any public contract: (i) if, for objective and compelling technical or artistic reasons, the contract may be awarded only to a particular economic operator provided, however, that a contracting authority whose principal activities are cultural promotion, the exhibiting of works of art, the staging of performances or the broadcast of radio or television programs shall not be required to obtain the authorization of the PPA to utilize this subparagraph; (ii) if, for reasons of protection of intellectual or industrial property right or other exclusive rights, the contract may be awarded only to a particular economic operator; (iii) if, insofar as is strictly necessary for reasons of extreme urgency brought about by objectively verifiable events that were not reasonably foreseeable by the concerned contracting authority, such contracting authority cannot afford the time required to conduct any other procedure provided for by this law. Provided, however, that if the circumstances creating the situation of extreme urgency can be attributed to the negligent or purposeful acts or omissions of a contracting authority, this provision may not be invoked; (iv) when less than two responsive tenders or requests to participate have been submitted in response to an open procedure, a restricted procedure or negotiated procedure after publication of the contract notice, see paragraph 4 Article 32 of this law, provided that a) the initial contract specifications are not changed and b) that the contracting authority has demonstrated that due to a severely limited competitive market for the contract in question a new open, restricted or negotiated procedure after publication of a contract notice will not result in an increased number of responsive tenders.

2.2 a supply contract: (i) for additional deliveries by the original supplier where such additional deliveries are replacements for previously delivered products or installations or constitute an extension of current product deliveries or installations

if a change of supplier would necessarily require the concerned contracting authority to accept products or installations having technical or other characteristics that are materially different from the products or installations previously acquired and these differences would result in incompatibility or disproportionate technical difficulties in operation and maintenance. Provided, however, that this Article 35.2.b(i) can only be invoked by a public authority or a public undertaking to cover one or more contracts for additional deliveries that, alone or in the aggregate, have a value that is not greater than ten percent (10%) of the value of the supply contract covering the original deliveries; or (ii) if the concerned contracting authority is a public service operator, for the purchase of commodities at a commodities market, commodities exchange, or similar open trading platform or system or for a bargain purchase, where it is possible to procure supplies by taking advantage of a particularly.

2.3. a service contract: (i) that follows from a design contest conducted pursuant to open or restricted procedures, and that is required, under the applicable rules, to be awarded to the successful candidate; (ii) to be awarded to a contracting authority that enjoys, pursuant to a legislative or regulatory normative or sub normative act, an exclusive right to provide such service.

2.4. a service or works contract: (i) for the performance or execution of additional services or works that were neither included in the original conception of a previously awarded works project nor provided for in the concerned works contract previously concluded, but which have, through unforeseen circumstances, become necessary for the performance of the services or works described in such project and contract. Provided, however, that this Article 35.2.d(i) may only be invoked if (a) the contract covering such additional services or works is to be awarded to the economic operator performing the original services or works and (b) such additional services or works cannot be technically or economically separated from the main contract without major inconvenience to the contracting authority or (c) when such works or services, although separable from the performance of the original contract, are strictly necessary for its completion. Provided, further, that this Article 35.2.d(i) may only be invoked by a public authority or a public undertaking to cover one or more contracts for additional services or works that, alone or in the aggregate, have a value that is not greater than ten percent (10%) of the value of the original contract; (ii) for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to whom the same contracting authorities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded according to the open or restricted procedure. As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authorities when they apply the valuation rules of Chapter 4. Public authorities may use this procedure only during a period of two years after the conclusion of the original contract. Provided, however, that this Article 35.2.d(ii) can only be invoked by a public authority or a public undertaking to cover one or more contracts for new services that, alone or in the aggregate, have a value that is not greater than ten percent (10%) of the value of the earlier services contract.

3. A contracting authority desiring to obtain the authorization required by paragraph 1 of this Article shall first prepare a written statement affirming that the contracting authority has, without any intent to discriminate against or in favor of any economic operator, has determined that a provision of paragraph 2 of this Article permits the use of negotiated procedures without the publication of a contract notice to conduct such activity. The contracting authority shall also set forth in such statement a detailed explanation of the reasoning used and the factors considered by the contracting authority in reaching this determination.
4. The contracting authority shall then submit to the PPA in writing an authorization request and the statement specified in paragraph 3 of this Article. The PPA shall either issue the requested authorization or deny the request in writing within five (5) working days after receipt.
5. The PPA may authorize a contracting authority to use negotiated procedures without the publication of a contract notice only if (i) the PPA has received from such contracting authority in writing the authorization request and statement specified above, and (ii) the PPA has reviewed such statement and determined that, objectively considered, such statement convincingly demonstrates that the determination made by the contracting authority is valid.
6. Whenever the PPA authorizes a contracting authority to use negotiated procedures without the publication of a contract notice, the PPA shall publish a copy of such authorization in the Public Procurement Register.
7. If the PPA receives a request from a contracting authority that desires to invoke paragraph 2.1(iii) of this Article, the PPA shall immediately accord the highest possible priority to the development of a response to such request. The PPA may authorize a contracting authority to use negotiated procedures without publication of a contract notice on the basis of paragraph 2.1(iii) of this Article only if the PPA first verifies in writing that (i) an event necessitating an extremely urgent procurement has occurred, (ii) such event was not reasonably foreseeable by the contracting authority, (iii) such event requires the conduct of the concerned procurement on a more accelerated basis than even the time limits provided for in Article 46 of this law allow, and (iv) the occurrence of such event cannot be attributed to the negligent or purposeful acts or omissions of a contracting authority.
8. Even if the PPA determines that the criteria specified in paragraph 7 of this Article have been fulfilled, the PPA shall, whenever feasible, deny the request and instead direct the contracting authority to use the price quotation procedures set forth in Article 36 of this law. The limitation in paragraph 1 of Article 36 of this law with respect to low and minimal value contracts shall be disregarded for this purpose.
9. The conduct of a negotiated procedure without publication of a contract notice shall not in any way relieve a contracting authority of its obligation (i) to play an active role in determining the terms of the contract, with special reference to prices, delivery deadlines, quantities, technical characteristics and guarantees, (ii) to ensure that the contracted price is not higher than the concerned market price, and (iii) to carefully assess the quality of the concerned product, service or works.

Article 36

Price Quotation Procedures

1. A contracting authority may use price quotation procedures to conduct a procurement activity having as its object the award of a minimal or low value works, supply or service contract if

1.1. regarding a works contract it consists only of repair or maintenance; or

1.2. regarding supply or services (i) the concerned supplies or services are readily available from economic operators, (ii) the concerned supplies or services do not need to be specially produced or customized in order to satisfy the requirements of the contracting authority, and (iii) there is an established market for such supplies or services.

2. The contracting authority shall simultaneously send a written request for price quotations to at least three (3) economic operators and, to the extent practicable, to as many additional economic operators as is necessary to ensure that effective competition for the concerned contract is not impaired.

3. The contracting authority shall select such economic operators and otherwise conduct the procurement activity in a manner that is not intended to discriminate against or in favor of any economic operator.

4. An economic operator that did not receive a request for price quotations that was sent to other economic operators shall have the right to obtain, immediately upon request, such request for price quotations from the concerned contracting authority. An economic operator that did not receive a request for price quotations that was sent to other economic operators shall also have the right to submit a price quotation in response to such request, even if such economic operator obtained a copy or information about such request for price quotations from someone other than the contracting authority.

5. A written request for price quotations shall (i) describe, in accordance with Article 28 of this law, the concerned works, goods or services, (ii) inform all economic operators that their quotations must contain a lump sum fixed price that the contracting authority would need to pay to obtain the concerned works, goods or services and that such lump sum fixed price shall include any and all applicable taxes and duties as well as any transportation, insurance, installation or other charges, fees or expenses of any description; and (iii) specify the date by which price quotations must be received.

6. For a procurement activity conducted pursuant to paragraph 1 of this Article, the date by which price quotations must be received shall be no less than five (5) days from the date of the dispatch of the written request for price quotations.

7. If, in a procurement activity conducted pursuant to paragraph 1 of this Article, less than three (3) economic operators that routinely offer the concerned works, goods or services on the market submit responsive written quotations on or before the specified deadline, the contracting authority shall cancel the procurement activity. In such event, the contracting authority shall, if it still desires to procure the concerned works, goods or services, initiate a new procurement activity for such goods or services.

8. An economic operator may submit only one price quotation during the concerned procurement activity.

An economic operator may not change its price quotation after such quotation has been submitted.

9. For the purposes of the applicability of the other provisions of this law, a request for price quotations shall constitute an "invitation to tender."

Article 37**Procedures for Minimal Value Contracts and Immovable Property Contracts**

The PPRC shall have the authority to establish in the public procurement rules a special procedure to govern the award of minimal value contracts. The PPRC shall also have the authority to establish special procedures to govern the award of immovable property contracts. The PPRC shall ensure that such procedure fulfils the conditions in Article 6 and 7 of this law.