

Based on Article 34 of the Law on Free Access to Public Information ("Official Gazette of the Republic of North Macedonia" No. 101/2019), the Director of the Agency for the Protection of the Right to Free Access to Public Information, on \_\_. \_\_.2021 brought the following

**PROCEDURE**  
**for the implementation of public procurement procedures and implementation of contracts**

**1. PURPOSE**

This procedure determines the process for the procurement of goods, services and works, for the needs of the Agency for the Protection of the Right to Free Access to Public Information (hereinafter: Agency).

This procedure describes the manner and procedure in the planning and implementation of public procurement procedures, the execution and implementation of public procurement contracts, the distribution of the duties and responsibilities of the public procurement commission, the responsible person, the person or the organizational form within which works are carried out in the field of public procurement, as well as the movement of documentation during the implementation of public procurement procedures in the Agency.

The purpose of this procedure is to ensure the correct application of the Law on Public Procurement during the implementation of public procurement procedures in the Agency, in accordance with the principles of economy, efficiency and effectiveness of the use of public funds, competition between economic operators, transparency, equal treatment and non-discrimination of economic operators and proportionality.

**2. APPLICATION**

2.1 The persons applying this procedure are obliged to ensure the consistent application of the provisions of the law on public procurement in each phase of the planning process, implementation of public procurement procedures and realization of contracts.

2.2 The procedure is applied by the following persons:

- The responsible person of the Agency;
- Person for performing work in the field of public procurement;
- Public procurement commissions;
- The employees of the Financial Affairs Department;
- Other employees who will be included if necessary;

**3. CONNECTION WITH OTHER DOCUMENTS**

- Law on Public Procurement and by-laws;
- Law on Obligations;
- Financial discipline law;
- Law on budgets;
- Law on execution of the Budget of the Republic of North Macedonia in the current year;

**4. PROCEDURE**

The procurement process is carried out exclusively in accordance with the Law on Public

Procurement and the by-laws arising from the same law.

#### **4.1 COMPETENCES OF PERSONS WORKING WITH PUBLIC PROCUREMENTS**

4.1.1 The responsible person of the Agency determines a Person for performing work in the field of public procurement (hereinafter: Person for public procurement).

4.1.2 The person for public procurement is responsible for monitoring the legal regulations and implementing the legal provisions in the process of conducting public procurements and is obliged to act in accordance with the Code of Conduct during the implementation of public procurements.

4.1.3 The responsible person of the Agency, for each procedure for public procurement, determines a Commission for public procurement, which should be composed of an odd number of members, and should also contain their deputies.

4.1.4 The Public Procurement Commission independently and independently implements the public procurement procedure in accordance with the provisions of the Law on Public Procurement and the Code of Conduct for the Implementation of Public Procurement.

4.1.5 The responsible person of the Agency, depending on the need for certain procedures for public procurement due to the specificity of the subject of procurement, the complexity of the works and the need for professional knowledge, may hire external experts as well.

#### **4.2 PLANNING OF PUBLIC PROCUREMENTS**

4.2.1 Based on the planned sources of financing and needs for the procurement of goods, services and works for the current year, as well as on the basis of experience with similar procurements carried out in previous years and on the basis of previous market research, the person for public procurement in coordination with the Department for Financial Affairs prepare an annual public procurement plan for the Agency's total procurement needs in the current year.

4.2.2 The annual plan for public procurement is approved and adopted by the responsible person of the Agency.

4.2.3 The adopted annual plan is published on the Electronic System for Public Procurement (hereinafter: ESPP) by the end of January of the current year.

4.2.4 If necessary during the year, the annual public procurement plan can be modified and/or supplemented. Amendments and/or additions to the annual public procurement plan are published on ESPP.

4.2.5 The content of the annual public procurement plan should not be changed when the estimated value changes, when the type of the planned procedure for awarding a public procurement contract changes or when the expected start of the procedure changes.

### **4.3 DECISION ON PUBLIC PROCUREMENT**

4.3.1 Before starting any public procurement procedure, the public procurement person prepares a Public Procurement Decision.

4.3.2 The Decision on public procurement determines the subject of the procurement, the amount and source of the funds needed for the implementation of the contract, the method and procedure for public procurement and appoints the composition of the commission for public procurement and, if necessary, hired external experts.

4.3.3 The decision on public procurement contains a rationale for the need for the procurement.

4.3.4 The decision on public procurement can be amended or supplemented due to: additional provision of funds, change of the estimated value, change of member of the public procurement commission, change of the subject of procurement, change of division of the subject of procurement and others.

4.3.5 The decision on public procurement and its amendments and/or additions are signed by the responsible person of the Agency.

4.3.6 The members of the public procurement commission and their deputies, possibly hired external experts, are familiarized with the adopted Decision on public procurement by sending a copy via e-mail or an internal delivery book through the Agency's archive.

4.3.7 The person for public procurement publishes the Decision on public procurement of the ESPP.

### **4.4 PREPARATION OF TENDER DOCUMENTATION**

4.4.1 The person for public procurement and the commission for public procurement participate in the preparation of the tender documentation. It is published with the public procurement announcement, electronically, in a format that can be used directly by economic operators.

4.4.2 The form and content of the tender documentation should be in accordance with the provisions of the Law on Public Procurement.

4.4.3 The tender documentation can be modified or supplemented, as needed or based on the submitted questions or requests from the economic operators.

4.4.4 The answers, changes and additions to the tender documentation, without compensation and in the shortest possible time, are published on ESPP, within the terms established by the Law on Public Procurement.

4.4.5 The technical specification is prepared in cooperation and coordination with other employees or other experts and it is part of the tender documentation.

4.4.6 In conditions where there is a need for a more precise definition of the technical specification, after the adoption of the Decision on public procurement, and before the publication of the announcement for public procurement, a technical dialogue can be conducted with the economic operators.

### **4.5 PUBLICATION OF ADVERTISEMENT**

4.5.1 On the basis of the Decision on Public Procurement, the public procurement person publishes a Public Procurement Notice on the ESPP and/or in the "Official Gazette of the Republic of North Macedonia", except for the negotiation procedure without publication of a notice.

4.5.2 The announcement for public procurement is compulsorily published in the Official Gazette of the European Union, if the estimated value excluding value added tax (VAT) is equal to or exceeds the established value thresholds established in the Law on Public Procurement.

#### **4.6 OPENING OF OFFERS**

4.6.1 The opening of bids begins at the time specified in the tender documentation as the deadline for submission of bids, except for the procurement of consulting services.

4.6.2 The opening of bids is public during the implementation of the following procedures: a procedure of low value with the publication of an announcement, a simplified open procedure, an open procedure, the second stage of a limited procedure and the stage of submission of offers from the competitive dialogue.

4.6.3 At the moment of starting the opening, ESPP will provide the public procurement commission with full access to all documents submitted by the bidders.

4.6.4 The Public Procurement Commission, in the presence of authorized representatives of the bidders, opens the bids and reads their elements/data in the order of their receipt. The commission keeps records of authorized representatives present.

4.6.5 Before proceeding to the evaluation of the bids, the public procurement commission prepares the Minutes of the opening of the bids, with data on the elements of the bids that are read, which is signed by the president of the commission or his deputy.

#### **4.7 STATEMENT OF NO CONFLICT OF INTEREST**

4.7.1 The president, the members of the public procurement commission and their deputies, as well as the responsible person of the Agency, sign a declaration of non-existence of conflict of interests, which is part of the file of the conducted procedure.

#### **4.8 EVALUATION OF OFFERS**

4.8.1 Before proceeding to the evaluation of the offers, the public procurement commission must check whether a negative reference of the bidders has been published, until the deadline for the submission of the offers, which it duly documents as part of the file of the procedure.

4.8.2 The Public Procurement Commission checks the validity and completeness of the documentation for determining the ability, only for the bidders for whom no negative reference has been published in accordance with the legally established deadlines.

4.8.3 The Public Procurement Commission may request bidders to clarify or supplement the documents, if there are no significant deviations from the requested documentation. The Public Procurement Commission must not create an advantage in favor of a certain economic operator by using the requested clarifications or additions.

4.8.4 The tenderer submits the requested explanation through ESPP within the deadline set by the commission.

4.8.5 The public procurement commission may not request, offer or allow any changes in the financial and technical offer, except for the correction of arithmetical errors.

4.8.6 The evaluation of the offers is carried out exclusively in accordance with the criteria specified in the tender documentation.

4.8.7 After the evaluation of the offers and taking into account the opinion of the experts if they are involved in the procedure, the Commission for Public Procurement prepares a Report of the conducted procedure. The Report contains the evaluation of the ability of the bidders, the opinion of the experts if they are involved in the procedure, the ranking of the bidders after the

completed electronic auction (if conducted) and a proposal for selecting the most favorable bidder or a proposal to cancel the procedure.

4.8.8 Before making the Decision on the selection of the most favorable offer, if the most favorable offer has a price higher than the amount of funds determined in the Decision on Public Procurement, it can be amended and the funds necessary for the implementation of the contract provided, provided that based on the conducted analysis, to determine that it is economically more profitable than repeating the procedure and the offered price does not exceed the value threshold prescribed for the type of procedure.

#### **4.9 DECISION TO CHOOSE THE BEST OFFER/CANCEL DECISION AND NOTIFY ECONOMIC OPERATORS**

4.9.1 Based on the Report of the conducted procedure and the proposal of the public procurement commission, the person for public procurement prepares a Decision for the selection of the most favorable offer/cancellation of the procedure, which is signed by the responsible person of the Agency.

4.9.2 The deadline for making a Decision on selection or annulment of the procedure is legally determined and is identical to the deadline for submitting bids, depending on the estimated value and the type of public procurement procedure.

4.9.3 All candidates, that is, bidders, are notified by the public procurement commission of the decisions regarding the selection of the most favorable offer, the conclusion of the framework agreement or the cancellation of the public procurement procedure. The Public Procurement Commission submits the notification through ESPP within three days from the day of the adoption of the relevant decision. A copy of the relevant decision is attached to the notification.

#### **4.10 CONCLUSION OF AGREEMENT**

4.10.1 The person for public procurement prepares a contract for public procurement or a framework agreement, which will be concluded with the selected most favorable bidder. The contracting parties conclude the contract for public procurement or the framework agreement in written form within the term of validity of the most favorable offer, but not later than 30 days from the day of finality of the Selection Decision.

4.10.2 The contract for public procurement or the framework agreement is concluded in accordance with the conditions established in the tender documentation and the offer.

#### **4.11 NOTICE OF CONTRACTS**

4.11.1 The Agency obligatorily publishes a notice of a concluded contract on the ESPP within ten days after the conclusion of the contract. In addition to the notification of the concluded agreement, a copy of the concluded agreement or framework agreement is also published. Information that has the status of personal data in accordance with the regulations on the protection of personal data is not published.

4.11.2 The Agency must publish a notice of amendment of the contract during its validity and a copy of the amendment of the agreement within ten days from the day of amendment of the public procurement contract or the framework agreement.

4.11.3 The public procurement person publishes the notification of a concluded contract of ESPP and the publication of the notification of modification of the contract during its validity.

#### **4.12 COMPLETION OF THE PROCEDURE AND RECORD OF PUBLIC PROCUREMENT PROCEDURES**

4.12.1 The procedure for public procurement ends on the day of finality of the Decision on selection or on annulment of the procedure.

4.12.2 The person for public procurement keeps the following records of public procurement procedures:

-Electronic file in a separate record book in ESPP, in which all documents resulting from the appropriate procedure for public procurement are recorded, which is kept in ESPP for at least five years from the date of conclusion of the contract for public procurement or from the finality of the decision to cancel the procedure in a way that ensures the preservation of data

integrity and

-Paper file for the public procurement procedure, which is kept in accordance with the deadlines established in the regulations governing archival and office operations.

#### **4.13 EXECUTION AND REALIZATION OF THE AGREEMENT**

4.13.1 The implementation of the contract/framework agreement for public procurement is carried out in accordance with the provisions and conditions of the contract/framework agreement itself. The agency determines a person/persons from among the employees in charge of initiating the purchase, for quantitative and qualitative reception and monitoring of the execution and realization of the contract.

4.13.2 The designated person from among the employees performs quantitative and qualitative reception of the goods/things and signs the consignment note/record for them. If a deviation from the agreed quality, quantities and prices is found for a certain type of goods/things, it is necessary to note the same in the delivery note/record and not to receive them.

4.13.3 The designated person/s from among the employees controls and monitors the execution and realization of the concluded public procurement contract, in accordance with the conditions established in the tender documentation and the selected most favorable offer,

4.13.4 The monitoring of the realization of the contract/framework agreement is carried out both from the aspect of the value of the contract (price, quantities) and from the aspect of the time frame of the contract and for the same prepares an appropriate review, which is delivered to the responsible person at least once a quarter of the Agency and the Department for Financial Affairs, with a special designation of contracts that have two months until the end of their duration.

#### **4.14 LEGAL PROTECTION**

4.14.1 Any economic operator who has a legal interest in obtaining the public procurement contract or the framework agreement and who suffered or could suffer damage from a possible violation of the provisions of the Law on Public Procurement, may seek legal protection against the decisions, actions and failure to take action by the Agency in the public procurement procedure.

4.14.2 The Commission for Public Procurement, in cooperation with the Head of the Department for Legal and General Affairs, proceed with the appeal procedure and prepare the response to the appeal.

4.14.3 The agency is obliged immediately, and no later than within five days from the day of receipt of the appeal, to make available to the State Commission through the State Commission, the appeal with all attachments, data and proof of the date of receipt, as well as the response to the appeal with explanation of the facts and legal allegations, chronology of the procedure, offers and other evidence of the existence of assumed circumstances

4.14.4 The response to the appeal is approved by the responsible person of the Agency.

4.14.5 The Agency is obliged to act in accordance with the decision of the State Commission within 30 days from the day of receipt of the decision, applying the legal understanding and the remarks of the State Commission in the decision.

#### **4.15 EXEMPTION FROM PUBLIC PROCUREMENT LAW**

4.15.1 The provisions of the Law on Public Procurement do not apply if the total value of procurement below the value thresholds prescribed by the Law does not exceed 12,000 Euros in Denar equivalent in the current year.

4.15.2 Purchases that do not exceed 12,000 Euros in Denar equivalent value for the current year are entered by the public procurement person in a quarterly record that is publicly available at ESPP.

## **5. DOCUMENTATION**

### 5.1 Reference Documents

- Annual plan for public procurement
- Decision on public procurement
- Tender documentation
- Minutes from the opening of bids
- Report of the conducted procedure
- Decision on selection/cancellation of procedure

5.2 The documentation resulting from the implementation of the procedure for the method and procedure of planning, implementation and implementation of the Agency's contracts is in accordance with the Law on Public Procurement and other by-laws.

## **6. TRANSITIONAL AND FINAL PROVISIONS**

6.1 This procedure enters into force on the day of its adoption.

6.2 With the entry into force of this Procedure, the Procurement Procedure number 03-663/1 of 12.01.2016 ceases to be valid.

**Director,  
Plamenka Bojcheva**