

GENERAL GUIDE ON THE PUBLIC PROCUREMENT LEGISLATIVE ENVIRONMENT IN BULGARIA



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GLOSSARY

No.	Abbreviation	Meaning
1.	PPA	Public Procurement Act
2.	IRPPA	Implementation Regulations to the Public Procurement act
3.	EDESA	Electronic Document and Electronic Signature Act
4.	EIA	Electronic Identification Act
5.	EGA	Electronic Government Act
6.	BGN	Bulgarian notes
7.	VAT	Value Added Tax
8.	CPV	Common Procurement Vocabulary
9.	SP to the PPA	Supplementary provisions to the Public Procurement Act
10.	OJ of the EU OJEU	Official Journal of the European Union
11.	APC	Administrative Procedure Code
12.	PPR	Public Procurement Register
13.	DPS	Dynamic purchasing system
14.	TFP to the PPA	Transitional and final provisions to the Public Procurement Act
15.	ESPD	European Single Procurement Document
16.	CPB	Central Purchasing Body
17.	SCPPP	Single Centralized Electronic Platform for the Award of Public Procurement Contracts
18.	CMO	Council of Ministers Ordinance
19.	AO	National Audit Office
20.	PFIA	Public Financial Inspection Agency

21.	CPC	Commission for Protection of Competition
22.	SAC	Supreme Administrative Court
23.	AAESIF	Act on the Administration of European Structural and Investment Funds

I. ACKNOWLEDGEMENTS

Following assessments performed in 2014/15, the European Commission (EC) identified in Bulgaria a competency gap which meant that the country was not meeting the public procurement ex-ante conditionality for capacity to benefit from the European Structural and Investment Funds (ESIF), according to Directive 2014/24EU on public procurement. As a result, the EC approached the OECD in order to design and implement, together with Bulgaria, a project to help the development of administrative capacity, training and dissemination of information, ensuring the effective application of public procurement rules through appropriate mechanisms. The Project was setup in the light of the Bulgarian Ex-ante Conditionality Action Plan and targets the three following groups of institutions:

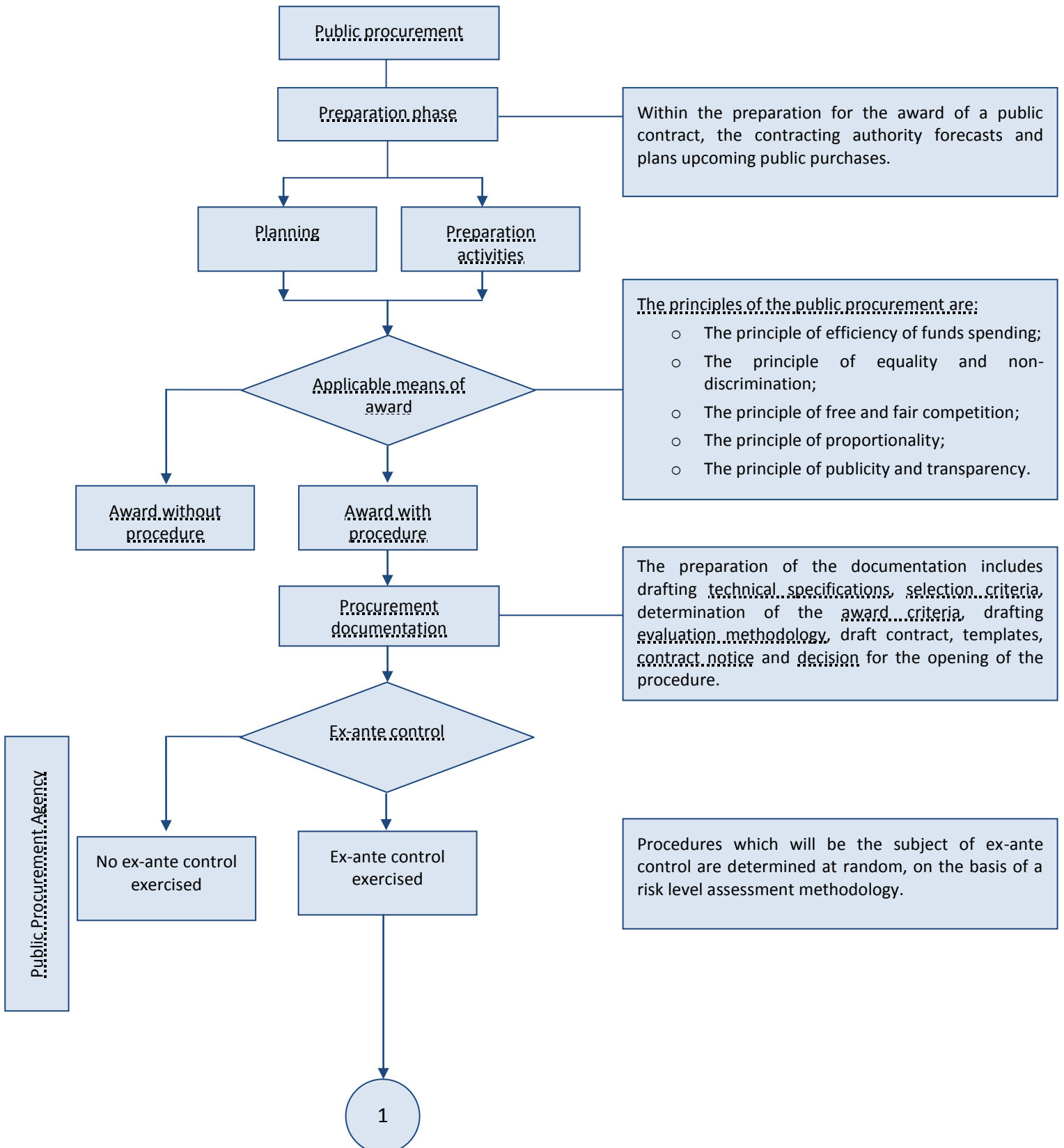
- Managing Authorities, the Certifying Authority and Audit Authority of ESIF, and in particular staff members responsible for the first- and second-level control checks on public procurement expenditure;
- The Public Procurement Agency (PPA);
- Municipalities and other bodies applying public procurement as ESIF beneficiaries.

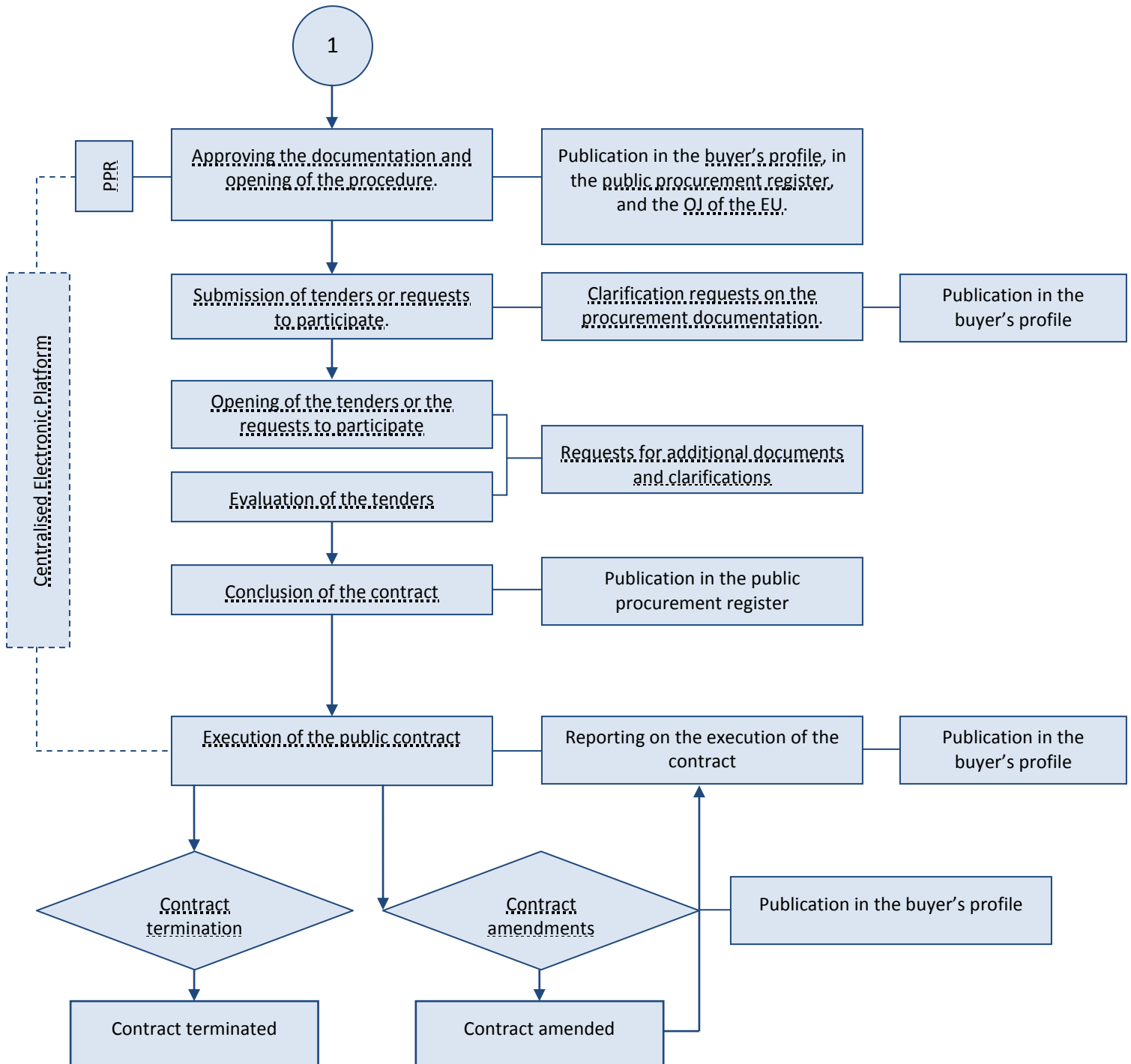
As a way to ensure the impact of the Project and achieve the maximum possible outreach, it was decided to create a General Guide for the practical usage of the new Public Procurement Legislation, adopted in April 2016 as a transposition of the EU Directive. The General Guide on the Public Procurement Legislative Environment in Bulgaria (the Guide) is an informative document which tackles the fundamentals of public procurement by providing references to the applicable rule of law as well as containing interpretations on specific practical and legal aspects. As one of the key deliverables of this Project, the General Guide on the Public Procurement Legislative Environment in Bulgaria targets **public procurement officers with various professional backgrounds from the public and the private sector**. It will **facilitate** training of public procurement officials and increase **professionalization**. It is **an easy-to-use reference manual** for public purchasing carried out by **classic contracting authorities**.

The preparation of this General Guide was conducted under the authority of Rolf Alter, the Director of the Directorate for Public Governance and Territorial Development of the OECD and János Bertok, Head of the Division for Public Sector Integrity in the same directorate.

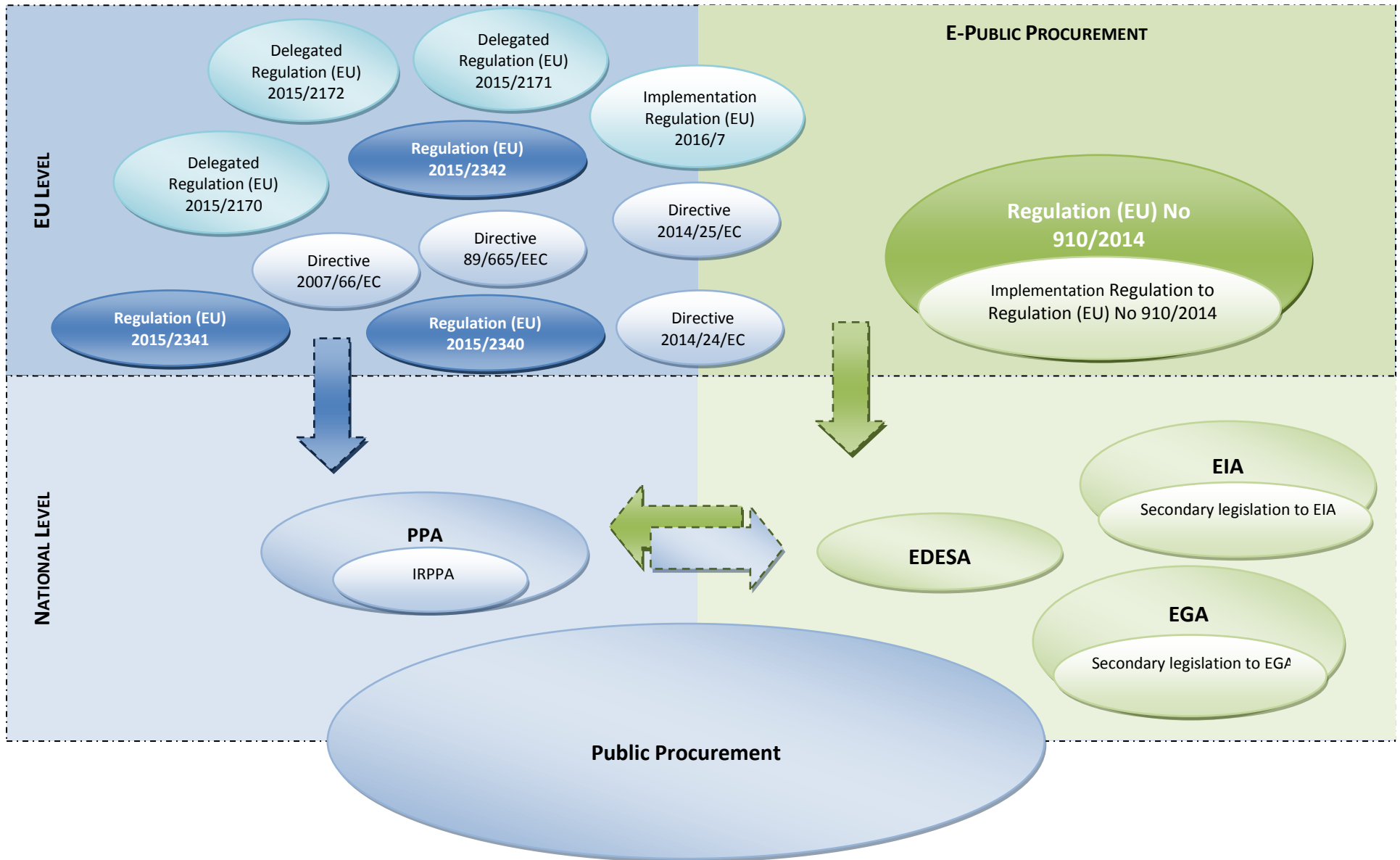
It was developed and written by Boyan Ivanov and Radina Tomanova on behalf of *Dimitrov, Petrov & Co* under the direction of Paulo Magina, Head of the Public Procurement Unit at the Division for Public Sector Integrity and Petur Berg Matthiasson, Policy Research and Advice within the Public Procurement Unit, with contribution from Kenza Khachani, Policy Research and Advice in the same Unit and Zdravka Pekova, Local Coordinator for the OECD in Bulgaria for this project.

II. MAP OF THE GUIDE



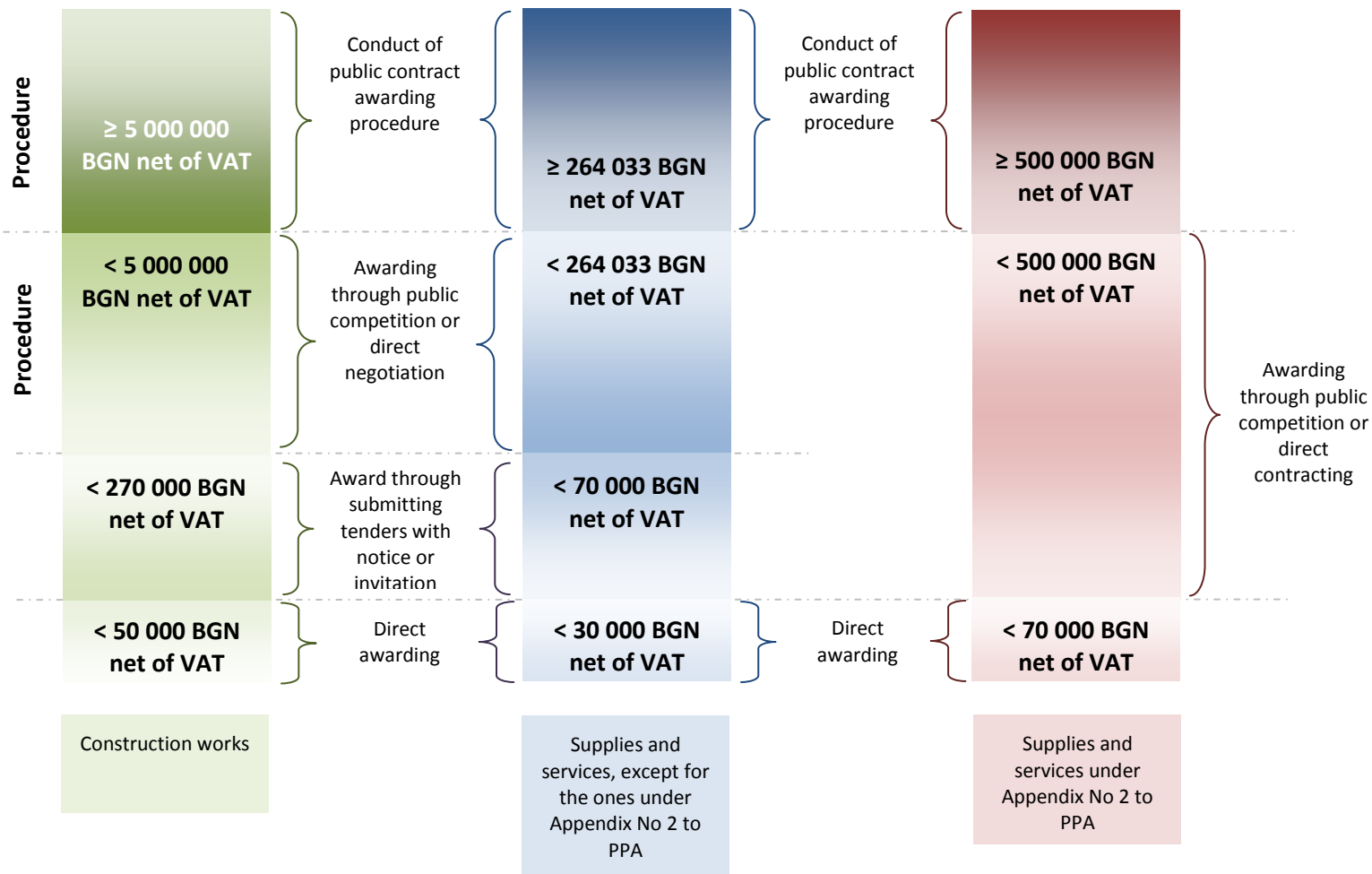


III. LEGAL FRAMEWORK



Fact Sheet No 1 – DEFINITIONS

Figure 1 - Thresholds for Public Work Contracts, Public Supply Contracts and Public Service Contracts under Appendix No 2 to PPA and Supplies and Services outside the Scope of Appendix No 2 to PPA



No	Question	Answer	Legal Reference
1.	What is public procurement?	A public procurement is the acquisition by means of a public contract of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities. The implementation of a public contract is directly related to the implementation of a public goal or satisfaction of the needs of the contracting authority.	Art. 1, Para. 2 PPA

No	Question	Answer	Legal Reference
2.	What are the public procurement objects?	There are three main categories of public procurement contracts depending on their object – works contracts, supply contracts or services contracts.	Art. 3, Para. 1 PPA
3.	What is a public works contract?	A public works contract refers to public contracts having as their object the execution, or both the design and execution, of works; or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work.	Art. 3, Para. 1, item 1 and Para. 2 PPA
4.	What is a public supply contract?	A public supply contract refers to the purchase, lease, rental or hire-purchase, with or without an option to buy, of products. A public supply contract may include, as an incidental matter, siting and installation operations.	Art. 3, Para. 1, item. 2 PPA
5.	What is a public service contract?	Within this type of public contracts, an economic operator provides a predefined service or set of services to a contracting authority.	Art. 3, Para. 1, item. 3 PPA
6.	What is mixed procurement?	A public procurement is considered mixed procurement where the subject-matter includes more than one object. (works, supply or services).	Art. 11 PPA
7.	What is a Common Procurement Vocabulary (CPV)?	This is a hierarchically structured nomenclature for the classification, divided into sections, groups, classes categories and sub-categories which is applicable to public procurement in order to unify (standardise) various references used by contracting authorities for describing the subject-matter of the awarded contracts The CPV has been established by Regulation (EC) No 2195/2002 of the European Parliament and of the Council and is reproduced in Appendices No. 1 – 3 and Appendices 14 and 15 of the PPA.	Art. 4 PPA §2, item. 30 of the SP to the PPA
8.	What is a reserved contract?	These are the cases where: <ul style="list-style-type: none"> ○ The supply of certain goods or the provision of services is predominantly procured to sheltered workshops or to economic operators whose main goal is the social and professional integration or reintegration of disabled and disadvantaged persons; ○ The public contract is performed within the 	Art. 12 PPA

No	Question	Answer	Legal Reference
		framework of sheltered employment programmes	
9.	What is a public contract?	Public contracts are contracts for pecuniary interest concluded following the rules of the PPA, in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services.	§2, item 4 of the SP to the PPA
10.	What is a subcontract?	A subcontract is a contract for pecuniary interest concluded in writing between the main contractor and one or more persons, having in its subject-matter the implementation of one or more activities of the awarded public contract.	§2, item 5 of the SP to the PPA
11.	What is a contracting authority?	A contracting authority is a person or a body of state that is entitled with the correct forecast, planning, award, implementation and reporting the results of public procurement contracts.	Art. 5, Para. 1 PPA
12.	What are the types of contracting authorities?	The PPA defines two main types of contracting authorities: public contracting authorities and utility contracting entities. On their turn contracting authorities and contracting entities may be further differentiated based on whether they are engaged in defence and security procurement.	Art. 5 PPA Art. 123 – 129 PPA
13.	Who are the utility contracting entities?	Utility contracting entities are: <ol style="list-style-type: none"> 1. The representatives of public undertakings as well as the associations formed by such public undertakings, whenever they are pursuing one or more utility activities; 2. The representatives of traders or other persons, that are not public undertakings, whenever they are pursuing one or more utility activities based on special or exclusive rights; 3. The representatives of central purchasing bodies established to satisfy the needs of utility contracting entities. <p>Utility activities are activities related to natural gas and heat; electricity; water; transport services; postal services</p>	Art. 5, Para. 4 PPA; Art. 123 PPA

No	Question	Answer	Legal Reference
		and the exploitation of a geographic area (provision of airports and maritime or inland ports or other terminal facilities to carriers by air, sea or inland waterway; extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels).	
14.	Who are the public contracting authorities?	<p>The (public) contracting authorities are:</p> <ul style="list-style-type: none"> ○ The persons in charge of administrative structures of the executive power on central (prime minister; ministers; the governor of the Bulgarian National Bank; the chairpersons of state commissions; the chairpersons of state agencies; the executive directors of executive agencies) level including their, territorial divisions and territorial level (district governors; municipal mayors; district municipality mayors; etc.); the persons in charge of other bodies of state established by the force of law or by an ordinance of the Council of Minister; individual structures within bodies of the executive power that are legal persons and are budget spending units, etc.; ○ The President of the Republic of Bulgaria; ○ The Chairperson of the National Assembly; ○ The Ombudsman of the Republic of Bulgaria; ○ The Chairperson of the Constitutional Court of the Republic of Bulgaria; ○ The persons in charge of the administration of judicial bodies that are managing separate budgets as well as the persons in charge of the prosecution offices; ○ The representatives of bodies governed by public law; ○ The representatives of healthcare institutions - commercial companies, owned by the state or by municipalities, with more than 50 per cent of their revenue originating from the state and/or municipal budget, as well as the budget of the National health insurance fund; ○ The persons in charge of central purchasing bodies, established to satisfy the needs of contracting authorities; ○ Associations of contracting authorities. 	Art. 5, Para. 2 PPA

No	Question	Answer	Legal Reference
15.	What is a body governed by public law?	<p>A body governed by public law is a legal person that: is established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character; is financed for a part of more than 50 per cent by state, territorial, or local bodies of power, or other bodies governed by public law; or is a subject to management supervision by those authorities or bodies; or has an administrative, managerial or supervisory board, more than half of whose members are appointed by the state, regional or local authorities, or by other bodies governed by public law.</p> <p>A healthcare institution – commercial company with 2/3 of its capital owned by private sector owners, financed for a part of more than 50 per cent by state, by territorial, or by local bodies of power, or by other bodies governed by public law; or is a subject to management supervision by those authorities or bodies; or has an administrative, managerial or supervisory board, more than half of whose members are appointed by the state, regional or local authorities, or by other bodies governed by public law; and which has an industrial or commercial character regardless of meeting needs in the general interest, is not considered a body governed by public law.</p>	§2, item 43 of the SP to the PPA
16.	What is a public procurement procedure?	A public procurement procedure is the process, explicitly defined in the law, which contracting authorities can or are obliged to apply for the purpose public contract award, whenever the legally required prerequisites are present.	-
17.	What is a main contractor?	A main contractor is a tenderer in a public procurement procedure whose tender has been ranked first and who has been selected for the implementation of the contract with a decision of the contracting authority that has entered into force, who has submitted the documents required for the conclusion and has concluded the public contract.	-
18.	What is a subcontractor ?	A subcontractor is a person who has agreed to implement a certain share of the subject-matter of the public contract.	§2, item 34 of the SP to the PPA

No	Question	Answer	Legal Reference
19.	What is a tenderer?	A tenderer is an economic operator who has submitted a tender.	-
20.	What is an interested tenderer?	An interested tenderer is a tenderer who has not been disqualified from participation in public procurement procedure by force of a decision of the contracting authority. A tenderer who has qualified but has not been awarded the public contract is also considered an interested tenderer.	§2, item 13 of the SP to the PPA
21.	What is a candidate?	A candidate is an economic operator that has sought an invitation or has been invited to take part in a restricted procedure, in a competitive procedure with negotiation, in a negotiated procedure without prior publication, in a competitive dialogue or in an innovation partnership.	-
22.	What is an interested candidate?	An interested candidate is a candidate who has not been permanently disqualified from participation following the selection phase of a public procurement procedure, because said candidate has not been informed for the disqualification or the proceedings for the appeal of the decision with which the candidate has been disqualified have not been completed.	§2, item 12 of the SP to the PPA
23.	What is an interested person?	An interested person is any person who is or has been interested in the award of a specific public contract and who has been or may be injured by an alleged irregularity.	§2, item 14 of the SP to the PPA
24.	What is public procurement documentation?	A public procurement documentation is a set of documents that have been prepared by the contracting authority in relation to a specific public procurement, which contains the conditions for participation in the procedure, the guidelines for tender preparation, the mandatory content of the tender, the evaluation methodology, the conditions for the award of the contract, as well as the documents' templates which each tenderer or candidate must submit. The documentation may contain additional documents which the contracting authority has supplied or is referring to for the purpose of determining the characteristics of the public contract as well as the conditions for conducting the procedure or which are required for the preparation of the requests to	Art. 31 PPA

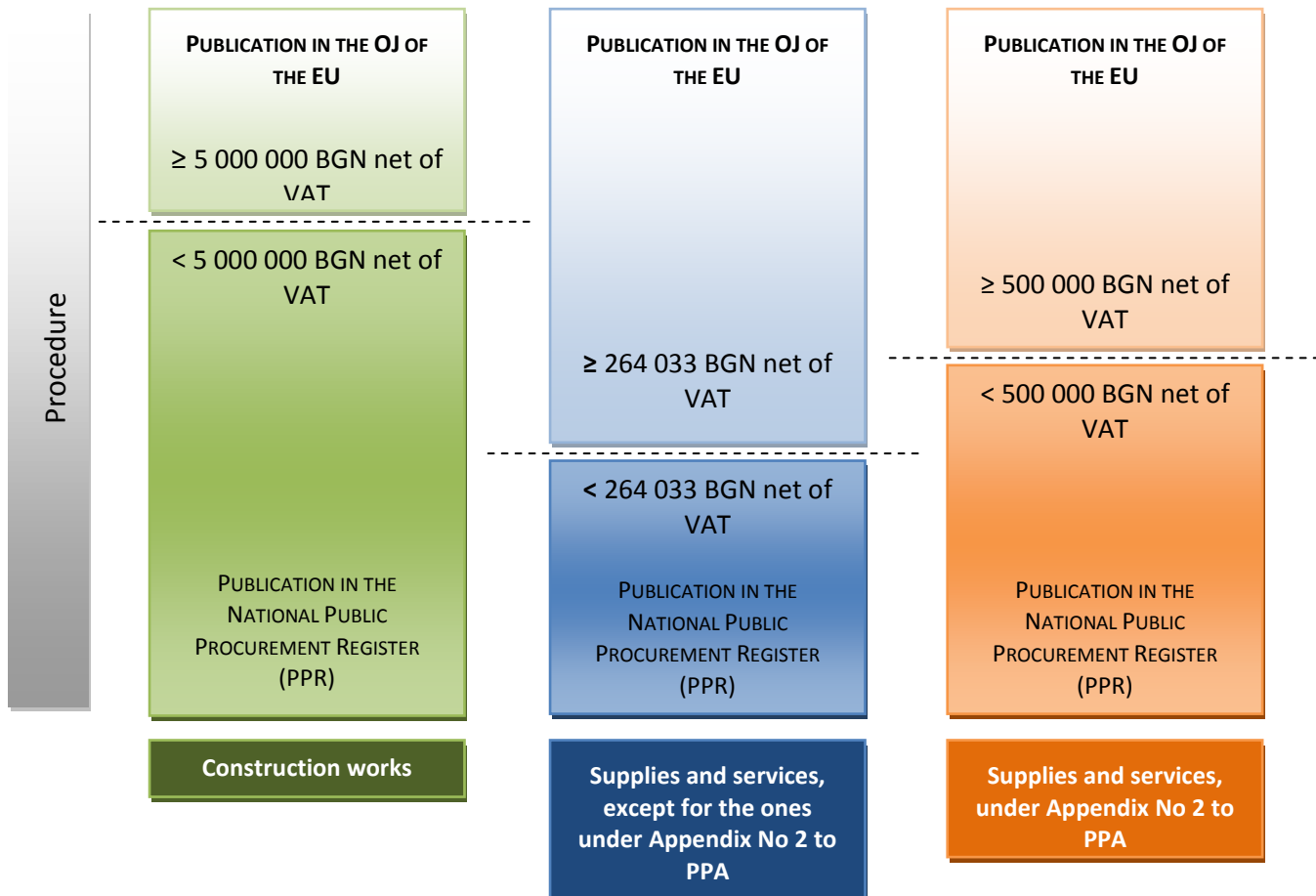
No	Question	Answer	Legal Reference
		participate, the tenders or the designs.	
25.	What is a contract notice?	With the <u>contract notice</u> the contracting authority announces the opening of a public contract award procedure, in all cases stipulated by the force of law.	Art. 24 PPA
26.	What is a prior information notice?	With the prior information notice the contracting authority announces the public contracts or framework agreements, which it intends to award throughout the next 12 months.	Art. 23, Para. 1, item 1 PPA
27.	What is a periodic indicative notice?	With a periodic indicative notice, a utilities contracting entity publishes its intend to award public contracts or to enter into framework agreements within the following 12 months.	Art. 23, Para. 1, item 2 PPA
28.	What is a contract award notice?	With the <u>contract award notice</u> contracting authorities announce the award and conclusion of a public contract.	Art. 26 PPA
29.	What are the threshold amounts?	The threshold amounts are a tool which is used to determine whether a public procurement procedure is required for the award of a public contract. In case the indicative value of the public procurement is higher or equal to the respective threshold amount, a public procurement procedure must be conducted. The threshold amounts are also used in order to determine whether advertising (publication of a contract notice) in the Official Journal of the EU is required.	Art. 20 PPA
30.	What are the values under the threshold amounts?	The amounts of the thresholds depend on <u>the object of the public procurement</u> , the type of the procedure and the type of the contracting authority.	Art. 20 PPA
31.	What is an indicative value of the public procurement?	<u>The indicative (estimated) value of the public procurement</u> is the cost of the public contract, determined by the contracting authority.	-
32.	How is the indicative value calculated?	The contracting authority determines the indicative value by including all payments (net of VAT) towards the future contractor, including envisaged options and contract renewals, as explicitly set out in the procurement	-

No	Question	Answer	Legal Reference
		documents, as well as all rewards or payments to candidates or tenderers in case the contracting authority has envisaged such rewards and payments.	
33.	What are lots?	<p>A lot is such a part of the public procurement which, despite the fact that it may be awarded under an individual contract, is systematically linked to the rest of the lots, forming the subject matter of the public procurement contract.</p> <p>At the contracting authority's discretion, a public procurement may be divided into lots which are defined by subject-matter and volume as well as – where applicable – by stipulating their indicative values.</p> <p>There are cases where the division into lots is mandatory.</p>	§2, item 29 of the SP to the PPA Art. 46 PPA
34.	What are objectively inseparable parts?	These are parts of the subject-matter of the public contract which due to their nature may not be awarded to more than one contractor.	§2, item 28 of the SP to the PPA
35.	What is a framework agreement?	A <u>framework agreement</u> is an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.	Art. 81, Para. 2 PPA
36.	What is an inappropriate tender?	An inappropriate tender is a tender which does not comply with the technical specifications and the requirements for the implementation of the public contract, or has been submitted by tenderer who does not comply with the selection criteria, or for whom any of the grounds for disqualification is present.	§2, item 25 of the SP to the PPA
37.	What is an inappropriate request to participate?	An inappropriate request to participate is a request to participate which has been submitted by a candidate who does not comply with the selection criteria, or for whom any of the grounds for disqualification is present.	§2, item 26 of the SP to the PPA
38.	What are selection criteria?	<u>Selection... criteria</u> are legally predefined conditions, necessary for determining the ability of tenderers or candidates to implement the public contract. They relate to:	Art. 59 – Art. 63 PPA

No	Question	Answer	Legal Reference
		<ul style="list-style-type: none"> ○ The suitability to pursue the professional activity; ○ The economic and financial standing; ○ The technical and professional ability. 	
39.	What are award criteria?	<p><u>Award criteria</u> are predefined by the contracting authority indicators, based on which the most economically advantageous tender is selected. There are three types of award criteria:</p> <ul style="list-style-type: none"> ○ Lowest cost; ○ Level of expenditure by taking into account the cost-effectiveness, including life-cycle costing; ○ The optimal price-to-quality ratio. 	Art. 70 PPA
40.	What is a most economically advantageous tender?	The <u>most economically advantageous tender</u> is the tender which provides the highest degree of compliance with the selected award criteria.	Art. 70 PPA
41.	What does quality-to-price ratio mean?	The optimal quality-to-price ratio is one of the award criteria based on which tenders are evaluated. The evaluation is done on the basis of the price or the level of expenditure as well as on the basis of indicators which include qualitative, environmental, and/or social aspects, related to the subject-matter of the public procurement.	Art. 70, Para. 2, item 3 PPA
42.	What are modifications to a public contract?	<u>Modification to a public contract</u> is a bilaterally agreed amendment of the original terms and conditions of the public contract. Modifications to a public contract are allowed as an exception and in the cases explicitly provided for in the law.	Art. 116 PPA
43.	What is a termination of a public contract or a framework agreement?	<p><u>The termination of a public contract or a framework agreement</u> is the extinguishing of rights and obligations of the contracting authority and the contractor, by the force of law or under the provisions of the contract or the framework agreement, or:</p> <ul style="list-style-type: none"> ○ When a substantial alteration of the public procurement which cannot be achieved through a modification of the contract is necessary; ○ Whenever it is established that the circumstances that should have led to the disqualification of the 	Art. 118 PPA

No	Question	Answer	Legal Reference
		<p>selected contractor have been present during the award of contract procedure;</p> <ul style="list-style-type: none"> ○ Whenever it is determined that the procurement contract should not have been awarded to the selected contractor, due to irregularities established by the EU Court of Justice. 	
44.	What is a performance guarantee?	<p>Contracting authorities may require from the selected contractor to present them with guarantees securing the performance of the contract or remunerations paid in advance. The maximum amount of the performance guarantee equals to 5 percent of the value of the public contract. Where an advance payment is secure, the guarantee equals the amount of the respective payment.</p> <p>Guarantees may be presented in the form of:</p> <ul style="list-style-type: none"> ○ A deposited sum; ○ A bank guarantee; ○ An insurance which covers the liabilities of the contractor. <p>The form of the guarantee is determined by the contractor.</p>	Art. 111 PPA
45.	What is a buyer's profile?	<p>The buyer's profile represents a separate part of a contracting authority's website or a separate part of another website, which is publicly accessible.</p> <p>In the buyer's profile the contracting authorities shall publish in the form of e-documents all information, related to public contracts awarded by them and to the performance of the public contracts.</p>	Art. 42, Para 1 and 2 PPA
46.	What is a Public Procurement Register?	<p>The Public Procurement Register is a centralised web-based information system, that publishes: contracting authorities' decisions; contract notices for opening of public procurement procedures, notices for announcing the opening, modification or awarding of public contracts; notices for completion of awarded public contracts.</p> <p>The Register is maintained by the Public Procurement Agency.</p> <p>Contracting authorities may create their own buyer's profile in the Public Procurement Register.</p>	Art. 36 and Art. 229, Para 1, item 11 PPA

Figure 2 - Thresholds for publication of information in the Official Journal of the European Union



Fact Sheet No 2 – PUBLIC PROCUREMENT PRINCIPLES

No	Question	Answer	Legal Reference
1.	Which are the principles of the public procurement?	<p>The principles of the public procurement are:</p> <ul style="list-style-type: none"> ○ The principle of efficiency of funds spending; ○ The principle of equality and non-discrimination; ○ The principle of free and fair competition; ○ The principle of proportionality; ○ The principle of publicity and transparency; <p>The contracting authorities are granted the exclusive right to decide on their own on their needs and necessities as well as on the way in which they are best met by taking into account the principles laid down in the PPA.</p>	Art. 1 and Art. 2, Para 1 PPA
2.	What is the principle of efficiency?	<p>The principle of efficiency is based upon achieving maximum results at a minimum loss of financial, economic and time resources. Conducting a procurement procedure with clearly predetermined criteria for selection of a contractor is a prerequisite for giving a full effect to this principle.</p> <p>It is assumed that where there are two or more lawful options, the contracting authority is obliged to choose the one that is most economical and most favourable to the state and society.</p>	Art. 1 and Art. 2, Para 1 PPA
3.	What is the principle of equality and non-admittance of discrimination?	<p>The principle of equality and non-discrimination consists in providing the possibility for all interested persons to participate in the public procurement procedure; setting criteria and requirements which do not lead to an unjustified restriction of the possibility of selecting a particular person as a contractor; as well as applying these criteria and requirements equally to all entities who have participated in the public procurement procedure.</p>	Art. 2, Para 1 PPA
4.	What is the principle of free and fair competition?	<p>The principle of free and fair competition implies providing an opportunity for all legal entities to participate in the procedures and the competition between them to be based on uniform and objective market criteria.</p>	Art. 2, Para 1 PPA
5.	What is the principle of proportionality?	<p>The principle of proportionality means setting such criteria and requirements for participation in the procedure for selecting a contractor and performance of the contract which are proportional to the scope, scale and complexity</p>	Art. 2, Para 1 PPA

No	Question	Answer	Legal Reference
		of the public procurement contract.	
6.	What is the principle of publicity and transparency?	<p>The principle of publicity and transparency consists in providing information about any action relating to the award of a public contract, providing for the opportunity of carrying out control over the process of decision taking by the contracting authority thus guaranteeing the rule of law. Compliance with that principle ensures transparency, reliability and completeness of the information in the course of the administrative procedure. Realising this principle is ensured by the law requirements relating to the publication of the information and the documents in the buyer's profile of the contracting authority, in the Public Procurement Register and in the Official Journal of the European Union.</p> <p>This principle is not applied without restrictions though – e.g. the PPA provides for the possibility a contracting authority to place restrictions regarding the access to information where it is necessary for the purposes of protection of the confidential nature of information or where classified information is concerned within the meaning of the Protection of Classified Information Act.</p> <p>On the other hand, the candidates and tenderers may provide in their request to participate and tenders information which they consider confidential in relation to the existence of a trade secret. In these cases, the information shall not be disclosed by the contracting authority. Tenders, however, cannot rely on confidentiality in respect to the proposals in their tenders which are subject to evaluation.</p>	Art. 2, Para 1 PPA
7.	Are there any other principles which are applied in respect to public procurement?	<p>Yes, there are, since the award of public procurement contracts is by its very nature an administrative procedure, other fundamental principles underlying the administrative process can be applied hereinto, as long as their subsidiary application would be contrary to the objectives or the specific provisions of the PPA. Such principles are the following:</p> <ul style="list-style-type: none"> ○ The principle of legality; ○ The principle of applying the legislative act of higher rank; 	Art. 4, Art. 5, Art. 7, Art. 11, Art. 13 APC

No	Question	Answer	Legal Reference
		<ul style="list-style-type: none">○ The principle of truthfulness;○ The principle of promptness and procedural economy;○ The principle of sequence and foreseeability.	

Fact Sheet No 3 – TYPES OF PUBLIC PROCUREMENT PROCEDURES

Figure 3 - Correlation between Types of Contracting Authorities and Types of Procedures

No	Types of Public Procurement Procedures	Classic Contracting Authorities	Utilities Contracting Entities	Contracting Authorities in the Fields of Defence and Security
1.	Open procedure	✓	✓	
2.	Restricted procedure	✓	✓	✓
3.	Competitive procedure with negotiation	✓		
4.	Negotiated procedure with prior publication of a call for competition		✓	
5.	Negotiated procedure with prior publication of a contract notice			✓
6.	Competitive dialogue	✓	✓	✓
7.	Innovation partnership	✓	✓	
8.	Negotiated procedure without prior publication of a contract notice	✓		
9.	Negotiated procedure without prior call for competition		✓	
10.	Negotiated procedure without publication of a contract notice			✓
11.	Design contest	✓	✓	
12.	Public competition	✓	✓	
13.	Direct contracting	✓	✓	

No	Question	Answer	Legal Reference
1.	How are public contracts awarded?	Depending on the <u>indicative price</u> , determined by the contracting authority, public contracts are awarded: <ul style="list-style-type: none"> ○ Following a procedure for the award of a public contract; or ○ Through gathering proposals with an advertisement or an invitation to certain persons; or ○ Directly, without the application of a procedure or any other manner defined in the law; 	Art. 20 PPA
2.	What is a public procurement procedure?	The public procurement procedure represents a set of strictly formalised rules, established by the law, which regulate the contracting authorities' competences, the evaluation commission's competences, the rights and obligations of the tenderers and the candidates, related to the award of public contracts. <u>The contracting authorities' decisions</u> , issued within a public procurement procedure, are subject to appeal.	-
3.	How many types of public procurement procedures exist?	The PPA defines 13 <u>types of procedures</u> for the award of public contracts.	Art. 18 PPA
4.	Which public procurement procedures are applied by contracting authorities?	<u>Contracting authorities</u> apply the following procedures: open procedure; restricted procedure; competitive procedure with negotiation; competitive dialogue; innovation partnership; negotiated procedure without prior publication; design contest; public competition; direct negotiation.	Art. 19, Para. 1 PPA
5.	What is an open procedure?	This is a procedure under which all interested persons may submit a tender.	Art. 18, Para. 2 PPA Art. 74 PPA
6.	What is a restricted procedure?	A restricted procedure is a procedure where tenders may be submitted only by candidates who have been invited to do so by the contracting	Art. 18, Para. 3 PPA

No	Question	Answer	Legal Reference
		authority, following the completion of a selection stage. Any interested person may submit a request to participate in the selection stage.	Art. 75 PPA
7.	What is a competitive procedure with negotiation?	This is a procedure where the contracting authority conducts negotiations with the candidates that have received an invitation following the completion of a selection stage. Any interested person may submit a request to participate in the selection stage. The negotiations are conducted on the basis of indicative (preliminary) tenders submitted by invited participants.	Art. 18, Para. 4 PPA Art. 76 PPA
8.	What is a competitive dialogue?	Competitive dialogue is a procedure where the contracting authority engages in dialogue with candidates, who have been admitted following the completion of a selection stage. The purpose of the dialogue is to determine one or more of the proposed solutions, which are in compliance with the requirements of the contracting authority, after which the respective candidates are invited to submit their final tenders.	Art. 18, Para. 5 PPA Art. 77 PPA
9.	What is an innovation partnership?	In the innovation partnership the contracting authority conducts preliminary negotiations with candidates, admitted following the completion of a selection stage, for the purpose of establishing a partnership with one or more partners that will be tasked with the implementation of a certain type of research and development activity. The specifics here are related to the fact that the contracting authority is required to justify the necessity for the receipt of an innovative product, service or works as well as the inability to acquire it through available market solutions.	Art. 18, Para. 6 PPA Art. 78 PPA
10.	What is a negotiated procedure without prior publication?	This is a procedure in which the contracting authority conducts negotiations with one or more preselected persons in order to determine the terms and conditions of the public contract. This procedure is applied only in the cases exhaustively listed in the law.	Art. 18, Para. 7 PPA Art. 79 PPA

No	Question	Answer	Legal Reference
11.	What is a design contest?	A design contest is a procedure under which the contracting authority acquires a civil works, architectural, engineering or data processing related design. The design is selected by an independent jury and following a contest with or without rewards. The design contest may be open or restricted with each contestant allowed to present only one design.	Art. 18, Para. 8 PPA Art. 80 PPA Art. 82-95 IRPPA
12.	What is a public competition?	This is a procedure where all interested parties may submit a tender. It is conducted only in case the indicative value of the public contract is under the thresholds defined in the law.	Art. 18, Para. 2 PPA Art. 178- 181 PPA
13.	What is a direct negotiation?	This is a procedure where the contracting authority conducts negotiations with one or more preselected persons for the purpose of determining the terms and conditions of the public contract. It is conducted only in case the indicative value of the public contract is under the thresholds and only if specific circumstances exhaustively listed in the law are present.	Art. 18, Para. 7 PPA Art. 182 PPA
14.	When may a contracting authority conclude a procurement contract directly?	Contracting authorities may award public contracts directly (without applying a specific procedure) whenever the public contract has an indicative value under: BGN 50 000 (net of VAT) for works contracts; BGN 70 000 (net of VAT) – for service under Appendix No. 2 to the PPA; and under BGN 30 000 (net of VAT) for services and supplies contracts.	Art. 20, Para. 4 PPA
15.	Are there additional criteria which may allow distinguishing between different types of public procurement procedures?	Different types of procedures can be further divided into a number of groups, depending on their commonalities and distinguishing features. For example: <ul style="list-style-type: none"> ○ A division into <i>primary</i> and <i>secondary (derivative)</i> procedures can be made; <p>Primary are the procedures which can be applied by contracting authorities without limitations.</p> <p>Secondary are the procedures which contracting</p>	-

No	Question	Answer	Legal Reference
		<p>authorities may apply only if certain legally defined preconditions are at hand. These preconditions may be related to an unsuccessful previous procedure; to the specifics of an already awarded contract which has been executed or is under execution, as well as – related to specifics of the subject-matter of the public contract to be awarded.</p> <ul style="list-style-type: none"> ○ Procedures which consist of one stage (single-staged) or more than one stages (two-staged). <p>Single-staged are procedures where the evaluation process begins with a decision for the opening of a procedure and ends with an award decision.</p> <p>The difference between one- and two-staged procedures is that in two-staged procedures the selection stage ends with a specific decision of the contracting authority.</p>	
16.	What is a tender?	<p>A tender is a set of documents which tenderers in award procedures have to complete and submit within a term defined by the contracting authority.</p> <p>The tender, depending on the type of the procedure, includes as a minimum technical proposal and price proposal.</p>	Art. 39 IRPPA
17.	When is a tender submitted?	<p>A tender is submitted in one-staged procedures and in the second stage of two-staged procedures:</p> <ul style="list-style-type: none"> ○ Open procedure; ○ Restricted procedure – following an invitation of the contracting authority after the completion of the selection stage; ○ Competitive procedure with negotiation – following an invitation of the contracting authority after the completion of the negotiations; ○ Competitive dialogue - following an invitation of the contracting authority after the completion of the dialogue; ○ Innovation partnership - following an invitation of the contracting authority after the 	<p>Art. 74, Para. 1, Art. 75, Para. 3, Art. 76, Para. 4, Art. 77, Para. 10, Art. 78, Para. 6, Art. 178, Para. 2 PPA</p> <p>Art. 64</p>

No	Question	Answer	Legal Reference
		<p>completion of the selection stage;</p> <ul style="list-style-type: none"> ○ Negotiated procedure without prior publication - following an invitation of the contracting authority for participation in the negotiations; ○ Public competition; ○ Direct negotiation - following an invitation of the contracting authority for participation in the negotiations. 	IRPPA
18.	Who submits a tender?	<p>A tender is submitted by the tenderers – participants in the procedure. Depending on the type of procedure a tender may be submitted by any economic operator (open procedure) or only by selected candidates, following the completion of the selection stage (restricted procedure, competitive dialogue, innovation partnership and competitive procedure with negotiation).</p> <p>In the above context an ‘economic operator’ is any natural or legal person or public entity or group of such persons and/or entities, including any temporary association of undertakings, which offers the execution of works and/or a work, the supply of products or the provision of services on the market.</p>	<p>Art. 101, Para. 1 PPA</p> <p>§2, item 50 SP to the PPA</p>
19.	What is a request to participate?	<p>A request to participate is a set of documents which tenderers in award procedures have to complete and submit within a term defined by the contracting authority.</p> <p>The request includes the European Single Procurement Document (ESPD) and where applicable – documents for proving compliance with measures set out by the contracting authority, for ensuring reliability.</p>	Art. 39 IRPPA
20.	What is an European Single Procurement Document	<p>The <u>ESPD</u> is a self-declaration serving as preliminary evidence in replacement of certificates issued by public authorities or third parties confirming that the relevant economic operator (tenderer or candidate):</p>	Art. 67 PPA

No	Question	Answer	Legal Reference
		<ul style="list-style-type: none"> ○ Fulfils the conditions related to the non-existence of any of the grounds for exclusion, specified by the contracting authority and the law; and ○ Complies with the requirements of the contracting authority related to: <ul style="list-style-type: none"> ▪ its suitability to pursue the professional activity; ▪ to its economic and financial standing; ▪ to its technical and professional ability; ○ Fulfils the objective rules and criteria that have been set out in relation to a reduction of numbers of candidates, tenders and solutions in restricted procedures, competitive procedures with negotiation, competitive dialogue procedures and innovation partnerships; 	
21.	When is a request to participate submitted?	<p>A request to participate is submitted in the first stage (selection stage) of two-staged procedures:</p> <ul style="list-style-type: none"> ○ Restricted procedure; ○ Competitive procedure with negotiation; ○ Competitive dialogue; ○ Innovation partnership. 	Art. 75, Para. 1, Art. 76, Para. 1, Art. 77, Para. 1, Art. 78, Para. 1 PPA
22.	Who submits a request to participate?	<p>A request to participate is submitted by candidates for the purpose of participation in public procurement procedures.</p>	Art. 101, Para. 1 PPA
23.	What is an invitation to tender?	<p>An invitation is a document which is drafted and sent by the contracting authority to candidates, inviting them to submit tenders. It is used in the following procedures</p> <ul style="list-style-type: none"> ○ Restricted procedure; ○ Competitive dialogue; ○ Innovation partnership; ○ Competitive procedure with negotiation. 	Art. 34, Para. 1 PPA

No	Question	Answer	Legal Reference
24.	What is a confirmation of interest?	In certain cases ¹ persons interested in a specific public procurement may be required to confirm their interest by submitting responses to an invitation by the contracting authority.	-
25.	What is an invitation to confirm interest?	This is an invitation with which, in cases where a prior information notice has been used as a call for competition for restricted procedures and competitive procedures with negotiation, contracting authorities simultaneously and in writing invite the economic operators which have expressed their interest to confirm their continuing interest.	Art. 34, Para. 2 PPA
26.	What is an invitation to participate in negotiations?	An invitation to participate in negotiations is a document which the contracting authority is obliged to use under: <ul style="list-style-type: none"> ○ Negotiated procedure without prior publication; ○ Direct negotiation. The invitation to participate in negotiations includes as minimum the subject of the public procurement (including description of <u>lots</u>), the requirements for the implementation of the contract, award criterion, date and place of the negotiations.	Art. 64, Para. 2 IRPPA

Figure 4 - Differentiation between the Types of Procedures

No	Procedure	Single-staged	Two-staged	Primary	Secondary
1.	Open procedure	✓		✓	
2.	Restricted procedure		✓	✓	
3.	Competitive procedure with negotiation		✓		✓
4.	Competitive		✓		✓

¹ In case of prior information notice and periodic indicative notice.

No	Procedure	Single-staged	Two-staged	Primary	Secondary
	dialogue				
5.	Innovation partnership		✓		✓
6.	Negotiated procedure without prior publication	✓			✓
7.	Design contest	✓			✓
8.	Public competition	✓			✓
9.	Direct negotiation	✓			✓

Fact Sheet No 4 – CONTRACTING AUTHORITIES' DECISIONS

No	Questions	Answers	Legal Grounds
1.	What are the contracting authorities' decisions?	The contracting authorities' decisions represent individual administrative acts.	Art. 22, Para 9 PPA
2.	What is an individual administrative act?	The individual administrative act is the explicit statement or the statement expressed by an action or omission of an administrative body or another authorized by the law body or organisation, which creates rights or obligations or directly concerns rights, freedoms or legitimate interests of private citizens or organisations, as well as the refusal to issue such an act.	Art. 21, Para 1 APC
3.	How many types of decisions do the contracting authorities issue?	<p>According to the law the contracting authorities' decisions are 10 depending on the type and stage of the procedure, as follows:</p> <ul style="list-style-type: none"> ○ For opening of the procedure; ○ For approval of modification notice or additional information; ○ For approval of invitation to confirm interest; ○ For preselection; ○ For completion of the dialogue; ○ For awarding a contractor; ○ For ranking of the tenderers in design contest and/or award of prizes and/or other payments within design contest; ○ For termination of the procedure; ○ For establishing a qualification system for inclusion or refusal to include interested economic operators in the dynamic purchasing system or in the qualification system; ○ For termination of the participation in a dynamic purchasing system or in the qualification system for operators included in it. 	Art. 22, Para 1 PPA

No	Questions	Answers	Legal Grounds
4.	What is the mandatory content of the decisions?	<p>The public authorities' decisions specify:</p> <ul style="list-style-type: none"> ○ The public authorities' name; ○ Number, data and legal grounds for the issue of the act; ○ Type of the procedure and the procurement subject; ○ Indicative value – where applicable; ○ Reasons – where needed; ○ Operational part the essence of which depends on the type and stage of the procedure and includes: <ul style="list-style-type: none"> ▪ Approval of the respective documents, related to the procedure; ▪ Approval of the modification notice and the additional information; ▪ The preselection results, including the decrease in the number of candidates, the dialogue results and the ranking of the tenderers; ▪ The unsuccessful candidates or tenderers, as well as the reasons for their exclusion, including when applicable – the reasons related to non-acceptance of tenders; ▪ Name of the awarded contractor, and when applicable – name of the subcontractor and its part of the public contract or the framework agreement, which will be executed by it; ▪ The identified conflicts of interest regarding the candidates or the tenderers and the measures taken – where applicable; ○ Which is the competent body of appeal and what is the term for appeal; ○ Names, signature and position of the person, prepared the act. 	Art. 22, Para 5 PPA

No	Questions	Answers	Legal Grounds
5.	How are the contracting authority's decisions prepared?	The Decision for Opening of the Procedure and the Decision for Approval of Modification Notice or Additional Information shall be prepared on the basis of a sample, approved by the Executive Director of the Public Procurement Agency. These decisions are prepared as e-documents by using <u>specialised...software</u> . They are subject to publication in the Public Procurement Register and are sent via electronic means. The rest of the decisions are prepared as per the requirements for minimal information to be contained in and the public procurement procedure's specifics and phase.	Art. 22, Para 4 PPA Art. 229, Para 5 PPA
6.	When do the decisions take effect?	The contracting authorities' decisions take effect as of their entering into force. Depending on the type of the decision, they enter into force within 10 days as of: <ul style="list-style-type: none"> ○ Expiration of the term for publication of the notice for modification or additional information, respectively – expiration of the term for amendment of the invitation to express interest; ○ Publication of the decisions for negotiated procedures without notices; ○ Receiving of the decision for preselection or completion of the dialogue by the candidates; ○ Receiving of the decision for awarding the public contract or for termination of the procedure by the tenderers; ○ Publication of the voluntary ex ante transparency notice. 	-
7.	Is it possible to provisionally enforce some of the contracting authorities' decisions?	Generally, in case a contracting authority's decision is appealed, this does not suspend the public procurement procedure, except for the case where an interim measure "procedure suspending" has been requested. An exception to this rule is the case where the public contract award decision is being appealed. In this case, the	Art. 22, Para 7 PPA

No	Questions	Answers	Legal Grounds
		contracting authority may request from the Commission for Protection of Competition to grant provisional enforcement of the appealed decision. The Commission for Protection of Competition issues a ruling on the request for provisional enforcement in a closed session.	
8.	Are the contracting authorities obliged to send their decisions to the candidates or the tenderers?	The contracting authorities are obliged to send their decisions, issued within the public procurement procedure, except for the decisions, which are published in the Public Procurement Register.	Art. 43, Para 1 PPA
9.	How are the contracting authorities' decisions sent?	<p>The decisions are sent to the address, specified by the candidate or the tenderer. This may be an e-mail or via post or another courier service provider for registered mail with a return receipt. The decisions may also be sent via fax.</p> <p>When the contracting authority sends its decision to an e-mail, the accompanying message shall be signed with an electronic signature.</p> <p>In each case the contracting authority's chosen method for sending of the decisions shall allow the certification of the date of receipt of the decision.</p>	Art. 43, Para 2 PPA
10.	What is done in case the decision is not received by the tenderer or the candidate?	In case the decision is not received by the candidate or the tenderer, the contracting authority publishes in its buyer's profile an announcement to the candidate/tenderer. The decision shall be deemed received as of the day of publishing the announcement.	Art. 43, Para 3 PPA

Fact Sheet No 5 – PUBLIC PROCUREMENT PHASES AND PROCESSES

No	Question	Answer	Legal Reference
1.	What are the phases of the award of public contract process?	<p>The following phases, related to the award of contract and the subsequent contract implementation processes, can be distinguished from a public procurement perspective:</p> <ul style="list-style-type: none"> ○ Preparation phase; ○ Award of contract phase; ○ Conclusion of the contract phase; ○ Implementation of the contract phase. 	-
2.	What are the processes included in the preparation phase?	<p>The preparation phase includes the implementation of all activities related to:</p> <ul style="list-style-type: none"> ○ Planning of the public procurement; ○ Performing preliminary and preparation activities; ○ Preparation and finalization of <u>the.....public procurement documentation</u>; ○ Ex-ante control (whenever applicable). 	-
3.	What are the processes in the award of contract phase?	<p>In general, the award of contract phase includes;</p> <ul style="list-style-type: none"> ○ Advertising and provision of access to the public procurement; ○ Submission of tenders / requests to participate; <ul style="list-style-type: none"> ▪ Option for submitting requests for clarifications by interested persons; ○ Appointment of evaluation commission; ○ Evaluation of submitted tenders / requests to participate; <ul style="list-style-type: none"> ▪ Opening of the tenders / requests to participate; ▪ Assessment of the tenders / requests to participate on the basis of announced selection criteria; ▪ Option to request additional documents or clarifications from tenderers / candidates in relation to existing irregularities or shortcomings in the content of the tenders / requests to participate; ▪ Assessment of tenders / requests to participate 	-

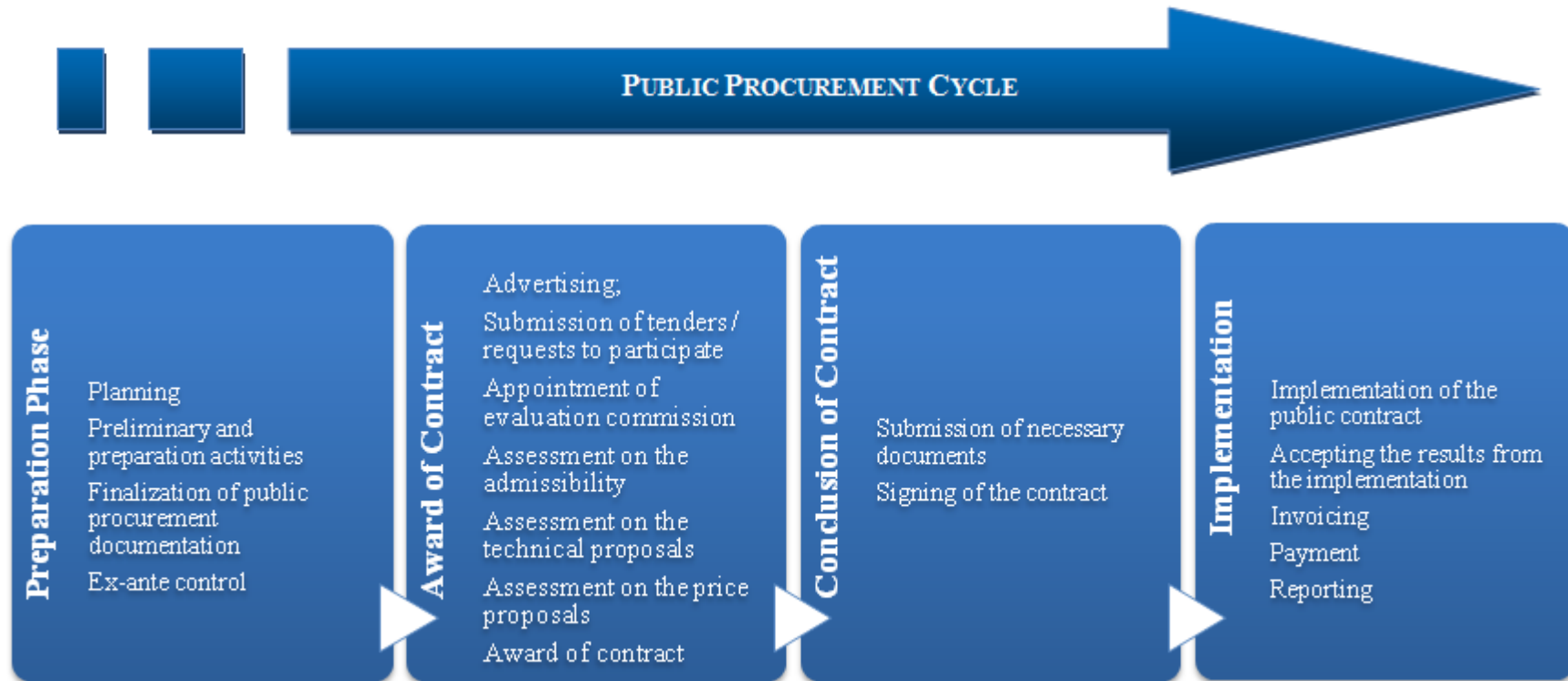
No	Question	Answer	Legal Reference
		<p>on the basis of the additionally submitted documents and clarifications;</p> <ul style="list-style-type: none"> ○ In two-staged procedures – issuance and entry into force of a decision for the results from the selection stage; sending invitations to candidates requesting the submission of tenders; <ul style="list-style-type: none"> ▪ Evaluation of technical proposals; ▪ Evaluation of price proposals. ○ Award of contract; <ul style="list-style-type: none"> ▪ Presenting the contracting authority with the report of the evaluation commission, containing the results of the evaluation; ▪ Issuance and entry into force of an award decision; alternatively – return of the report to the evaluation commission with explicit instructions for its supplementing or for remedying irregularities. 	
4.	What are the processes in the conclusion of the contract phase?	<p>The conclusion of the contract phase includes:</p> <ul style="list-style-type: none"> ○ Submission of necessary documents; ○ Signing of the contract. 	-
5.	What are the processes in the implementation of the contract phase?	<p>The implementation of the contract phase includes:</p> <ul style="list-style-type: none"> ○ Accepting the results from the implementation of the contract / Ordering; ○ Invoicing; ○ Payment. 	-
6.	How is the contract notice published?	<p>The contract notice is simultaneously published on the buyer's profile of the contracting authority and is sent to the Public Procurement Agency for publication in the Public Procurement Register. Each public procurement procedure is entered under a unique number.</p> <p>In cases where the public contract is within the respective thresholds, the contract notice is also published in the Official Journal of the EU.</p>	<p>Art. 35-38 PPA</p> <p>Chapter IV IRPPA</p>
7.	How is the	The contracting authority publishes the....public	Art. 36 and

No	Question	Answer	Legal Reference
	public procurement documentation published?	<u>procurement documentation</u> by providing access to it in the buyer's profile, simultaneously with the publication of the decision for opening of the public procurement procedure in the Public Procurement Register, and if applicable – in the Official Journal of the EU.	42 PPA
8.	What is the term for submission of tenders, respectively – submission of requests to participate?	The minimum terms for submission of tenders, respectively – of requests to participate vary from 30 to 35 days, depending on the type of the procedure. The terms may be additionally shortened in the cases provided for by the law.	Art. 74 - 80 PPA
9.	Can candidates and tenderers request clarifications?	Candidates and tenderers may request clarifications on the public procurement documentation and the conditions to participate in it, including with respect to the decision, contract notice, the invitation for confirmation of interest and the descriptive document.	Art. 33, Para 1 PPA
10.	How is a request for clarifications to the contracting authority prepared?	A request for clarifications is submitted to the contracting authority in writing.	Art. 33, Para 1 PPA
11.	When can a request for clarifications be submitted?	A request for clarifications may be submitted up to 10 days prior to the deadline for submission of tenders / requests to participate. If the term for submission of tenders / requests to participate has been shortened, then the term for requests for clarifications is 7 days prior to the deadline for submission of tenders / requests to participate.	Art. 33, Para 1 PPA
12.	What is the term for provision of the clarifications by the contracting authority?	Clarifications are prepared and presented to interested persons within 4-days of the receipt of the request but no less than 6 days prior to the deadline for submission of tenders / requests to participate.	Art. 33, Para 1 PPA
13.	Are the	The clarifications are public and are published on the	Art. 33,

No	Question	Answer	Legal Reference
	clarifications public?	buyer's profile of the contracting authority without containing any information as to the person who has made the request.	Para 2 и 4 PPA
14.	What are submissions of tenders / requests to participate?	<p>The documents related to the participation in a public procurement procedure are submitted by the respective tenderer or candidate, or by a duly authorized representative – personally or via mail or courier service to the address specified by the contracting authority. The documents are placed in non-transparent packages as follows:</p> <ul style="list-style-type: none"> ○ Selection documents (request to participate and tender); <ul style="list-style-type: none"> ▪ ESPD; ▪ Documents related to measures guaranteeing the reliability of the candidate / tenderer (where applicable); ▪ Documents providing for the legal grounds for the establishment of an association / consortium, as well as information related to the rights and obligations of consortium members, allocation of responsibility between consortium members, activities to be performed by each of the members (if so required by the contracting authority in the cases where the candidate / tenderer is an association or a consortium). ○ Technical proposal (tender); <ul style="list-style-type: none"> ▪ Power of attorney (where applicable); ▪ Proposal for the implementation of the public contract in accordance with the technical specifications and the requirements of the contracting authority; ▪ Declaration for the acceptance of the provisions of the draft contract; ▪ Declaration for the validity term of the proposal; ▪ Declaration for compliance with social security, tax, environmental protection and 	Art. 47-50 IRPPA

No	Question	Answer	Legal Reference
		<p>employment protection (where applicable);</p> <ul style="list-style-type: none"> ▪ Samples, descriptions or photographs of products to be supplied; ▪ Other information and/or documents if such are required by the contracting authority in relation to the subject-matter of the public procurement. <p>○ Price proposal (tender).</p> <ul style="list-style-type: none"> ▪ Price proposal containing the proposal of the tenderer as regards to acquisition costs as well as proposals related to other indicators expressed in monetary terms. <p>No tenders / requests to participate are accepted following the expiration of the term for submission neither those which are placed in opened packages or packages with violated integrity.</p> <p>In case the contracting authority has allowed the electronic submission of the documents, this has to be explicitly mentioned in the contract notice.</p>	
15.	Who opens and evaluates the tenders / the requests to participate?	The contracting authority appoints a commission for the review and evaluation of the tenders and the requests to participate, for conducting negotiations and dialogue.	Art. 103, Para 1 PPA

Figure 5 - Public Procurement Phases



Fact Sheet No 6 – DETERMINING PUBLIC PROCUREMENT INDICATIVE VALUE

No	Question	Answer	Legal Reference
1.	Which are the basic requirements for determining the indicative value of the public procurement?	<p>The basic requirements for determining <u>the indicative value</u> of the public procurement are:</p> <ul style="list-style-type: none"> ○ The indicative value shall include the total amount payable to the future contractor of the public procurement net of value added tax (VAT), including any form of option and any renewals of the contracts; ○ The indicative value of the public procurement is determined as of the date of the <u>decision for its opening</u>; ○ Where a contracting authority is comprised of separate operational units based on territorial, functional or any other principle, which are not individual contracting authorities, the indicative value shall be determined by taking into account the needs of all operational units; ○ Where public procurement is comprised of few <u>lots</u>, each of which is subject to a contract, the indicative value of the procurement shall be equal to the amount of all lots' values. 	Art. 21 PPA
2.	Which are the specific requirements for determining the indicative value with regard to public works contracts?	<p>The calculation of the indicative value shall include the cost of all supplies and services that are made available to the contractor by the contracting authority provided that they are necessary for executing <u>the works</u>.</p> <p>Supplies and services which are not necessary for executing the works shall not be included in the indicative value of the public works contract.</p>	Art. 21, Para 7 and Para 17 PPA
3.	What methods are available for determining the indicative value of public supply or service contracts?	<p>There are several methods for determining the indicative value of public supply or service contracts as defined by the PPA depending on the type of supply or service concerned as follows:</p> <ul style="list-style-type: none"> ○ Contracts for supplies or services which are regular in nature or which are intended to be renewed within a given period of time; ○ Contracts relating to the leasing, hire, rental or hire 	Art. 21, Para 8 – 13 PPA

No	Question	Answer	Legal Reference
		<p>purchase of products;</p> <ul style="list-style-type: none"> ○ Contracts for insurance services; ○ Contracts for banking and other financial services; ○ Design contracts; ○ Contracts which do not indicate a total price. 	
4.	How is the indicative value of contracts for supplies or services which are regular in nature or which are intended to be renewed within a given period of time determined?	<p>The estimated price of contracts for <u>supplies or services</u> which are regular in nature or which are intended to be renewed within a given period of time is determined on the bases of:</p> <ul style="list-style-type: none"> ○ The total actual value of the contracts of the same type awarded during the preceding 12 months adjusted so as to take account of the potential changes in quantity or value which could occur in the course of the 12 months following the initial contract; or ○ The total indicative value of the contracts awarded during the 12 months following the first delivered supply or service. 	Art. 21, Para 8 PPA
5.	How is the indicative value of contracts relating to the leasing, hire, rental or hire purchase of products determined?	<p>Where the contract relating to the leasing, hire, rental or hire purchase of products is with a fixed term and that term is less than or equal to 12 months, the estimated price is determined on the basis of the total indicative value for the term of the public procurement contract. Where the term of the contract is greater than 12 months, the indicative value is determined on the basis of the total value including the estimated residual value.</p> <p>In the case of public contracts relating to the leasing, hire, rental or hire purchase of products without a fixed term or the term of which cannot be defined, the indicative value is determined on the basis of the monthly value multiplied by 48.</p>	Art. 21, Para 9 PPA
6.	How is the indicative value of contracts for insurance services determined?	<p>The basis for calculating the indicative value of contracts for insurance services is the insurance premium payable and other forms of remuneration.</p>	Art. 21, Para 10 PPA

No	Question	Answer	Legal Reference
7.	How is the indicative value of contracts for banking and other financial services determined?	The basis for calculating the indicative value of contracts for banking and other financial services are the fees, commissions payable, interest and other forms of remuneration.	Art. 21, Para 10 PPA
8.	How is the indicative value of design contracts determined?	The basis for calculating the indicative value of design contracts are the fees, commissions payable and other forms of remuneration.	Art. 21, Para 10 PPA
9.	How is the indicative value of contracts which do not indicate a total price determined?	<p>With regard to public service contracts which do not indicate a total price, the basis for calculating the estimated contract value depends on whether the contract is with or without a fixed term.</p> <p>In the case of fixed-term contracts, where that term is less than or equal to 48 months, the indicative value is determined on the basis of the total value for the entire term.</p> <p>In the case of contracts without a fixed term or with a term greater than 48 months, the indicative value is determined on the basis of the monthly value multiplied by 48.</p>	Art. 21, Para 11 PPA
10.	How is the indicative value of contracts awarded under a framework agreement or a dynamic purchasing system determined?	In these cases, the value to be taken into consideration shall be the maximum indicative value net of VAT of all the contracts envisaged for the total term of the framework agreement or the dynamic purchasing system .	Art. 21, Para 12 PPA
11.	How is the indicative value of contracts awarded under	In the case of innovation partnerships, the value to be taken into consideration shall be the maximum indicative value net of VAT of the research and development activities to take place during all stages of	Art. 21, Para 13 PPA

No	Question	Answer	Legal Reference
	an innovation partnership determined?	the envisaged partnership as well as of the supplies, services or works to be developed and procured at the end of the envisaged partnership.	
12.	What are the requirements to contracting authorities when choosing the method for the calculation of the indicative value?	<p>The choice of method for calculating the indicative value of a public procurement shall not be made with the intention of:</p> <ul style="list-style-type: none"> ○ Applying an award procedure for lower values; ○ Dividing the contract into lots with the intention of applying an award procedure for lower values. 	Art. 21, Para 14 and 15 PPA

Fact Sheet No 7 – PREPARATION OF PUBLIC PROCUREMENT

No	Questions	Answers	Legal Reference
1.	What preliminary actions does the contracting authority carry out before the preparation of the public procurement procedure?	Before the preparation of the public procurement procedure the contracting authority estimates the need for and plans forthcoming public procurements.	-
2.	What does estimate mean?	The estimate of the public procurement involves establishing the number and type of public procurement based on the expected needs and the financial resources the contracting authority intends to provide.	Art. 25 IRPPA
3.	What does planning mean?	The planning involves preparation of a schedule for award of a public contracts by the contracting authority, taking into account the following: <ul style="list-style-type: none"> ○ the procedure specified for each public contract award, including the type of the procedure chosen; ○ preparation time including <u>documentation</u>; ○ time for conducting the public contract award, including time for receipt of requests to participate or tenders, time for work of the commission and the time for the conclusion of the contract. 	Art. 26, Para 1 IRPPA
4.	What is preparation of the public procurement procedure?	The preparation of the public procurement procedure constitutes a series of legal and factual actions by the contracting authority related to the development of <u>documentation</u> for the public procurement.	-
5.	What kind of actions can the contracting authority undertake in the course of the preparation of the public procurement	In the course of the preparation of the public procurement procedure the contracting authority may conduct market consultations, by seeking advice from independent experts or bodies, or market players.	Art. 44, Para 1 PPA

No	Questions	Answers	Legal Reference
	procedure?		
6.	Are there any limitations with regards to conducting market consultations?	<p>Market consultations may be conducted provided that they do not lead to distortion of competition and violation of the principles of non-discrimination and transparency. So as to comply with this requirement the contracting authority shall at least undertake the following actions:</p> <ul style="list-style-type: none"> ○ Publishing the whole information, exchanged in relation to the preparation for the public procurement, including the result received by the contracting authority and in the event this is not possible – indicating through the buyer’s profile the place where this information can be obtained; ○ Specifying a reasonable time limit for receiving tenders, including considering whether the reduction of the time limits will lead to infringement of the principle of equal treatment. 	Art. 44, Para 2 and 3 PPA
7.	How does the contracting authority specify the time limits for receiving tenders and requests to participate?	<p>When specifying the time limits, the contacting authorities should take into account the complexity of the public procurement as well as the time needed for preparing the tenders, without prejudice to the minimum time limits set out in law for the relevant procedures.</p> <p>Examples of minimum time limits set out in law:</p> <ul style="list-style-type: none"> ○ 35 days – for an open procedure; ○ 30 days – for a restricted procedure; ○ 30 days – for a competitive procedure with negotiation; ○ 30 days – for a competitive dialogue; ○ 30 days – for innovation partnership. 	Art. 45, Para 1; Art. 74 – 76 PPA
8.	Is it possible to shorten the deadlines for the	<p>Tender submission deadlines can be shortened, in cases where:</p> <ul style="list-style-type: none"> ○ A prior information notice has been 	Art. 74 – 76 PPA

No	Questions	Answers	Legal Reference
	receipt of tenders and requests to participate?	<p>published between 35 days and 12 months prior to the publication of the contract notice; and the prior information notice contains the information under Part A, Section 1 of the contract notice; and or</p> <ul style="list-style-type: none"> ○ The contracting authority has allowed submission of tenders by electronic means of communication. <p>In the above cases the reduction may not exceed a total of 20 days for the open procedure and a total of 15 days for the restricted procedure and the competitive procedure with negotiation.</p> <p>In cases where the award of the public contract is a matter of urgency, the contracting authority may shorten the submission deadline to no less than 15 days regardless of the existence of prior publications and the selected means for communication.</p> <p>The PPA does not envisage shorter submission terms for the competitive dialogue, innovation partnership procedures and the negotiated procedure without publication.</p>	
9.	Is it mandatory to separate the public procurement into lots?	The separation of the public procurement into lots lies with the contracting authority and in the decision for opening of the procedure; the contracting authority shall indicate the reasons for not separating the public procurement into lots.	Art. 46, Para 1 PPA
10.	Is it possible to submit tenders for several or for all lots?	It is possible to submit tenders for one, several or for all lots in the cases where the contracting authorities have indicated this explicitly in the notice for opening of the procedure or in the invitation for confirmation of interest. In such cases the contracting authority shall have the right to restrict the number of the lots awarded to one contractor.	Art. 46, Para 4 and 5 PPA
11.	Are the contracting authorities entitled to set special	Regarding the performance of the public contract, the contracting authorities may set special conditions, related to economic or social aspects	Art. 47, Para 1 and 2 PPA

No	Questions	Answers	Legal Reference
	conditions for performance of the public contract?	of the performance, to innovation, environmental protection or to employment. These conditions shall be related to the subject of the public procurement and shall be specified in the notice for initiation of the procedure, or in the public procurement documentation.	
12.	What is a test report?	Generally, test reports represent documents, duly issued by a competent authority, which certify the performance of controlling tests on certain activities, machinery, equipment and the like, executed/owned by the holder of the test report.	-
13.	What is a certificate?	Generally, certificates represent a document, duly issued by a competent authority, which certifies the existence of certain qualities, criteria, capacities of the certificate's holder.	-
14.	What evidence may the contracting authorities request in relation to proving the compliance with the requirements or criteria with regard to the performance of the contract?	The contracting authorities may request from the tenderers or the candidates to represent a test report, issued by a conformity authority, or a certificate, issued by such an authority, as a proof of compliance with the requirements or criteria, related to the performance of the contract.	Art. 52, Para. 1 PPA
15.	Is it possible to submit variants of the tender?	Yes, it is. The contracting authorities may permit or require submission of variants of the tender. In such cases, the chosen selection criteria as well as the tender assessment indicators should allow applying to both tenders containing variants and tenders which do not contain variants.	Art. 53, Para 1 and 5 PPA

Fact Sheet No 8 – PUBLIC PROCUREMENT DOSSIER

No	Questions	Answers	Legal Reference
1.	What is a public procurement dossier?	The public procurement dossier is a set of documents that have been prepared or submitted within the <u>public procurement procedure</u> and within the execution of <u>the contract / framework agreement</u> .	-
2.	Which public procurement is the dossier prepared for?	A dossier is prepared for each public procurement procedure conducted by contracting authorities in Bulgaria.	-
3.	Who prepares the public procurement dossier?	The dossier is prepared by the contracting authority of the public procurement.	Art. 121, Para 1 PPA
4.	What is the purpose of the public procurement dossier?	The purpose of the dossier is to provide documental <u>traceability (audit path)</u> in relation to all actions and decisions of the contracting authority, as well as to the actions of the commissions for awarding public procurements, irrespective of whether the procurements are awarded via electronic means.	Art. 121, Para 1 PPA
5.	What does the public procurement dossier contain?	The dossier contains: <ul style="list-style-type: none"> ○ all <u>decisions and notices</u>; ○ <u>the documentation</u> and other additional documents; ○ explanations, invitations, records, final reports of the evaluation commission; ○ tenders and requests to participate; ○ evidence of actions taken in order to guaranty equality of the tenderers in cases of market consultations; ○ description of the reasons why other means, different from the electronic ones, are used for submission of documents in electronic submission, and in the cases of <u>ex-ante control</u> carried out – also <u>the opinions of the Public Procurement Agency</u> and the grounds 	Art. 121, Para 2 PPA Art. 98, Para IRPPA

No	Questions	Answers	Legal Reference
		<p>for the recommendations rejected by the contracting authority;</p> <ul style="list-style-type: none"> ○ the contract or the framework agreement; ○ all documents, related to execution and its accounting; ○ the order by which a commission is appointed to carry out a preliminary selection of candidates and tenderers, as well as consideration and evaluation of tenders or negotiations and dialogue, including all orders, which amend or supplement the commission's composition; ○ a copy or extract from the register of the received requests to participate and / or tenders; ○ the protocol of received requests to participate; ○ information exchange between the contracting authorities and other persons or bodies in relation to the preparation and conduct of the procedure and the performance of the contract; ○ information regarding the appeal of the tender including the appeal document itself, the opinions on it, the decisions and rulings of the authorities responsible for the appeal; ○ documents submitted by the selected tenderer prior to the conclusion of the contract; ○ document confirming the return of samples, where applicable; ○ unique numbers under which the documents have been filed with the Public Procurement Agency for the purposes of control, where applicable; ○ information about the circulation of the documents in the dossier. 	
6.	How long is the	The dossier is stored for a period of 5 years as of	Art. 122,

No	Questions	Answers	Legal Reference
	public procurement dossier stored?	the date of completion of the execution of public contract or as of the date of terminating the procedure.	Para 1 PPA
7.	Is it possible to extend the period?	The period may be extended in case that such extension is due to the operating rules of funding, auditing and certification bodies in relation to provision of funds on EU projects and programmes.	Art. 122, Para 2 PPA

Fact Sheet No 9 – EVALUATION COMMISSION AND EVALUATION COMMISSION’S ACTIONS

No	Question	Answer	Legal Reference
1.	What is the composition of the commission?	The commission shall be composed of an odd number of members with the possibility of external experts. There is no explicit requirement provided for in the law regarding the composition of the commission. It is however required that there is no conflict of interest between the members of the commission and the tenderers/ candidates in the procedure.	Art. 103 PPA Art. 53 - 61 IRPPA
2.	Who determines the composition of the commission?	The commission is appointed by the contracting authority after the expiry of <u>the term for submitting tenders/ request to participate.</u>	Art. 103 PPA, art. 51 IRPPA
3.	What are the actions of the commission upon reviewing the tenders and requests to participate?	The commission shall open the sealed non-transparent envelopes in the order of their receipt and shall announce their contents by verifying that there is a separate sealed envelope with a specified price proposal. The tenders opening session shall be public and tenderers/ candidates, their proxies or media representatives may be present as well. After opening the envelopes and reviewing the documents for selection, the commission shall review the technical and price proposals at a closed session.	Art. 53 - 61 IRPPA
4.	How are the tenderers/ candidates ranked?	The tenderers are ranked by the commission in accordance with the degree of compliance with the terms and conditions predetermined by the contracting authority. In the event where two or more tenders have equal complex assessment, the tender containing a better price is given an advantage over the others.	Art. 58 PPA
5.	How does the commission make decisions?	The commission’s decisions are adopted by majority of its members. In the event where a member of the commission opposes an adopted decision, the same signs the minutes with a dissenting opinion providing his/her reasons in writing.	Art. 103, Para 4 PPA
6.	What kind of documents does the commission draw up in the course of its	The commission’s actions are recorded while the results of its work are described in a report.	Art. 103, Para 3 PPA

No	Question	Answer	Legal Reference
	work?		
7.	What does the report of the commission contain?	<p>The report on the results of the commission's work contains:</p> <ul style="list-style-type: none"> ○ the composition of the commission, including amendments which have arisen in the course of the work of the commission; ○ number and date of the order of appointment of the commission as well as the orders by which terms, tasks and composition are amended; ○ a brief description of the work process; ○ candidates and tenderers in the procedure; ○ actions relating to opening, reviewing and evaluating each of the tenders, requests to participate and negotiations conducted, if applicable; ○ a ranking of the tenderers, if applicable; ○ a proposal for exclusion of candidates or tenderers, if applicable; ○ grounds for admission or exclusion of each candidate or tenderer; ○ a proposal for concluding a contract with the tenderer ranked first or for terminating the procedure under the relevant legal ground, if applicable; ○ a description of the samples and/or photographs presented, if applicable. 	Art. 60, Para 1 IRPPA
8.	Who is the commission's report submitted to?	The commission's report is signed by all members and is submitted to the contracting authority along with the entire documentation, including samples and/or photographs presented. The report shall be accompanied by all documents drawn up in the course of the work of the commission, such as protocols, evaluation spreadsheets, reasons for dissenting opinion, etc.	Art. 106, Para 1 PPA Art. 60, Para 2 and 3 IRPPA

Fact Sheet No 10 – SELECTION CRITERIA

No	Question	Answer	Legal Reference
1.	On what criteria is the choice of participants based?	<p>The choice of participants is based on their compliance with the requirements of the contracting authority and the law related to:</p> <ul style="list-style-type: none"> ○ The applicable grounds for exclusion from participation; ○ The applicable selection criteria related to the economic operator's suitability to pursue the professional activity; ○ The applicable selection criteria related to the economic operator's economic and financial standing; ○ The applicable selection criteria related to the economic operator's technical and professional ability. 	-
2.	What are the grounds for exclusion of a tenderer/ candidate?	<p>The grounds for exclusion from participation are explicitly provided for by law:</p> <ul style="list-style-type: none"> ○ grounds requiring mandatory exclusion from participation; ○ grounds leading to a potential exclusion from participation; ○ other grounds for exclusion. 	Art. 54, 55 and 107 PPA
3.	What are the mandatory grounds for an exclusion from participation?	<p>The grounds requiring mandatory exclusion from participation are exhaustively listed in the law:</p> <ul style="list-style-type: none"> ○ The tenderer or candidate has been convicted by an effective sentence, unless rehabilitated, of criminal offence relating to terrorism, human trafficking, criminal offence against the labour rights of the citizens, against property, against the economy, against the financial, tax or social security system, criminal offence for bribery, criminal offense relating to leading an organized criminal group, criminal offence against public health and the environment, as well as a criminal offense similar to those above, in another Member State or a third country; ○ The tenderer or candidate has obligations for taxes 	Art. 54, Para 1 PPA

No	Question	Answer	Legal Reference
		<p>and compulsory social security contributions to the state and to the municipality of the seat of the contracting authority and the tenderer or candidate or similar obligations specified with an effective act issued by the competent authority in accordance with the legislation of the state in which the candidate or the participant is established unless there is a rescheduling, deferral or a collateral of the obligation or obligations permitted by an act which has not entered into force;</p> <ul style="list-style-type: none"> ○ Breach of the principle of the equal treatment as a result of the candidate or tenderer participating in market consultations and/or drawing up documentation; ○ For a candidate or tenderer, it has been found that: <ul style="list-style-type: none"> ▪ The same has submitted a document with incorrect data certifying lack of grounds for exclusion or compliance with the selection criteria; ▪ has not submitted the required information relating to certifying the lack of grounds for exclusion or compliance with the selection criteria; ○ It has been established by reference to an enforceable penal ruling or a court decision that upon performing a public procurement contract, the candidate or tenderer has infringed their obligations under the Labour Code relating to a restriction on unilateral amendment of the conditions of employment, payment of remuneration to employees, special protection of employees minors and similar obligations specified with an effective act issued by the competent authority in accordance with the legislation of the state in which the candidate or the participant is established; ○ There is a conflict of interest for the tenderer 	

No	Question	Answer	Legal Reference
		which cannot be eliminated;	
4.	What are the non-mandatory grounds for an exclusion from participation?	<p>A candidate or tenderer may be excluded from participation if it has been found that the same:</p> <ul style="list-style-type: none"> ○ is declared insolvent or is subject to a pending bankruptcy proceedings or liquidation proceedings, or has made an out-of-court arrangement with the creditors or has suspended business activities and, in case the candidate or tenderer is a foreign person, it is in any similar situation arising from a similar procedure under the legislation of the state in which the candidate or the participant is established; ○ has been disqualified from practicing a specific profession or activity according to the legislation of the state where the violation has been committed; ○ has entered into an agreement with other persons with the aim of distortion of competition, where the distortion has been established by an act of a competent authority; ○ has been proved guilty for non-performance of a public procurement contract or a concession contract for construction or for a service which led to its early termination, payment of compensations or other similar sanctions, except in the cases, where the non-fulfillment affects less than 50% of the value or the scope the contract; ○ Has tried to: <ul style="list-style-type: none"> ▪ influence the contracting authority in making the decision on exclusion, selection or awarding, including by providing incorrect or misleading information, or ▪ obtain information, which may give him unfounded advantage in the public procurement procedure; 	Art. 55, Para 1 PPA
5.	What other grounds exist for exclusion from	<p>These grounds are exhaustively listed in the law:</p> <ul style="list-style-type: none"> ○ The candidate or tenderer does not comply with the set selection criteria or does not meet any other condition specified by the contracting 	Art. 107 PPA

No	Question	Answer	Legal Reference
	participation?	<p>authority;</p> <ul style="list-style-type: none"> ○ The tenderer has submitted a tender which does not meet the predetermined conditions of the public procurement nor the rules and requirements of environmental, social and labour law; ○ The tenderer has not managed to submit with the time limit period a justification about their unusually favourable tender or the justification of their tender is not detailed enough and it is obvious that it is against the law; ○ The candidates or tenderers are affiliated parties. 	
6.	What are the selection criteria related to the economic operator's suitability to pursue the professional activity?	<p>With regard to suitability to pursue the professional activity, contracting authorities may require economic operators to be enrolled in one of the professional or trade registers.</p> <p>On some occasions the requirement towards a tenderer or a candidate to be enrolled in a professional or a trade register may originate from the legislation which regulates the implementation of the subject-matter of the public contract (e.g. works contracts, provision of legal services, provision of services related to design and engineering, etc.).</p>	Art. 60, Para 1 PPA
7.	What are the selection criteria related to the economic operator's economic and financial standing?	<p>In order to ensure that economic operators (tenderers or candidates) possess the necessary economic and financial capacity to perform the contract, contracting authorities may impose requirements related to a certain minimum yearly turnover (including a certain minimum turnover in the area covered by the respective contract) and/or may require that economic operators provide information on their annual accounts showing the ratios, for instance, between assets and liabilities.</p> <p>Requirements related to economic and financial standing may also include appropriate level of professional risk indemnity insurance.</p>	Art. 61, Para. 1 PPA
8.	Are there any quantitative	Yes, pursuant to the law these requirements are correlated to the indicative value, complexity and the	Art. 61, Para. 2 PPA

No	Question	Answer	Legal Reference
	limitations before the imposed economic and financial standing requirements?	<p>duration of the public contract to be awarded. The rule is that the required general turnover (calculated on the basis of yearly turnovers) of the tenderer or candidate may not exceed two times the estimated contract value.</p> <p>Contracting authorities may require general turnover in excess to the double of the indicative value of the contract only in cases where this may be justified by the nature of the subject-matter of the contract. In such cases contracting authorities must provide appropriate justification in the contract notice.</p>	
9.	What are the selection criteria related to the economic operator's technical and professional ability?	<p>In order to ensure that economic operators possess the necessary human and technical resources and experience to perform the contract to an appropriate quality standard, contracting authorities may impose requirements related to:</p> <ul style="list-style-type: none"> ○ Previously implemented activities which are similar or identical to the subject-matter of the respective public contract to be awarded; ○ Having at their disposal the equipment and means necessary for the implementation of the public contract to be awarded; ○ Having at their disposal the personnel required for the implementation of the public contract; ○ Attesting that the economic operator complies with certain quality assurance and/or environmental protection standards; ○ The average number of employees as well as the number of the persons engaged in managerial positions; ○ The certification of the goods to be delivered in order to attest their compliance with the technical specifications or specific standards; 	Art. 65, Para. 1
10.	Are there any limitations before the imposed requirements	Yes, any requirements related to the technical and professional ability of tenderers or candidates must be determined in accordance with the specifics of the subject-matter and the complexity of the public contract to be awarded.	Art. 63, Para. 2 – 6 PPA

No	Question	Answer	Legal Reference
	related to the technical and professional ability?	<p>Additionally, in terms of requirements for previous experience related to previously implemented activities, contracting authorities are limited to:</p> <ul style="list-style-type: none"> ○ Works carried out over at the most the past five years as of the date of the submission of the tender or the request to participate; and ○ Services provided and deliveries effected over at the most the past three years as of the date of the submission of the tender or the request to participate. <p>Contracting authorities may not include as part of the selection criteria, such requirements which are limited only to the implementation of public procurement contracts, specific programmes, projects or by specifying a specific source of funding, and may not set up requirements which are related to a specific number of implemented contracts with a defined subject-matter.</p>	
11.	How is compliance with the selection criteria proven?	<p>Compliance with the selection criteria is proven on the basis of a self-declaration in the form of the ESPD. This is a document which serves as preliminary evidence in replacement of certificates issued by public authorities or third parties confirming that the relevant economic operator (tenderer or candidate) complies with the respective requirements.</p> <p>The ESPD consists of a formal statement by the economic operator that the relevant grounds for exclusion do not apply and/or that the relevant selection criteria are fulfilled. Additionally the ESPD contains information which allows the identification of public authorities or third parties responsible for establishing the supporting documents. Tenderers or candidates are required to formally state that they will, upon request and without delay, provide the respective supporting documents. If contracting authorities are able to obtain the supporting documents directly by accessing a database, the ESPD must also provide the information required for this purpose</p>	<p>Art. 67, Para. 1 PPA Commission Implementing Regulation (EU) 2016/7 of 5 January 2016</p>
12.	Is the content	Yes, the ESPD is defined by Commission Implementing	Art. 67, Para.

No	Question	Answer	Legal Reference
	of the ESPD mandatory?	Regulation (EU) 2016/7 of 5 January 2016 as a standard ESPD form with mandatory content.	4 PPA Commission Implementing Regulation (EU) 2016/7 of 5 January 2016
13.	Can tenderers or candidates reuse an already drafted and submitted ESPD?	Yes, an ESPD which has already been used in a previous procurement procedure may be reused, provided that the respective tenderer or candidate confirms that the information contained therein continues to be correct.	Art. 67, Para. 3 PPA
14.	Can contracting authorities require from tenderers or candidates to provide them with supporting documents for the circumstances declared by means of an ESPD?	<p>A contracting authority may ask tenderers and candidates at any moment during the procedure to submit all or part of the supporting documents. This option may be used by the contracting authority:</p> <ul style="list-style-type: none"> ○ Where this is necessary to ensure the proper conduct of the procedure; and ○ The contracting authority does not have the possibility of obtaining the certificates or the relevant information directly by accessing a national database in any EU Member State that is available free of charge, such as a national procurement register, a virtual company dossier, an electronic document storage system or a prequalification system; and ○ The contracting authority is not in possession of the respective documents. 	Art. 67, Para. 8 PPA

Fact Sheet No 11 – AWARD CRITERIA. ABNORMALLY FAVOURABLE TENDERS

No	Question	Answer	Legal Reference
1.	What is the methodology for carrying out a comprehensive evaluation (assessment)?	The methodology for carrying out a comprehensive evaluation is part of the <u>public procurement documentation</u> where the contracting authority specifies the indicators included in the criterion or criteria for contract award, the manner of determining the assessment under each indicator as well as the manner of carrying out a comprehensive assessment.	Art. 70, Para 1 PPA
2.	Which are the contract award criteria?	The contract award criteria are: <ul style="list-style-type: none"> ○ The lowest price; ○ Level of costing by taking into account the cost-effectiveness, including the life-cycle costing; ○ Optimal price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question. 	Art. 70, Para 2 PPA
3.	What do the award criteria include?	Each of the award criteria, except for “the lowest price”, includes indicators on the basis of which the tender of each of the tenderers is being evaluated.	-
4.	What may be the indicators included in the “level of costing” criterion?	These are indicators on the basis of which the life-cycle costing is assessed. It is mandatory the acquisition cost to be included in this indicator along with one or more indicators covering: <ul style="list-style-type: none"> ○ Costs, borne by the contracting authority or other users, such as – costs of use, such as consumption of energy and other resources; maintenance costs; end of life costs, such as collection and recycling costs; and ○ Costs imputed to environmental externalities linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified; such costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs. <p>Where contracting authorities assess the costs using a</p>	Art. 71, Para 1 PPA

No	Question	Answer	Legal Reference
		life-cycle costing approach, they shall indicate in the procurement documents the data to be provided by the tenderers and the method which the contracting authority will use to determine the life-cycle costs on the basis of those data.	
5.	Are there any specific requirements in terms of carrying out an assessment based on a methodology including a life-cycle costing assessment?	<p>Yes, there are in terms of assessment of costs imputed to environmental externalities. These requirements are as follows:</p> <ul style="list-style-type: none"> ○ The assessment shall be based on non-discriminatory criteria and shall be objectively verifiable; ○ Where the approach for assessment has been developed for a particular procurement, this approach shall not allow giving unduly favouring to certain operators nor disadvantaging others. ○ The manner of determining the assessment shall be accessible to all interested operators; ○ The data required by the contracting authority to be such as to be provided by the tenderers with reasonable effort, including cases where the tenderers are economic operators from third countries party to the Agreement on Government Procurement (GPA) or other international agreements by which the European Union is bound. 	Art. 71, Para 3 PPA
6.	What may be the indicators included in the “optimal price-quality ratio” criterion?	<p>Such may be indicators relating to:</p> <ul style="list-style-type: none"> ○ Evaluating quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and innovative trading techniques and conditions; ○ Organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; ○ Service and maintenance, and technical assistance and conditions such as delivery date, delivery 	Art. 70, Para 4 PPA

No	Question	Answer	Legal Reference
		process and delivery period or period of completion.	
7.	Are there any specific requirements in terms of carrying out an assessment based on a methodology including an optimal price-quality ratio assessment?	No, there are not; the law does not provide for any specific requirements with respect to this.	-
8.	What are the general requirements to indicators included in the “level of costing” and optimal price-quality criteria?	<p>The general requirements to indicators are as follows:</p> <ul style="list-style-type: none"> ○ To be relevant to the subject-matter of the public procurement; ○ Shall not confer an unrestricted freedom of choice; ○ Shall ensure the possibility of effective competition. <p>Furthermore, figures and percentages shall be specified for the quantifiable indicators as well as the method of their calculation; as for the non-quantifiable indicators – the method of their assessment by the commission shall be specified by providing a specific value through an expert assessment.</p> <p>In line with the established practice, it is deemed inadmissible to include indicators in the methodology for evaluation of tenders which do not make it clear how tenderers are supposed to prepare their tenders so as to receive the maximum scores under this indicator, respectively how the determining of assessment shall be conducted by the commission and based on which specific parameter in the tender the respective scores shall be attributed.</p>	Art. 70, Para 5 PPA
9.	What is an expert	An expert evaluation is an evaluation which is not based on purely mathematical calculations (where quantifiable	-

No	Question	Answer	Legal Reference
	evaluation?	<p>indicators are involved) but at the same time it concerns the quality of the proposed tender and is conducted on the basis of expertise, experience, qualifications and special knowledge of the specific matter, i.e. the expert assessment is based on specific knowledge of the members of the evaluation commission.</p> <p>In any case, where an expert evaluation is concerned, it is necessary to specify the reasons for the evaluation carried out.</p>	
10.	What are the law requirements in the case where the selected criterion includes more than one indicator?	<p>In such case the contracting authority shall indicate in the notice or in the invitation to confirm interest and in the <u>tender documentation</u> the relative weighting given to each of the criteria and where this proves impossible, to indicate the criteria in decreasing order of importance. The contracting authorities may specify the minimal and maximum permissible values of the qualitative indicators.</p>	Art. 70, Para 6 PPA
11.	What are the requirements regarding the manner of determining the assessment under the concerned indicator?	<p>The manner of determining the assessment under each indicator shall be structured so as to:</p> <ul style="list-style-type: none"> ○ Enable the assessment of the level of performance, proposed in each tender in accordance with the subject matter of the public procurement as well as with the technical specifications; ○ Enable the objective comparison and assessment of the technical proposal in the tenders; ○ Provide sufficient information to the tenderers regarding the rules applicable upon determining the assessment of each indicator. 	Art. 70, Para 7 PPA
12.	Is it possible for the amount payable and the costs to be fixed?	<p>Yes, it is, but as an exception. In such cases, the assessment shall be based on indicators relating to evaluation of quality only whereas the fixing of the amount payable as well as the costing shall be justified by the contracting authority.</p>	Art. 70, Para 8 PPA
13.	What are the law restrictions regarding the	<p>It is inadmissible to include indicators in the assessment which estimate the time for making a payment or assessing the amount or the tenderer's refusal to</p>	Art. 70, Para 10 PPA

No	Question	Answer	Legal Reference
	determining of indicators?	receive an advanced payment where such is provided for.	
14.	Is it possible to include the selection criteria as indicators for assessing the tenders?	No, it is not, the contracting authorities do not have the right to include selection criteria as indicators for assessing the tenders. For instance, in case the contracting authority has set requirements for the professional competence of the staff assigned as part of the selection criteria, the contracting authority shall not be able to include an indicator relating to the professional competence of the staff.	Art. 70, Para 12 PPA
15.	What is an abnormally favourable proposal?	This is a proposal contained in a tender which is relating to a price or costs subject to assessment and which is by more than 20 percent more favourable than the average value of the rest of the tenderers under the same indicator.	Art. 72, Para 1 PPA
16.	What obligations does the abnormally favourable tender create for the contracting authority?	Where there is an abnormally favourable tender, the contracting authority shall require a detailed justification in writing from the tenderer concerned.	Art. 72, Para 1 PPA
17.	What are the requirements regarding the tenderer's detailed justification in writing?	The justification in writing concerns the way in which the abnormally favourable proposal has been formed and is to be submitted within 5 days as of the receipt of the request.	Art. 72, Para 1 PPA
18.	What may the tenderer's grounds while justifying the abnormally favourable proposal refer to?	The justification may be based on: <ul style="list-style-type: none"> ○ The economic specificities of the production process, of the services provided and the construction method; ○ The technical solution selected or any exceptionally favourable conditions available to the tenderer for the supply of the products and 	Art. 72, Para 2 PPA

No	Question	Answer	Legal Reference
		<p>services or for the execution of the construction works;</p> <ul style="list-style-type: none"> ○ The originality of the proposal by the tenderer regarding the construction work, supplies or services; ○ The compliance with obligations relating to the environmental protection, social and labour law, collective agreements and/or the international environmental, social and labour law provisions; ○ The possibility of the tenderer to obtain state aid. 	
19.	How many proposals are necessary for the formation of the average comparable value so as a written justification to be required?	To require a justification in writing, it is necessary the average comparable value to be formed by more than one proposal.	Art. 72, Para 1 PPA
20.	Is the assessed proposal included when forming the average comparable value?	No, it is not, when determining the average comparable value, no proposals are included of the tender which is subject to assessment as whether there is an abnormally favourable proposal.	Art. 72, Para 1 PPA
21.	When is the tender's justification rejected?	<p>The justification is rejected only in the cases where the submitted evidence is insufficient to justify the proposed price or costs.</p> <p>Furthermore, the justification is rejected in the cases where the proposed price or costs are by more than 20 percent more favourable than the average value of the rest of the tenderers:</p> <ul style="list-style-type: none"> ○ Due to non-compliance with the standards and rules relating to the environmental protection, social and labour law, collective agreements and/or the international environmental, social 	Art. 72, Para 3 - 5 PPA

No	Question	Answer	Legal Reference
		<p>and labour law provisions;</p> <ul style="list-style-type: none"> ○ Due to obtained state aid in the case where the tenderer fails to prove within the time limit prescribed that the aid is compatible with the internal market. 	
22.	What happens when the justification is rejected?	The tenderer concerned is excluded from participating further in the procedure. In view of this significant consequence, a legal requirement has been introduced the submitted justification to be assessed in terms of its comprehensiveness and objectivity. This assessment shall take into account the specifics of the particular procedure and the content of written justification in question.	Art. 72, Para 3 – 5 PPA
23.	Is it necessary to give grounds for accepting or rejecting the justification?	Yes, it is necessary to provide detailed grounds to support the acceptance or rejection of the justification. The grounds with regards to this shall be relevant and adequate to the requirement of objectivity and comprehensiveness, as well as to the presence of any of the hypothesis related to the economic characteristics, technical solutions selected; any exceptionally favourable conditions available to the tenderer for the supply of the products and services or for the execution of the construction works; originality of the proposed by tenderer; the compliance with obligations relating to the environmental protection, social and labour law, collective agreements and/or the international environmental, social and labour law provisions; and/ or the possibility of the tenderer obtaining state aid.	-
24.	Who reviews and assesses the submitted justification?	The justification is reviewed and an assessment on whether it to be accepted or rejected is conducted by the evaluation commission assigned by the contracting authority.	Art. 67, Para 6 IRPPA Art. 72 PPA
25.	Is the commission's assessment regarding the tenderer's justification	Specifying which of the circumstances set out in the written justification are considered objective and within which hypothesis they fall, is an aspect in the analytical work of the subsidiary body. It is within the discretionary power of the commission to decide on the extent of appropriateness of the proposal concerned. In this line,	-

No	Question	Answer	Legal Reference
	subject to further control?	the assessment of the commission conducting the public procurement procedure is not subject to further control.	

Fact Sheet No 12 – TECHNICAL SPECIFICATIONS

No	Questions	Answers	Legal Reference
1.	What is the purpose of the technical specifications?	The technical specifications determine the needed characteristics of the subject of the public procurement.	Art. 48, Para 1 PPA
2.	Who determines the technical specifications?	The technical specifications are determined by the contracting authority.	Art. 48, Para 1 PPA
3.	How are the technical specifications determined?	<p>The technical specifications are determined in one of the following ways:</p> <ul style="list-style-type: none"> ○ by indicating the work characteristics or the functional requirements, including the ecological ones, which allow the precise identification of the parameters of the subject of the public procurement; ○ by indicating in the following order: <ul style="list-style-type: none"> ▪ Bulgarian standards transposing European standards; ▪ European technical assessments; ▪ common technical specifications; ▪ international standards; ▪ other standardization documents, established by the European standardization bodies or where there are not such - through Bulgarian standards, Bulgarian technical approvals or Bulgarian technical specifications; ○ by indicating the work characteristics or the functional requirements through indication of the specifications under one of the standards mentioned above, the reference to which shall be considered a compliance with the requirements for the work characteristics or functional requirements; ○ through specifications under one of the standards mentioned above for a particular part of the characteristics, and for the others - by indicating the work characteristics, or 	Art. 48, Para 1, items 1-4 and Para 2 PPA

No	Questions	Answers	Legal Reference
		functional requirements which allow the precise identification of the parameters of the subject of the public procurement;	
4.	What other requirements must the technical specifications meet?	<p>The technical specifications shall:</p> <ul style="list-style-type: none"> ○ provide equal access for the candidates or tenderers in the public procurement procedure; ○ not create unjustified barriers to the public procurement awarding in conditions of competition; ○ not contain a particular model, source or specific process which characterizes the products or services, offered by a particular potential contractor, not a trade mark, patent, type or a particular origin or production, which would lead to advantage or elimination of certain persons or products. 	Art. 49 PPA
5.	What is a label?	A label is any document, certificate or license confirming that the works, products, services, processes or procedures meet certain requirements.	§2, item 23 AP of PPA
6.	May the contracting authority require specific labels?	The contracting authorities may require specific labels proving that the performance shall comply with the characteristics required (including ecological, social or other characteristics).	Art. 51, Para 1 PPA
7.	What requirements must label specifications meet?	<p>In the cases where the contracting authority requires particular labels, they shall:</p> <ul style="list-style-type: none"> ○ refer to the subject of the public procurement and be appropriate for determining its characteristics; ○ be based on objectively verifiable and non-discrimination requirements; ○ be established under an open and transparent procedure, in which all interested parties are entitled to participate; ○ be accessible for use to all potential candidates and tenderers; 	Art. 51, Para 1, items 1-5 PPA

No	Questions	Answers	Legal Reference
		<ul style="list-style-type: none">○ be defined by an organization which is independent of the potential candidates and tenderers in the public procurement procedure.	

Fact Sheet No 13 – FINALISING PUBLIC PROCUREMENT PROCEDURES

No	Question	Answer	Legal Reference
1.	How is the procedure finalised?	<p>The procedures are finalised by a contracting authority's decision on:</p> <ul style="list-style-type: none"> ○ selecting a contractor of a public procurement, including a contract based on a framework agreement, dynamic purchasing system (DPS) or qualification system; ○ selecting contractors under a framework agreement; ○ ranking of tenderers and/ or award of prizes and/or other cash prizes in design contests; ○ terminating the procedure. 	Art. 108 PPA
2.	How is the contractor selected?	<p>A tenderer is selected as a contractor of the public procurement provided that:</p> <ul style="list-style-type: none"> ○ there are no grounds for exclusion from the procedure available; ○ meets the selection criteria and if applicable – the non-discriminatory rules and the criteria for reduction of the number of candidates; ○ their tender has received the highest evaluation by applying terms and conditions predetermined by the contracting authority as well as by applying the selected award criteria. 	Art. 109 PPA
3.	Under what conditions is the procedure terminated?	<p>The contracting authority shall <i>necessarily</i> terminate the procedure in the cases where:</p> <ul style="list-style-type: none"> ○ no tender, request to participate or contest design has been submitted or there are no tenderers for negotiations; ○ all tenders or request to participate do not meet the terms and conditions for submission, including requirements for form, manner and term, or they are inappropriate; ○ all contest designs do not meet the terms and conditions predetermined by the contracting authority; ○ the tenderers ranked first and second refuse to conclude a contract; 	Art. 110 PPA

No	Question	Answer	Legal Reference
		<ul style="list-style-type: none"> ○ violations have been identified in the process of opening and carrying out the procedure and these violations cannot be remedied without amending the terms and conditions under which the procedure has been announced; ○ as a result of the non-performance of any of the conditions for concluding the public procurement contract; ○ all tenders meeting the conditions predetermined by the contracting authority exceed the financial resources which the contracting authority can provide; ○ it is no longer necessary to carry out the procedure or the public contract award as a result of a substantial change in the circumstances or inability to provide financing for the performance of the public procurement for reasons unforeseeable by the contracting authority; ○ there is a need for substantial changes in the conditions of the public procurement which may lead to change in the mm the circle of the interested persons. <p>The contracting authority <i>may</i> terminate the procedure where:</p> <ul style="list-style-type: none"> ○ there has been only one tender, request to participate or contest design submitted; ○ there is only one appropriate request to participate or only one appropriate tender; ○ there is only one contest design which meets the terms and conditions predetermined by the contracting authority; ○ the tenderer ranked first refuses to conclude a contract, fails to fulfil any of the conditions for conclusion of a contract or fails to prove that there are no grounds for exclusion from the procedure available. 	
4.	May the	Yes, it may, but only provided that the decision for	Art. 110,

No	Question	Answer	Legal Reference
	contracting authority open a new public procurement procedure with the same subject as the one of the already terminated procedure?	termination has been enforced.	Para 4 PPA

Fact Sheet No 14 – CONCLUSION OF A PUBLIC CONTRACT

No	Questions	Answers	Legal Reference
1.	Under what conditions does the public authority conclude a public contract?	<p>The contracting authority concludes a <u>public contract</u> when the selected contractor presents:</p> <ul style="list-style-type: none"> ○ registration document, if the contracting authority has requested the establishment of a legal entity for the contract performance; ○ up-to-date documents evidencing the lack of grounds for exclusion in accordance with the content of the submitted ESPD as well as compliance with the set selection criteria; ○ the set <u>performance guarantee</u>; ○ execute the relevant registration, present a document or fulfil another requirement needed for the contract performance in compliance with a legislation act or administrative act or with the contracting authority's public procurement conditions. 	Art. 112, Para. 1 PPA
2.	Under what conditions does the public authority not conclude a public contract?	<p>The contracting authority does not conclude a public contract when the selected contractor:</p> <ul style="list-style-type: none"> ○ does not fulfil the aforementioned requirements; ○ refuses to conclude a contract; ○ does not provide proof for the lack of grounds for exclusion. 	Art. 112, Para. 2 PPA
3.	What are the options for the public authority in case one of the conditions under the previous questions are present?	In such cases the contracting authority may amend the entered into force decision in the part concerning the awarding the public contract, and provide sufficient reasons for awarding the contract to the secondly ranked tenderer.	Art. 112, Para. 3 PPA
4.	Are there set requirements regarding the public contract?	Yes, the public contract shall be in line with the public contract draft, attached to the <u>documentation</u> , and shall be accompanied by all tenderer's proposals in the tender, on the basis of	Art. 112, Para. 4 PPA

		which the tenderer has been awarded the public contract.	
5.	Are amendments in the public contract draft allowed?	Amendments in the public contract draft are allowed only as exceptions in case they are not significant and are due to conditions which occurred during or after the procedure.	Art. 112, Para. 4 PPA
6.	What is the contract minimum content?	<p>The law provides for a mandatory minimum content of each public contract:</p> <ul style="list-style-type: none"> ○ identification of the parties, date and place of signing; ○ subject; ○ price, terms and conditions for its payment; ○ term or duration for contract performance, and for phased performance – intermedium terms; ○ rights and obligations of the parties, including the contractor’s obligation to conclude a subcontractor agreement when the contractor has expressed in its tender the intention to subcontract; ○ where applicable – provided options and renewals, including scope and value, as well as terms and conditions for their implementation; ○ amount and conditions for forfeiting and release of the performance guarantees, incl. staged release; ○ terms for acceptance of the work; ○ terms and conditions for termination. 	Art. 112, Para. 5 PPA; Art. 69 IRPPA
7.	In what term is the contract concluded?	The contract is concluded within one month as of entry into force of the decision for awarding the contract or the ordinance allowing preliminary execution of the decision, but not within 14 days as of the notification of the interested candidates and/or interested tenderers for the decision for awarding the contract.	Art. 112, Para. 6 PPA
8.	Are there any exemptions	As an exception, the contracting authority may conclude a public contract before the expiration of	Art. 112, Para. 7 PPA

	regarding the term for concluding of the contract?	<p>the 14-day period as of notification of the interested candidates and/or interested tenderers for the decision for awarding the contract, in case:</p> <ul style="list-style-type: none"> ○ the contractor has been awarded as a result of some of the public procurement procedures² and there has been only one invited tenderer; ○ the contractor has been awarded as a result of some of the public procurement procedures³ and there have been invited more tenderers; ○ the awarded contractor is the only interested tenderer and there are no interested candidates; or ○ the contract is concluded on the basis of a framework agreement with one tenderer. 	
9.	Is there any requirement regarding public contracts terms?	Public contracts with continuous or regular performance cover a maximum period of five years. Concluding termless or automatically extendable contracts is not admissible. If such nevertheless conclude have been concluded, they are deemed concluded for one year.	Art. 113, Para. 1 and 4 PPA
10.	Are there any exemptions regarding the 5-year term of public contracts?	<p>As an exception, a public contract may be concluded for longer period if this is necessary due to:</p> <ul style="list-style-type: none"> ○ the essence of the procurement subject; ○ the necessity of investment returns; or ○ technical reasons, which shall be stated in the contracting authority's motives of the call for tenders' decision. <p>In case the contract has been concluded on the basis of a framework agreement, the term of the contract may exceed the framework agreement term, if:</p> <ul style="list-style-type: none"> ○ no longer than a year is needed for 	Art. 113, Para. 2 and 3 PPA

² These are negotiated procedure without prior publication of a contract notice, negotiated procedure without prior call for competition, negotiated procedure without publication of a contract notice or direct contracting.

³ These are the urgent cases in negotiated procedure without prior publication of a contract notice, negotiated procedure without prior call for competition, negotiated procedure without publication of a contract notice or direct contracting.

		<p>finishing the performance of the contract;</p> <ul style="list-style-type: none"> ○ the contract term is related to the execution of activities serving the main subject, incl. warranty service and staff trainings – no longer than a year. 	
11.	Is it possible to conclude the contract under conditions?	<p>In case there has been no financing provided at the opening of the procedure, the contract may be concluded under conditions. This circumstance is specified in the contract notice or the invitation to confirm interest and in the public contract draft. In such cases each of the parties may terminate the contract without serving a notice after 3 months as of its signing.</p>	Art. 114 PPA

Fact Sheet No 15 – MODIFICATION AND TERMINATION OF A PUBLIC CONTRACT

No	Questions	Answers	Legal Reference
1.	Is a modification in a public contract or a framework agreement always admissible?	<p>Modifications in a public contract or a framework agreement are admissible only under the conditions explicitly provided for in the law.</p> <p><i>Examples for inadmissible modifications:</i></p> <ul style="list-style-type: none"> ○ <i>The parties to the contract;</i> ○ <i>Possibility for amendment of the numbers and sizes of the goods, subject to supply;</i> ○ <i>Possibility for increasing the price in the tender;</i> ○ <i>Supplement to the procurement subject with new activities after carrying out the public procurement procedure.</i> 	-
2.	Under what conditions may a public contract or a framework agreement be modified?	<p>The conditions for modifications in a public contract or a framework agreement are:</p> <ul style="list-style-type: none"> ○ the modifications have been provided for in the procurement documentation or in the contract in clear, precise and unequivocal review clauses; ○ the scope and nature of the possible modifications or options, as well as the conditions under which they may be made, do not lead to alternation in the overall subject of the procurement or the framework agreement; ○ due to unforeseen circumstances it is necessary to perform additional supplies, services or works, which are not included in the initial public procurement, where the change of the contractor: ○ cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations, awarded under the initial procurement; and ○ would cause significant inconvenience, 	Art. 116, Para 1 PPA

		<p>related to the maintenance, operation and servicing or would duplicate contracting authority's costs;</p> <ul style="list-style-type: none"> ○ the need for modification has been brought about by circumstances which do not lead to alternation in the subject of the contract or the framework agreement; ○ substitution of the contractor is needed in one of the following cases: <ul style="list-style-type: none"> ▪ the initial contractor is not able to continue performing the contract or the framework agreement and the possibility of substitution is provided for in the procurement documentation and in the contract in clear, precise and unequivocal review clauses, concerning the occurrence of certain conditions; ▪ there is universal or partial succession as a result of transformation of the initial contractor, including the cases of liquidation or open wind-up procedure, there are no grounds for exclusion of the new contractor and the new contractor fulfils the selection criteria initially established, provided that this change does not lead to other substantial modifications to the public contract or the framework agreement and does not circumvent the law. ○ the needed modifications are not substantial; ○ the need for modification has been brought about by unforeseen circumstances and does not lead to alternation of the contract or the framework agreement as a whole and the modification value is up to 10% of the initial contract value for services and supplies and up to 15% of the initial contract value for works, or the modification value does not exceed the respective threshold of each public procurement type. 	
3.	Are subsequent	Yes, they are possible but shall not lead to	Art. 116,

	modifications possible?	circumvent of the law.	Para 2 PPA
4.	When is the contract modification substantial?	<p>The modification in a public contract is substantial when one or more of the following conditions are present:</p> <ul style="list-style-type: none"> ○ the modification introduces conditions which, had they been part of the initial procurement procedure, would have attracted additional tenderers or candidates in the procurement procedure, would have allowed for the admission of other tenderers or candidates than those initially selected or for the acceptance of a tender other than that originally accepted; ○ the modification leads to benefits in favour of the contractor which have not been provided for to the rest of the tenderers in the procedure; ○ the modification concerns the subject or the scope of the public contract or the framework agreement; ○ the contractor has been substituted with a new one in contradiction to the law. 	Art. 116, Para 5 PPA
5.	Under what conditions is the public contract or the framework agreement terminated?	<p>The public contract or the framework agreement is terminated:</p> <ul style="list-style-type: none"> ○ pursuant to the general conditions of the law (e.g. expiration of its term); ○ pursuant to the conditions stipulated in the contract itself or the framework agreement itself; ○ in case of substantial modification of the procurement which does not allow for the contract or the framework agreement to be modified under the conditions, specified under the previous Question; ○ when the presence of conditions for mandatory exclusion from participation in the public procurement during the execution of the procedure has been determined; ○ when the procedure should have not been 	Art. 118, Para 1 PPA Art. 73 IRPPA

		<p>awarded to the contractor because of violation, given by the European Court of Justice in proceedings against Bulgaria for breach of the EU Treaties;</p> <ul style="list-style-type: none"> ○ the contract has been awarded on the basis of a framework agreement, which has been declared voidable. <p>In the last three cases the contracting authority may terminate the contract without notice.</p>	
6.	Under what conditions may the public contract or the framework agreement be declared voidable?	<p>Grounds for voidability are present in case the contract or the framework agreement has been concluded:</p> <ul style="list-style-type: none"> ○ without public procurement procedure despite the presence of grounds for its conduct; ○ the procedure is executed without publication of the opening of the procedure; ○ under unlawful implementation of: <ul style="list-style-type: none"> ▪ the exceptions rules of the PPA; ▪ negotiated procedure without prior publication of a contract notice; ▪ negotiated procedure without prior call for competition; ▪ negotiated procedure without publication of a contract notice; ▪ direct contracting with certain economic operators; ○ prior to entering into force of a contracting authority's act in relation to the procedure, and a violation is determined which has affected the possibility of: <ul style="list-style-type: none"> ▪ an interested economic operator to submit request for participation or tender; ▪ an interested candidate to submit tender; ▪ an interested candidate or tenderer to participate in the contractor awarding. 	<p>Art. 119 PPA Art. 73, Para 2 IRPPA</p>
7.	Who is entitled to	Each of the following is entitled to request	Art. 224,

	request voidability of the contract or the framework agreement?	<p>voidability of the contract or the framework agreement:</p> <ul style="list-style-type: none"> ○ <u>each interested economic operator</u> – for violation of the requirement for publication of the opening of the procedure or for unlawful implementation of the exceptions rules of the PPA, the negotiated procedure without prior publication of a contract notice, the negotiated procedure without prior call for competition, the negotiated procedure without publication of a contract notice, and the direct contracting with certain economic operators; ○ each interested economic operator and <u>interested candidate</u> – for violation that has affected the possibility of the interested economic operator to submit request to participate or tender or of the interested candidate to submit tender; ○ <u>interested candidate and/or interested tenderer</u> – for violation that has affected the possibility of an interested candidate or tenderer to participate in the contractor awarding. 	Para 1 PPA
8.	In what term may voidability of a contract or a framework agreement be requested?	Voidability may be requested within two months as of publication of a call for tenders in the <u>Public Procurement Register</u> . In case of no publication – within two months as of the date of knowledge, but no later than a year of the signing.	Art. 225, Para 1 PPA
9.	What are the consequences of the voidability?	<p>In case a public contract or a framework agreement has been declared voidable, each of the parties shall return to the other everything received from the latter.</p> <p>In case this is not possible, each of the parties shall return to the other the monetary equivalent of everything received under the contract.</p>	Art. 226 PPA

Fact Sheet No 16 – SPECIFIC TECHNIQUES AND INSTRUMENTS

No	Questions	Answers	Legal ground
1.	What are specific techniques and instruments for awarding public procurements?	Specific techniques and instruments represent special methods of procurement which facilitate the contracting authorities in the public procurement procedures.	-
2.	How many types of specific techniques and instruments are available?	The law regulates 5 types of techniques and instruments: <ul style="list-style-type: none"> ○ Framework agreement; ○ Dynamic purchasing systems; ○ Electronic auctions; ○ Electronic catalogues; ○ Centralized procurement. 	Art. 81-98 PPA
Framework Agreement			
3.	What is a framework agreement?	A <u>framework agreement</u> is an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.	Art. 81, Para 2 PPA
4.	When is a framework agreement concluded?	Framework agreement may be concluded on the basis of any of the public procurement procedures in case the respective requirements are present.	Art. 81, Para 1 PPA
5.	What is the maximum term of the framework agreement?	The maximum term of the framework agreement for <u>classic contracting authorities</u> is 4 years and for utilities contracting entities – 8 years.	Art. 81, Para 3 PPA
6.	Is it possible to prolong the term?	The term of the framework agreement might be longer than 4 years, resp. 8 years, in exceptional cases and for reasons related to the subject of the agreement.	Art. 81, Para 4 PPA
7.	How is a public procurement contract concluded as a result of a	Concluding a contract as a result of a framework agreement depends on the fact whether the agreement contains all terms and with how many individuals the agreement itself is concluded.	-

No	Questions	Answers	Legal ground
	framework agreement?		
8.	How shall be proceeded in case the framework agreement sets out all terms?	<p>Where the framework agreement sets out all terms, the contracting authority concludes the public procurement contract, applying these terms.</p> <p>In case the framework agreement is concluded with more than one operator, the agreement shall define the conditions under which a contractor would be determined for each specific contract.</p>	Art. 82, Para 1 PPA
9.	How shall be proceeded in case the framework agreement does not set out all terms?	<p>Where the framework agreement does not out all terms and it is concluded with a single operator, the contracting authority requests the operator to supplement its tender.</p> <p>In case the framework agreement does not set out all terms and it is concluded with more than one operator, the contracting authority performs an internal competitive selection for determining a contractor for each specific contract.</p>	Art. 82, Para 2 and 3 PPA
10.	How is an internal competitive selection held?	<p>The contracting authority holds an internal competitive selection by:</p> <ul style="list-style-type: none"> ○ sending a written invitation to the operators under the framework agreement; ○ determining an appropriate deadline for receipt of tenders, taking into account the complexity of the public procurement subject and the time needed for the preparation of the tenders; ○ keeping the tenders until the deadline for receiving them; ○ appointing an evaluation commission; ○ producing a decision elects a contractor on the basis of the criteria defined for awarding the public procurement and concludes a contract or suspends the internal competitive selection. <p>Conducting the internal competitive selection, the contracting authority may apply the indicators and</p>	Art. 82, Para 4 and 6 PPA

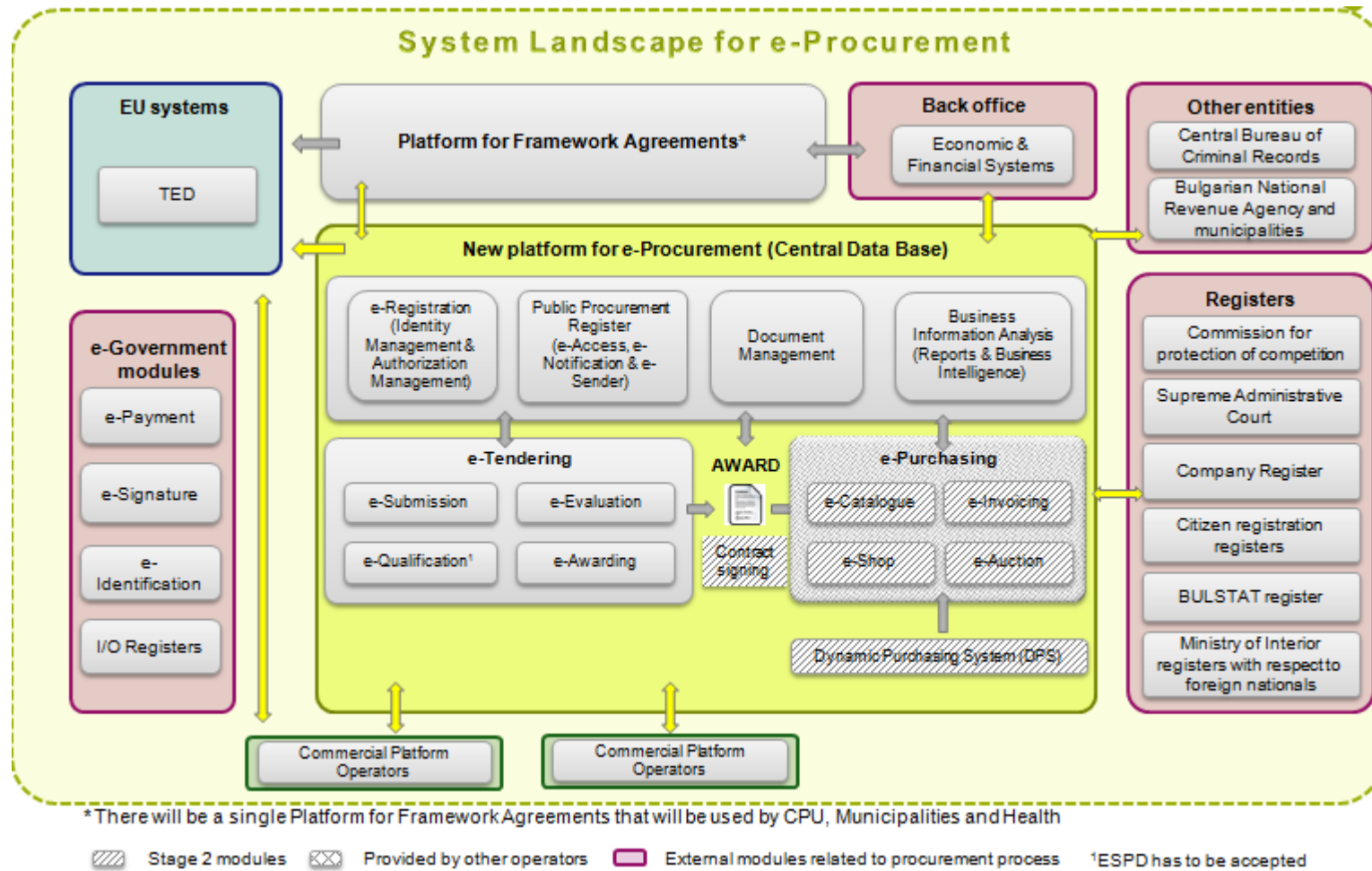
No	Questions	Answers	Legal ground
		evaluation methodology used for the conclusion of the framework agreement.	
Dynamic Purchasing Systems			
11.	What is a dynamic purchasing system?	Dynamic purchasing system (DPS) is an electronic process, which is applied for commonly used purchases whose basic characteristics satisfy the contracting authority's requirements. DPS shall be open throughout the period of validity to any operator that satisfies the selection criteria. The access and participation in the DPS shall be open and free.	Art. 83, Para 1 PPA
12.	Who participates in a dynamic purchasing system?	All candidates that meet the selection criteria are included in the DPS. The contracting authorities may not limit the number of candidates in it.	Art. 83, Para 4 PPA
13.	How to participate in a dynamic purchasing system?	Any operator may apply for inclusion in DPS within the period of its validity until 30 as of the day of sending the contract notice for publication or the invitation to confirm interest.	Art. 85, Para 1 PPA
14.	In what term shall the contracting authority decide on the participation in a DPS?	Within 10 working days as of receipt of the application, the contracting authority shall decide on the inclusion of the candidate in DPS by applying the established selection criteria.	Art. 85, Para 3 PPA
15.	May the term of validity of a DPS be altered?	The DPS term of validity may be altered. For announcement of the change the contracting authority shall use the notice template used for the announcement of the DPS.	Art. 88, Para 1 PPA
Electronic auctions			
16.	What is an electronic auction?	An electronic auction is a repeating electronic process which starts with the initial full evaluation of the tenders and enables them to be ranked using automatic evaluation methods, lower prices and/or new values concerning certain elements of the tenders.	Art. 89, Para 1 PPA
17.	When is an electronic auction used?	The contracting authorities may use an electronic auction when awarding public contracts in open or restricted procedures, competitive procedure with negotiation or negotiated procedure with prior	Art. 89, Para 4 and 5 PPA

No	Questions	Answers	Legal ground
		publication of a call for competition, as well as in awarding public contracts in a DPS.	
18.	Are there any restrictions when using an electronic auction?	Electronic auction shall not be used in case of public service contracts and public construction contracts, having as their subject intellectual performances and which are not subject to an automatic evaluation by electronic means.	Art. 89, Para 2 PPA
19.	How is an electronic auction held?	An electronic auction shall be based on: <ul style="list-style-type: none"> ○ on prices where the contract is awarded on the basis of price only; ○ prices and/or new values of the indicators, where the contract is awarded on the basis of the best price-quality ratio or to the tender with the lowest cost using a cost-effectiveness approach. 	Art. 90, Para 1 PPA
20.	Is it possible to hold the electronic auction in phases?	An electronic auction may be held in subsequent phases and at each phase the contracting authority may announce the number of tenderers but in no case may the identities of the tenderers be disclosed.	Art. 90, Para 8 and 12 PPA
21.	When is an electronic auction closed?	An electronic auction is closed in one of the following manners: <ul style="list-style-type: none"> ○ at the indicated in the invitation date and hour; ○ when no new proposals, that satisfy the contracting authority's selection criteria, have been received – after expiration of the term, provided for in the invitation; ○ when all phases of the auction have been completed. 	Art. 91, Para 1 PPA
Electronic Catalogues			
22.	What are electronic catalogues?	Electronic catalogues represent a different way of submitting tenders upon request of the contracting authority – in the format of an electronic catalogue or part of the content to be an electronic catalogue (when awarding public contracts via electronic means). The requirement for electronic catalogues shall be indicated in the	Art. 92, Para 1 PPA

No	Questions	Answers	Legal ground
		contract notice or the invitation to confirm interest.	
23.	Is it possible to use electronic catalogues along with other specific techniques and instruments?	Electronic catalogues may be used along with framework agreement and dynamic purchasing system.	Art. 93 and 94 PPA
Centralised Procurement			
24.	What is centralised procurement?	Centralised procurement is the obtaining of supplies and/or services from a central purchasing body that provides centralized purchasing activities.	Art. 95, Para 1 PPA
25.	Is it possible to use centralised procurement along with other specific techniques and instruments?	Centralised procurement may be used along with framework agreement and dynamic purchasing system. Centralised procurement may also take advantage of e-Catalogues and e-Auctions.	Art. 95, Para 2 PPA

Fact Sheet No 17 – E-PROCUREMENT

Figure 6 - Scheme for E-Procurement⁴



⁴ The scheme was developed under the project “Bulgaria: Policy Advice and Support for the Introduction of the Reform on E-Procurement”, implemented by the European Bank for Reconstruction and Development.

No	Question	Answer	Legal Reference
1.	What is electronic procurement?	<p>Electronic procurement may be regarded as a set of legal, organizational, technological and training measures, related to implementation of actions and communication under a public procurement procedure, conclusion of the public contract, document turnover regarding the execution of the public contract and reporting, electronically through the use of electronic communication and electronic means of communication.</p> <p>Commonly electronic procurement is viewed as part of electronic government. However, while e-government is a function, generally related to the activities of the executive power, public procurement covers also activities of the legislative and judicial powers. The use of information and communication technologies for the purposes of execution of competences of judicial and legislative bodies is referred to as, respectively, electronic justice and electronic democracy.</p> <p>Regardless of the common general goals, the existence of principle and practical differences in the manner in which e-government, e-justice and e-democracy function can be pointed out.</p> <p>In this sense it may be considered that electronic procurement has a horizontal effect on e-government, e-justice and e-democracy (Fig. No. 6).</p>	-
2.	What are electronic means of communication?	Electronic means of communication correspond to electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio,	§ 2, item 10 SP to the PPA

No	Question	Answer	Legal Reference
		by optical means or by other electromagnetic means.	
3.	Is the use of electronic means of communication mandatory throughout the procurement process?	With the entry into force of the respective provisions of the PPA, relating to communication and information exchange, the use of electronic means of communication for the award of public contracts will be mandatory.	Art. 39, Para.1 PPA
4.	Are there exceptions to the rule that the use of electronic means of communication is mandatory?	<p>Yes, contracting authorities will not be obliged to conform to the requirements for mandatory use of electronic means of communication in cases where:</p> <ul style="list-style-type: none"> ○ Due to the specialised nature of the procurement, the use of electronic means of communication would require specific tools, devices or file formats that are not generally available or supported by generally available applications; ○ The applications supporting file formats that are suitable for the description of the tenders use file formats that cannot be handled by any other open or generally available applications or are under a proprietary licensing scheme and cannot be made available for downloading or remote use by the contracting authority; ○ The use of electronic means of communication would require specialised office equipment that is not available to the contracting authority; ○ The procurement documents require the submission of physical or scale models which cannot be transmitted using electronic 	Art. 39, Para. 3 and 4 PPA

No	Question	Answer	Legal Reference
		<p>means.</p> <p>Whenever electronic means of communication are not used, communication may be carried out by post or other suitable carrier or by a combination of post or other suitable carrier and electronic means.</p> <p>In addition, contracting authorities will not be obliged to comply with mandatory use of electronic means of communication whenever the use of other means is necessary in relation to:</p> <ul style="list-style-type: none"> ○ To prevent a breach of security of the electronic means of communications; ○ For the purposes of protection of sensitive information requiring such a high level of protection that it cannot be properly ensured by using electronic tools and devices that are either generally available to economic operators. 	
5.	<p>What are the requirements relating to the tools and devices for electronic exchange of information?</p>	<p>The tools and devices in use as well as their technical characteristics have to be non-discriminatory, generally available and interoperable with the ICT products in generally available and must not restrict economic operators' access to the procurement procedure.</p> <p>Contracting authorities may, where necessary, require the use of tools and devices which are not generally available, provided that the contracting authorities offer alternative means of access.</p> <p>Furthermore, utilized tools and devices for the electronic receipt of tenders, requests for participation as well as plans and projects in design contests must guarantee, through technical means and appropriate</p>	<p>Art. 39, Para. 1, 2 and 8 PPA</p>

No	Question	Answer	Legal Reference
		<p>procedures, that:</p> <ul style="list-style-type: none"> ○ The exact time and date of the receipt of tenders, requests to participate and the submission of plans and projects can be determined precisely ○ No-one can have access to the transmitted data, before the expiration of the respective terms; ○ Only authorised persons may set or change the dates for opening data received; ○ During the different stages of the procurement procedure or of the design contest access to all data submitted, or to part thereof, must be possible only for authorised persons; ○ Only authorised persons must give access to data transmitted and only after the prescribed date; ○ Data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith. 	
6.	What are appropriate means for access?	<p>The means for access determined by the contracting authority are deemed appropriate:</p> <ul style="list-style-type: none"> ○ In case they ensure that access is unrestricted, full, direct and free of charge access as of the date of the publication of the contract notice or the date the invitation to confirm interest was sent; the contract notice and the invitation to confirm interest must contain 	Art. 39, Para. 2 PPA

No	Question	Answer	Legal Reference
		<p>the internet address where these means can be accessed;</p> <ul style="list-style-type: none"> ○ Tenderers having no access to the tools and devices concerned, or no possibility of obtaining them within the relevant time limits, are provided with access to the procurement procedure through the generation of one-time access codes, made available free of charge online. This is only valid in case the above lack of access cannot be attributed to the tenderer concerned; or ○ Support an alternative channel for electronic submission of tenders. 	
7.	What is a qualified electronic signature?	Qualified electronic signature means an advanced electronic signature that is based on a qualified certificate for electronic signatures, provided by a trust service provider, which allows establish the link between the signatory and the public key for verification of the signature; and is created by a qualified electronic signature creation device.	Art. 16 EDESA
8.	Is the use of qualified electronic signatures mandatory?	<p>Pursuant to the law, use of a qualified electronic signature is not mandatory. Meanwhile if it is concluded that the level of assessed risks, requires the use of advanced electronic signatures within the meaning of the Electronic Document and Electronic Signature Act, contracting authorities are required to accept advanced electronic signatures supported by a qualified certificate, provided by a trust service provider, which is on a trusted list.</p> <p>It may therefore be concluded that the format (the type) of the electronic</p>	Art. 39, Para. 10 PPA Art. 25 Regulation No. 910/2014

No	Question	Answer	Legal Reference
		signature which will be used under a procurement procedure by candidates or tenderers, will be determined by the contracting authority on the basis of the necessary security level.	
9.	Is the contracting authority obliged to accept an electronic signature which does not comply with the predefined requirements?	In accordance with the special rules on the use and legal effects of electronic signatures, should a candidate or a tenderer applies a qualified electronic signature, the respective contracting authority may not reject it, regardless of the specific requirements and conditions related to a public procurement procedure. This conclusion originates from the legally established principle that the electronic signature may not be denied legal effect and admissibility solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic signature. In a similar manner, it is established that an electronic transaction may not be rejected only on the grounds that a document is in electronic form. It should be noted that qualified electronic signature has the equivalent legal effect of a handwritten signature.	
10.	In which cases may the contracting authority reject an electronic signature which does not comply with the predefined requirements?	In case a candidate or a tenderer uses a format of electronic signature, different from the requirements established by the contracting authority, the electronic signature or the electronic document carrier has to include information on existing validation possibilities.	Art. 39, Para. 12 PPA
11.	What is an electronic signature?	Electronic signature means any data in electronic form which is attached to or logically associated with other data in electronic form and which is used for determining its authorship.	Art. 13, Para. 1 EDESA
12.	What is an advanced	An advanced electronic signature means an	Art. 13, Para.

No	Question	Answer	Legal Reference
	electronic signature?	<p>electronic signature which:</p> <ul style="list-style-type: none"> ○ Allows the identification of the author; ○ Is uniquely linked to the signatory (the author); ○ Is created using electronic signature creation data that the signatory can, with a high level of confidence, use under his sole control; ○ Is linked to the data signed therewith in such a way that any subsequent change in the data is detectable. 	2 EDESA
13.	What is an electronic statement?	An electronic statement is a verbal statement, represented in digital format, through a common standard for transformation, reading and visual representation of information.	Art. 2, Para. 1 EDESA
14.	What is an electronic document?	<p>An electronic document is an electronic statement recorded on a magnetic, optic or another carrier which allows its reproduction.</p> <p>An electronic document may also mean any content stored in electronic form, in particular text or sound, visual or audio-visual recording.</p>	<p>Art. 3, Para. 1 EDESA</p> <p>Art. 3, Para. 1, item 35 Regulation No. 910/2014</p>
15.	Who is the author (signatory) of an electronic statement?	Author (signatory) of an electronic statement is a natural person who is cited in the electronic statement as its author.	Art. 4 EDESA
16.	Who is the principal (holder) of an electronic statement?	Principal (holder) of an electronic statement means the person on whose behalf the electronic statement has been issued.	Art. 4 EDESA
17.	What is a trust service provider?	A trust service provider is a person performing public functions that issues qualified signature certificates and	Art. 19 EDESA

No	Question	Answer	Legal Reference
		certificates for the time of creation of an electronic signature, created for a specific electronic document.	
18.	What is a trust list?	<p>A trust list contains the minimally required information on the supervised by a member state accredited qualified trust service providers. The list must be published in machine readable format. If a member state publishes its trust list in a human readable format, it must ensure that the information in this list is the same as in the list in machine readable format.</p> <p>The primary function of trust lists is to provide for cross-border interoperability in terms of the use of qualified electronic signatures as well as to guarantee the recognition of certificates created by trust service providers established in other member states.</p>	<p>Art. 44 EDESA Decision 2009/767/EC</p>
19.	What are the requirements towards the electronic signatures of tenderers and candidates used under a public procurement procedure?	The validation possibilities must allow the contracting authority to validate online, free of charge and in a way that is understandable for non-native speakers, the received electronic signature.	Art. 39, Para. 12 PPA
20.	Are there any requirements relating to electronically signed documents issued by a competent authority of another Member State or by another issuing entity?	Yes, in terms of documents used under a public procurement procedure, that are signed by a competent authority of a member state or by another issuing entity, the competent issuing authority or entity may establish the required advanced signature format in accordance which is differs from the established reference formats. In such cases the electronic signature or the electronic document must contain information on the validation possibilities, which would allow the online, free of charge validation, in a way that is understandable for non-native speakers.	Art. 39, Para. 13 PPA

No	Question	Answer	Legal Reference
21.	Is an electronic document considered a written document?	Yes, electronic documents are equivalent to written documents.	Art. 3, Para. 2 EDESA
22.	What is a centralized electronic platform for the award of public procurement contracts?	<p>When awarding public contracts contracting authorities are required to make use of single national web-based electronic platform which is envisaged to be operated and maintained by the Public Procurement Agency.</p> <p>The deployment of the centralized electronic platform for the award of public procurement contracts is a reflection of the decision adopted by the legislator for centralization of electronic procurement – i.e. one information system will be used by all contracting authorities, instead of each contracting authority having to develop and implement its own software solution or having to use a solution of an ancillary purchasing activities services provider.</p>	Art. 40, Para. 1 PPA
23.	What are the requirements towards the centralized electronic platform for the award of public procurement contracts?	<p>The centralized electronic platform must allow the use of electronic means of communication applying to:</p> <ul style="list-style-type: none"> ○ <u>Publication of contracting authorities' decisions;</u> ○ <u>Publication of contract notices;</u> ○ <u>Publication of public procurement procedure documentations;</u> ○ <u>Submission of requests for clarifications by tenderers and candidates,</u> as well as provision of clarifications on public procurement procedure documentations by contracting authorities; ○ <u>Sending of invitations by contracting authorities;</u> ○ <u>Submission of requests for participation and tenders</u> 	Art. 40, Para. 3 PPA

No	Question	Answer	Legal Reference
		<p>(electronic submission):</p> <ul style="list-style-type: none"> ○ Evaluation of tenders; ○ Conclusion of contracts; ○ Ordering under a contract; ○ Invoicing; ○ Payments; ○ Transmission of other information and documents. 	
24.	When do legal provisions relating to obligations for the use electronic procurement enter into force?	<p>Bulgarian legislator has envisaged a <u>phased approach towards respective provisions entering into force</u> with respect to electronic public procurement.</p> <p>Initially electronic procurement and the mandatory use of electronic means of communication will become effective towards central purchasing bodies. They will be obliged to make use of electronic procurement as of 1 January 2017.</p> <p>As regards to the rest of the contracting authorities, this obligation will partially enter into force as of 1 July 2017. As of then the use of electronic means of communication will apply to:</p> <ul style="list-style-type: none"> ○ Publication of contracting authorities' decisions; ○ Publication of contract notices; ○ Publication of public procurement procedure documentations; ○ Submission of requests for clarifications by tenderers and candidates, as well as provision of clarifications on public procurement procedure documentations by contracting authorities; ○ Sending of invitations by contracting authorities; ○ Submission of requests for 	§ 29 TFP to the PPA

No	Question	Answer	Legal Reference
		<p>participation and tenders (electronic submission);</p> <ul style="list-style-type: none"> ○ Transmission of other information and documents. <p>The use of an electronic European Single Procurement Document will be mandatory as of 1 April 2018.</p> <p>As of 1 June 2018 contracting authorities will no longer be able to require documents contained in member states' national data-bases when free of charge and direct access has been ensured. Furthermore, as of this date contracting authorities will be obliged to primarily require types of certificates or forms of documentary evidence that are covered by the online repository of certificates 'e-Certis'.</p> <p>As of 1 June 2020 the centralized electronic platform must allow the use of electronic means of communication applying to:</p> <ul style="list-style-type: none"> ○ Evaluation of tenders; ○ Conclusion of contracts; ○ Ordering under a contract; ○ Invoicing; ○ Payments. 	

Figure 7 - Correlation between e-Procurement and e-Government, e-Democracy and e-Justice

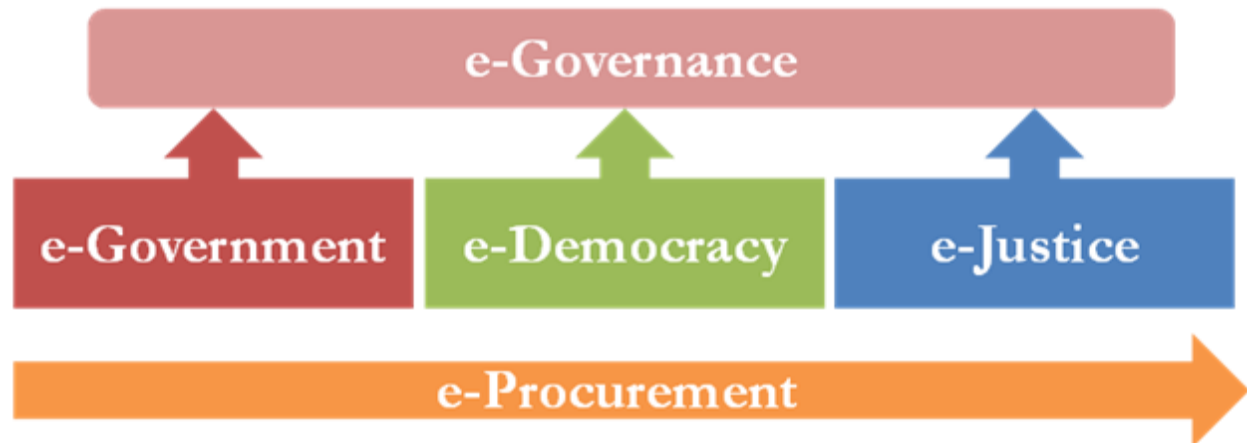


Figure 8 - Composition of e-Procurement

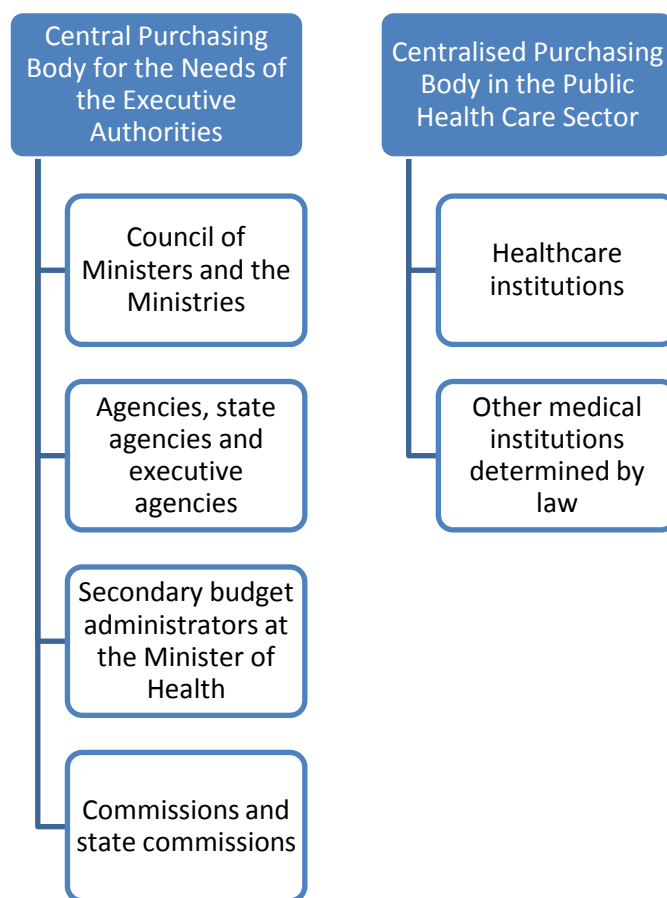


Figure 9 - Calendar on Entry into Force of PPA Provisions related to e-Procurement



Fact Sheet No 18 – CENTRAL PURCHASING BODIES

Figure 10 - Central Purchasing Bodies and Contracting Authorities



No	Question	Answer	Legal Reference
1.	What is a central purchasing body?	This is a contracting authority, established to provide centralised purchasing activities and possibly supporting purchasing activities.	§ 2, item 63 AP of PPA
2.	What are centralised purchasing activities?	These are activities conducted on a permanent basis, related to the acquisition of supplies and/or services intended for contracting authorities, or related to the award of public contracts or the conclusion of framework agreements for works, supplies or services intended for contracting authorities	§ 2, item 64 AP of PPA
3.	How are centralised purchasing	The acquisition of supplies and/or services from the centralised purchasing bodies is conducted through public procurement procedures, awarded by using a:	Art. 95, Para 2 PPA

No	Question	Answer	Legal Reference
	activities conducted?	<ul style="list-style-type: none"> ○ <u>Dynamic purchasing system</u>, operated by the centralised purchasing body; ○ <u>Framework agreement</u> concluded with the centralised purchasing body. 	
4.	Does a contracting authority perform a public procurement procedure for awarding a centralised purchasing body?	No, the contracting authorities do not apply the public procurement procedures when awarding a centralised purchasing body for conducting centralised purchasing activities, which may also include provision of supporting purchasing activities.	Art. 95, Para 4 PPA
5.	How is a centralised purchasing body established?	<p>A central purchasing body may be established upon a decision of a group of contracting authorities.</p> <p>The Council of Ministers establishes centralised purchasing bodies for the needs of the executive authority administrations, as well as for the needs of specific sectors.</p> <p>Upon proposal of the municipal councils the municipal mayors establish centralised purchasing bodies for the needs of the municipalities. Also, a municipal council may adopt a decision for the acquisition of supplies and/or services from an already established centralised purchasing body in order to fulfil municipal needs.</p>	Art. 96 PPA
6.	Is it possible to use a centralised purchasing body, established in another Member State of the EU?	Yes, the contracting authorities are entitled to use dynamic purchasing systems, framework agreements and contracts, concluded with a centralised purchasing body, established in another MS of the EU, in case the respective contracting authority is specified therein.	Art. 98, Para 1 PPA
7.	In case using a centralised purchasing body, established in another MS of the EU, which is the	In cases, where public contracts are awarded through a dynamic purchasing systems or a framework agreement, the applicable legislation is the one of the MS, where the centralised purchasing authority is established.	Art. 98, Para 2 PPA

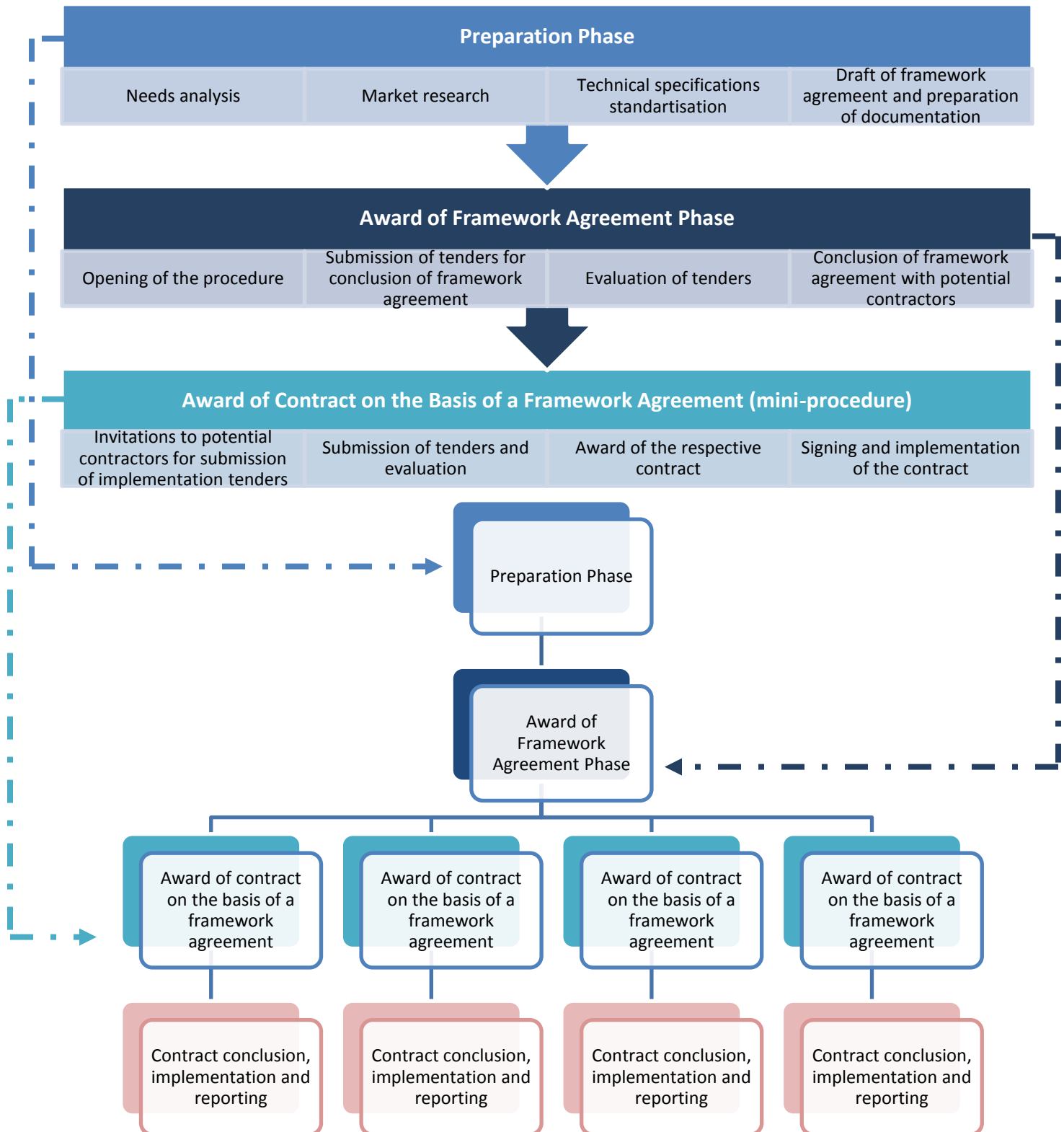
No	Question	Answer	Legal Reference
	applicable legislation?		
8.	What centralised purchasing bodies have been established so far?	<p>Currently, two centralised purchasing bodies are established:</p> <ul style="list-style-type: none"> ○ Centralised purchasing body for the needs of the executive authorities, established by a Council of Ministers Ordinance (CMO) No 385 of 30.12.2015 on the Activity of the Centralised Purchasing Body for the Needs of the Executive Authorities; ○ Centralised purchasing body in the Public HealthCare sector, established by a Council of Ministers Ordinance (CMO) No 146 of 09.06.2015 on Establishing a Centralised Purchasing Body for the Needs of the Public Health Care Sector. <p>The functions of a centralised purchasing body for the needs of the executive authorities are executed by the Minister of Finance, assisted by Department “Central Finance and Contracting” at the Ministry of Finance, and the functions of a centralised purchasing body for the needs of the public health care sector – by the Minister of HealthCare, assisted by Department “Statutory Regulation and Public Procurement in Health Care” at the Ministry of Health Care.</p>	<p>Council of Ministers Ordinance (CMO) No 385 of 30.12.2015 Council of Ministers Ordinance No 146 of 09.06.2015</p>
9.	What is the subject of public contracts awarded through a Centralised Purchasing Body (CPB) for the Needs of the Executive Authorities?	<p>Subject to public contracts through CPB for the Needs of the Executive Authorities are the supplies of goods and the provision of services in categories, as follows:</p> <ul style="list-style-type: none"> ○ Supplies of: copy paper; stationery; toners for copiers and printers and other printing devices, and other printing supplies; motor fuel, supplied by cards for cashless payment, car care and car lubricants; automobiles; office equipment and furniture; software for operating systems and application software for creating, editing and formatting of e-documents; computers and peripherals; ○ Provision of services for: current and thorough cleaning of buildings, including providing the 	<p>Art. 3 CMO No 385 of 30.12.2015</p>

No	Question	Answer	Legal Reference
		<p>necessary materials and supplies for it; airfare; translation services; post and courier services; technical maintenance and repair of automobiles; technical maintenance and repair of air conditioning equipment; technical maintenance and repair of office equipment.</p> <p>In addition to the aforementioned, the Council of Minister may specify other, additional, supplies and services which shall be awarded through a centralised purchasing body for the needs of the executive authorities.</p>	
10.	What is the subject of public contracts awarded through a CPB for The Needs of the Public Health Care Sector?	Subject to public contracts through CPB for the needs of the public health care sector are the supplies of goods – medical products from the Positive Drug List, entered into a public electronic register at the National Council on Prices and Reimbursement of Medical Products.	Art. 3 CMO No 146 of 09.06.2015
11.	Which executive authorities does the CPB for the Needs of the Executive Authorities serve?	<p>The CPB for the Needs of the Executive Authorities applies procedures for conclusion of framework agreements for the needs of:</p> <ul style="list-style-type: none"> ○ The Council of Ministers and the Ministries; ○ Explicitly specified agencies, state agencies and executive agencies; ○ Explicitly specified secondary budget administrators at the Minister of Health Care; ○ Explicitly specified commissions and state commissions. 	Art. 4, Para 1 CMO No 385 of 30.12.2015
12.	Are executive authorities obliged to award public contracts only through a CPB?	<p>The aforementioned executive authorities, except for the commissions and the state commissions, shall make use of the centralised purchasing activities conducted by the Central Purchasing Body.</p> <p>The only exception to this rule is related to public procurement funded or co-funded with programs or EU funds, with funds from other countries or from international or foreign organizations.</p> <p>Also, executive authorities may award public contracts</p>	Art. 4, Para 2-6 CMO No 385 of 30.12.2015

No	Question	Answer	Legal Reference
		on their own during the term of the framework agreement only if the supplies/services to be awarded by means other than the respective framework agreement are with an indicative value, lower than the one for which a written contract is required by the law.	
13.	How are the centralised purchasing activities conducted by the CPB for the Needs of the Executive Authorities?	<p>The CPB concludes a framework agreement with the potential contractors and subsequently the individual contracting authorities conclude a public contract by selecting a contractor on the basis of the framework agreement.</p> <p>It is provided for the CPB to award the public contract on the basis of the framework agreement on behalf and for the account of the individual contracting authorities.</p>	Art. 4, Para 1 CMO No 385 of 30.12.2015
14.	Which is the party to a public contract awarded on the basis of a centralised framework agreement?	The individual contracting authority is the party to a public contract awarded on the basis of a framework agreement, concluded through a Centralised Purchasing Body.	Art. 4, Para 7 CMO No 385 of 30.12.2015
15.	Which contracting authorities does the Centralised Purchasing Body in the Public Health Care Sector serve?	The Centralised Purchasing Body in the Public Health Care Sector serves the healthcare institution and other medical institutions determined by law.	Art. 1 CMO No 146 of 09.06.2015
16.	Are the respective medical establishments obliged to award public contracts with the subject, determined by the law, only through the CPB in the Public	<p>Yes, the medical establishments, determined by the law, shall award public contracts with the respective subject, through the CPB in the Public Health Care Sector.</p> <p>The only exception to this rule is related to public procurement funded or co-funded with programs or EU funds, with funds from other countries or from international or foreign organizations.</p>	Art. 3 CMO No 146 of 09.06.2015

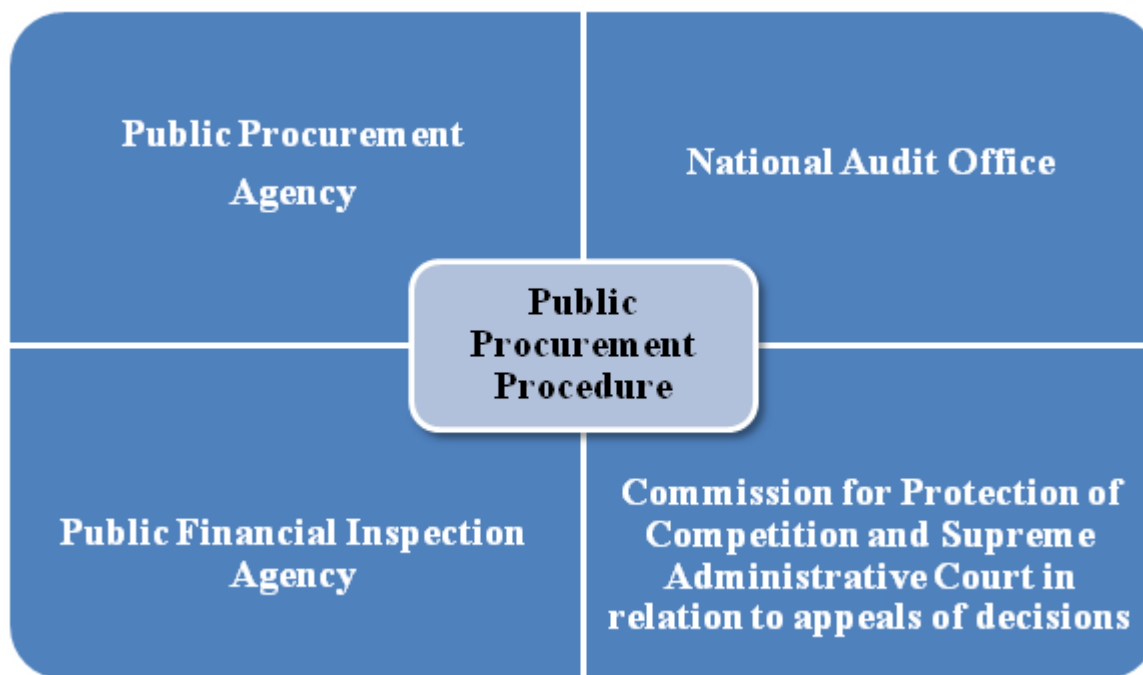
No	Question	Answer	Legal Reference
	Health Care Sector?		
17.	Which is the party to a public contract awarded on the basis of a centralised purchasing by a CPB in the Public Health Care Sector?	The individual contracting authority is the party to a public contract awarded on the basis of a framework agreement, concluded by the CPB in the Public Health Care Sector.	Art. 4, Para 1 and 2 CMO No 146 of 09.06.2015
18.	How are the centralised purchasing activities conducted by the CPB in the Public Health Care Sector?	The CPB concludes a framework agreement with the potential contractors. The procedures under the framework agreement are conducted through an electronic auction by the contracting authorities. It is provided for the CPB to conduct the electronic auction on behalf and for the account of the individual contracting authorities.	Art. 4, Para 1 and 2 CMO No 385 of 30.12.2015
19.	Are the centralised purchasing bodies services paid?	No, for using the existing centralised purchasing bodies' services no fees are paid.	-

Figure 11 - Central Purchasing On The Basis of a Framework Agreement



Fact Sheet No 19 – CONTROL OVER PUBLIC PROCUREMENT

Figure 12 - Control Bodies



No	Questions	Answers	Legal Reference
1.	How is the public procurement process controlled?	Control in public procurement is carried out on the basis of the legally provided opportunity to appeal contracting authorities' acts, actions and omissions by candidates and tenderers, as well as the imposing of administrative sanctions by control authorities.	-
2.	What are the types of control over the award of public contracts?	The types of control over the award of public contracts can be defined as ex-ante, monitoring (on-going control) and ex-post.	-
3.	What is an ex-ante control over the award of public contracts?	The ex-ante control is the control over the award of public contracts which is carried out prior to the announcement of the procurement procedure and covers the drafts of the opening decision; the decision for approval of modification notice or additional information, the technical specifications, and the evaluation methodology	Art. 232, Para 3 and Para 5 PPA

No	Questions	Answers	Legal Reference
		(whenever the award criterion is not the lowest price). In case where the announcement of the public procurement procedure is done via prior information notice, the control also covers the invitation to confirm interest, prior to it being sent to persons who have expressed their interest.	
4.	Who exercises the ex-ante control?	The ex-ante control is carried out by the Executive Director of the Public Procurement Agency.	Art. 229, Para 1, items 5 and 6 PPA
5.	Which are the procedures that may or may not be subjected to ex-ante control?	<p>The ex-ante control covers the procedures which have to be published in the Public Procurement Register. An exception to this rule is envisaged with respect to security and defence procurement.</p> <p>The individual procedures which will be subjected to ex-ante control are determined at random by the application of a risk level assessment methodology which is yet to be developed.</p>	Art. 232, Para 1 and 2 PPA
6.	How is the ex-ante control concluded?	As a result of the completed ex-ante control the Public Procurement Agency issues a statement with the respective findings.	Art. 232, Para 7 and 9 PPA
7.	What is monitoring (on-going control) over the award of public contracts?	<p>Monitoring (on-going control) means:</p> <ul style="list-style-type: none"> ○ The control, exercised by the Executive Director of the Public Procurement Agency, by the appointment of observers in order to oversee the activities of the evaluation commission, whenever the risk related to occurrence of errors and irregularities has been assessed as significant. ○ The control, exercised by the Executive Director of the Public Procurement Agency over decisions and notices, published in the Public Procurement Register, the evaluation methodology and the technical specifications, following the announcement of the procedure. ○ The control exercised in relation to appeals by interested persons of: 	<p>Art. 232, Para 8 PPA</p> <p>Art. 129, Para 1 IRPPA</p> <p>Art. 120, Para 1 PPA</p>

No	Questions	Answers	Legal Reference
		<ul style="list-style-type: none"> ▪ The decision for the opening of the procedure, the decision for approval of modification notice or additional information; ▪ The decision for preselection; 	
8.	What are competences of the observers during the monitoring?	<p>During the monitoring, the observers:</p> <ul style="list-style-type: none"> ○ May attend the sessions of the evaluation commission, whenever considered necessary; ○ Have free access to all documents, related to the procedure which is being monitored, including to require references, additional information as well as to make excerpts of and copies of documents. 	Art. 129, Para 1 IRPPA
9.	How is the work of the observers engaged with the monitoring concluded?	The observers issue a statement on the documents reflecting the work of the evaluation committee which is presented to the Executive Director of the Public Procurement Agency. The respective contracting authority is furnished with a copy of the statement.	Art. 130, Para 2 and 3 IRPPA
10.	Are contracting authorities required to consider the findings from the ex-ante control and the monitoring?	<p>No, contracting authorities are not required to consider the findings of the Public Procurement Agency, contained in the respective statement.</p> <p>In case a contracting authority refuses to take into account the findings in of the control exercised, said contracting authority may submit written justification to the Public Procurement Agency and is obliged to include a justification in that sense in the tender dossier.</p> <p>The statement with the findings of the exercised monitoring is sent to the National Audit Office and the Public Financial Inspection Agency.</p>	Art. 232, Para 7, 8 and 10 PPA
11.	What is an ex-post control over the award of public contracts?	<p>The ex-post control is exercised:</p> <ul style="list-style-type: none"> ○ In relation to appeals by interested parties of award decisions, actions or omissions of contracting authorities; ○ By the National Audit Office and the Public 	Art. 196, Para 1 PPA Art. 238 et seq. PPA

No	Questions	Answers	Legal Reference
		Financial Inspection Agency; <ul style="list-style-type: none"> ○ By the Public Procurement Agency in relation to amendments of a public contract. 	
12.	Which acts may be appealed?	Subject to appeal is any decision of the contracting authorities in a procedure for: <ul style="list-style-type: none"> ○ public procurement, including through the conclusion of a framework agreement, dynamic purchasing system or qualification systems; ○ concluding a framework agreement; ○ establishment of a dynamic purchasing system or qualification systems; ○ design contest; These acts may be appealed on their lawfulness, including the existence of discriminatory economic, financial, technical or training requirements in the notice, the tender documentation or any other document related to the procedure. <ul style="list-style-type: none"> ○ decisions for rejection of subcontractors, selected by the contractor; ○ contracting authority's acts or omissions which impede the access of economic operators to the procedure. 	Art. 196, Para 1, 3, 4 and 5 PPA
13.	Which contracting authorities' acts may not be appealed?	The following may not be appealed: <ul style="list-style-type: none"> ○ decision for the award of contract within an internal competitive selection when the total amount of the awarded contract under the framework agreement by the respective contracting authority is lower or equals: BGN 50 000 (for construction contracts) and BGN 30 000 (for supply and service contracts); ○ reasons for the inability to separate the subject of the public procurement into lots. 	Art. 196, Para 2 PPA
14.	Which is the competent body of appeal for	The competent body of appeal for contracting authorities' acts, actions or omissions in the course of public procurement, is the Commission	Art. 196, Para 3 PPA

No	Questions	Answers	Legal Reference
	contracting authorities' acts?	for Protection of Competition (CPC).	
15.	In what term may the contracting authorities' acts be appealed?	Contracting authorities' acts may be appealed within 10 days as of execution of the respective action, resp. giving of the act.	Art. 197 PPA
16.	Who may appeal?	Interested operators, candidates and tenderers have the right to appeal.	Art. 198 PPA
17.	Is the CPC's decision final?	No, the CPC's decision may be also appealed within 14 days as of its announcement to the parties.	Art. 216, Para. 1 PPA
18.	Which is the competent body of appeal for CPC's acts?	The competent body of appeal for CPC's decision is the Supreme Administrative Court.	Art. 216, Para. 1 PPA

Figure 13 - Correlation between the Types of Control and the Phases in Public Procurement

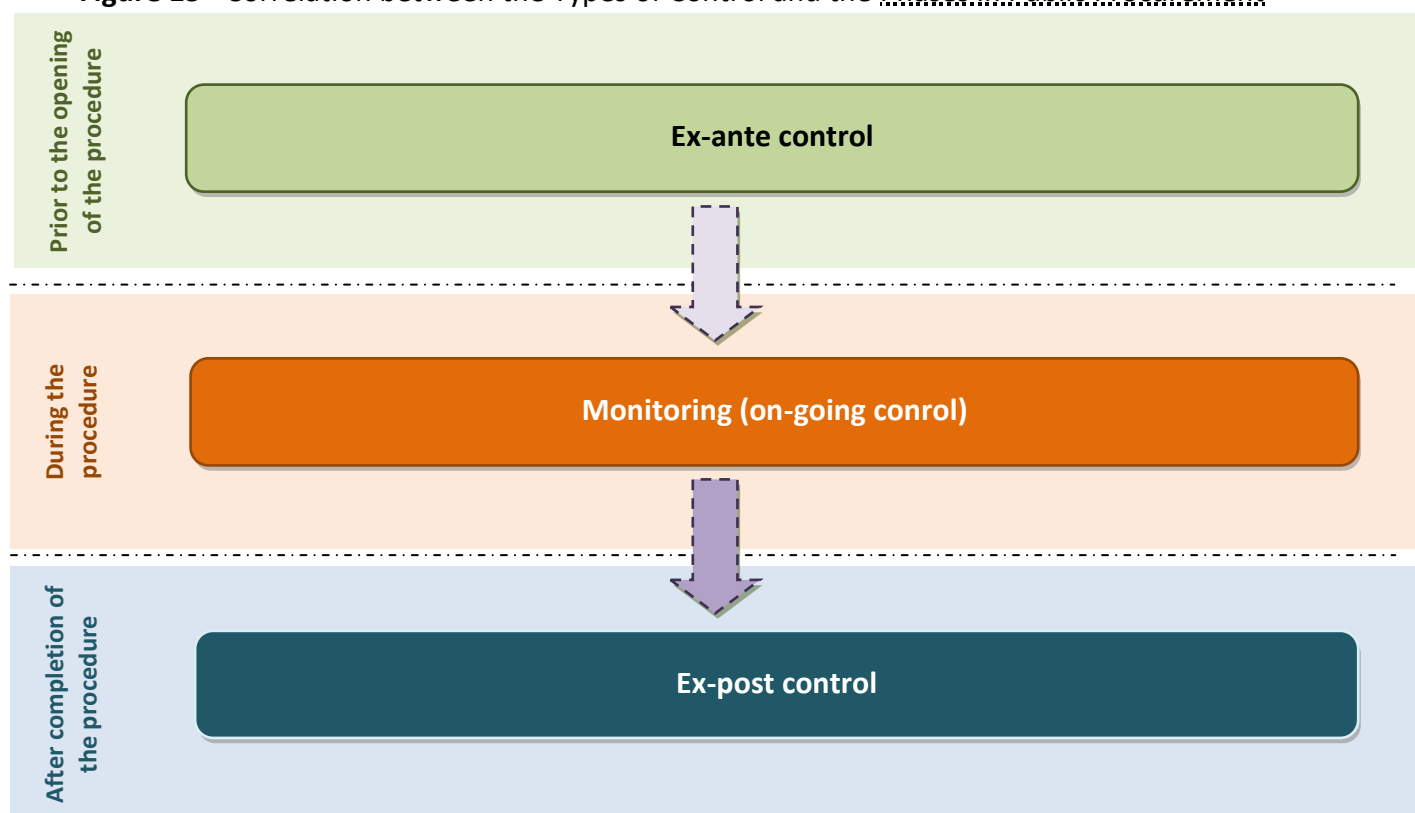
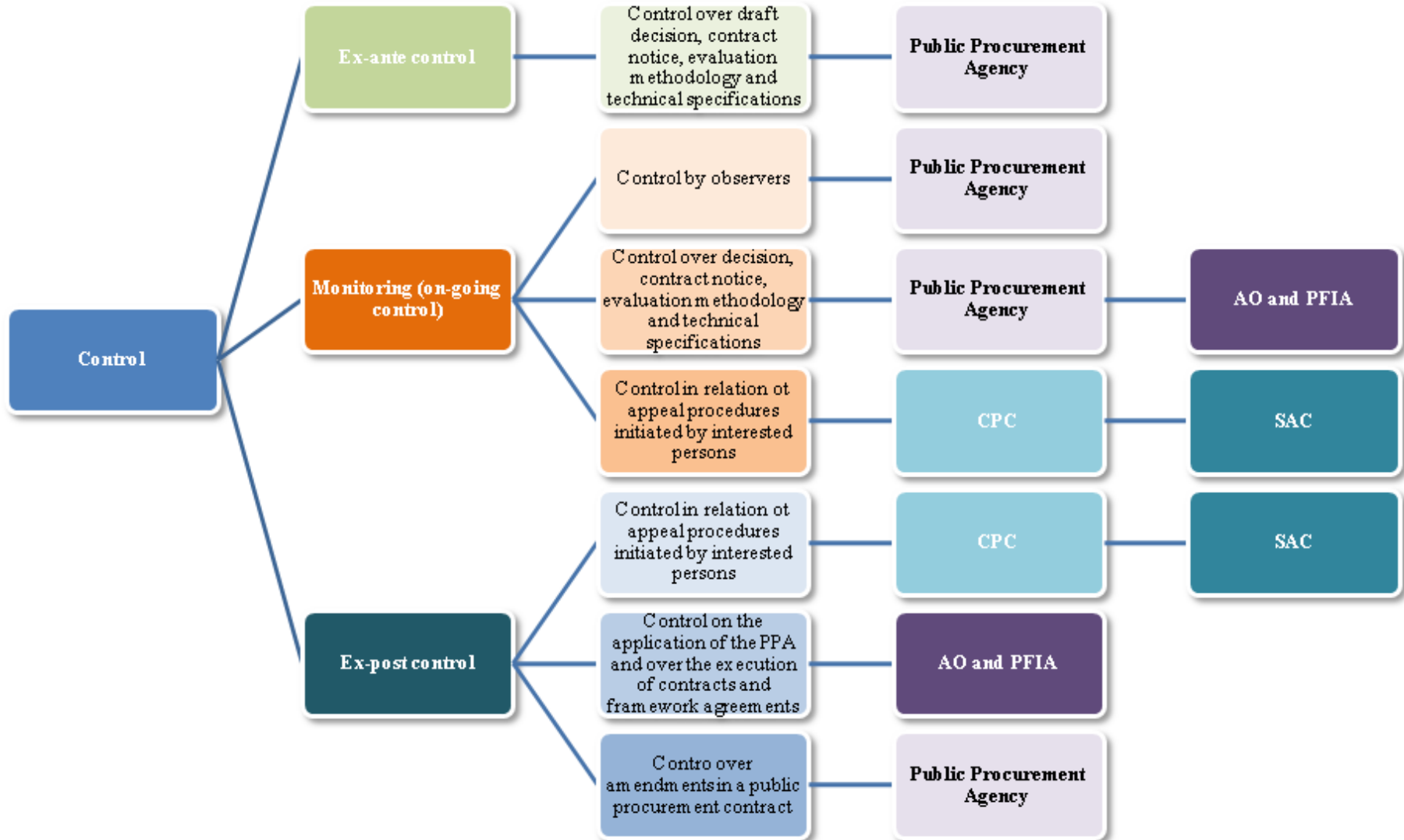


Figure 14 - Types of Control



Fact Sheet No 20 – OTHER TYPES OF CONTROL OVER PUBLIC PROCUREMENT

No	Questions	Answers	Legal Reference
1.	Is there any type of control over the award of public contracts which is exercised by bodies that are not part of the public procurement system?	<p>Yes, public contracts awarded under EU funded projects may be the subject of control by the managing body of the respective operational programme.</p> <p>This type of control is part of the procedures for the administration of irregularities and application of financial corrections in relation to the fulfilment of obligations by EU financial aid beneficiaries.</p>	<p>Art. 69, Para 1 AAESIF;</p> <p>Art. 70, Para 1, item 9 AAESIF</p>
2.	What is the scope of the control exercised by managing bodies?	<p>This type of control covers the general legality of completed public procurement procedures for the award of public contracts under EU funded projects. In this sense the purpose of the control is to ascertain there have been any irregularities and systematic irregularities related to the public procurement process.</p> <p>Irregularity means any breach of Union law, or of national law relating to its application, resulting from an act or omission by an economic operator involved in the implementation of the ESI Funds, which has, or would have, the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union.</p> <p>Systemic irregularity means any irregularity, which may be of a recurring nature, with a high probability of occurrence in similar types of operations, which results from a serious deficiency in the effective functioning of a management and control system, including a failure to establish appropriate procedures in accordance with this EU legislation and the fund-specific rules.</p>	<p>Art. 70, Para 1, item 9 AAESIF</p> <p>Art. 2, item 36 and 38 Regulation (EU) No 1303/2013</p>
3.	Who initiates the control exercised by managing bodies?	The control procedure is initiated by the managing body of the respective operational programme at its own discretion or following a notification for a possible irregularity.	Art. 69, Para 2 AAESIF
4.	What are the consequences if	If the control procedure results in the detection of an irregularity, a financial correction is applied.	Art. 71, Para 1 AAESIF

No	Questions	Answers	Legal Reference
	irregularities have been detected following the control procedure administered by managing bodies?	The application of a financial correction means the decommitment of the financial aid, partially or in its entirety.	
5.	When is a control procedure administered by managing bodies initiated?	A control procedure administered by managing bodies may be initiated at any stage of the implementation of the respective EU funded project. This allows the conclusion that the control over the award of EU funded public contracts can be characterised as ex-ante, on-going and ex-post.	-

GENERAL GUIDE ON THE PUBLIC PROCUREMENT LEGISLATIVE ENVIRONMENT IN BULGARIA

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