



UNIVERSITAT
POLITÈCNICA
DE VALÈNCIA



ESCUELA TÉCNICA SUPERIOR
INGENIERÍA DE
EDIFICACIÓN



SZENT ISTVÁN
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"COMPARISON BETWEEN AWARD PROCEDURES ON THE PUBLIC SECTOR, BETWEEN THE COUNTRIES OF SPAIN AND HUNGARY"

CONSTRUCTION MANAGEMENT DIPLOMA PROJECT
AREA: CONSTRUCTION PROJECTS MANAGEMENT

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BUDAPEST 2013 - 2014

UNIVERSIDAD POLITECNICA DE VALENCIA - SZENT ISTVÁN UNIVERSITÁSIY
FUENTES GINER, MARIA BEGOÑA - MIKLOS HAJDU

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1. INTRODUCTION

The following Grade Final Project has the general objective the comparison between procurement processes in the public sector, between the countries of Spain and Hungary.

In the next section, the motivations, objectives and methodology of work for the realization of the Final Project are explained.

I- Motivation

The Grade Final Project is the last stage of the university education, with the aim to show and apply the knowledge learned during the four years studying degree in construction engineering.

The issue of this diploma project, "Comparison between award procedures on the public sector, between the countries of Spain and Hungary", due to two motives.

The choice of subject of this project, "Comparison between award procedures on the public sector", was proposed by the Professor of Construction Management in Szent István University, Mr. Miklos Hajdu, person responsible for the review of work. The tutor chose this aim in order to the student can use and know the law about different adjudication procedures.

The other reason is that this Final Project is evaluated in the Polytechnic University of Valencia, city where the author of this work has studied the entire degree; and in the Szent István University of Godollo, city where the final project is done due to the author is in an exchange program. For this reason, the aim of the project is a comparison between those two countries, the place where is done the work, and the place where the author was studying.

II- Objectives

The objectives to be achieved to the realization of this work can be divided between academic objectives, related technical learning, and personal objectives related to personal experience and non-academic school education.

About academic objectives, work in the project allow in depth study of the processes of project award in two countries. this means to be able to find information, read and understand the law in this subject.

The personal objectives will be learn more about other language, new vocabulary and more technical expressions; learn more about other country, Hungary; and know the differences and the similarities between the same law in two countries.

III- Methodology of work

The methodology used in this process will be based in the study, understanding and comparison of the law of each country. In the first stage, the Spanish law, and finally, the Hungarian law.

The order is this, because it's easier ,for the author of this project, to understand the Spanish law due to this is not the first contact with the law, the language is the same than the mother tongue of the author, and it is easier to find.

The Hungarian law has a difficulty, it is written in Hungarian language, so is necessary to find it in English.

II. SPANISH LEGISLATION: LAW ABOUT CONTRACTS ON PUBLIC SECTOR

The adjudication procedures in Spanish Law are contained in the *Real Decreto Legislativo 3/2011 (Royal Legislative Decree)*, approving the consolidated text of the Law on Public Sector, published in the Official State Journal of Spain on 16 November 2011, coming into force one month later, on 16 December of the same year.

Work organization is based on a selection of articles and paragraphs of the previous Law, to properly explain the procedures for awarding public sector in Spain.

This Act is to regulate the public sector procurement, to ensure that it conforms to the principles of freedom of access to tenders, publicity and transparency of procedures, and non-discrimination and equal treatment of candidates and to ensure, in connection with the objective of budgetary stability and cost control, efficient use of funds for the execution of works, procurement of goods and contracting services by requiring prior identification of needs meet, safeguarding free competition and selection of the most economically advantageous tender.

a- PRIOR INFORMATION ABOUT THE LAW

a.1- CONTRACTS ON PUBLIC SECTOR

The Law on Public Sector makes a classification of the different contracts in relation to the contracting subject and object of the contract. This classification is explained in the following paragraphs under the title ACCORDING With Their nature and ACCORDING to the object, respectively.

Apart from this classification, there is another difference contracts depending on the amount of the contract, which in this document with the title ACCORDING to the amount.

a.1.1- CONTRACTS ACCORDING TO THE OBJECT

The law on public procurement establishes a classification according to the object of the contract, in contracts celebrated by the agencies, organizations and entities in the public sector, defined on the general provisions of this Royal Decree.

1. Works Contracts

Term 'work' means the outcome of a set of construction or civil engineering designed to fulfil itself an economic or technical function, which has an immovable object.

That work must solve the requirements specified by the contracting entity operating in the public sector. In addition to these services, the contract may include, where appropriate, the drafting of the project.

2. Contracts for public works concession/ Granting public works contract

The public works concession is a contract that concerns the realization by the licensee of some of the benefits referred to in the previous paragraph, including restoration and repair of existing constructions, as well as conservation and maintenance of built elements, and in which the consideration for that consists either solely in the right to exploit the construction or in this right together to perceive a price.

The contract will be carried, in any case, at the risk of the contractor.

3. Public service management contracts/ Utility management contract

The contract management of public services is one whereby a Civil Service or a Mutual Accident and Occupational Diseases Social Security, entrust to a natural or juridical person, the operation of a service whose provision has been assumed as its own jurisdiction by the Administration or Mutual.

4. Supply contract

The supply contracts are aimed at the acquisition, lease, or rental of products or real estate. This products or real states can be subject to purchase option.

Anyway, the following contracts are considered supply contracts:

- a) Those in which the employer is obliged to provide a plurality of goods sequentially in the unit price that the total amount is set exactly at the time of concluding the contract, being subordinate deliveries to the needs of the purchaser.
 - b) Those which are aimed at the acquisition and lease of equipment and systems for telecommunications and information processing, devices and programs, and licensing of the use of the latter, except for procurement contracts computer programs which could be considered as a service contract.
 - c) The manufacture, by which the thing or things that have to be delivered by the employer must be prepared in accordance with peculiar characteristics previously set by the contracting entity, even if it is obliged to provide all or part of the materials accurate.
5. Services contract
- Service contracts are those whose object is to make consistent performance in an activity or development aimed at obtaining a different result of a work or supply.
6. Contract for collaboration between the public and private sector
- Those contracts designed to drive the long-term collaboration between the public and private sector in order to get installation, maintenance and operation of complex systems in which the contractor performs the work necessary to provide a service entrusted by the administration in exchange for a linked price with the achievement of performance targets.
- The risks are shared between private and public sector.
- Contracts may be held only collaboration between the public sector and the private sector when the alternative contracting methods do not allow the satisfaction of public purposes.
- The constructor employee payments will be an amount which can vary throughout the duration of the contract depending on the fulfilment of certain performance targets.
7. Mixed contracts
- Mixed contracts are those contracts which contain benefits corresponding to another or others of a different kind of contracts and which will be addressed in any case, to determine the rules to be observed in its award, the nature of the provision that is more important from the economic point of view.

a.1.2- CONTRACTS ACCORDING TO THE AMOUNT

1. Contracts subject to harmonized regulation

Contracts called SARA in Spanish ("Sujetos A una Regulación Armonizada"), Contracts subject to harmonized regulation, are contracts subjected to an European guidelines about Public Contracts.

The next contracts are known as SARA contracts:

- All contracts for collaboration between the public and private sector,
- Works Contracts and Granting public works contract exceeding amount of 5.186.000 €.
- The supply contracts and service contracts awarded by the Central Government, autonomous agencies or management entities and common services of Social Security that have an amount exceeding € 134,000.
- The supply contracts and service contracts awarded by contracting authorities, different than the others, whose amount is higher than 207.000 €.

The following contracts are not considered subject to harmonized regulation, whatever its estimated value:

- a) aimed at the acquisition, development, production or co-production of programs for broadcasting by broadcasters, as well as those relating to the broadcasting time.
- b) The research and fully paid by the contracting development, provided that the results are not reserved exclusively for use by him in the exercise of its own activity.
- c) Included within the scope on the Functioning of the European Union to be concluded in the defence sector.
- d) The secret or confidential, or those whose performance must be accompanied by special security measures in accordance with applicable law, or where required for the protection of essential security interests of the State declared.
- e) Those whose principal purpose of permitting the contracting authorities to provide or exploit public telecommunications networks or to provide to the public one or more telecommunications services.

The SARA contracts must necessarily be published in the OJEU ("Official Journal of the European Union") and will present particularities in their processing.

2. *Minor contracts*

In minors contracts, application processing only require the approval of the expenditure and the incorporation of the same invoice, which must meet the requirements that the rules of this law established.

In the minor works contract must also be added the cost of the works, without prejudice that the project must exist when the relevant standards so require.

Minors contracts directly may be awarded to any employer with capacity to act and who has the professional qualifications required to perform the service.

Contracts under 50,000 € are considered minor contracts, in the case of works contracts, or under 18,000 €, in the case of other contracts.

- Calculating the estimated value of contracts

1. The estimated contract value is determined by the total value, excluding value added tax, which must be paid as estimated by the contracting authority. In calculating the estimated

total amount, any kind of option and any extension of the contract must be taken into account. When it provides for prizes or payments to candidates or tenderers, the amount shall be taken into account when calculating the estimated contract value.

For that, it is intended in the specifications or in the invitation to tender the possibility that the contract is modified, shall be considered estimated contract value the maximum amount that it can achieve, taking into account all the possible changes.

2. Estimation should be made taking into account the usual market price, and be referred to the time of sending the notice or, if such a notice is not required, at the time the contracting start the procedure for awarding the contract.

3. Contracts works and public works concession, the calculation of the estimated value shall take into account the cost of the works and the total estimated value of the supplies needed for their execution have been made available to the contractor for the contracting authority.

4. In supply contracts aimed leasing, rental or hire purchase of products, the value to be used for calculating the estimated contract value shall be as follows:

a) In the case of fixed-term contracts, where their term not exceeding twelve months, the total estimated value for the duration of the contract; when their term is more than twelve months, the total value including the estimated residual value.

b) In the case of contracts whose duration is not fixed for reference to a period of time, the monthly value multiplied by 48.

5. For supply contracts or services that have a character of periodicity, or contracts to be renewed within a specified period of time, will be taken as the basis for calculating the estimated contract value of any of the following amounts:

a) The total actual value of the successive contracts awarded during the previous fiscal year or the previous twelve months, adjusted, where possible, depending on the changes in quantity or value over the twelve months following the initial contract.

b) The total estimated value of the successive contracts awarded during the twelve months following the first delivery or during the financial year if that is longer than twelve months.

6. When the execution of a work, the contracting out some services or obtaining uniform supplies can lead to the simultaneous award of separate lots, should take into account the estimated total value of all such lots.

a.1.3- CONTRACTS ACCORDING WITH THEIR NATURE

The public sector contracts may be administrative or private.

1. Administrative contracts

1. The following contracts are administrative contracts which are held by a Public Administration:

a) works contracts, public works concession, management utilities, supplies, and services, as well as collaboration contracts between the public sector and the private sector. However, contracts for services (financial service: Insurance services and Banking and investment services) and contracts which aimed at creating, arts and literary (Recreational, cultural and sporting services) shall not administrative.

b) All other contracts, but which are administrative nature to be linked directly to the Contracting Authority or satisfy directly or immediately a public purpose, which cannot be specifically attributed the character of private contracts, or being declared as a private in a Law.

2. Administrative contracts are governed, in their preparation, award, effects and termination by this Act, however, the special contracts explained in the letter b) of the preceding paragraph shall apply, first term, specific standards.

2. *Private contracts*

1. The contracts concluded by the authorities, agencies and public sector entities that do not meet the condition of Public Administration will be considered private contracts.

Likewise, they are private contracts concluded by a public administration contracts for services (financial service: Insurance services and Banking and investment services) and contracts which aimed at creating, arts and literary (Recreational, cultural and sporting services) and any other contracts other than those referred to in paragraph 1 of the preceding article.

2 . Private contracts are governed, in their preparation and award, if there are no specific rules, for this law. In terms of its effects and extinction, these contracts are governed by private law.

a.2- CAPACITY AND SOLVENCY OF THE EMPLOYER

Candidate companies to contract with the public sector must observe and respect the technical and financial requirements explained below.

a.2.1- CAPACITY TO CONTRACT WITH THE PUBLIC SECTOR

Terms of aptitude

1. They can only contract with the public sector individuals or corporations, Spanish or foreign, who have full capacity to act, are not involved in a prohibition on hiring, and certify their economic, financial and technical or professional capacity.
2. Entrepreneurs must have business or professional qualification that is required to perform the activity or service that is the subject of the contract.

Non-EU companies

1. Individuals or legal persons from United not belonging to the European Union must be supported by a report from the origin State of the foreign company, where the other State admits the participation of companies in contracting with the government and the authorities from Spain, bodies or public sector entities. For contracts subject to harmonized regulation will be omitted the report on reciprocity in relation to companies signatory to the Agreement on Government Procurement of the World Trade Organization.
2. Celebrating works contracts will require that these companies have opened branch in Spain and that are registered in the Commercial Register.

Compatibility Policies

1. Companies that took part in the preparation of technical specifications or contract documents preparatory may not attend the tender.
2. Contracts aimed at monitoring, supervision, control and direction of the execution of works and facilities may not be awarded to the same companies awarded the contracts for works, or companies linked to them.

a.2.2- SOLVENCY

1. To enter into contracts with public sector, employers must prove to be in possession of the minimum economic and financial capacity , and professional or technical capacity to be determined by the contracting authority.
2. Minimum solvency requirements to be met by the employer and required documentation shall be indicated in the contract notice and in the specifications of the contract, must be linked to object and be proportionate to it.
3. To demonstrate the necessary solvency, the employer could be based on the solvency and means of other entities. It is not necessary explain the links which it has with them, provided that it demonstrates that, for the execution of the contract, has the means.

4. Doing stated in the specifications, Contracting authorities may require candidates or tenderers to commit to attributed to the performance of the contract the human or material resources needed.

b. PROCESSING FILES

There are two different types of process for record recruitment of Public Administration contracts.

These two types are classified as ordinary or abbreviated processing, and these last are classified at the same time in urgent or processing of emergency.

b.1- ORDINARY PROCESSING

Record contract. Initiation and content

The conclusion of contracts by the government will require the prior processing of the dossier, to be started by the contracting authority motivating the need for contract.

The dossier must cover the whole object of the contract for the purpose of bidding and award, it is not possible to split into lots. It should also incorporate the existence of credit certificate or document that legally replaced it.

In the dossier will be adequately justified the choice of the procedure and the criteria that will be considered for contract award.

Approval of the dossier

Completed the contract dossier, reasoned decision by the contracting authority approving the same and having the opening of its award shall be issued. The resolution also constitutes approval of expenditure.

Procurement dossiers may be completed even with the award and execution of the relevant contract, even if his execution is going to be initiated in the following year.

Dossier recruitments for minor contracts

Minor contracts are included in ordinary processing files. These contracts have been explained in the [CONTRACTS ACCORDING TO THE AMOUNT](#) (page 7).

b.2- URGENT PROCESSING OF THE FILE

Contracts whose celebration meets an urgent need or whose adjudication must be accelerated by the public interest may be the subject of urgent processing records. To this purpose the dossier must contain the emergency declaration made by the Contracting Authority stating the reasons.

The urgent cases will be processed following the same procedure as the ordinary, with the following specialties:

- a) They must take preference over the rest of the dossiers to be processed by the various bodies involved in the investigation, which shall have five days to submit their reports or complete the requisite formalities.

When the complexity of the case or any other cause justified make impossible to comply with the deadline, the bodies required to evaluate the procedure will communicate to the contracting authority that it had declared the emergency. In this case the period shall be extended until ten days.

- b) The deadlines established for the bidding, award and execution of the contract shall be reduced by half, except within fifteen working days as waiting period before the execution of the contract.
- c) The deadline to start the execution of the contract may not exceeding fifteen working days from the formalization. If this time would exceed, the contract may be terminated, unless the delay is due to causes unrelated to the Contracting Authority and the Contractor and record this in the appropriate reasoned decision.

b.3- PROCESSING OF EMERGENCY

When the Administration will have to act immediately because of catastrophic events, situations involving grave danger or needs affecting the national defence, shall be the following exceptional arrangements:

- a) The contracting authority, without obligation to conduct administrative proceedings, may order the execution of what is necessary to remedy the event occurred or satisfy the need, or freely contract their object, in whole or in part, without complying with the formal requirements laid down in this law, including the existence of sufficient credit.
- b) If the contract has been celebrated by the Central Government, autonomous bodies, management entities and common services of the Social Security or other government public entities, will notice these agreements to the Council of Ministers within a maximum period of sixty days.
- c) The deadline for the start of the performance of the services shall not exceed one month from the adoption of the agreement referred to in point a). If this time would exceed, the recruitment will require the handling of a ordinary procedure.

c- ADJUDICATION OF CONTRACTS FOR PUBLIC ADMINISTRATIONS

c. 1- GENERAL RULES

c.1.1- POLICY PROVISIONS

Award procedure

1. Contracts concluded between public authorities are awarded in accordance with the rules of this Chapter.
2. Award shall be made ordinarily using the open procedure or the restricted procedure. And extraordinarily using the negotiated procedure and the competitive dialogue.
3. The minor contracts will be regulated by the articles previously explained in [CONTRACTS ACCORDING WITH THE AMOUNT](#) (page 7).

Principles of equality and transparency: Contracting authorities must treat tenderers and candidates in a equitable and non-discriminatory form and adjust their actions to the principle of transparency.

Confidentiality: The contracting authority shall not disclose the information provided by employers that they have designated as confidential.

c.1.2- ADVERTISEMENT

Previous advert / pre-information advert

1. Contracting authorities may publish a prior information notice in order to make known, in connection with contracts for works, supplies and services which they intend to award over the following twelve months, the following:
 - a) In the case of works contracts, the essential characteristics of those whose estimated value is equal to or greater than 5.186.000 €.
 - b) In the case of supply contracts, the estimated total value, broken down by products, when the total value is equal to or greater than 750,000 €.
 - c) In the case of service contracts, when the total value is equal to or greater than 750,000 €.

2. Notices shall be published in the "Official Journal of the European Union" or in the profile of the contracting.

In the event that the publication is to be made in the contractor profile of the contracting authority, the latter must notify the European Commission and the "Official Journal" by electronic means in accordance with the format and procedures for transmission that established. In the previous advert, it will be indicated the communication date.

The publication of the previous advert will let to reduce the deadlines for submission of tenders in open procedures and restricted in the way that these precepts is determined.

Call for tenders

1. The procedures for adjudication of contracts on the Public Administration, except in the negotiated procedures, should be announced in the "Official State Journal". However, in the case of contracts of the Autonomous Communities, local authorities or public entities dependent on them, the advertising may be replaced in the "Official Journal" by which is carried in newspapers or newsletters official regional or provincial.

When contracts are subject to harmonized regulation, the notice shall also be published in the 'Official Journal of the European Union', but in this case, the advertising carried by the official regional or provincial newspapers cannot replace the one that should be done in the "Official State Journal".

2. When the contracting authority considers appropriate, procedures for awarding contracts for works, supplies or services not subject to harmonized regulation may be also advertised in the "Official Journal of the European Union".

c.1.3- BIDDING / TENDER

Deadlines for submission of tenders

Contracting authorities shall set limits for receipt of tenders or requests to participate given the time reasonably necessary to prepare those, considering the complexity of the contract, and respecting, in any case, the time limits set out in this Act .

If the contract dossier was declared urgent processing, the deadlines established shall be reduced. Explained in the apart called [PROCESING FILES](#) (page 13).

Proposals of the interested parties

Proposals of the interested parties must comply with the provisions of the specific administrative clauses, and their presentation implies the acceptance by the employer of the contents of all such terms or conditions without exception or reservation.

Tenderers may not submit more than one proposal. Nor can subscribe to any proposed joint venture with others if it has individually or included in more than one joint venture. Violation of these rules will result in the dismissal of all proposals by him subscribed.

Presentation of the supporting documentation of compliance with prerequisites

1. Proposals in the open procedure and requests to participate in restricted, negotiated procedures and the competitive dialogue must be accompanied by the following documents:

- a) Accreditation of legal status of the employer and, where appropriate, their representation.
- b) Accreditation status of the company, if any, or justification of the requirements of economic and financial standing and technical and professional solvency.
- c) Presentation of a responsible statement of not being in process of prohibiting the hiring.
- d) An e-mail address to receive notifications.
- e) For foreign companies, in cases where the contract is going to be executed in Spain, the statement to accept the jurisdiction of the courts and Spanish tribunals of any kind, for all the

incidences that directly or indirectly can appear from contract, renouncing the foreign jurisdiction of the bidder.

2. As needed to present more documents, it will be in concordance with the specifications of the invitation to tender.

3. The contracting authority may stipulate that the previous documentation is replaced by a declaration by the tenderer, indicating that it meets the legal conditions to be contract by the government. In such case, the successful tenderer must prove for the contracting authority, prior to contract award, the possession and validity of the documents required.

Variations and improvements admitted

When there are award criteria different than price, the contracting authority may take account of variants or improvements that offer bidders, provided that the specific administrative clauses have expressly provided that possibility.

Electronic auction

1. The contract may be chosen by an electronic auction, defined as a process of repetition. In the auction bids must improve prices or other values that will improve overall supply. The auction is based on an electronic device that allows the classification of tenders through an automatic evaluation methods.

2. Electronic auction may be employed in the open, in the restricted and negotiated only in paragraph a) of [GENERAL ASSUMPTIONS](#) (page 28). It is necessary that contract specifications can be established with precision and that benefits covered by it are not intellectual. The electronic auctions cannot be used improperly or so that they obstruct or restrict competition or they change the subject of the contract.

3. The electronic auction shall be based on variations price or variations relating values of the elements of the tender which are quantifiable and able to be expressed in figures or percentages.

4. Contracting authorities, which decide to hold an electronic auction, shall indicate in the contract notice and include in the specification the following information:

- a) The values for which concerns the electronic auction;
- b) The limits of the values that may be submitted;
- c) The information available to bidders during the electronic auction and the time to be provided;
- d) How the auction will take place;
- e) The conditions under which the tenderers will be able to bid and in particular the minimum improvements that will be required for each bid;
- f) The electronic equipment used and the arrangements and technical specifications for connection.

5. Before electronic auction, the contracting authority shall make a full initial evaluation of the tenders in accordance with the award criteria. Later, the contracting authority shall invite all tenderers who have submitted admissible tenders to submit new revised downwards or new

values to improve the supply prices. Invitation will be electronic, computer or electronic means.

6. Invitation shall include all relevant information for individual connection to the electronic device used and specify the date and time of start of the electronic auction.

7. Between the date of sending of the invitations and the start of the electronic auction will have to spend at least two business days.

8. The electronic auction may take place in several phases.

9. At each stage of the auction, and continuously and instantaneously, the contracting authority will communicate to the tenders the information to allow them to know their relative rankings at any moment. Additionally, they may provide other information concerning prices or values submitted by the other bidders, provided this is specifically provided in the specifications, and announced the number of people who are participating in the corresponding phase of the auction, but in no case identity can be disclosed.

10. Close of the auction is determined by reference to one or more of the following criteria:

a) By pointing a specific date and time, which shall be indicated in the invitation to participate in the auction.

b) Given the lack of presentation of new prices or new values which meet the requirements in relation to the formulation of minimal improvements.

c) On ending of the number of stages set in the invitation to participate in the auction.

11. After closing an electronic auction, the contract will be awarded in accordance with the paragraph [RANKING OF THE TENDERS, AWARD OF THE CONTRACT AND NOTIFICATION OF AWARD](#) (page 19), based on their results.

Succession in the process

If during the process of adjudication, legal person of a candidate bidding company or its abolition, transmitting its power to other companies, the absorbing company will take its place in the process, provided it meets the initial requirements to participate in the proceedings award.

c.1.4- SELECTION OF THE SUCCESSFUL TENDERER

Evaluation criteria of the offers

1. Existing criteria for the award of the contract shall be determined by the contracting authority and will be detailed in the advertisement, in the specific administrative clauses or in the descriptive document.

2. The criteria can be characteristics of the object of the contract can be assessed by numbers or percentages obtained by the application of the formulas set out in the specifications, or criteria which quantification depends on a value judgment.

When in a bid to be followed by an open or restricted procedure is attributed to the assessable criteria automatically by applying formulas a lower weighting corresponding to the criteria which quantification depends on a value judgment. The contracting authority shall constitute a

committee with a minimum of three members, consisting of experts with appropriate qualifications, non-integrated in the group who determined the contract, who shall conduct the evaluation of bids; or entrust this assessment to a specialized technical agency, duly identified in the specifications.

3. When only one award criterion is used, it must necessarily be the lowest price.
4. When you take into account more than one criteria, it must specify the relative weighting given to each of them. In the event that the procurement procedure is articulated in several phases, will also indicate in which of them will apply different criteria and the minimum score required the tenderer to continue in the selection process.
5. Search criteria and their weighting will be indicated in the invitation to tender.

Ranking of the tenders, award of the contract and notification of award

1. The contracting authority will classify in descending order, the proposals submitted and not declared disproportionate or abnormal. To make this classification, will attend the award criteria indicated in the specifications or in the advertisement so may request technical reports few deems appropriate. When the only criterion to consider is the price, it will be understand that the tender offering that incorporates the lowest price will be the most advantageous.

2. The contracting authority shall require the tenderer which has submitted the most economically advantageous tender for, within ten working days from the day following that on which he had received the request, submit supporting documentation of being up to in meeting their tax obligations and the Social Security or authorize the contracting directly for the accreditation of this. Relevant certificates may be issued by electronic, computer or electronic ways.

If the tenderer does not properly complete the requirement within the prescribed time, shall mean that the tenderer has withdrawn its bid, then proceeding to seek the same documents for the next bidder, in the order they have been classified tenders.

3. The contracting authority must award the contract within five working days after of receipt the documentation.

4. The adjudication it must be justified, notified to tenderers and simultaneously, published in the contractor profile.

The notification shall contain, in any case, the necessary information to allow the unsuccessful tenderer or candidate dropped to appeal against the award decision.

Deals with abnormal or disproportionate values

1. May be expressed in the specifications the objective parameters depending on which it will be appreciated that the proposition cannot be fulfilled due to the inclusion of disproportionate or abnormal values.

2. When a proposition can be considered disproportionate or abnormal, should be hearing the tenderer which has submitted to justify the assessment of supply and specifying the conditions.

3. If the contracting authority, considering the justification made by the tenderer, considers that the offer cannot be fulfilled due to the inclusion of disproportionate or abnormal values, shall exclude from the classification.

c.1.5- REPORTING OBLIGATIONS ABOUT THE RESULT OF THE PROCEEDING

Advertising of contracts

1. The formalization of contracts, except those under contract, will be published in the contracting profile indicating at least the same data mentioned in the tender notice.

2. Where the amount of the contract is equal or greater than 100,000 €, shall also be published in the "Official State Journal" or Journals or the respective autonomous regions or provinces, an advertisement in which was aware of this formalization, in a period not exceeding forty-eight days from the date thereof.

In the case of contracts subject to harmonized regulation the notice should be sent, within the period prescribed in the preceding paragraph, to the 'Official Journal of the European Union "and published in the" Official State Journal ".

Waiver of the contract by the Administration

1. In the event that the contracting authority waives conclude a contract for having made the appropriate call, or decides to restart the procedure for adjudication, shall notify the candidates or tenderers, also inform the European Commission of this decision when the contract was published in the 'Official Journal of the European Union'.

2. Waiver of conclusion of the contract or the discontinuance of the proceedings may only be agreed by the contracting authority before the award. In both cases the candidates or tenderers will receive a reward for the expenses they have incurred, as provided in the advertisement or in the specifications, or in accordance with the general principles governing the responsibility of the Directors.

3. The contracting authority can only waive the contract for reasons of public interest duly substantiated in the dossier. In this case, they can not be promoted a new tender with the same object while the reasons given to justify the waiver continue.

4. The withdrawal procedure should be established in a non-remediable violation of the rules of contract preparation or regulatory award procedure, must be justified on the dossier the occurrence of the cause. It will not prevent the immediate start of a new tender procedure.

c.1.6- FORMALIZATION OF THE CONTRACT

1. Contracts concluded between public authorities should be formalized in an administrative document that conforms exactly to the conditions of the tender.

2. Conclusion of the contract shall be made not later than fifteen days following that on which the notice of award is received to tenderers and candidates.

c.2- PROCEDURES

c.2.1- OPEN PROCEDURE

Delimitation.

In a Open Procedure, any interested company may present a proposal to the public administration, being excluded from any negotiation of contract terms with the tenderers.

Information for tenderers

When it was not provided access by electronic, computerized or telematic to the specifications and any supporting documents, they will be sent to the parties concerned within six days of receipt of such request, provided that it is filed before the expiry of the deadline for submission of tenders at the time that the contracting authority indicates in the specifications. The additional information requested about the specifications and additional documents must be provided at least six days before the deadline for receipt of bids, provided that the request is submitted in advance according with the specifications.

When the statements and documents or additional information, although requested in good time, have not been provided within the time limits, deadlines for receipt of offers will end when all interested parties have the information needed to formulate offers.

Deadlines for submission of proposals

1. On award of contracts subject to harmonized regulation, the deadline for submission of proposals shall be not less fifty-two days from the date of dispatch of the contract notice to the European Commission. This period may be shortened by five days when electronic access is offered to the statements and supporting documents.

If it were sent prior, the deadline for submitting proposals may be reduced to thirty-six days, as a rule, or, in duly justified cases, to twenty days. The limits referred to in the two previous paragraphs may be reduced in seven days when notices are drawn up and transmitted by electronic, computer or electronic means. This reduction may be added with the five days provided in the first paragraph.

2. In contracts which are not subject to harmonized regulation, the deadline for submitting proposals will not be less than fifteen days from the publication of the contract notice. In works contracts and public works concessions, the period shall be at least twenty-six days.

Consideration of proposals and award proposal

1. The body responsible for the assessment of proposals previously must qualify documentation of compliance with prerequisites. Later proceed to the opening and

consideration of proposals by formulating the corresponding award proposal to the contracting authority.

Reed [BIDDING / TENDER](#) (page 16).

It is important to present the documentation of compliance with prerequisites and the proposals in different envelope, because the process to open it is different.

The opening of the bids shall be made within a maximum period of one month from the date of expiry of the deadline for submission of tenders. In any case, the opening of the financial bid will be held in public, except when it is expected to act on the notice electronically usable.

2. When by the assessment of proposals have to be considered different criteria, not just the price, the competent body, before making the proposal, it may request few technical reports as it considers. Similarly, these reports may be requested as needed to verify that tenders comply with the technical specifications.

3. When the contracting authority does not award the contract in accordance with the proposal shall justify its decision.

Reed [SELECTION OF THE SUCCESSFUL TENDERER](#) (page 18)

Adjudication/ Award

1. When the only criteria to consider in selecting the winner of the contract is the price, the award shall be made by no later than fifteen days from the day following the opening of the bids.

2. When awarding the contract to be taken into account a number of criteria, the deadline for making the award shall be two months from the opening of the bids, unless it had set up another in the specific administrative clauses .

3. Deadlines indicated in the preceding paragraphs will be extended to fifteen working days if necessary follow the procedures for deals with abnormal values or disproportionate.

4. Failure produced the award within the prescribed period, bidders shall be entitled to withdraw his proposal.

Reed [SELECTION OF THE SUCCESSFUL TENDERER](#) (page 18)

c.2.2- RESTRICTED PROCEDURE

Delimitation

In restricted procedures may submit proposals employers who, at his request and considering its solvency, are selected by the contracting authority. In this procedure all negotiating contract terms with applicants or candidates shall be prohibited.

Criteria for the selection of candidates

1. Prior to the announcement of the tender, the contracting authority must be established objective criteria of solvency, according to which candidates will be selected to be invited to submit proposals with.
2. The contracting authority shall indicate the minimum number of entrepreneurs who will invite to participate in the proceeding, which shall not be less than five. If deemed appropriate, the contracting authority may also set the maximum number of candidates that will be invited to submit a bid. The number of candidates invited shall be sufficient to guarantee the effective competition.
3. Criteria or objective and non-discriminatory rules under which candidates will be selected and the minimum and the maximum number of those who will be invited to tender shall be indicated in the invitation to tender.

Requests to participate

1. On award of contracts subject to harmonized regulation, the deadline for receipt of requests to participate shall not be less than thirty-seven days from the date of sending the notice to the 'Official Journal of the European Union '. In the case of concession contracts for public works, this period may not be less than fifty-two days. This period may be shortened by seven days when notices are sent electronically, computer and electronic media.
2. Whether the contracts are not subject to harmonized regulation, the deadline for submitting requests to participate shall be at least ten days, after publication of the notice.
3. Requests to participate must be accompanied by the supporting documentation of compliance with prerequisites.

Reed [BIDDING / TENDER](#) (page 16).

Selection of Requesters

1. The contracting authority, after verifying the character and solvency of applicants, will select who go to the next phase, which invited in writing, to submit their proposals within appropriate deadline.
2. The number of candidates invited to submit proposals must be, at least, equal to the minimum that had been determined previously. When the number of suitable candidates is

less than the minimum number, the contracting authority may continue the procedure with which meet the required conditions.

Content of invitations and information to guests

1. Invitations will contain a reference to the contract notice published and indicate the deadline for receipt of tenders, the address to be sent and the language in which they must be drawn, award criteria and their relative weighting, and place, date and time of opening of tenders.
2. Invitation to the candidates shall include a copy of the specifications and copies of additional documents, or contain the necessary instructions to allow access to these documents, when they are made directly available by electronic, computer and telematic.
3. The contracting authorities or competent departments shall provide, within six days prior to the deadline for receipt of tenders, the additional information on the specifications or additional documents that were requested in good time for the candidates.
4. When the statements and documents or additional information, although requested in good time, have not been provided within the time limits, deadlines for receipt of offers will end when all interested parties have the information needed to formulate offers.

Propositions

1. Deadline for receipt of tenders in the procedures relating to contracts subject to harmonized regulation shall not be less than forty days, counted from the date of sending written notice invitation. This period may be shortened by five days when there are a electronic, computer and telematic access to the contract documents and supporting documents.
If the previous announcement had been sent, the period may be reduced, as a general rule, up to thirty-six days or, in exceptional and duly justified cases, to twenty days.
2. In proceedings relating to contracts not subject to harmonized regulation, the deadline for submitting proposals will not be less than fifteen days from the date of the invitation.

Adjudication

The adjudication in this procedure shall follow the same way than in the Open Procedure explained in Consideration of proposals and award proposal and Adjudication/ Award contained in the Open Procedure paragraph.

Reed [OPEN PROCEDURE](#) (page 21).

In this procedure the difference is that is not necessary deliver the supporting documentation of compliance with prerequisites, because this documents had to have been attached in the Requests to participate, in a previous step.

c.2.3- COMPETITIVE DIALOGUE

Delimitation

In this procedure, the contracting authority leads a dialogue between a previous selected candidates, with the aim of develop one or more solutions to satisfy needs. The determined solutions will serve as specifications to make the proposals.

The contracting authority may set compensation for participants in the dialogue.

Cases of application

1. The competitive dialogue may be used in specially complex contracts, when the contracting authority considers inadequate the adjudication by open or restricted procedure.

One contract is considered specially complex, when the authority is not able to lead the process or not satisfy the needs or objectives of it.

2. Contract for collaboration between the public and private sector shall be always awarded by this procedure.

Opening the procedure

1. Contracting authorities shall publish a invitation to tender where they will present their needs and requirements.

2. Invitations to take part in the dialogue will contain a reference to the invitation to tender published and indicate the date and place of beginning of the consultation phase, the language or languages used, the documents relating to the eligibility conditions, and the relative weighting of the criteria for awarding the contract.

Invitation to the candidates shall include a copy of the specifications and copies of additional documents, or contain the necessary instructions to allow access to these documents, when they are made directly available by electronic, computer and telematic.

3. The contracting authorities or competent departments shall provide, within six days prior to the deadline for receipt of tenders, the additional information on the specifications or additional documents that were requested in good time for the candidates .

Criteria for the selection of candidates

1. Prior to the announcement of the tender, the contracting authority must be established objective criteria of solvency, according to which candidates will be selected to participate in the dialogue process.

2. The contracting authority shall indicate the minimum number of entrepreneurs who will invite to participate in the proceeding, which shall not be less than three. If deemed appropriate, the contracting authority may also set the maximum number of candidates that

will participate. The number of candidates invited shall be sufficient to guarantee the effective competition.

3. Criteria or objective and non-discriminatory rules under which candidates will be selected and the minimum and the maximum number of those who will be invited shall be indicated in the invitation.

Requests to participate

1. On award of contracts subject to harmonized regulation, the deadline for receipt of requests to participate shall not be less than thirty-seven days from the date of sending the notice to the 'Official Journal of the European Union '. In the case of concession contracts for public works, this period may not be less than fifty-two days. This period may be shortened by seven days when notices are sent electronically, computer and electronic media.

2. Whether the contracts are not subject to harmonized regulation, the deadline for submitting requests to participate shall be at least ten days, after publication of the notice.

3. Requests to participate must be accompanied by the supporting documentation of compliance with prerequisites.

Reed [BIDDING / TENDER](#) (page 16).

Selection of Requesters

1. The contracting authority, after verifying the character and solvency of applicants, will select who can participate in the dialogue, which will be invited in writing.

2. The number of candidates invited to participate must be, at least, equal to the minimum that had been determined previously. When the number of suitable candidates is less than the minimum number, the contracting authority may continue the procedure with which meet the required conditions.

Dialogue with candidate

1. The contracting authority shall develop, with the candidates selected, a dialogue whose aim will be to identify and define the means to satisfy their needs. During this dialogue, may be discussed all aspects of the contract with the selected candidates.

2. During the dialogue, the contracting authority will give a equal treatment of all tenderers and, in particular, will not facilitate information that may give an advantage to some tenderers above of others.

The contracting authority shall not disclose to the other participants solutions proposed or other confidential information by a participant.

3. The procedure can make in different phases in order to reduce the number of final solutions during the last dialogue. It will be necessary to indicate this in the invitation to tender. The number of final candidates must guarantee the effective competitive.

4. The contracting authority will continue the dialogue until it is able to identify solutions that can meet your needs.

After declaring closed the dialogue and inform all participants, the contracting authority shall invite them to submit their final tenders, indicating the deadline, the address to be sent and the language or languages in which they can be drawn.

Submission and examination of tenders

1. Tenders must include all required and necessary for the performance of the project. The contracting authority may request details or clarifications on the submitted bids, adjustments in the same or complementary information concerning them, provided that the change may not have a discriminatory effect.

2. The contracting authority shall evaluate the tenders submitted in accordance with the award criteria set out in the contract notice or in the descriptive document and will select the most economically advantageous tender. For this assessment must be considered necessarily several criteria, without it being possible only award the contract based on the price offered.

3. The contracting authority may require the tenderer whose tender is submitted the most economically advantageous to clarify certain aspects of the same.

c.2.4- NEGOTIATED PROCEDURE

Characterization

In the negotiated procedure the award will fall on the successful tenderer chosen by the contracting authority, after make several consultation and negotiate the terms of the contract with one or more of them.

The negotiated procedure shall be subject to prior publication in the cases explained below, in which the submission of tenders will be possible by any interested. In all other cases, you will not need to publicize the procedure.

Cases of application

General assumptions

Contracts concluded between public authorities may be awarded by negotiated procedure in the following cases:

- a) When the award of the contract by open, restricted or competitive dialogue has been unacceptable or irregular. This can happen for not complying with the legal obligations relating to taxes on bids, environmental protection and working conditions; for violating the conditions for the submission of variants or improvements, or to include abnormal or disproportionate values, provided they are not substantially the original terms of the contract changed.
- b) In exceptional cases, in the case of contracts in which, by reason of its characteristics or of their high risks, do not permit determine prior overall pricing.
- c) Where the tenders submitted in the open or restricted procedures do not meet the need for the project, provided that the original terms of the contract are not substantially altered. In the case of contracts subject to harmonized regulation, a report to the Commission of the European Union will be forwarded.
- d) When, for technical or artistic reasons or for reasons connected with protection of exclusive rights the contract can be awarded only to a specific employer.
- e) When a extreme urgency, resulting from unexpected facts and not attributable to the contracting authority, demands prompt execution of the contract which cannot be achieved through the implementation of urgent processing.
- f) When the contract was declared secret or confidential, or when their performance must be accompanied by special security measures in accordance with applicable law or where required for the protection of the essential security interests of the State.
- g) In the case of contracts under the Treaty on the Functioning of the European Union.

- works contracts

Works contracts may be awarded by negotiated procedure in the following cases:

- a) When the works are just performed for research, testing or development and not with the aim of obtain a return or recovering research costs or development.
- b) Where additional works not included in the project or in the contract, but due to external circumstances, become necessary to execute the work, and whose execution is entrusted to the contractor of the main work. This will happen when the works cannot be technically or economically separated from the original contract without causing major problems to the contracting or, even if possible, it was necessary to separate for its completion, and that the cumulative amount of the additional works does not exceed 50 percent of the original contract amount.
- c) When the works consisting in the repetition of similar awarded by open or restricted procedure to the contractor by the contracting authority. That this will happen when the

works conform to a basic project that is the subject of the initial contract awarded under these procedures, the possibility of using this procedure is indicated in the notice of the original contract and the amount of new works has been computed by fixing the amount of the contract.

You can only use this procedure for a period of three years from the conclusion of the original contract.

d) In any case when the estimated value is less than one million euros.

- Contract management utilities

Contract management utilities may be awarded by this procedure in the following cases:

a) In the case of public services for which it is not possible to promote competition in the supply.

b) The management of services whose first budget proposed shall less than 500,000 euros and term of less than five years.

c) Relating to the provision of subsidized health care by outside resources.

- Supply contracts

Supply contracts utilities may be awarded by this procedure in the following cases:

a) In the case of the acquisition of movable property forming part of the Spanish Historical Heritage, which is intended for museums, archives and libraries.

b) When the products are manufactured for the purpose of research, experiment, study or development.

c) In the case of the acquisition on organized markets or commodity exchanges supplies listed in them.

d) In any case when the estimated value is less than 100.000 euros.

- Service contracts

Service contracts may be awarded by negotiated procedure in the following cases:

a) When due to the characteristics of the service, especially in contracts intellectualized character, not possible to establish the precise conditions required to award it the open or restricted procedure.

b) Where additional services not included in the project or in the contract, but due to external circumstances, become necessary to execute the service, and whose execution is entrusted to the contractor of the main work. This will happen when the works cannot be technically or economically separated from the original contract without causing major problems to the contracting or, even if possible, it was necessary to separate for its completion, and that the cumulative amount of the additional works does not exceed 50 percent of the original contract amount.

c) When the services consisting in the repetition of similar awarded by open or restricted procedure to the contractor by the contracting authority. That this will happen when the works conform to a basic project that is the subject of the initial contract awarded under these procedures, the possibility of using this procedure is indicated in the notice of the original contract and the amount of new works has been computed by fixing the amount of the contract.

You can only use this procedure for a period of three years from the conclusion of the original contract.

d) Where the contract is the result of a contest and must be awarded to the winner. If there are multiple winners must invite all to participate in the negotiations.

e) In any case when the estimated value is less than 100.000 euros.

- Other contracts

Unless otherwise specified in the special rules provided, the other general government contracts may be awarded by negotiated procedure whose estimated value is less than 100,000 euros.

Processing

Delimitation of the subject matter of negotiation

In the statement of administrative clauses will be determined the economic and technical issues that must be negotiated with the company.

Notice and submission of requests to participate

1. When the negotiated procedure is used due to the circumstances referred to in points a) and b) of paragraph **CASES OF APPLICATION, GENERAL ASSUMPTIONS**, in point a) of **WORKS CONTRACTS**, or in point a) of Article **SERVICE CONTRACTS** the contracting authority must publish a notice in the manner provided in the **CALL FOR TENDERS SECTION**.

(In general, when the award of the contract by open, restricted or competitive dialogue has been unacceptable or irregular, and when in the case of contracts in which, by reason of its characteristics or of their high risks, do not permit determine prior overall pricing; In works contracts, works are performed for research, testing or development and not to obtain a return; In service contracts, with characteristics of the service (contracts intellectualized character), not possible to award it by the open or restricted procedure.)

The publication of the notice can be avoided when the negotiated procedure is used for having appeared irregular or unacceptable tenders in the other procedures. It is necessary that in the negotiating were included all bidders who had submitted tenders in the open, restricted or competitive dialogue procedure in accordance with the formal requirements, and only them.

2. Similarly, in contracts not subject to harmonized regulation that may be awarded by negotiated procedure because his budget is less than the indicated in the previous paragraphs, shall be published the advertisements when the estimated value exceeding € 200.000, in the case of works contracts, or 60.000 euros, in the case of other.

(In works contracts, when the estimated value is less than one million euros; In contract management utilities, when the first budget proposed shall less than 500,000 euros and term of less than five years; In supply, service and other contracts, when the estimated value is less than 100.000 euros.)

Criteria for the selection of candidates

1. Prior to the announcement of the tender, the contracting authority must be established objective criteria of solvency, according to which candidates will be selected to participate in the dialogue process.

2. The contracting authority shall indicate the minimum number of entrepreneurs who will invite to participate in the proceeding, which shall not be less than three. If deemed appropriate, the contracting authority may also set the maximum number of candidates that will participate. The number of candidates invited shall be sufficient to guarantee the effective competition.

3. Criteria or objective and non-discriminatory rules under which candidates will be selected and the minimum and the maximum number of those who will be invited shall be indicated in the invitation.

Requests to participate

1. On award of contracts subject to harmonized regulation, the deadline for receipt of requests to participate shall not be less than thirty-seven days from the date of sending the notice to the 'Official Journal of the European Union '. In the case of concession contracts for public works, this period may not be less than fifty-two days. This period may be shortened by seven days when notices are sent electronically, computer and electronic media.

2. Whether the contracts are not subject to harmonized regulation, the deadline for submitting requests to participate shall be at least ten days, after publication of the notice.

3. Requests to participate must be accompanied by the supporting documentation of compliance with prerequisites.

Reed [BIDDING / TENDER](#) (page 16).

Selection of Requesters

1. The contracting authority, after verifying the character and solvency of applicants, will select who can participate in the negotiation, which will be invited in writing.

2. The number of candidates invited to participate must be, at least, equal to the minimum that had been determined previously. When the number of suitable candidates is less than the minimum number, the contracting authority may continue the procedure with which meet the required conditions.

Content of invitations and information to guests

1. Invitations will contain a reference to the contract notice published and indicate the deadline for receipt of tenders, the address to be sent and the language in which they must be drawn, award criteria and their relative weighting, and place, date and time of opening of tenders.

2. Invitation to the candidates shall include a copy of the specifications and copies of additional documents, or contain the necessary instructions to allow access to these documents, when they are made directly available by electronic, computer and telematic.

3. The contracting authorities or competent departments shall provide, within six days prior to the deadline for receipt of tenders, the additional information on the specifications or additional documents that were requested in good time for the candidates.

4. When the statements and documents or additional information, although requested in good time, have not been provided within the time limits, deadlines for receipt of offers will end when all interested parties have the information needed to formulate offers.

Negotiating the terms of the contract

1. In the negotiated procedure will be necessary to request offers to, at least, three qualified firms for the completion of the contract, when this is possible.

2. Contracting authorities shall coordinate the negotiated procedure in successive stages in order to gradually reduce the number of tenders to be negotiated by applying the award criteria stated in the contract notice or in the specifications, indicating in these if you are going to use this power. The number of solutions that reach the finals will be sufficiently large to ensure effective competition, provided that have been submitted enough solutions or suitable candidates.
3. During the negotiations, contracting authorities shall ensure that all bidders are treated equally. In particular they shall not provide a discriminatory manner which may give information to certain advantages with respect to other bidders.
4. Contracting authorities shall negotiate with tenderers the proposals they have submitted to adapt them to the requirements of the tender documents and clauses in the contract notice, if applicable, and the additional documents, in order to identify the most economically advantageous tender.
5. In the dossier shall be recorded the invitations of tenders received and the reasons for acceptance or rejection.

c.2.5- SPECIAL RULES APPLY TO PROJECT CONTESTS

Application

Project contests are procedures for obtaining plans or projects, mainly in the fields of architecture, urbanism, engineering and data processing, through a selection that is entrusted a jury.

The rules of this section will apply to contests which meet one of the following types:

- a) Organized project contest as part of a procedure for the award of a service contract.
- b) Project contest with prizes or/and payments to the participants.

Participants

In the event that the contracting authority decides to limit the number of participants, their selection shall be made in accordance with objective criteria, clear and non-discriminatory criteria, without the access to participation may be limited to a particular territory or excluding physical persons of legal persons, or the reverse.

Advertisement

1. The bidding contest will be published in the manner provided in [CALL OF TENDERS , c.1.2-ADVERTISEMENT](#) (page 16).
2. Contest results will be published in the manner provided in [ADVERTISING OF CONTRACTS, c.1.5- REPORTING OBLIGATIONS ABOUT THE RESULT OF THE PROCEEDING](#) (page 20).

Decision of Contest

1. The jury will be composed of independent natural persons of participating in the contest.
2. Where there is a requirement a particular professional qualification to participate in a contest, at least one third of the members of the jury shall have that qualification or an equivalent qualification.
3. The jury shall take decisions or opinions completely independently, based on projects that will be submitted anonymously and based solely on the criteria set out in the notice of conclusion of the competition.
4. The jury shall be autonomous in its decisions or opinions.
5. The jury shall record in a report the ranking of projects, taking into account the merits of each project, together with its remarks and any points which may need clarification.
6. Anonymity must be observed until the jury has reached its opinion or decision.
7. Known jury's opinion and taking into account the contents of the classification, the contracting authority shall award.

c-3- CONTRACTING AUTHORITY

Procurement board

1. Except when there is a Board of Trade, in the open and restricted procedures and in negotiated procedures referred to in paragraph 1. Of Notice and submission of requests register to participate, contracting authorities of the government shall be assisted by a procurement table.

The procurement table shall be the authority for the assessment of tenders. In negotiated procedures where it is not necessary to publish notices, the constitution of this committee shall be optional for contracting.

2. The procurement board shall composed of a President, the members specified in the regulations, and a Secretary.

- The Secretary shall be appointed from among officials;
- One of the members must be a person serving the contracting authority that has assigned the relevant legal advice;
- One of the members must be a person serving the contracting authority that has attributed its economic and budgetary control.

3. Members of the Committee shall be appointed by the contracting authority.

Special procurement board of competitive dialogue

1. Special procurement board shall be constitute to assist the contracting authority in the procedures for competitive dialogue. It will be composed as explained in the previous section, and for a number of especially qualified persons designated by the contracting authority. The number of such persons shall be equal to or greater than one-third of the members of the board.

2. In dossiers that are processed for the conclusion of contracts of collaboration between the public sector and the private sector, especially competitive dialogue board shall draw pre-assessment document.

Jury of contests

1. During the contests, contracting officers will constitute Jury contests, incorporating five personalities composition of recognized competence in the relevant area, designated by the contracting authority, which may contribute in a special way evaluate proposals, and participate in discussions and vote.

2. Jury members must be independent of the individuals participating in the contest. When candidates are required to possess certain qualifications or experience, at least a third of the jury members must be in possession of the same or equivalent.

d. Relation with Articles of Law on Public Sector

6. Development: Explanation of both laws and comparison between them

III. Spanish legislation: Law about Contracts on Public Sector

a. Prior information about the law

a.1- Contracts on Public Sector

a.1.1- According to the object of the contract

Related with Articles from 5 to 12, of the Law on Public Sector Contract.

a.1.2- According to the amount of the contract

1. Contracts subject to harmonized regulation

Related with Articles from 13 to 17, of the Law on Public Sector Contract.

2. Minor contracts

Related with Articles 111 and 138, of the Law on Public Sector Contract.

- *Calculating the estimated value of contracts*

Related with Articles 88, of the Law on Public Sector Contract.

a.1.3- According with their nature

Related with Articles from 18 to 20, of the Law on Public Sector Contract.

a.2- Capacity and solvency of the employer

a.2.1- Capacity to contract with the public sector

Related with Articles from 54 to 56, of the Law on Public Sector Contract.

a.2.2- Solvency

Related with Articles from 62 to 64, of the Law on Public Sector Contract.

b. Processing files

b.1- Ordinary processing

Related with Articles from 109 to 111, of the Law on Public Sector Contract.

b.2- Urgent processing of the file

Related with Articles 112, of the Law on Public Sector Contract.

b.3- Processing of emergency

Related with Articles 113, of the Law on Public Sector Contract.

c. Adjudication of contracts for Public Administrations

c.1 - GENERAL RULES

c.1.1- Policy Provisions

Related with Articles from 138 to 140, of the Law on Public Sector Contract.

c.1.2- Advertisement

Related with Articles from 141 to 142, of the Law on Public Sector Contract.

c.1.3- Bidding / Tender

Related with Articles from 143 to 149, of the Law on Public Sector Contract.

c.1.4- Selection of the successful tenderer

Related with Articles from 150 to 152, of the Law on Public Sector Contract.

c.1.5- Reporting obligations about the result of the proceeding

Related with Articles from 153 to 155, of the Law on Public Sector Contract.

c.1.6- Formalization of the contract

Related with Articles 156, of the Law on Public Sector Contract.

c.2 - PROCEDURES

c.2.1- OPEN PROCEDURE

Related with Articles from 157 to 161, of the Law on Public Sector Contract.

c.2.2- RESTRICTED PROCEDURE

Related with Articles from 162 to 168, of the Law on Public Sector Contract.

c.2.3- COMPETITIVE DIALOGUE

Related with Articles from 179 to 183, of the Law on Public Sector Contract.

c.2.4- NEGOCIATED PROCEDURE

Related with Articles from 169 to 178, of the Law on Public Sector Contract.

c.2.5- Special RULES APPLY TO PROJECT CONTESTS

Related with Articles from 184 to 188, of the Law on Public Sector Contract.

c.3 - Contracting Authority

Related with Articles 320, 321 and 123, of the Law on Public Sector Contract.

II. HUNGARIAN LEGISLATION: LAW ABOUT CONTRACTS ON PUBLIC SECTOR

The adjudication procedures in Hungarian Law are contained in *Act CVIII of 2011 on Public Procurement*.

Basically, the both countries laws are the same, but there are a small differences. So, in the follows paragraph will explain the comparative between Spanish Law and Hungarian Law, related the articles of both laws.

First classification: EU thresholds

This Act establish one contract classification based in economic thresholds, explained in the Law in *PART TWO, PROVISIONS RELATED TO PUBLIC PROCUREMENTS REACHING EU THRESHOLDS* and *PART THREE, NATIONAL PROCEDURES*.

This classification and the thresholds are specified by EU law and defined as national thresholds by the Budget Act of Hungary. (*Public procurement thresholds, Article10*)

In the paragraph *Value of public procurements, Articles 11 to 18*, are explained how calculate the estimated contract value. In the last article, Article 18, is determined the limit amount which separate both types of contracts:

"3. The procedure laid down in Part Three of this Act shall apply in each case to contracts having an estimated value less than HUF 21 824 000 in case of services and supplies and less than HUF 272 800 000 in case of works contracts, on condition that the estimated value of such a part not calculated together does not exceed 20 % of the value that would have been established by the contracting authority in case of application of paragraph 2 as the total estimated value of the public procurement contract."

In the Spanish part, this classification is explained in [CONTRACTS ACCORDING TO THE AMOUNT](#) (page 7).

Second classification: Subject-matters

In the paragraph of Spanish Law [CONTRACTS ACCORDING TO THE OBJECT](#) (page 6), it was explained the seven different kinds of contracts related with Articles from 5 to 12, of the Law on Public Sector Contract. In *CHAPTER I, Subject-matters of public procurements, Article 7* of Hungarian Law, there is the follow classification:

"1. Subject-matters of public procurements shall be the following: public supply, public works, public services, public works concessions and service concessions."

Language

One of the biggest differences between both laws and contracts appears in *CHAPTER I, Principles and main purpose of the Act, Article 2*:

"6. Contract award procedures shall be conducted in Hungarian. The contracting authority may make it possible to use another language instead of Hungarian but it shall not be made compulsory."

Award procedures

In Hungarian Law, *PART TWO, PROVISIONS RELATED TO PUBLIC PROCUREMENTS REACHING EU THRESHOLDS*, there are the same procedures than in Spain. The kinds of procedures are explained in the *CHAPTER XII, Types of contract award procedures*, and more exactly in the Article 82:

"Contract award procedures may be open or restricted or negotiated procedures or competitive dialogue. Recourse to a negotiated procedure or to a competitive dialogue may only take place if this is permitted by this Law. Negotiated procedures may be with or without the publication of a contract notice."

The procedures in both countries agree on the form of processing, time limits, and required documentation. This happens because they are subject under the same rules of the European Union.

In Hungarian Law, *PART THREE, NATIONAL PROCEDURES, Procedural rules to be applied, Article 121*, explain:

"1. For the purposes of carrying out a public procurement contract covered by this Part, the contracting authority
(a) shall conduct a procedure formed independently in the case and in a way pursuant to Article 123, or
(b) shall proceed according to the rules set out in Part Two of this Act, with the differences stipulated in Article 122. "

This article is similar to the [CONTRACTS ACCORDING TO THE AMOUNT, Minor contracts](#) (page 7).

III. BIBLIOGRAPHY

- *Spanish Legislation:*

"Real Decreto Legislativo 3/2011, de 14 de noviembre, por el que se aprueba el texto refundido de la Ley de Contratos del Sector Público."

- *Hungarian Law:*

"Act CVIII of 2011 on Public Procurement."

- *Complementary information:*

Theoretical lessons with the tutor of the project.

IV. ANNEX

a. DEFINITIONS

The next definitions are key words used in this project, explained in English and translated in Spanish to facilitate the lecture:

1. **Auction** ("*Subasta*")- A public sale in which goods or property are sold to the highest bidder;
2. **Award criteria** ("*Criterios de adjudicación*") - Standards, rules, or tests on which the adjudication is based;
3. **Award/ Adjudication** ("*Adjudicación*")- Stage of the public contract in which the natural or legal person to whom the administration will conclude a contract is designated;
4. **Candidate** ("*Candidato*"): any economic operator who (which) submits a request to participate in the first stage, that of participation, of a contract award procedure consisting of more than one stages;
5. **Contracts subject to harmonized regulation** ("*Contratos Sujetos A Reglación Armonizada - SARA*")- They are a kind of contracts classification according to the amount, which are subjected to an European guidelines about Public Contracts.
6. **Dossier** ("*Informe*")- A collection of documents about a particular person, event, or subject;
7. **Law on public procurement** ("*Ley sobre Contratación Pública*")- This Act is to regulate the public sector procurement, to ensure that it conforms to the principles of freedom of access to tenders, publicity and transparency of procedures, and non-discrimination and equal treatment of candidates and to ensure, in connection with the objective of budgetary stability and cost control, efficient use of funds for the execution of works, procurement of goods and contracting services by requiring prior identification of needs meet, safeguarding free competition and selection of the most economically advantageous tender;
8. **Official Journal of the European Union** ("*Dario Oficial de la Unión Europea- DOUE*")- It is the official source of European Community law. It is the only publication that appears every weekday in 23 languages;
9. **Official State Journal** ("*Boletín Oficial del Estado- BOE*")- It is the official journal of the Spanish State dedicated to the publication of certain laws, regulations and acts of compulsory integration;
10. **Previous announcement** ("*Anuncio Previo*")- It's an optional announcement made by contracting authorities. Contracting authorities may publish a prior information notice in order to make known, in connection with contracts for works, supplies and services which they intend to award over the following twelve months;

11. **Royal Legislative Decree** ("*Real Decreto Legislativo*") - The Royal Decree is a proper legislative decree of countries with parliamentary monarchy like Spain. It is a rule of law as law, emanating from the central executive power, under express delegation made by the legislature (Parliament);
12. **Specifications and prescriptions** ("*Pliego y prescripciones*")- It is a contractual and compulsory document, in which conditions or clauses of the contract are determined by in a works or services , an administrative concession, an auction;
13. **Tax** ("*Impuesto*")- A sum of money demanded by a government for its support or for specific facilities or services, levied upon incomes, property, sales, etc;
14. **Tenderer** ("*Licitador*"): an economic operator who (which) submits a tender in a contract award procedure;

b. FIRST SCHEMES ABOUT SPANISH LEGISLATION

- OPEN PROCEDURE - 42 -

- RESTRICTED PROCEDURE - 43 -

- COMPETITIVE DIALOGUE - 44 -

- NEGOTIATED PROCEDURE - 45 -

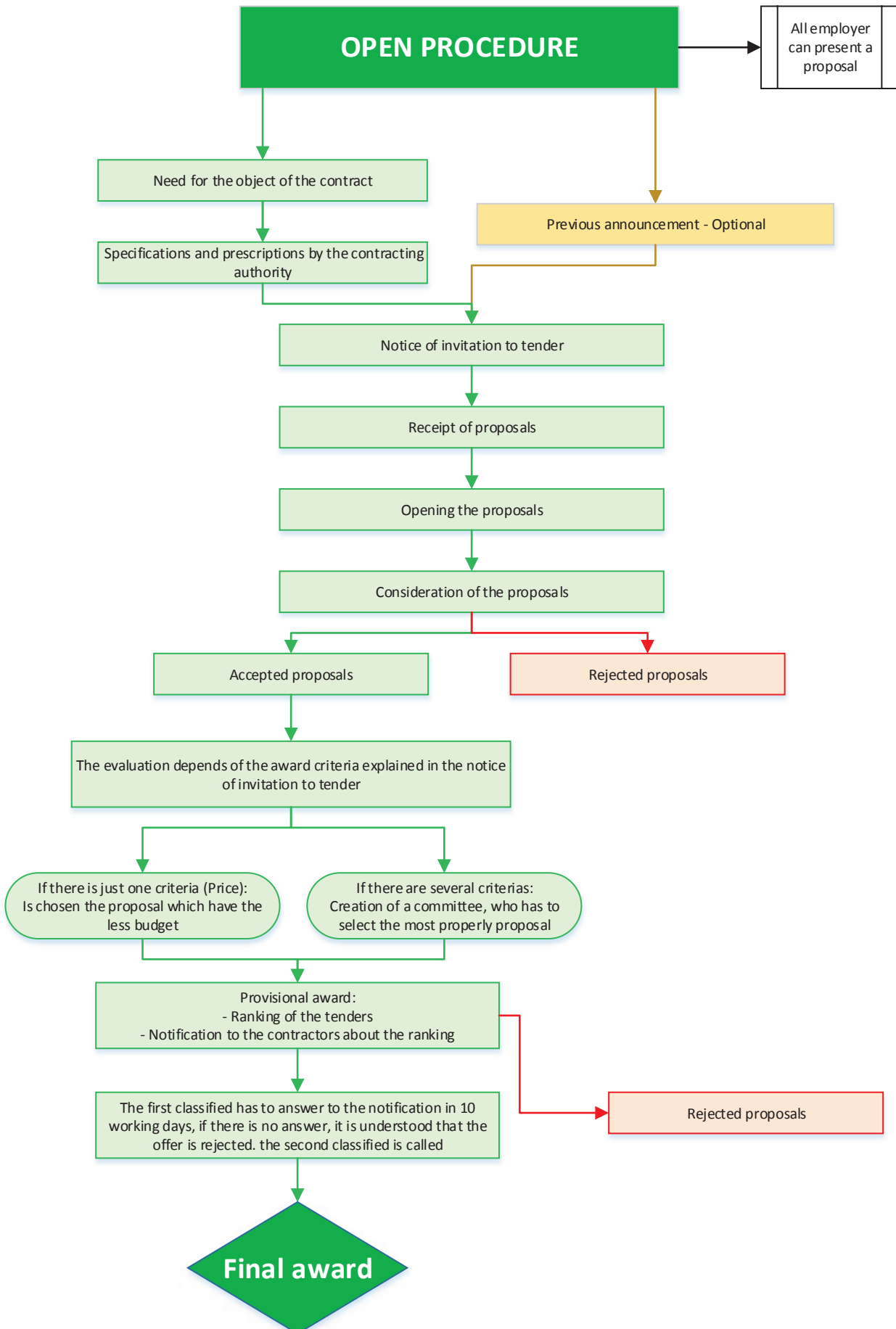
c. COMPLETE SCHEMES ABOUT SPANISH LEGISLATION

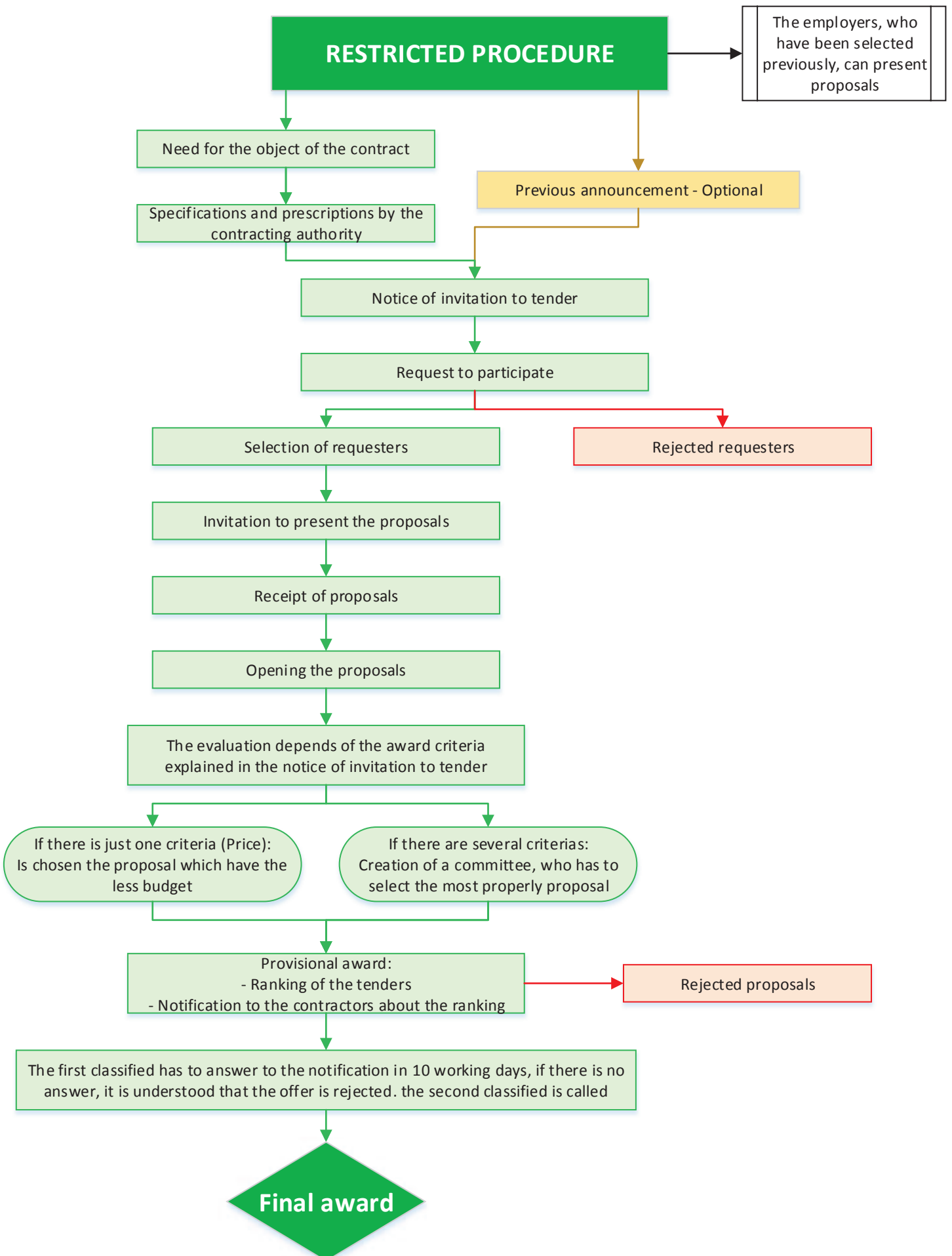
- OPEN PROCEDURE - 46 - 47 -

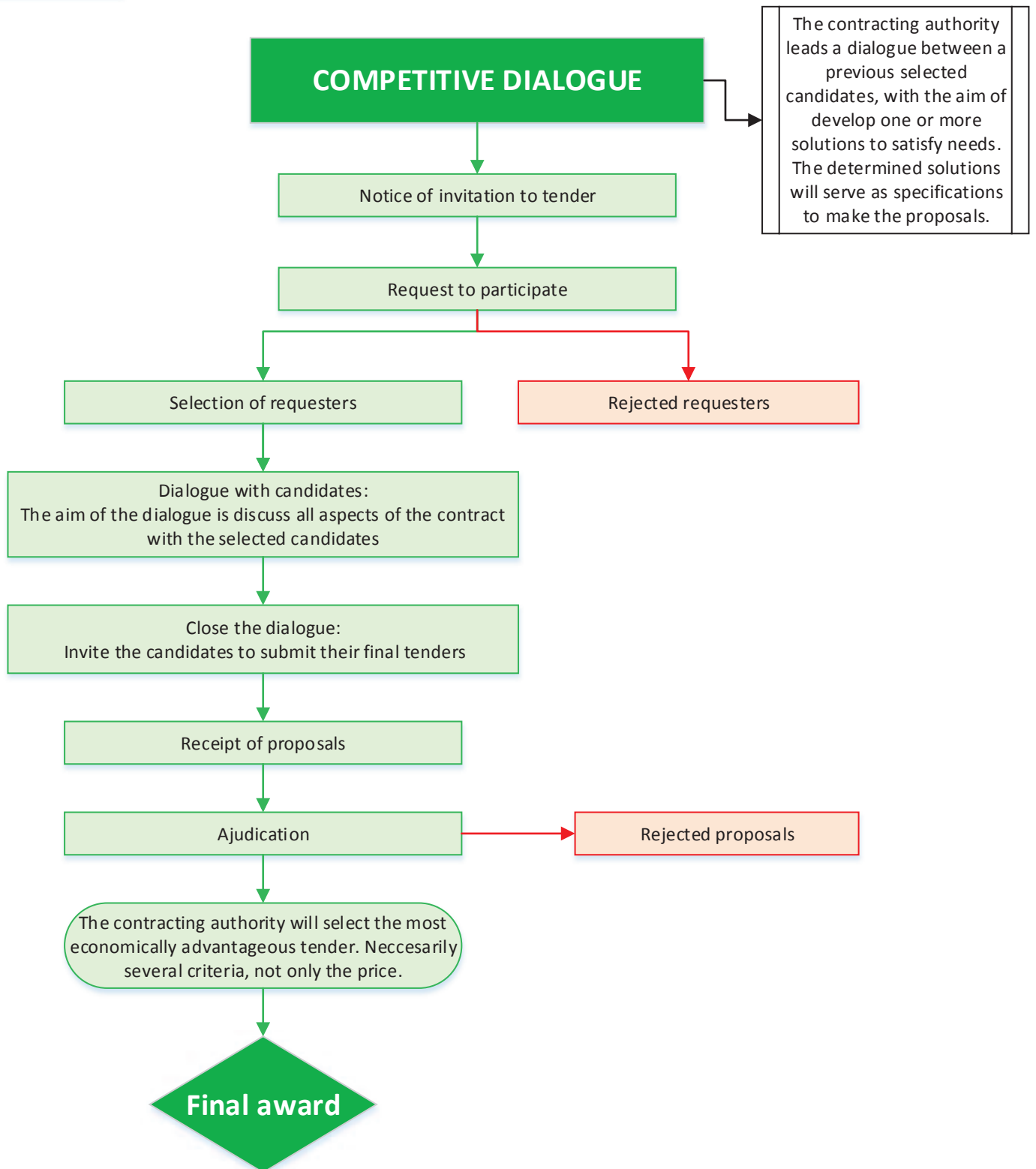
- RESTRICTED PROCEDURE - 48 - 49 -

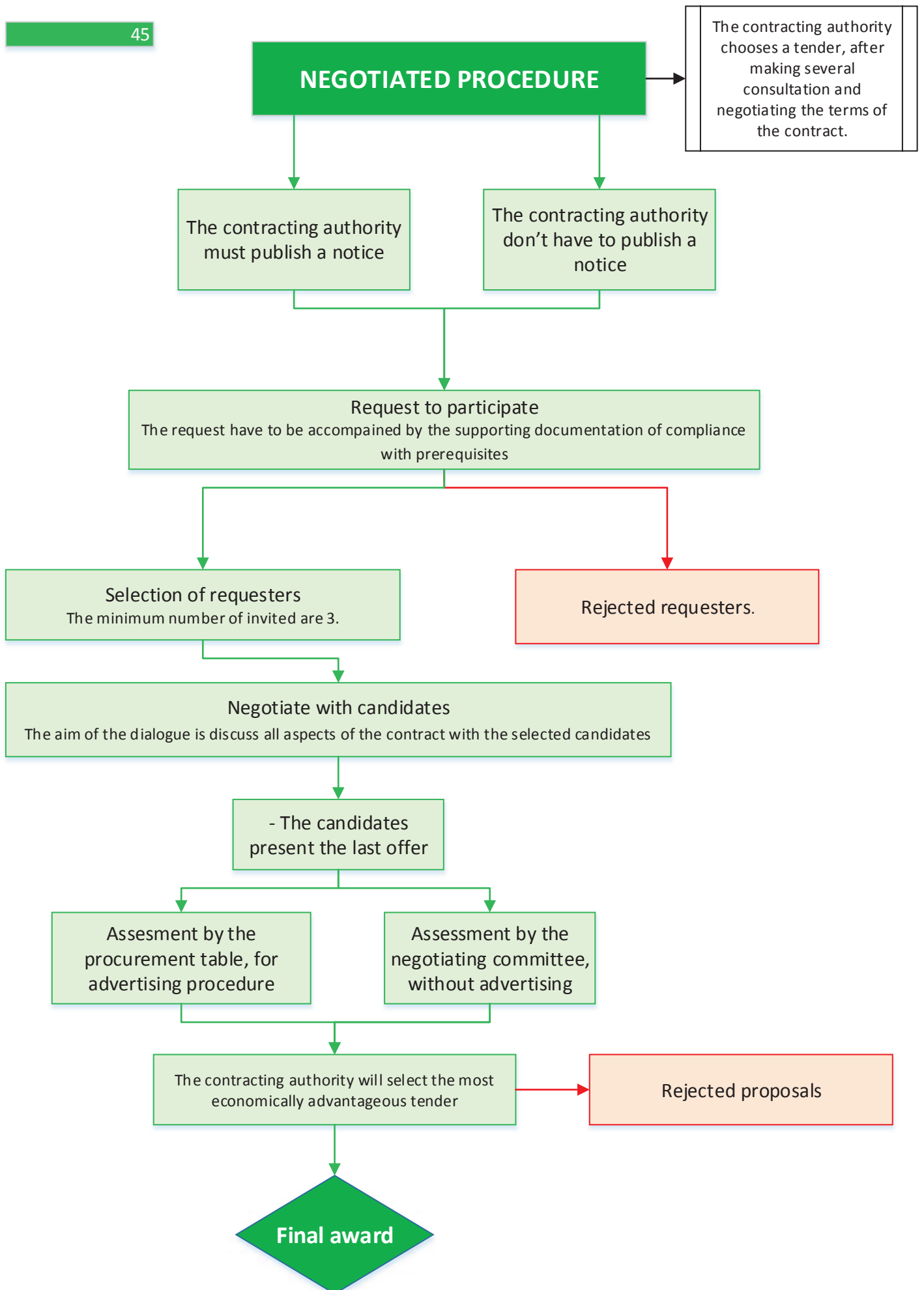
- COMPETITIVE DIALOGUE - 50 - 51 -

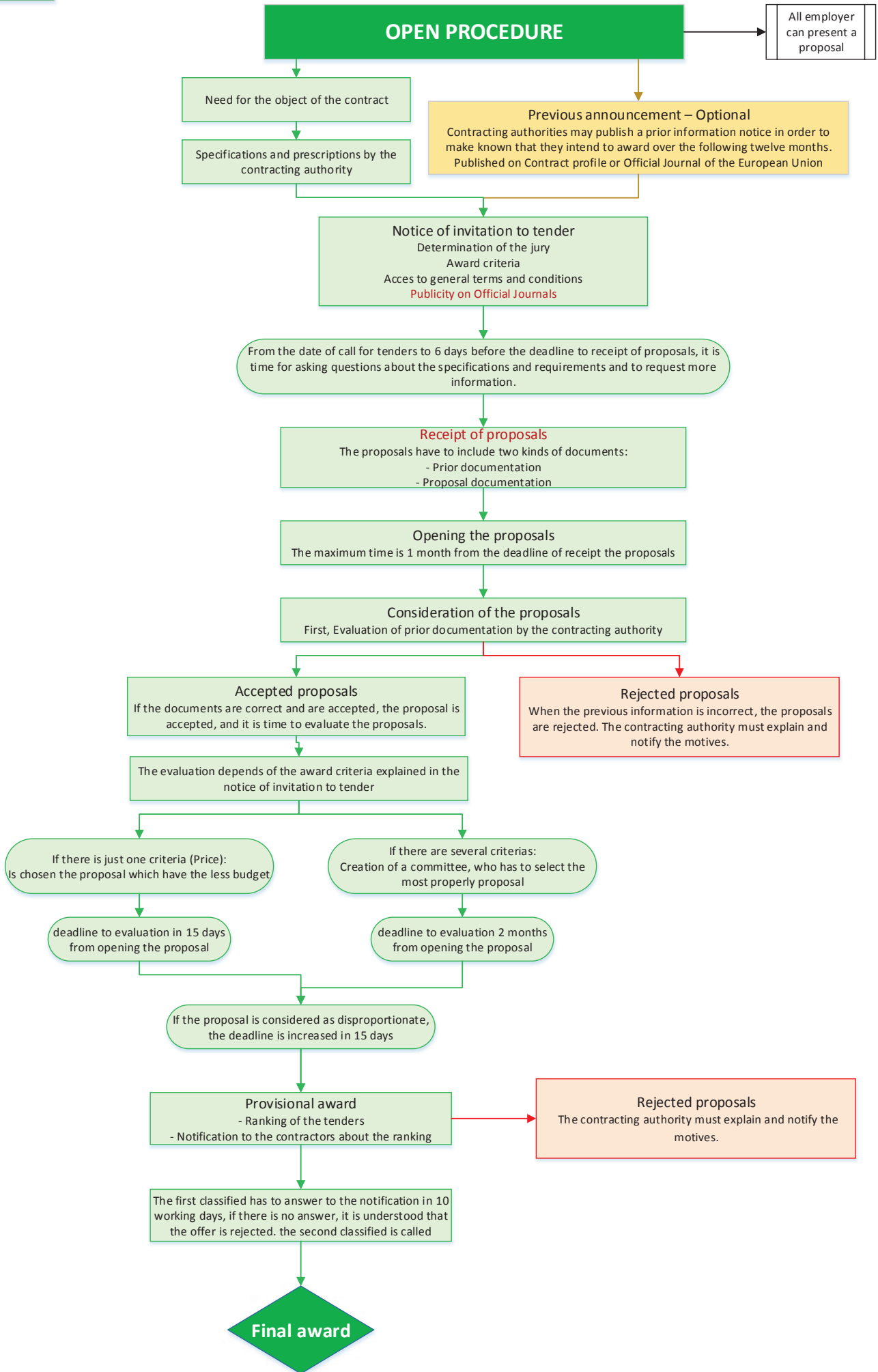
- NEGOTIATED PROCEDURE - 52 -

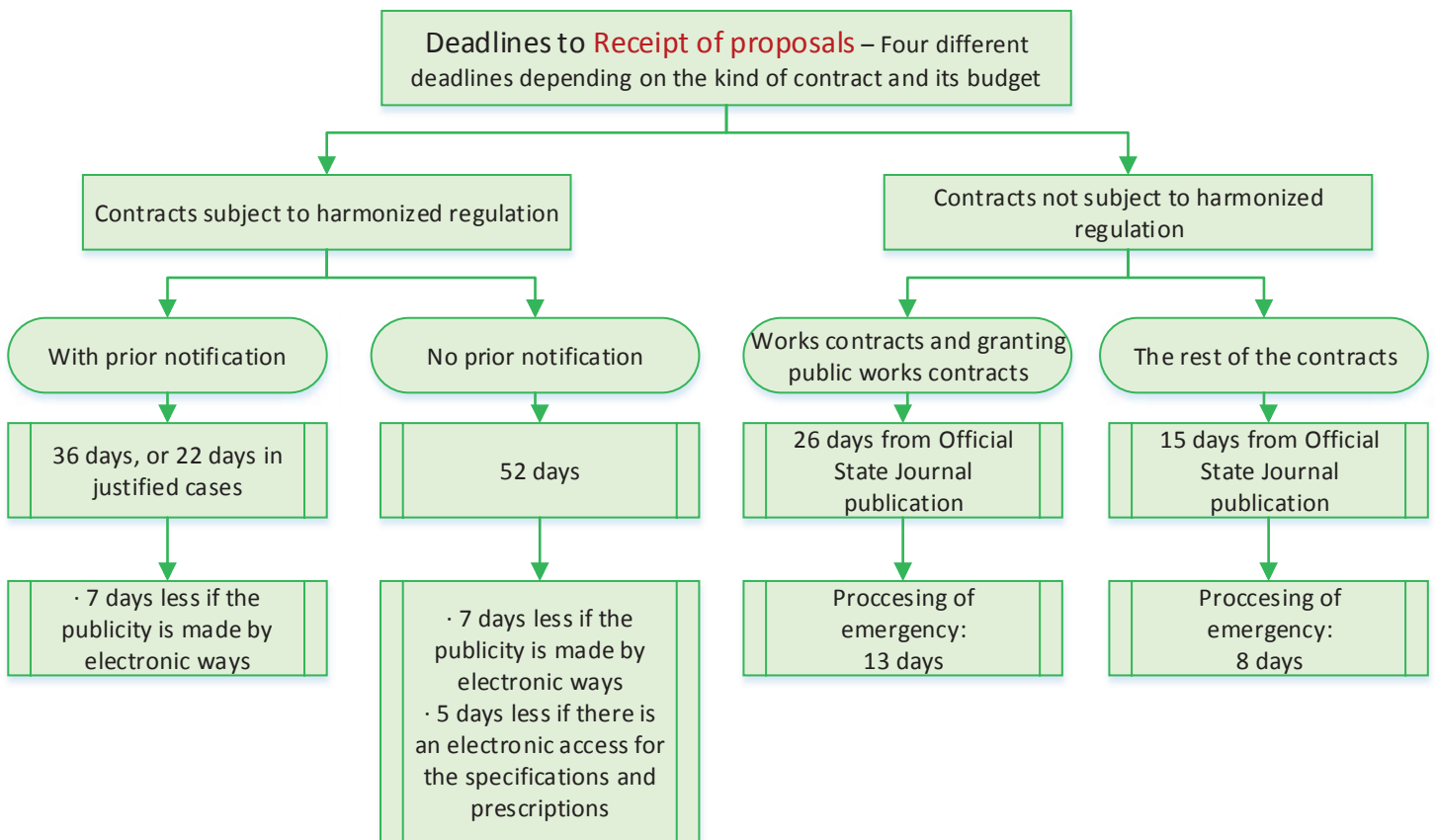
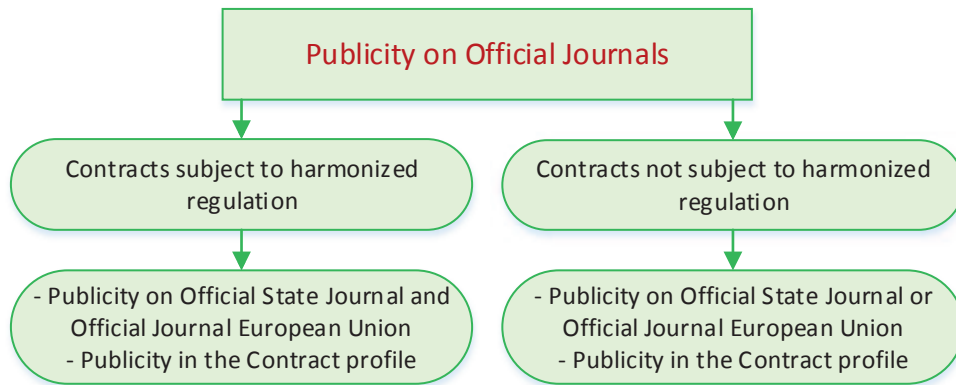


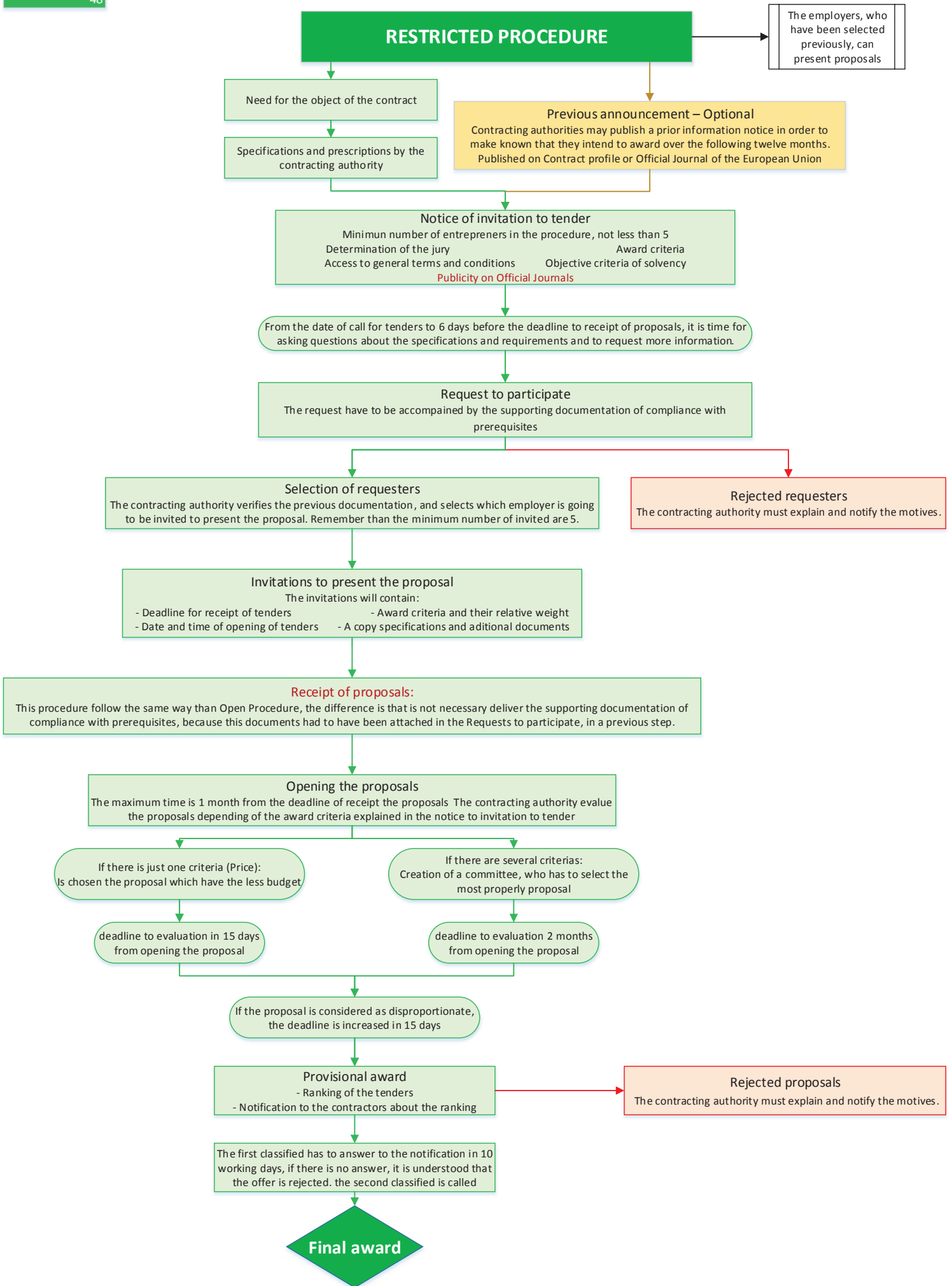


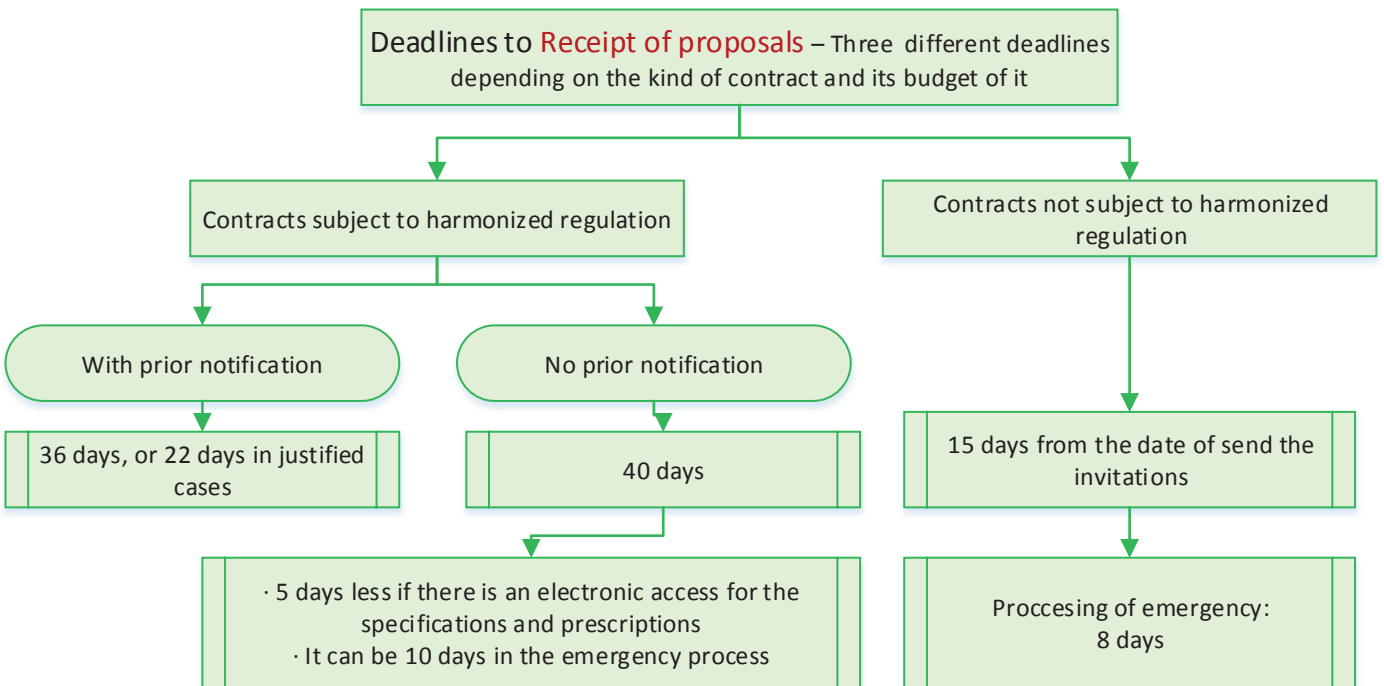
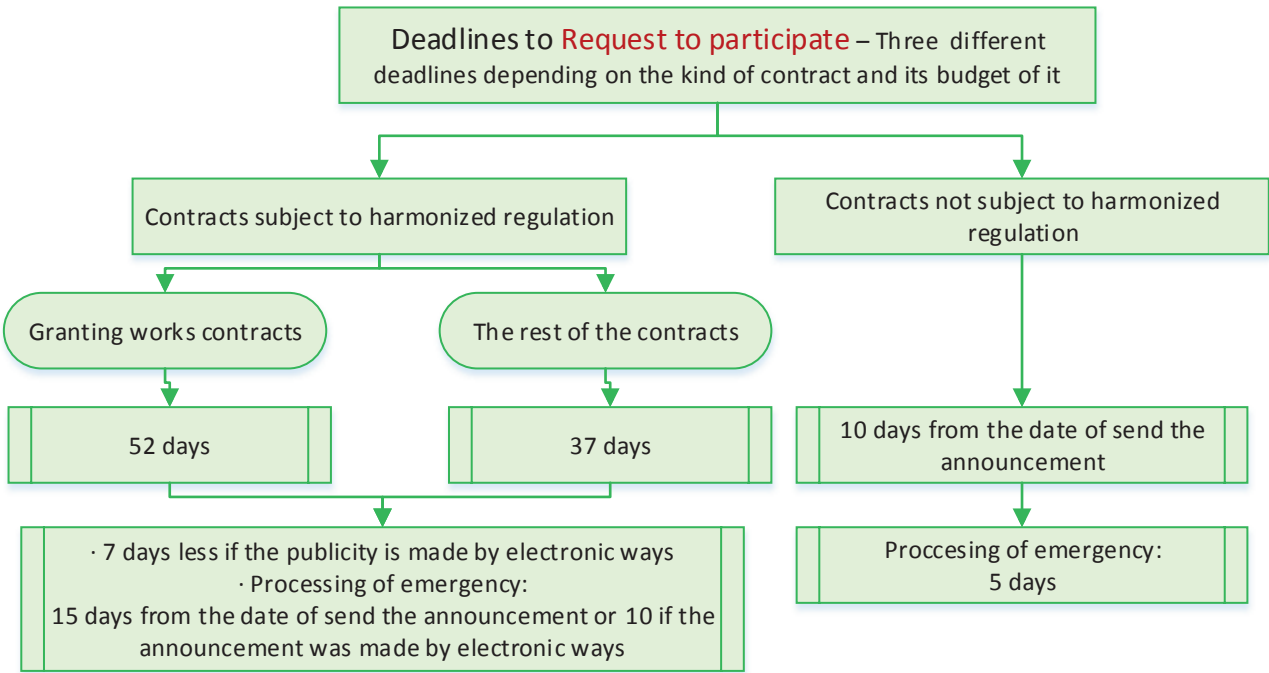
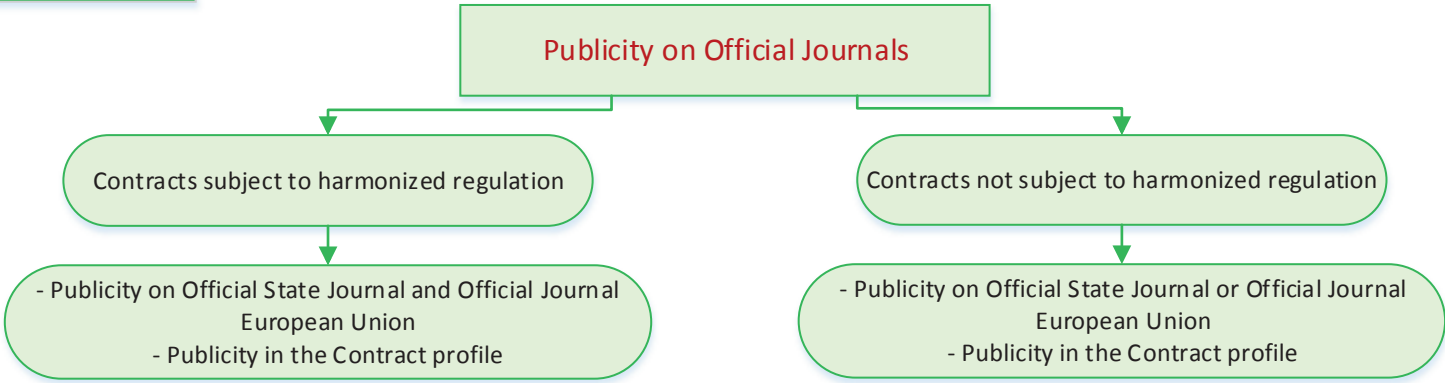












The contracting authority leads a dialogue between a previous selected candidates, with the aim of develop one or more solutions to satisfy needs. The determined solutions will serve as specifications to make the proposals.

