OFFER AND DEMAND IN LEGAL AND ECONOMIC TERMS

Enisa Haliti-Mustafa *, Ahmet Maloku **, Valon Mustafa ***

* Faculty of Law, University for Business and Technology (UBT), Prishtina, Republic of Kosovo
** Corresponding author, Faculty of Law, University for Business and Technology (UBT), Prishtina, Republic of Kosovo
Contact details: Faculty of Law, University for Business and Technology (UBT), Lagjja Kalabria, 10000 Prishtina, Republic of Kosovo
*** 4-Tech Dienstleistungen GmbH, Hamburg, Germany

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Abstract

The research problem is expressed in the multifaceted questions of the complexity of the meaning (Maloku et al., 2022, p. 138) of supply and demand in the legal and economic aspects of Kosovo. The research problem is of great importance, because it expresses the seriousness of the subjects for the conclusion of their agreement, respecting the legal and economic norms. The purpose of the research is to process the collected data through the main objectives, to interpret the results of the work, to draw the results and conclusions of the presentation of the offer and demand in the legal and economic aspect in Kosovo according to the law on mandatory relations, formal agreements and scientific research. In the work, to achieve the objectives and the purpose of the work, several methods are used among them meta-analysis, synthesis, comparative as well as deductive and inductive methods. The main findings of the paper are the presentation of the call for tender (written offer) in public institutions in Kosovo, legal framework procedures, procurement procedures, and legal procedures, such as the stages of the development of the offer. Our findings provide an overview of top-influential research for new scholars (Thamaree & Zaby, 2023, p. 42) for offer and demand.

Keywords: Offer, Demand, Tender Procedures, Obligations, Rights in the Agreement


Declaration of conflicting interests: The Authors declare that there is no conflict of interest.

1. INTRODUCTION

Today in Kosovo, great efforts have been made to issue new legislation within a very short time, with democratic principles of the rule of law, in the free market economy, in the full equality of participating subjects, as well as in the creation of laws and civil relations. The main objectives of this paper are an analysis of Law No. 04/L-077 on Obligation Relations (Assembly of the Republic of Kosovo, 2012), formal agreements, and scientific research. The offer in the legal aspect of Kosovo is an expression of the will of a person employing which he/her invites the other designated person to conclude a contract according to Article 26 para. 1 of Law No. 04/L-077 on Obligation Relations, the offer in which the deadline for its acceptance is, obliges the bidder until its expiration. The person who offers the offer is called a bidder, while the person to whom is presented the offer is called the offered person (Dauti, 2004, p. 72). By this we understand that the offer is the initiative to conclude the contract, which must meet certain conditions — it must be given by the person who intends to conclude the contract (the bidder) or by the authorized person (the bidder's authorizer), according to Article 26 of Law No. 04/L-077 on Obligation Relations, to express clearly and seriously the will of the proposer for the desire to conclude the contract, based on
the proposed conditions. The offer is made in written form if a formal contract is concluded (Article 38 of Law No. 04/L-077 on Obligation Relations). The goods, which have been displayed in the shop window at a certain price, represent the offer for the conclusion of the sales contract, with any consumer conditions. This offer is addressed to all consumers; therefore, every consumer is an offeree. The personality of the offeree is not so important here. There is another situation in contracts that are concluded for the personality of the subject, "intuitu personae" contracts. In that case, the offer must be sent to the designated entity (e.g., contract on the action, contract on authorization) (Daubi, 2004, pp. 72–73).

Whereas the legal characteristic of formulated contracts is reflected in a special way, namely in the technique of their connection. Unlike contracts with specific content, in which the two contracting parties by mutual agreement determine the elements and conditions of the contract, in form contracts "the offer for its connection is general and permanent." (Article 33 of Law No. 04/L-077 on Obligation Relations)

After the war, in Kosovo, we all witnessed how many people made different offers, not considering the legal bases. We have also seen cases of such persons who requested the application of the offer for their personal interests. These problems have pushed us to deal with this issue in order to scientifically ascertain the legal basis of agreements in legal–civil relations.

The finding of this study is limited by the study's exploratory and quantitative nature (Njapha & Lekhanya, 2017). For the reason that it often happened that the request offered by the tenderer was passed against the offer and by this, we mean that in practice we have changes in the acceptance of the offer, having changes in the agreement, whether in the price of the offer, in the amount of the offer or the rights and obligations. The research has a gap because there is no expert interviewed from the legal and economic fields who have professional experience in giving the offer and accepting the offer in Kosovo.

The objective of this study is to investigate further (Singh, 2021) the ways of announcing the offer, and the procedures and conditions for accepting the offer according to the legislation of Kosovo until the fulfillment of the agreement by both parties.

The purpose of the paper is to interpret Law No. 04/L-077 on Obligation Relations, in practice, formal agreements, and scientific research of different times in relation to supply and demand.

There are many other reasons for this theme since we have real developments in the time of Roman law when at the beginning contracts were rare and those contracts, so-called "manipulation", were more of a ceremonial character, religious rather than contract in the modern sense.

During the research of the paper, we came across a gap in the current national literature that deals with offers and demands in the legal aspect. Also, the gap was a big obstacle for us because there was very little research on the quantitative and qualitative aspects. Also, during the research, it was noticed that there was a gap in the legislative absence, namely in the absence of several laws and by-laws, such as administrative instructions.

In terms of the theoretical framework, the paper elaborates on the presentation of the offer against the demand in the framework of the contracts announced by the procurement of institutions at the country level. Also, in the theoretical aspect, the paper analyzes the implementation of the legal frameworks of Kosovo regarding the offer and request.

The research data, analysis, and research findings are of great importance because they will serve other researchers in the way of further analysis of the presentation of the offer and demand using our empirical and qualitative research data. Research data is also important for other lawyers, financial experts, procurement office experts, lawyers, and Ph.D. students who research the offer and request.

The research data of the paper also contribute to further research in various scientific fields (Qerimi et al., 2022, p. 290), especially in the obligation relations to the subjects of offer and demand.

To achieve the research objective, a qualitative approach is used (Abdalla et al., 2022, p. 173). Such research enables us to obtain relevant knowledge with the help of scientific methods and research techniques — scientific (Maloku et al., 2022, p. 138). The paper uses the meta-analysis method, the synthesis method, the comparative method, as well as the inductive and deductive methods.

The rest of this paper is structured as follows. Section 2 reviews the relevant literature. Section 3 presents the methodology used to conduct the study. Section 4 presents the results and discussion of the results and Section 5 provides the conclusions of the study.

2. LITERATURE REVIEW

Referring to the latest literature at the world level such as the book “Mandatory Jurisdiction in International Law" (Lamm, 2014). The Statute of the Permanent Court of International Justice with the provisions of the optional clause has introduced a system of mandatory international partial adjudication based on full compliance with the voluntary acceptance of the court’s jurisdiction. This timely book provides an extensive survey of the development of the optional clause system, the theoretical and procedural aspects of unilateral declarations of acceptance and the various reservations added to these declarations. It also seeks to find solutions to improve the system. The author critically examines those reservations that undermine the system of mandatory jurisdiction and discusses the main controversies. It considers the various aspects of compulsory jurisdiction paying particular attention to the practice of the States, the jurisprudence of the courts, and the relevant jurisprudence of both courts. The book contains a unique comparative analysis of all declarations of acceptance made since the establishment of the Permanent Court of International Justice, also debating the shortcomings and future of the system, as well as the second volume or the special part of the book “The Law of Obligations and Contracts: The General Part and the Special Part" (Tutulani-Semini, 2016). Then by
reviewing the book “E Drejta e Detyrimeve: Pjesa e Përgjithshme” (Dauti, 2016), a comparison of the legal provisions with those applied in an international aspect is made. Referring to the great codifications, it begins with the so-called Code Napoleon of 1807, according to King Napoleon, who had ordered the summary of civil law in a single book written in a simple language that everyone could understand (Code Napoleon, 1807). This code was followed by a series of other famous codes such as the General Civil Code of Austria of 1812 (Baeck, 1966), which, with many amendments, is still in force, divided according to the institutional system: personae (persons), res (things) and actions (suit). Meanwhile, one of the most important codes in Europe continues to be the German Civil Code (Civil Code, 2002). This code entered into force in 1900 and with some amendments, it is still in force. The book is divided according to the panderct system, i.e., in a total of five chapters, called books: General Part, Property Law, Law of Obligations, Family Law, and Inheritance Law. Most European countries follow this division today, including the American Civil Code (Civil Code of the Republic of Albania, 2001).

The current paper argues that it is not possible to give a general answer (Gramano, 2020) for the concrete research because to elaborate the offer and demand it must be analyzed from different scientific perspectives with the participation of many other actors in the relevant field.

The offer must be given by the person offered or by the person authorized by him (Milosevic, 1966) and acceptance must be made only by the offeror and the offeree, who, according to the content, fully respond to the request for the offer so that the agreement has effects legal.

Only if the offeree will accept part of the demand (Anson, 1975) and an agreement will be reached, or will give something seriously to close the agreement, or part of the payment, or that a note or written memorandum of the agreement in question to be made and signed by the parties who will be bound by such contract.

Cases and doctrine contain a mix of classic and contemporary modified cases (Barnett & Oman, 2021) that easily emphasize current contract doctrine along with the lawyer's essential skill of case analysis — how to analyze the facts of a case to distinguish the prevailing rules and theory regarding the offer.

Offer and demand provide an excellent overview of all the main areas of contract law, (Davies, 2021), making it ideal for use in all legal work. The focus on key cases acts as a springboard to critical analysis and discussion and useful recommendations for supply and demand.

That being the case, it is not surprising that contracts — which are essentially the law of exchange — should have the status of a core course in law school (Chirelstein, 2013). Every exchange relationship, even the simplest retail transaction, is based on an agreement between the parties, and we naturally expect — though without thinking about it — that legal rules somehow assure that the agreement will be honored. Contract law is supposed to enforce that expectation. In this process, it mainly asks and answers the following questions: First, whether the parties have behaved in such a way as to create legally distinct expectations from each other; second, if they have, how those expectations should be characterized and understood; third, whether the understanding was faithfully carried out by the parties or somehow obstructed; and finally, if it gets in the way, what if the law has to do something about it.

“Rules and Laws for Civil Actions” (Burch Elias, 2022) is the essential guide to this complex and increasingly relevant area of the law. In addition, no other book presents the same level of information on the law relating to compulsory purchase and compensation. “Contract Law: A Case and Problem Based Approach” (Jimenez, 2021) is a unique casebook that provides an organizational structure introducing students to each major area of contract law before exploring these areas in greater depth.

This statutory supplement combines the most useful statutes for courses in contracts, commercial law, secured transactions, commercial paper, sales, bankruptcy, debtor-creditor law, and corporate reorganizations (Baird et al., 2020). This convenient paperback from a highly respected author team supplements the authors' own casebook as well as any other casebook for contracts. This supplement also reproduces excerpts from other relevant source materials and provides accompanying commentary to enhance the study of contract law (Knapp et al., 2019). “The Law of Debtors and Creditors: Bankruptcy, Security Interests” (Brown et al., 2022) brings you timely coverage of all aspects of the debtor-creditor relationship. It explains situations from both points of view and offers an in-depth analysis of vital topics.

The research questions of the study are as follows:

RQ1: How will the offer be presented?
RQ2: What are the legal framework procedures, the procurement procedures, and the stages of the development of the offer?

3. RESEARCH METHODOLOGY

The research in this paper has the characteristics of scientific theoretical research, which is necessarily qualitative in nature (Qerimi et al., 2023, p. 185). In this paper, several methods will be used to achieve the objectives of the paper. These methods are the analysis method, the research method, and the scientific method. This paper was carried out based on the concepts that exist in Law No. 04/L-077 on Obligation Relations, formal agreements, and scientific research. The method of analysis and synthesis was used among the special scientific methods, which will be especially useful in researching the theoretical perspectives of domestic and foreign authors (Maloku et al., 2022, p. 176).

The paper will not be finalized without the use of the research data analysis method as well as the empirical aspect. In the research, the data were obtained from the institutions related to the announcement of the tenders, including the conditions of the offer and the demand with certain deadlines. These data are better analyzed in the paper using the camping method to achieve the research goal. The paper elaborated on the research objective by analyzing and elaborating on the research problem using the inductive and deductive methods.
This paper would have a methodological gap if scientific methods were not used. Through the preliminary method of analysis, various works and scientific theories have been analyzed in relation to the research problem of offer and demand.

4. RESULTS AND DISCUSSION

4.1. Offer as a market remedy

The offer represents the entire production of material and services, which the sellers are ready and able to offer to market for sale at a certain price, during a certain period of time, when other factors are unchanged. Therefore, taken globally, the offer expresses the intention of the producer (seller) to offer a material good or service, at any possible price in the market (Berisha, 2004, p. 65). Offer and demand, as two main components of the law of value in the market, have functional connections but are opposites of each other, so, they have an inverse position with each other. The provision of offer and demand also determines the market price. The price and the offer are in the right proportion, e.g., when the prices increase, the offer also increases. While, the demand is inversely proportional to prices, e.g., as the price increases, the demand decreases. The supply curve for any material good represents the ratio between its market price and the quantity of those material goods, which producers are willing to produce and sell, under the conditions, other things remain unchanged. In an offer, it is also the case of demand, many factors influence and to distinguish them, there are: 1) product price, 2) technology, and 3) the price of production factors (impes) (Flegar, 1990, p. 64).

The development of the offer is handled and regulated by legal norms in an ongoing field of social relations (in the field of circulation of goods and provision of services), the relationship between creditor and debtor. The offer represents the total amount of goods and final services dedicated to the market so that the consumers are ready to buy for the given price offered under the other constant variable, e.g., without changing other conditions. This is then supported by the price made by consumers, which with the level of demand shows the need for the goods in demand for consumers. The greater the demand, the price is higher, and vice versa, if the offer is greater than the demand, then the price falls. This is the law of the market.

4.2. Today’s position of the offer as an economic and legal tool

The offer during the last decade of the last century has marked an extraordinary development in the entire world. There is a professional and public dedication that allows the offer to advance both at the national and international levels. All developing countries, as well as those in transition, are encouraged to adapt their relations with the international community. This has influenced the creation of different forms of contract as well as the creation of transparency and the opening of competition between internal bidders, but also for foreign bidders. This explains that none of the closed legal systems within the country can be advanced and reformed according to the demands of the time. The development of every country has to do with the system of legal regulation, which is done on the behaviors and economic-social actions of individuals or groups of individuals with each other (Kelmendi, 2011). The legal system determines the legal principles and definition, material and formal, of the legal arrangements of relations based on interests and economic-social relations in space and time. In this approach, we will also deal with the forms of contracts with different content, relying on the fact that the offer (the basis for concluding the contract) has recently taken a new direction, as in European countries, which have gone through a phase of transition, where previously different agreements were applied, as well as in the Republic of Kosovo. According to scientific research, in recent times, it is known that the biggest leap in development, the right of obligations was experienced in the development of capitalist relations in the economy, especially in the 19th century (Arrowsmith, 2003). Today, mandatory relations are created even with the unilateral expression of the will, such as a contract for the benefit of a third person, an insurance contract, an adhesion contract, a collective contract, etc. Whereas the new contracts, in terms of obligations, are insurance contracts, travel insurance contracts, etc. Today’s ways of offering, as an economic legal tool, are when the value of the general product is calculated by collecting all the incomes of all the owners of the factors of production, used both for the production of final goods, as well as for intermediate goods, ways of announcing the offer through various announcements in writing, oral, mail, etc. The possibilities of today’s position of the offer facilitate the offers related to the information of the goods, with its quality that we can see through different catalogs; product marketing helps in selecting the right product. Recent technological developments have greatly helped the current position of the offer as an economic legal tool.

4.3. Method of giving the offer

The offer can be made to a person or a group of people, even a majority of organizations, but not to the whole of humanity. The offer can be made to the person present or not present. It is considered that the offer has been made to the person present not only when the parties are in the same location, but also when they have been in direct contact through technical means of information, such as phone or the Internet. The offer is considered that it has been given to a person who is not present when it is sent by post or any adequately formulated offer, which someone else answers with acceptance. The agreement is reached at that moment when the offer is accepted.

4.4. Acceptance of the oral offer

The acceptance of the offer in writing, sending of catalogs, price lists, tariffs, and other announcements, as well as announcements made through the press, tracts, radio, and television or in any other way, do not constitute an offer to conclude a contract, but only a call to make offers under the announced conditions. The binding acceptance of the offeror and the offeree orally is preceded by preliminary
actions, such as the negotiations, talks, and pre-discussions of the entities with the expression of their will (Kelmendi, 2011). After the completion of these preparations, the parties take concrete actions regarding the conclusion of the oral offer, such as offer and acceptance of the oral offer. The acceptance of the oral offer precedes the negotiations between certain entities. The interested parties can discuss the elements of setting the price, the method and place of delivery, the quality of the item, the payment, etc. These pre-negotiations have the character of pre-negotiation regarding the conclusion of the acceptance of the oral offer (Brestovci, 2000, p. 60).

4.5. Acceptance of the offer in writing

Acceptance of the offer in writing should contain a clear and certain-way presented conclusion of the sales contract with every consumer. Acceptance of a written offer is a form that is written by hand, and signed by the entities that have entered into a contract. The conditions of acceptance of the written offer are: signing of contractual entities, agreement of will, the name and surname of the entities are written in the signature or they can also do it by facsimile in the district where the place is designated for signing. The offer in writing is considered accepted even when the offeror sends the item or pays the price, as well as when they do any other action which, based on the offer, is certified between the interested parties and customs and can be considered as a statement of acceptance.

4.6. Counteroffer

One of the conditions that must be fulfilled for the acceptance of the offer to be effective is that this acceptance must have essential elements compatible with those offered. For example, if the offer foresees the price of the goods €10,000, while the letter or document through which the offer is accepted foresees the price of €5,000, then we do not have the acceptance of the original offer, but we have a counteroffer (Gams, 1978). Article 25, if there is a counteroffer, the contract is not considered concluded; because the offer and the acceptance cannot have the same elements; it means that there is no agreement of the will of the parties, so there is no acceptance. If there is a counteroffer, the contract can only be concluded if the original (first) bidder accepts the change that has been made and agreed that the contract will be concluded by that change. In the example mentioned above, if the party that made the offer at €10,000 agrees to lower the price to €5,000 then we have a signed contract, and the price of the goods will be €5,000. Just like the offer, the acceptance of the offer can be revoked under certain conditions. This revocation or cancellation, however, must reach the bidder before the acceptance or at the same time as acceptance. If it is revoked after reaching acceptance, then it is considered a breach of contract. If the revocation of acceptance occurs before acceptance, then it is a valid revocation and there is neither acceptance nor contract. The question arises, what happens if the bidder makes the offer and then dies? In most cases, if the bidder dies, then the offer also is canceled. So the acceptor cannot accept the offer of the offeror who has died in the meantime. However, the offer of the offerer, who has already dead, can be accepted by the acceptor; if the recipient is not aware of the death of the offeror, in that case, the executed contract must be fulfilled by the heirs of the property of the deceased offeror. As the offer contains its main elements, so does the counteroffer express the main elements considering the legal work. By this, we understand that the counteroffer also has the other element, which is the object, as well as the time of implementation of the counteroffer, as an offer from the offeree, intending to create the possibility of the offer from the offeree from the counteroffer, as well as the realization of the offer made by the offeree based on the legal order to the counteroffer. The entities, whose purpose is to realize the offer from the counteroffer, make the offer in their own way by expressing serious offers to make the possibility of conclusion of the offer to the counteroffer, where the counteroffer has been expressed to the offer from the moment of its first presentation. Whereas in the case of the impossibility of the offer against the counteroffer to the entities, it is when the parties are not able to fulfill the conditions set in the offer according to the legally permitted circulation. Counteroffer as an object is one of the basic conditions for offering an offer to a counteroffer, where the object or subject of the offer to the counteroffer can be an immovable or movable item. The object of the offer to the counteroffer must be possible; respectively the content of the offer must be possible and permissible without legal restrictions and prohibitions. Article 28 of Law No. 04/L-077 on Obligation Relations, the object of the offer to the counteroffer consists of items and actions which present the rights and certain obligations between the entities. Regarding the impossibility of fulfilling the contract from a legal point of view, it is a fact that the offer is outside their will and it is impossible to execute it. As for the time of conclusion and the possibility of the offer to the counteroffer, it is easier for the offer to be made between the entities present. The time of conclusion of the offer from the moment of acceptance of the offer to the counteroffer produces the effect of the offer, such as the rights and obligations of the offered party.

5. CONCLUSION

In this paper, we have understood that the offer in the legal aspect in Kosovo is of great importance, because it expresses the seriousness of the entities for the conclusion of their agreement, taking into account the legal norms. From the paper we have understood that the acceptance of the offer is an expression of the will of the acceptor with which he/she notifies the bidder that he/she has accepted the proposal for the conclusion of the contract according to the conditions specified in the offer. We have also understood that the offer in the legal aspect in Kosovo is an expression of the will of a person by which he/she invites the other designated person to conclude a contract according to Article 26 of Law No. 04/L-077 on Obligation
The obligations and contractual law, we have come to Kosovo. From the contracts, contracts on the organization of trips, etc. From the proposal for the desire to conclude the contract, based on the principles of management, in the principles of procurement, guided by experience and intuition, by the transmission of information, or according to previous practical choices.

The implications of the research results of this work will be seen in the future in the national aspect in the work of lawyers, financial experts, and workers who work in the tender office, but not also in the international aspect for all those whose work focuses on offer and demand.

This work in perspective will be of great importance, i.e., it will be a new basis for future research for experts in the relevant field in Kosovo. It should also be noted that this research has limitations because we have found it difficult to base it on previous research related to the research project. After all, it has not been published. We hope that this work will be a catalyst in the future for other research.

REFERENCES

APPENDIX. FORM OF CONTRACT AWARD NOTICE

JOB ☑ SUPPLY ☑ SERVICES ☑

According to Article 41 of Law No. 04/L-042 on Public Procurement of the Republic of Kosovo, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092

Date of preparation of the notice: 21.07.2022

Procurement Number KEK-xxx-xxx-

Internal Procurement Number KEKO-xxx-xxx-xxx

This announcement has been prepared in the LANGUAGES:

| Albanian  x | Serbian ☐ | English x |

SECTION I: CONTRACTING AUTHORITY

L1) Name and address of the contracting authority (CA)

| Official name: Kosovo Energetic Corporation J.S.C. |
| Postal address: St. Mother Teresa, 36 |
| Town: Pristina |
| Contact person: Flamur Bekteshi |
| Email: flamur.bekteshi@kek-energy.com |
| Internet address (if applicable): www.kek-energy.com |

SECTION II: THE SUBJECT OF THE CONTRACT

II.1) Type of contract and location of works, place of delivery or realization

(Choose only one category — works, supplies, or services — which corresponds most closely to the specific object of your contract)

Contracts include joint procurement Yes ☑ No ☐

SECTION III: PROCEDURE

III.1) Type of procedure

☐ Open ☑ Limited ☐ Competitive with negotiations ☐ Negotiated without publication of contract notice ☐ Quotation price
III.2) Award criteria

- Lowest price
- The most economically favorable tender in the direction of KFK

III.3) Administrative information

III.4) Preliminary publications related to the same contract

B05 Contract Notice: 2022/KEK-22-4411-1-2-1/B05-0009732 i 18.05.2022

Other publications (if applicable):

SECTION IV: AWARD OF CONTRACT

(In case of several lots awarded to several successful economic operators, repeat § IV.4 and IV.5 for each lot)

Contracts: KEK-22-4411-1-2-1/C1764

No. of the part: 1

IV.1) Date of contract award: 13.07.2022
IV.2) Planned date of contract signing: 29.07.2022
IV.3) The number of accepted tenders: 2
IV.4) Name and address of the economic operator to whom the contract was awarded

Official name: N.T.P. "Xani-Inex"
Postal address: Dardania Bl.9-H-6 Nr. 21
Town: Pristina
Postal code: 10000
Country: Kosovo
Contact person: Xani Xeni
Telephone: Fax:
Email: xani_inex@yahoo.com
Internet address (if applicable):

If yes, the value of the contract or the percentage likely to be subcontracted Value; or Percentage %, If it is not known -
A brief description of the value/percentage to be subcontracted (if known):

IV.5) Information on the value of the contract

Total contract value: 41 311,80 EUR
Responsible tender with the lowest price: 41 311,80 EUR

SECTION V: SUPPLEMENTARY INFORMATION

V.1) Complaints

Any interested party can file a complaint with the Contracting Authority based on Article 108/A of Law No. 04/L-042 on Public Procurement of the Republic of Kosovo, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092 at the address specified in Section I of this Contract Award Notice.

V.2) Is the contract likely to be subcontracted?

- Yes
- No

V.3) Additional information

Add other information:
N.T.P. Xani-Inex, 600013099 41 311,80 EUR
N.P.T., HEKURANI, 600238001
Attachment: Copy of the Statement of Needs and Availability of means.