

DEVELOPMENTS AND REFORMS IN PUBLIC PROCUREMENT SYSTEM IN KOSOVO: THE FIRST DECADE

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ABSTRACT

Public procurement in Kosovo started developing immediately after the war in 1999, and it has been in existence for ten years. If accomplishments in public procurement field in Kosovo are compared to the time, when public procurement was presented, one may conclude that in a short timeframe, considerable results have been achieved.

Factors that have influenced these results can be categorized into two groups:

- a) Immediately after the war in the field of public procurement in Kosovo a large number of international procurement experts were engaged. They established a public procurement system in Kosovo.
- b) Having in mind public procurement as a new field in Kosovo, many different donators have offered funds for training of procurement officers in Kosovo and abroad.

INTRODUCTION

During the last decade of the past century public procurement has had an extraordinary development almost entire worldwide. The leaps in development during that period were more accentuated in countries experiencing transition from planned economy to market economy. It influenced the development of public procurement regulations on national and international level. All developing countries and countries in transition were encouraged to adapt procurement regulation in accordance with international community or regional economical organizations. This has affected the transparency as well as competition for foreign suppliers. No public procurement system isolated in a country can advance and reform according to the demands of the time. The success of any given system depends on what the regulations seek to achieve. Domestic procurement systems may exist in isolation but often do not.ⁱ The development of a public procurement system is based on the free market economy.

A greater importance is being dedicated to the public procurement in the entire world. In all countries in the world governments are major purchasers of goods, services and works. During 2010 through public procurement in Kosovo is foreseen to be expended 602.5 million € or 53.34% of the Kosovo Consolidated Budget.ⁱⁱ This amount does not include expenditures of the

public enterprises, even if they were managed by the Government of Kosovo and are obliged to implement LPP while performing procurement activities.

Public procurement in Europe was introduced in the beginning of the twentieth century. In Italy, for the first time public procurement field was regulated by “Royal Decree” No. 2440, of the October 18, 1923.ⁱⁱⁱ Public procurement was introduced in other Western European countries almost at the same time as in Italy.

In Poland, the first act on public procurement was passed on February 15, 1933, and was in force until 1939. In period of the communist regime a system of central planning was practiced and obviously there was no need for a separate regulation concerning the acquisition of goods and services by the state and its institutions.^{iv} After the transition from planned economy into market economy, the first modern law on public procurement in Poland entered into force on January 01, 1995.

In Estonia, the first law on public procurement was issued in 1934.^v It was in force until the beginning of the Second World War. After the termination of the Second World War public procurement in Estonia did not exist until the proclamation of the independence, when Estonian Parliament in 1995 issued a modern law on public procurement.

In Western Balkan countries, public procurement was introduced after the nineties’ of the last century.

In Albania, the first document in the public procurement field was issued on March 22, 1993, according to the Ministers’ Council Decision No.191, regarding system of public purchasing and services carried out by enterprises and institutions, which were financed by the state Budget.^{vi} The first law on public procurement was issued on July 26th, 1995, and it went into force on November 1st, 1995.^{vii} That law was based on the model of the “UNCITRAL” Law, but had several elements of the World Bank procurement rules incorporated as well as GATT’s Government Procurement Agreement, now World Trade Organization. From 1995 until 2009, the Parliament of Albania amended the law on public procurement seven times.

In Republic of Macedonia, the first law on public procurement was issued on 1998, and promulgated in the Official Journal of the Republic of Macedonia No.26/1998.^{viii}

The first law on public procurement in the Republic of Montenegro, went into force on August 8th, 2001.^{ix} The law was based on the World Bank procurement rules. It was considered to be quite complicated and not in accordance with EU procurement directives. During 2006, the Parliament of Republic of Montenegro approved a new law on public procurement, which is in accordance with EU procurement directives.

In Kosovo the first document which regulated public procurement field was issued by the United Nations Administration in Kosovo on December 15th, 1999, known as Finance Administration Instruction No.2/1999 on Public Procurement using Kosovo Consolidated Budget funds. This Instruction was based on the World Bank procurement rules and United Nations Commission on International Trade Law "UNCITRAL".

PUBLIC PROCUREMENT IN KOSOVO

Public Procurement according to Finance Administration Instruction No.2/1999

Public Procurement in Kosovo was introduced immediately after the war in 1999. Bearing in mind the importance of a new area being developed in Kosovo, United Nations Administration in Kosovo prepared and made official the first document on public procurement on December 15, 1999, known as Finance Administration Instruction No.2/1999 on Public Procurement using Kosovo Consolidated Budget funds.

It is believed that FAI No.2/1999 would cover the field of public procurement for about one year until a more comprehensive document was to be issued. However the Instruction remained in force for more than a four-year period until June 09th, 2004 when the Public Procurement Law No.2003/17 went into force. FAI No.2/1999 was based on World Bank procurement rules and on United Nations Commission on International Trade Law "UNCITRAL".^x These rules had been used by most of Central and Southeastern Europe during transitional period. Procurement terminology used in FAI No.2/1999, and procurement procedures were analog to World Bank and "UNCITRAL" procurement rules.

The purpose of FAI No.2/1999 was to guarantee that all public procurements would be conducted making the utmost of the opportunities of UNMIK Provisional Administration in Kosovo to fulfill their needs in a correct, open, transparent, efficient manner and with a competitive convenient price avoiding interest and corruption conflicts.^{xi}

According to FAI No.2/1999 in Kosovo procurement institutions were established on central and local level. On central level were established: The Public Procurement Regulatory Body and the Central Procurement Entity, and procuring entities were established throughout all Kosovo municipalities, PISG ministries, functions reserved for UNMIK as well as the public companies.

Public Procurement Regulatory Body

According to FAI No.2/1999 the highest public procurement body in Kosovo was the Public Procurement Regulatory Body. PPRB was established in December 1999, within the Kosovo Central Fiscal Authority, and from November 2002 transferred to the Ministry of Economy and Finance.^{xii}

Competencies and responsibilities of PPRB according to FAI No.2/1999 were to:

- a) Prepare and promulgate all standard bidding documents for use by procuring entities;
- b) Provide guidance, interpretation, explanation of administrative instructions and assists procuring entities;
- c) Inspect the records and activities of procuring entities; to the extent it deems necessary in order to check the implementation of procurement rules;
- d) Review complaints of suppliers who are unsatisfied with contract award;
- e) Train procurement officers that work in procuring entities; throughout Kosovo;
- f) Cooperates with local and international institutions regarding the public procurement issues;
- g) Do everything else necessary to guide, monitor and improve the efficiency, fairness, honesty, integrity and transparency of the public procurement process in Kosovo.

Since the establishment and until the mid 2001, PPRB was seriously understaffed. In May 2001, PPRB was staffed by one international and one local counterpart.^{xiii}

Central Procurement Entity

The Central Procurement Entity according to FAI No.2/1999 was established within the Ministry of Public Services of Kosovo and had the following competences and responsibilities:

- a) Develop and supervise implementation of public procurement in Kosovo in accordance with rules and procedures of Ministry of Economy and Finance;
- b) Check and approve all public procurement contracts in Kosovo with values from 25.000€ till 500.000€, whereas from February, 2004 also over 500.000€

c) Approve deviation from normal procurement procedures, for contract values from 25.000€ till 50.000€ whereas from February, 2004 also over 50.000€^{xiv}

d) Guides and approves all long-term procurement contracts, on behalf of other procuring entities;

e) Assist procuring entities throughout municipalities and ministries for completing of procurement activities.

Even the CPE in the beginning of its work had the same problems concerning staff deficit, as the PPRB had.^{xv} During 2000 in CPE five international and only one Kosovar procurement experts were recruited. The author of this paper was the first person Kosovar, who started working with CPE and on the public procurement scene in Kosovo since the beginning of 2000. From a practical point of view the public procurement system had not always proven effective, as on the institutional arrangements, both PPRB and CPE participated in the development. The PPRB, as a legislative body under EU Pillar in Kosovo, was assigned to develop the procurement policies. On the other hand, the CPE which was the central procurement body responsible for providing support to procuring entities on operational level of procurement activities. Further CPE was responsible for approving procurement contracts was under the UN Pillar. The involvement of different international organizations in the development of procurement system in Kosovo, sometimes had delayed the reforms, as their approaches to policy and practical procurement issues often varied considerably. Different organizations tend to relate and refer to different procurement rules and systems.^{xvi}

Procuring Entities

Throughout all municipalities of Kosovo, Ministries of PISG, UNMIK reserved functions and public companies throughout entire Kosovo according to FAI No.2/1999, procuring entities were established. An emphatic contribution for establishment of procurement entities in the entire Kosovo led to establishing PPRB and CPE staff.

On December 31, 2003, in Kosovo 65 procuring entities existed.^{xvii} Procuring entities performed all procurement activities within the respective entity in an independent manner, and in accordance with procurement rules into force. For procurement contracts up to 25.000€ approval and contract signing is done by Approving Officer of the procuring entity whereas for contracts for values over 25.000€ approval and contract signing was managed by Authorizing Officer of the Central Procurement Entity.

Procurement Principles according to FAI No.2/1999

According to FAI No.2/1999, the procurement principles were the following:

- Full and fair competition;
- Openness and transparency;
- Avoidance of conflicts of interest and corruption;
- Equal and non-discriminatory treatment.

Procurement Methods according to FAI No.2/1999

According to FAI No.2/1999, depending on the nature of procurement the following procurement methods could be used:

- Direct single-source procurement;
- Competitive shopping;
- Competitive tendering;
- Restricted competitive tendering;
- Two-stage competitive tendering;
- Procurement methods for consultant services;
- Emergency procurement.

Review of Complaints of Suppliers according to FAI No.2/1999

A separate chapter of FAI No.2/1999, which was dedicated to procedures regarding complaints from suppliers, which were unsatisfied with decisions of procuring entities in relation to contract award. Any supplier could require an administrative review of decisions taken by the procuring entities, his/her interests were damaged by procuring entities, violating the FAI No.2/1999.

Such complaints could be addressed to the below mentioned depending on the value of procurement activities:

- The head of procuring entities that has performed the procurement activity;
- Central Fiscal Authority.

Every complaint should contain: name of the person complaining, procurement activity reference, name of procuring entity against which the complaint is filed and the claims of the complainant. If head of contracting authority or competent officer of CFA accept the complaint the decision suspends the procurement activities, until a final decision is made. When the final decision has been made copies of the decision are sent to the complainant and the procuring entity against whom the complaint is addressed to. If the complainant is unsatisfied with the decision of head of

procuring entity or competent officer of CFA he/she may ask for arbitration in accordance with the rules of United Nations Commission on International Trade Law “UNCITRAL”.

Accompanying documentation according to FAI No.2/1999

With the purpose of completing the legislative framework on public procurement in Kosovo, PPRB was authorized to issue procurement documents that would support the application of FAI No.2/1999. All those documents were prepared based on the World Bank procurement documentation. The documents that existed were not enough for a successful procurement activity. The documents mentioned were not completely finished during the entire time that FAI No.2/1999 was in force. Documents issued by PPRB contained the following:

- Standard documents–Invitation to price quotation for competitive shopping for values until 25.000€
- Report of tender evaluation and recommendations for contract award for competitive shopping;
- Instruction for usage of standard tender document for values over 25.000€
- Tender documentation for competitive tendering for goods within KCB for values over 25.000€
- Tender documentation for competitive tendering for works within KCB for values over 25.000€
- Report of tender evaluation and recommendations for contract award for competitive tendering;
- Minutes for tender opening.

Positive Effects and Weaknesses of FAI No.2/1999

For the purpose of making a more detailed analysis and comparing what could be positive effects of FAI No.2/1999 on one side and its weaknesses on the other, one can come to following conclusions:

Positive Effects of FAI No.2/1999

FAI No.2/1999 had made it possible to establish an entirely new public procurement system in Kosovo for the first time.

- Even though it was quite simple and short, bearing in mind that procurement in Kosovo was a new field, its simplicity allowed that all Kosovar procurement officers, without having prior experience in procurement, to understand it and apply it in practice;

- Having in mind that FAI No.2/1999 was based on the World Bank procurement rules, all Kosovar procurement officers during the implementation of that instruction managed to know and become familiar with the World Bank procurement rules;
- Knowledge Gained with regard to FAI No.2/1999, by procurement officers made it easier understanding and implement the Law on Public Procurement No.2003/17, which entered into force on June 09th, 2004, as an entirely new law in Kosovo.

Weaknesses of FAI No.2/1999

- FAI No.2/1999 was quite simple and it could not cover all cases and situations that were encountered in practical life during its implementation;
- Procuring entities had an excessive freedom in case of selection of procurement method for completing procurement activities;
- Concentration of the excessive competencies in Central Procurement Entity;
- Procedures for complaints review were not defined and deadlines for filing complaints not set;
- Complaints review was conducted by the PPRB, since this body had been established under the Ministry of Economy and Finance, and it did not have necessary independence in the decision-making aspect;
- Secondary documents were never completed as much as it should have been.

LAW ON PUBLIC PROCUREMENT IN KOSOVO No.2003/17

Even though with the issuing of FAI No.2/1999, it was thought that the Instruction would cover the field of public procurement in Kosovo for a one-year period the instruction was in force for more than four years. Two attempts were made during that period for the compilation of public procurement law but both of them failed. The reason why those two attempts were not successful was that both draft laws prepared for public procurement were not in accordance with EU Procurement Directives. After the third attempt, during 2003 a Draft-Law on Public Procurement in Kosovo was prepared, which was in accordance with EU Procurement Directives. In January 2003, Central Procurement Entity was authorized by Government of Kosovo, which functioned within Ministry of Public Services of Kosovo, for preparation of the Draft-Law on Public Procurement. The working group nominated by the government of Kosovo with 12 procurement officers (international and Kosovar) after an intensive three-month work, from January until March 2003, prepared and finalized the Draft-LPP in

Kosovo.^{xviii} The draft was approved by the government of Kosovo and sent to Assembly of Kosovo for further processing. In June 2003, the Assembly of Kosovo approved in principle and sent it to the parliamentary committees for further review. The parliamentary committees of the Assembly of Kosovo led by the Budget and Finance Committee as a functional committee, after a detailed review of the law has presented a great number of amendments, altogether 53 were sent to the Assembly of Kosovo for final approval. After the second reading in the session held on September 11, 2003, the Assembly of Kosovo approved the final text of LPP of Kosovo incorporating in it 47 proposed amendments by parliamentary committees from total 53 presented amendments.^{xix}

The LPP of Kosovo replaced completely all previous documents on public procurement that had been in force previously. LPP No.2003/17 was promulgated by the SRSG on February 9, 2004, and it entered into force on June 9, 2004.

The law offers a very comprehensive framework for public procurement in Kosovo in comparison to FAI No.2/1999. The Law is in accordance with the requirements of the EU Directives but adjusted to the specific conditions and circumstances of Kosovo.^{xx} The Law allows for more transparency in public procurement in Kosovo.

Compared to the previous FAI No.2/1999, the LPP leads to advantages in the public procurement field. The LPP provides for an appropriate range of procurement procedure and indeed sets a higher standard than the EU Directive in some important aspects.^{xxi}

Law on Public Procurement in Kosovo No.2003/17, contains 9 titles, 23 chapters and 121 sections

Title I: General Matters

Title II: Rules Governing Public Contracts

Title III: Rules Governing Design Contests

Title IV: Additional Rules on Work Concession Contracts

Title V: Public Procurement Regulatory Commission

Title VI: Public Procurement Agency

Title VII: Public Procurement Rules Committee

Title VIII: Procurement Review Procedures

Title IX: Remedial and Penalty Provisions and Final Matters

Procurement Principles according to LPP

According to the LPP procurement principles that have priority are:

- Transparency;
- Competition;
- Equal treatment/non-discrimination;
- Professionalism.

Establishment of the Procurement Department

According to the LPP, each contracting authority shall establish a procurement department to conduct the procurement activities of the contracting authority. From the personnel engaged in the procurement department, contracting authority shall appoint a person to act as a procurement manager. If a contracting authority is a public authority, the procurement manager will have the status of a civil servant. The contracting authority may only designate a person to serve as its procurement manager if he/she holds a current and valid “procurement professional certificate“, issued by the PPRC. The Procurement department is a professional procurement body within a contracting authority that deals with procurement activities regarding supply, service, works, works within concession, design contest. The department is responsible for use of public funds and public resources in Kosovo in a transparent, fair and efficient manner.

Training of Procurement Officers

Bearing in mind public procurement as a new field in Kosovo and for the purpose of making the procurement officers more prepared for the implementation of the LPP it is required by the law that each procurement officer attends regular trainings for 10 days each year organized by the PPRC. The training covers all material aspects of the LPP and secondary legislation on procurement. Each participant at the end of the training will be tested, and if the test is successfully passed the participant will receive a procurement professional certificate. The certificate is valid for a one-year period. This training has influenced the advancement of public procurement system in Kosovo and its reformation.

Signing of Public Contracts

The procurement manager of a contracting authority is the only person authorized sign a public contract on behalf of the contracting authority. A public contract that is not signed by the contracting authority’s procurement manager shall be void and unenforceable and not in accordance with the LPP. The person having the signing authority on behalf of contracting authority, may sign such contract only, if the legal time limit for claims has elapsed,

and the procurement activity is completed in accordance with the law Further it is required that funds for such procurement are in accordance with the funds for fulfilling duties that could arise from that procurement.

If the concerned public contract is of a large value, then for ceremonial purposes only, is it allowed that such contract is signed by both procurement manager and another senior public officer, who is not a civil servant, provided that the procurement manager has signed the contract first.

Classifying a Public Contract by Estimated Value

According to the LPP all procurement contracts, depending on the value, are categorized into four groups:

No.	Type of contract	Contract value
01	Minimal value contract	0-500€
02	Low value contract	500-10.000€
03	Medium value contract	10.000-100.000€ for goods & services 10.000-250.000€ for works
04	Large value contract	over 100.000€ for goods & services over 250.000€ for works

The Contracting authority shall implement an appropriate procurement procedure when initiating a procurement activity, depending on the contract value.

Procurement Procedures according to LPP

The part dealing with procurement procedures is elaborated by LPP in a very detailed manner. According to LPP, contracting authorities during completion of procurement activities can use the following procurement procedures depending on the value and the nature of the procurement:

- Open procedures;
- General restricted procedures;
- Special restricted procedures;

- Negotiated procedures after publication of a contract notice;
- Negotiated procedures without publication of a contract notice;
- Price quotation procedures;
- Procedures for minimal contracts.

Difficulties in Implementing LPP

Even though LPP No.2003/17 marked evident advantages to the public procurement system in Kosovo, it was by with difficulties and emphatic obstacles in the initial phase of implementation. First obstacle for successful implementation of LPP was a quite long delay by Assembly of Kosovo for establishment of two central procurement institutions: PPRC and PPA. Since PPRC was authorized according to the law to organize and hold the trainings in public procurement field, delay of its establishment influenced on procurement officers of the contracting authorities. Without any previous training regarding this law and the best international practices on public procurement implementation was extremely difficult.

According to the evaluation of European Commission, LPP No.2003/17, going into force on June 09, 2004, had serious difficulties during the implementation phase. Instead of simplifying the public procurement processes and in order to make them more transparent, the proper implementation of LPP in Kosovo proved to be very complicated and caused delays and considerable expenses for KCB.^{xvii}

The Law institutes the public procurement processes and three central bodies for their management: Public Procurement Agency, Public Procurement Regulatory Commission and Rules Committee for Public Procurement. The Rules Committee consisted of PPRC, PPA representative and the representative of Ministry of Economy and Finance. This Committee is obligated to compile and promulgate public procurement detailed rules for LPP implementation. Public procurement rules are consisting of instructions, rules, documents and forms that contracting authorities, procurement officers, enterprises and persons ought to respect, use and take in regard during the execution of or participation in procurement activities regulated by LPP. Bearing in mind that two representatives of the Rules Committee – the Public Procurement Agency and the Ministry of Economy and Finance are at the same time contracting authorities that conduct procurement activities, their participation in compiling and promulgation of secondary legislation presents a conflict of interest. This conflict of interest is manifest because these institutions promulgate secondary rules and also implement them.

According to the LPP, Public Procurement Regulatory Commission except for dealing with regulatory functions also deals with complaints review in public procurement field in Kosovo and this presents a conflict of interest between regulatory functions and complaints review.^{xxiii}

Even though, LPP in Kosovo No.2003/17 entered into force on June 06th, 2004, the secondary legislation that supported LPP had not been prepared at the time, when the Law entered into force. The secondary legislation was prepared by the Rules Committee with the assistance of a consultancy company “Confirtec” from Italia, financed by the EAR. The assistance took place during the first phase of the Project “Support for creating the Public Procurement Framework in Kosovo”. The secondary legislation was promulgated by the Rules Committee during December 2005, and entered into force on January 01, 2006. Since sub-legal acts have not been implemented for a long time, this has complicated even more than the implementation of the Law, while decentralized procurement bodies did not have sufficient support for the implementation of the LPP.^{xxiv}

The period since the LPP No.2003/17 entered into force until finalization of accompanying secondary legislation lasted for more than 18 months. During that period, previous secondary legislation based on FAI No.2/1999 was used. Previous secondary legislation was as mentioned never completed and has been based on the World Bank procurement rules and “UNCITRAL” Law. Law No.2003/17 has been based on EU Procurement Directives and this presented a double difficulty in implementing the LPP in Kosovo in the initial phases.

AMENDING THE LAW ON PUBLIC PROCUREMENT IN KOSOVO

Even though LPP entered into force on June 09, 2004, its implementation in practice at the beginning was followed by emphasized difficulties. Establishment of two central public procurement bodies foreseen by the Law for its implementation – the PPRC and the PPA were established with a great delay. Until the PPRC started working with an eight-month delay, on February 03, 2005, PPA started working with a greater delay, around 21 months–on March 08, 2006. From the moment of the LPP finalization by a working group appointed by the Government of Kosovo, on March 2003, till the complete constituting of the institutions foreseen for implementation of this law, on March 2006, around three years had past. In general, during the same period considerable improvements occurred in public procurement in Europe and in other countries. During that period several other laws were issued and promulgated in Kosovo, that in a way, were covered by LPP and new institutions were established in Kosovo, covering several fields of Law on Public Procurement.

Also, the two EC procurement directives, No.17/2004, and 18/2004, promulgated on January 31, 2004, influenced on amending the LPP No.2003/17. Based on these changes, the need for starting amending the Law on Public Procurement in Kosovo was manifest. The working group consisting of five members^{xv} for amending the LPP, nominated by Prime Minister's Office, on March 24, 2006, finalized all amendments of this law and approved them in consensus passing them to Government of Kosovo for further processing. The proposed amendments in the LPP No.2003/17, after previous reviews based on the requested procedures were approved by the Government of Kosovo and were sent to the Assembly of Kosovo for further review.

The Assembly of Kosovo authorized the Budget and Finance Committee to review the text after the first reading. This Committee of the Assembly of Kosovo considered it reasonable to review the Law completely and proposed to the Assembly of Kosovo approval of 100 amendments in Law on Public Procurement. In the session of February 08, 2007, all amendments one by one were voted for and approved by the members of Assembly of Kosovo. Finally the complete text of the LPP known as Law No. 02/L-99 was adopted. This amendment was signed and promulgated by SRSG on June 06, 2007, as UNMIK Regulation No.2007/20, when it entered into force.

Reasons for Amending the LPP No.2003/17

With the LPP amendment the following goals are achieved:

Reformation of central public procurement institutional structure in Kosovo:

- a) Public Procurement Rules Committee in Part VII of the LPP shall not exist anymore and all competencies of this committee are transferred to the PPRC's responsibility;
- b) A new independent procurement body is established, which directly reports to the Assembly of Kosovo, called Procurement Review Body and shall be dealing with complaints reviews;
- c) Number of PPRC Board members shall be reduced from five to three members;
- d) Number of PPA Board members shall be reduced from three to one member.

Removal of materials covered by other Laws:

- a) Part IV of the LPP regarding work concessions contracts is removed, due to the fact that the Assembly of Kosovo approved the Law on Award Concession Procedures;

- b) LPP provisions that deal with financial issues are removed because they were included in the Law on Public Finance Management.

Transfer competencies to other institutions established after the approval of LPP:

- a) Training and certification of Kosovar procurement officers is passed to Kosovo Institute for Public Administration, supported by the PPRC;
- b) Auditing of procurement activities remains the responsibility of Office of the Auditor General in Kosovo.

Simplification of several LPP provisions:

- a) All tendering time limits are reduced by approximately 25% with the purpose of efficiently performing procurement activities;
- b) The number of procurement procedures is reduced from seven to six procedures;
- c) General restricted procedures and special restricted procedures are fused into one procedure – the restricted procedure.

Amendment of the LPP for Ministry of Foreign Affairs

Ministry of Foreign Affairs was established in 2008, according to the Law No.03/L-044 on the Ministry of Foreign Affairs and Diplomatic Service of the Republic of Kosovo. This law, as well as the LPP of 2007, which was promulgated before the Law on the Ministry of Foreign Affairs have not provided any specific section regarding the way to conduct the procurements through diplomatic missions of the Republic of Kosovo abroad.

Various difficulties for the normal functioning of these missions are presented upon the establishment of the diplomatic missions of the Republic of Kosovo abroad; accordingly there was an urgent need to amend the LPP. This was done by the Law No.03-L-158 amending the LPP No.02/L-99, which was approved by the Assembly of the Republic of Kosovo on July 24th, 2009, promulgated by the President of Kosovo on July 31st, 2009. It went into force on the day of publication in the Official Gazette of the Republic of Kosovo.

With the adoption of this Law several competencies for conducting procurement activities are transferred to the diplomatic/consular mission of the Republic of Kosovo in different countries of the world. For small and minimum value contracts, the right to sign the contract is transferred to the Head of diplomatic/consular mission in the relevant state. Renting of facilities and acquisition of facilities for diplomatic/consular missions of the Republic of Kosovo abroad may be done through negotiated procedures without publication of contract notice since the Government of Kosovo has

previously taken such a decision. Contracts for renting facilities and acquisition of facilities for diplomatic/consular missions of the Republic of Kosovo abroad can have duration up to 5 years, while an advance payment may be made for 12 months.

Provisions of the EC Procurement Directives which are not transferred to the LPP No.02/L-99

Law on Public Procurement in Kosovo Nr.2003/17 which entered into force on June 9, 2004 was based on the corresponding EC procurement directives. While the law was prepared in 2003, two procurement directives of the European Commission No.17/2004 and 18/2004 were promulgated on January 31st, 2004. Accordingly these two directives are not incorporated in the law.

The amended LPP, No.02/L-99 UNMIK which entered into force on June 6th, 2007, has incorporated most but not all the provisions of the two procurement directives of the European Commission No.17/2004 and 18/2004. The reason why not all provisions of these two procurement directives of the European Commission are incorporated is because Kosovo's short tradition in the field of public procurement compared to other countries of the EU. Accordingly it was believed many of the provisions would present difficulties with regard to the Law on public procurement. Also it was believed that the requirements of the EC procurement directives are mandatory only for EU member states.

- With the LPP amendment of 2007, Public Framework Contracts were incorporated, but the accompanying secondary legislation for this kind of contracts is not adequate enough; therefore it presents difficulties in practical implementation;

- Kosovo under the LPP No.02/L-99 has only one procurement law which covers procurements for governmental institutions and for public utilities companies. This law presents implementing difficulties in public utilities companies and therefore needs the separate law for public companies based on the EC procurement directive No.17/2004.

The Law on Public Procurement No.02/L-99 does not include:

- Competitive dialogue;
- Dynamic purchasing system;
- Electronic tendering and electronic auction;
- LPP does not foresee with any provision green procurement;
- Thresholds for procurement are lower in LPP than in EC procurement directive;

- Additional contracts according to the LPP are allowed only up to 10% of the basic contract, while in the EC procurement directives this percentage is up to 50%;
- Use of negotiated procedures without the publication of the contract notice is allowed to be applied only after approval by the PPA;
- LPP requires 10-day training for all procurement officers each year;
- Procedure for price quotations, which are used for small value contracts up to 10,000€ is not in accordance with the EC procurement directives. This procedure is taken from the “UNCITRAL” model.

Public Procurement Regulatory Commission

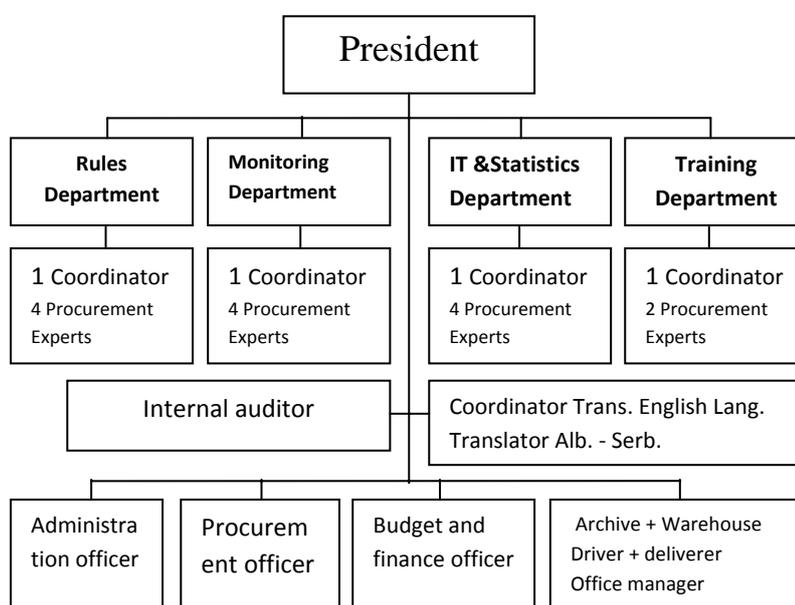
Public Procurement Regulatory Commission is established, based on the Section 81 of the Law on Public Procurement No. 2003/17, which entered into force on June 09th, 2004. PPRC has started its work with all competencies and responsibilities given by the LPP on February 3rd, 2005.

According to the LPP No.02/L-99 which entered into force on June 6th, 2007, PPRC is an independent regulatory agency, which reports to the Assembly of Kosovo and has the following authorizations, competencies and responsibilities:

- Is competent for overall development, functioning and supervision of public procurement system in Kosovo;
- Sets detailed rules for ensuring the implementation of the Law on Public Procurement;
- Compiles and publishes all secondary legislation on public procurement;
- Establishes and maintains official public procurement web-site in Kosovo, where all information regarding and dealing with public procurement in Kosovo is published;
- Supports KIPA and other training and educational institutions on training of officers in the field of public procurement;
- Collects, analyzes and publishes information regarding the public procurement activities in Kosovo;
- Provides technical assistance and professional advice to the contracting authorities and economic operators for the implementation and interpretation of the provision of the LPP;
- Cooperates with other organizations at home and abroad on matters associated with public procurement.

PPRC also has the authority and responsibility to supervise and observe the implementation of provisions of this LPP and all other rules issued by the PPRC. By amendments made to the LPP it is foreseen that the Board of PPRC in future shall have 3 permanent members, whereas each member of PPRC that is in function from December 31st, 2006 shall continue to serve in that position until the end of his mandate, as foreseen in the procurement legislation that was in force at the time of its nomination.^{xxvi}

Organizational structure of the PPRC



Procurement Review Body

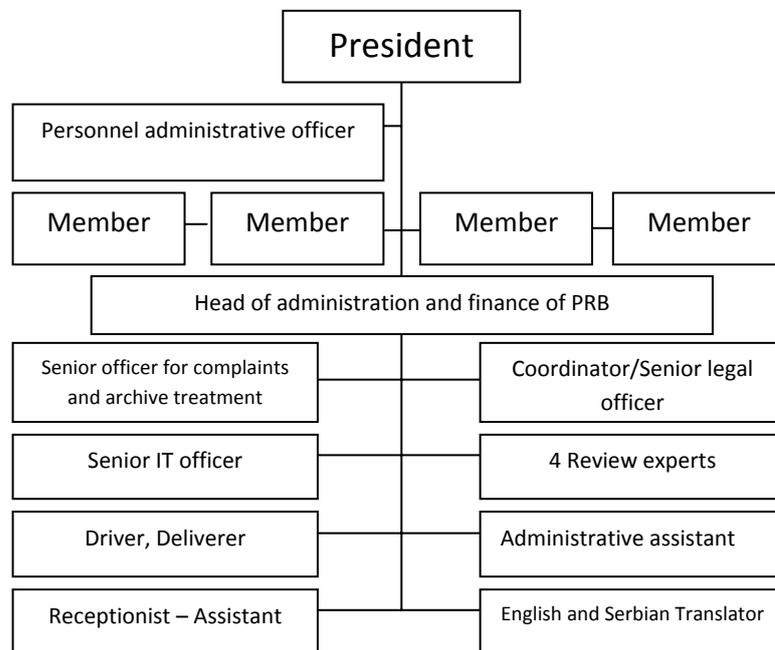
The Procurement Review Body is managed by a five-member Board, nominated by the Government and appointed by the Assembly of Kosovo with a five-year mandate. PRB has started to function in August 2008, after the nomination of the PRB Board members by the Assembly of Kosovo on July 30th, 2008.

Functions and competencies of the PRB are:

- Reviews all complaints addressed to the PRB in public procurement field regarding the possible violations of the LPP;

- Implements investigations self-initiatively or with the request of any involved party in the procurement process regarding any irregularity during the conducting of the procurement activity;
- Is obligated to issue Work Regulation of the Review Panels;
- Every year reports to the Assembly of Kosovo on the progress of the complaints review procedures;
- An appeal against PRB decisions may be brought before the Supreme Court.

Organizational Structure of the PRB



Public Procurement Agency

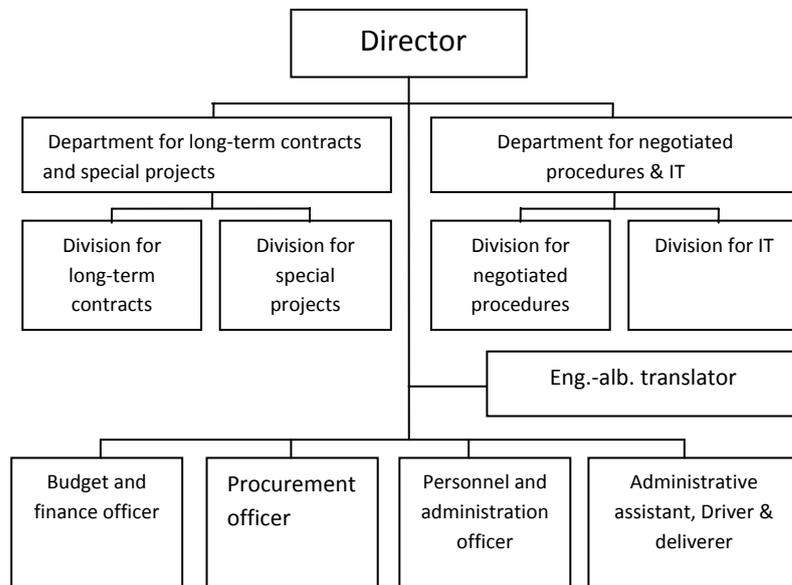
The Public Procurement Agency of Kosovo was established based on section 90 of the Law on Public Procurement No.2003/17. PPA is lead by a three-member Board with three-year mandate. Since July 1st, 2009, Public Procurement Agency is led only by its Executive Director^{xxvii}.

According to the LPP No.02/L-99, competencies and responsibilities of PPA are:

- Collecting information for procurement forecasts from all contracting authorities;

- Conducts procurement activities for common use products for all contracting authorities in the level of Kosovo according to the authorization given by the Government;
- Conducts procurements on behalf of contracting authorities when dealing with complex procurements based on the request of contracting authority;
- Authorizes cancellation, a condition determined according to the Section 30A of the LPP, in cases when contracting authorities accepts less then three responsive tenders during implementation of procurement procedures;
- Allows the use of procurement procedures without the publication of contract notice for all contracting authorities in the level of Kosovo.

Organizational structure of PPA



Training of Procurement Officers

Year 2009 is the fifth year that the training and certification of public procurement officers of Kosovo is made according to the LPP requests. If the five-years of development are compared to 2005 to 2009 period regarding the training in the field of public procurement, one may conclude that every year the number of trained procurement officers has increased, except in 2009.



From 488 procurement officers that attended the training during 2009, 424 of them passed the qualification test successfully and were provided with valid certificates for public procurement. If the training that was held until now is analyzed, one can conclude that these trainings are almost the same from year to year and the most of the procurement officers are the same persons for the last five years. In future there shall be changes in training of the public procurement field in Kosovo.

PUBLIC PROCURTEMENT ACTIVITIES IN KOSOVO DURING 2007, 2008 AND 2009

Based on the competencies given by the LPP, PPRC collects, analyzes and publishes information regarding the public procurement activities in Kosovo and has prepared for five years in a row an annual report on the public procurement activities in Kosovo.

Tables below show the public procurement activities in Kosovo during 2007, 2008 and 2009 according to the number of signed contracts, according to the value of the contracts for procurements, as well as public procurements in relation to the GDP.

Number of signed contracts during 2007, 2008 and 2009				
Contracting Authorities:	Number of contracts 2007	Number of contracts 2008	Number of contracts 2009	Comparison of 2008/2009(%)
Governmental	10.622	10.882	10.955	0.67
Public Company	4.578	3.431	3.786	10.35
Other	18	4	79	%
Total :	15.218	14.317	14.820	3.51

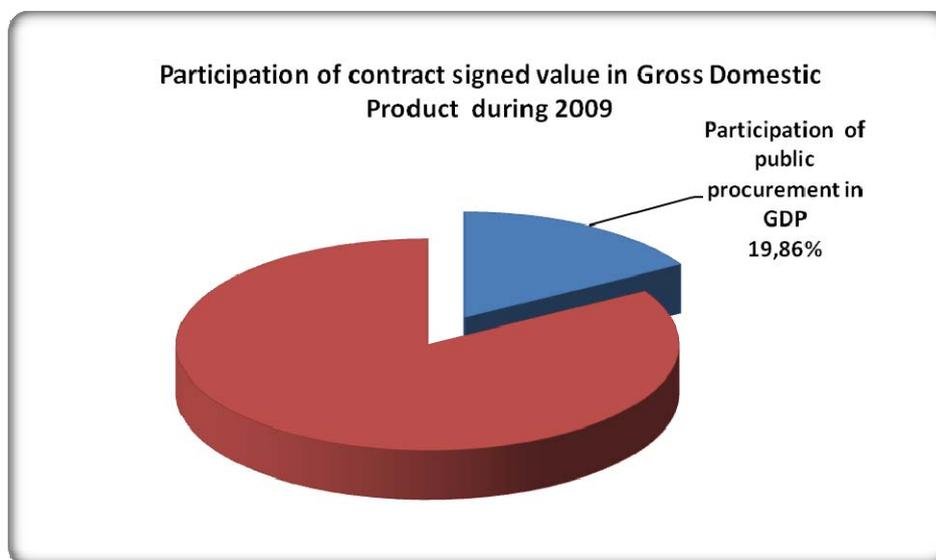
The number of signed contracts for public procurements during the last three years is approximately the same. Whilst 15.218 contracts were signed in 2007, in 2008 =14.312, the total number of the signed contracts during 2009 is 14.820. Compared to the previous year it is an increase of 3.51%.

The value of signed contracts during 2007, 2008 and 2009(€)				
Contracting Authorities:	Value of contracts 2007	Value of contracts 2008	Value of contracts 2009 ^{xxviii}	Comparison of 2008-2009(%)
Governmental	187,463,647.57	456,695,720.32	529,849,302.73	16.02
Public Company	213,824,064.35	369,627,159.60 ^{xxix}	245,382,175.36	-33.61
Other	940,724.98	160,682.75	2,922,036.94	1718.51
Total	402,228,436.90	826,483,562.67	778,153,515.03	-5.85

Comparing the total value of the signed contracts with previous years, there has been a continual increase of the budget organizations within the Government, while in public companies the total value of the signed contract, compared with previous years, shows a decrease, since the value of the contracts signed in 2008 by public companies indicate a use of long term contracts regarding Kosovo Energy Corporation.

Public Procurements in Relation with GDP in Kosovo during 2009

The total value of the public procurement, which includes the number of 14.820 contracts signed for the period 01.01.2009 - 31.12.2009 is 778,153,515.03€ which represents 19.86% of GDP in 2009. In Kosovo expenditure through public procurement compared to GDP is higher than the average regarding EU Member States. The reasons are due to the fact that immediately after the war in Kosovo a new administration had started a build-up of accommodations and equipment with necessary means for normal functioning and investment of the Kosovo infrastructure destroyed during the war. On the other side GDP in Kosovo was very small in 2009 = 3.918 million€^{xxx}



The Review of the Complaints in Public Procurement

All complaints in the public procurement field in Kosovo are reviewed by the Procurement Review Body. Whilst in 2007 the percentage of the complaints compared to the small, medium and large value signed contracts was 3,16%, in 2008 this percentage is 3,68% whereas in 2009 there has been an increase to 5,03%.

The number of presented complaints in Kosovo during 2007, 2008 and 2009			
	Year 2007	Year 2008	Year 2009 ^{xxxi}
The number of small, medium and large value contracts	7.787	7.844	9.073
The number of submitted complaints	246	289	457
Percentage	3.16%	3.68%	5.03%

Challenges on Public Procurement System in Kosovo

Complaints regarding the public procurement system in Kosovo are too many. Most frequent regard:

- Pressures upon the procurement officers during the performance of procurement activities, especially in the award of contracts;
- The high turnover of procurement officers in the contracting authorities;
- A low number of licensed procurement officer in Kosovo, compared with available budget for procurement;
- The continuing nomination of persons without procurement experience into main positions of the procurement departments , that make many difficulties in implementation of the LPP;
- Far too much use of the negotiated procedures without publication for contract notice for single source procurements.

Recommendations on Improving Public Procurement System in Kosovo

- Reformation of public procurement system in Kosovo;
- Involve all the actors in consolidation and implementation of the LPP;
- To prepare the specific regulations under LPP that regulate procurement activities in a sector of public utilities companies, which is based on EC procurement directive No.2004/17;
- To reorganize the procedures of the review of complaints according the law, so that the initial complaint is sent to the Chief Administrative Officer of

the contracting authority, before sending it to the PRB, if the matter is not resolved;

- To apply procurement procedures and regulations by contracting authorities that promotes efficient procurement, based on modern procurement practices and new technology, implementing framework agreement and electronic procurement;
- Qualifying and training the personnel that are involved in public procurement in private sector, regarding tenders, especially regarding preparation and submission of complaints;
- Raising the awareness about the public procurement of contracting authorities and economic operator in Kosovo;
- Improving access to public procurement data in Kosovo for all interested parties;
- Improve support by the central institution of public procurement in Kosovo as the bearer of development of public procurement system;
- A greater use of restricted procedures for the realization of the procurement activities, especially regarding procurements within public utilities companies;
- To reduce as much as possible the use of contracts with small and minimal values, by using public framework agreements and centralized procurements;
- Further improvement of the official electronic web-site of the public procurement in Kosovo, which improves transparency in public procurement.

NOTES

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- ⁱ Peter Trepte (2006). "Regulating Procurement" *Understanding the ends and means of public procurement Regulation*; Oxford University Press, pp.7
- ⁱⁱ KCB for 2010
- ⁱⁱⁱ *Public Procurement in Europe (2005)*.; Instituto poligrafiko e Zecca Dello Stato, Roma, pp.33-116
- ^{iv} "Public procurement-The Continuing Revolution" (2003)., *Center Commercial Law Studies- London Forum; Volume 15*, pp.103
- ^v *Public Procurement in Europe (2005)*.; Instituto poligrafiko e Zecca Dello Stato, Roma, pp.33-116
- ^{vi} Decision Nr. 191 Ministers' Council of Albania of the date 22.03.1993
- ^{vii} SIGMA (2006): *Albania-Public Procurement Assessment*
- ^{viii} SIGMA (2006): *Former Yugoslav Republic of Macedonia-Public Procurement Assessment*
- ^{ix} SIGMA (2006): *Montenegro- Public Procurement Assessment*
- ^x Model of the UNCITRAL Law is prepared to help countries that wish to adapt Regulatory in public procurement field; Sue Arrowsmith; John Linareli; Don Wallace. Jr.: "Regulating Public Procurement"-National and International Perspectives 2000; Publisher: KLUVER LAW INTERNATIONAL; The Hague-London-Boston, pp.88
- ^{xi} FAI No.2/1999;
- ^{xii} UNMIK/RREG/2001/19; on Executive branch of Provisional Self-Governing Institutions in Kosovo
- ^{xiii} Elisabetta Piselli (2003). , "Public procurement-The Continuing Revolution", *Center Commercial Law Studies -London Forum, Volume 15*, pp.55-56
- ^{xiv} SRSG's Executive decision No.2004/2, on approval of particular procurement activities in transferred fields; 19 February 2004
- ^{xv} Elisabetta Piselli (2003). , "Public procurement-The Continuing Revolution", *Center Commercial Law Studies-London Forum; Volume 15*, pp.55-56
- ^{xvi} Elisabetta Piselli,(2003). "Public procurement- The Continuing Revolution", *Center Commercial Law Studies-London Forum, Volume 15*, pp.55-56
- ^{xvii} CPE's archive
- ^{xviii} The author of this paper was a member of a working group nominated by the Government of Kosovo for the preparation of the Public Procurement Draft-Law
- ^{xix} Archive of Assembly of Kosovo
- ^{xx} Declaration on the compatibility of Law with EU Procurement Directives
- ^{xxi} Kosovo Operational Procurement Review; June 2004; Operational Policy and Services Unit Europe and Central Asia Region
- ^{xxii} EC Progress Report for Kosovo for 2005; Brussels, 9 November 2005 SEC(2005)143
- ^{xxiii} EC Progress Report for Kosovo for 2005; Brussels, 9 November 2005 SEC(2005)143
- ^{xxiv} EC Progress Report for Kosovo for 2005; Brussels, 9 November 2005 SEC(2005)143

^{xxv} *Author of this paper is one of the members of the working group for LPP amendment*

^{xxvi} *LPP No.02/L-99;Section 89A*

^{xxvii} *LPP No.02/L-99;Section 92.2*

^{xxviii} *In the value of the signed contracts is included also the value of 8,387,328€ of the contract annex*

^{xxx} *PPRC Report for 2009*

^{xxxi} *PRB Report for 2009*

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