

**LAW No. 04/L-042
ON PUBLIC PROCUREMENT IN REPUBLIC OF KOSOVO**

Assembly of Republic of Kosovo;

Based on Article 65 (1) of the Constitution of the Republic of Kosovo;

Approves

LAW ON PUBLIC PROCUREMENT IN REPUBLIC OF KOSOVO

**TITLE I
GENERAL PROVISIONS**

**CHAPTER I
PURPOSE, SCOPE, EXEMPTIONS, DEFINITIONS**

**Article 1
Purpose**

1. The purpose of this law is to ensure the most efficient, cost-effective, transparent and fair use of public funds, public resources and any other funds and resources of contracting authorities in Kosovo by establishing the requirements and rules that shall be observed, the procedures that shall be followed, the rights that shall be respected, and the obligations that shall be performed, by persons, economic operators, undertakings, contracting authorities, works concessionaires and public bodies conducting, or involved, participating or interested in, a procurement activity involving or relating to the use of such funds and/or resources.

2. This law also aims to ensure the integrity and accountability of public officials, civil servants and other persons conducting or involved in a procurement activity by requiring that the decisions of such individuals, and the legal and factual bases for such decisions, are free of any personal interest, are characterized by non-discrimination and a high degree of transparency, and are in compliance with the procedural and substantive requirements of the present law.

3. Finally, this law is intended to promote the establishment of an institutional culture of unbiased, ethical and materially disinterested professionalism among all public officials, civil servants and other persons conducting or involved in a procurement activity by requiring such individuals to conduct themselves in a manner that is informed solely by the objective of achieving the most efficient, cost-effective, transparent and fair use of public funds and public resources while strictly complying with the procedural and substantive requirements of the present law.

**Article 2
Scope**

1. This law shall apply to the procurement activities of contracting authorities and works concessionaires, as those terms are defined herein. Such authorities and concessionaires are required, in the conduct of their procurement activities, to observe and comply with the applicable procedural and substantive requirements of this Law.

2. This law also applies to all persons, economic operators, undertakings, as those terms are defined herein, involved, participating or interested, directly or indirectly, in a procurement activity covered by this law; such persons, operators, undertakings are also required to observe and comply with the applicable procedural and substantive requirements of the present law.

3. All public service operators may utilize the specific procedural rules set forth in Title V under the conditions specified in that title.

4. Diplomatic missions of the Republic of Kosovo shall be subject to the special provisions established in Title X of this law.

Article 3 Exemptions

1. Notwithstanding any other provision of this law, the contracting authority shall not be required to comply with any specific procurement procedure or to observe the provisions of this law to the extent of transparency when compliance and the respect would compromise the legitimate secrecy or the security interests when carrying out procurement activities relevant for awarding of a public contract for which the Government have agreed to exclude it from the scope of this law because, (i) the performance of the contract under applicable law in Kosovo, requires the use of special security measures, or (ii) Government have agreed to classify the object of the contract as a secret. Exclusions pursuant to this Article regarding the reserved matters shall be allowed in compliance with the Law on Access to Public Documents.

2. This law shall not apply to procurement activities leading to the award of a public contract falling within the scope of an agreement providing for the application of other procurement rules and/or procedures where (i) such agreement makes the availability of financing for the concerned contract conditional on the application of such other rules and/or procedures, and (ii) such agreement has been entered into between the Government and an intergovernmental, bilateral, multilateral or international financing institution.

3. This law shall not apply to an employment contract if such a procurement activity is subject to other rules that are established by a law or other regulation. Similarly, current law will not apply to contracts in relation to postgraduate training or vocational training by employers for specific skills development of individual workers. Further the law shall not apply to procurement solely aimed at representation in the form of offering food and beverage.

4. This Law shall only apply to a socially owned enterprise under the administration of the Privatization Agency of Kosovo if such enterprise is engaged, on the basis of special or exclusive rights granted by a competent public authority, in a public service activity. In such a case, the enterprise shall be deemed to be both a public undertaking and a public service operator and shall comply with the applicable provisions of this Law.

5. Procurement activities leading to the award of a service or works concession contract shall be governed by the Law on Public-Private Partnership. Such procurement activities shall only be subject to this Law to the extent specified in Law on Public-Private Partnership.

6. This law shall not apply to contracting authorities for the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon, unless otherwise foreseen by special Laws.

Article 4 Definitions

1. Term used in this law shall have the following meaning:

1.1. **Authorizing Officer** - the person designated by the CAO pursuant to Article 22.1 of this law as having the authority to authorize the contracting authority's Procurement Officer to initiate a procurement activity.

1.2. **Autonomous executive agency** - a public authority that (i) is not itself a budget organization but is part of another budget organization, *and* (ii) is explicitly required by a primary normative act to operate with autonomy or substantial autonomy from the budget organization of which it is a part.

1.3. **Body governed by public law** - a person, undertaking or body that (i) has been established for the specific purpose of meeting needs in the general interest that do not have an industrial or commercial character, *and* (ii) meets any of the following three criteria: (a) it receives 50% or more of its financing from one or more public authorities and/or other bodies governed by public law, (b) it is subject to management supervision by one or more public authorities and/or bodies governed by public law, or (c) it has an administrative, managerial or supervisory board, 50% or more of the votes of which are exercisable by members appointed by one or more public authorities and/or bodies governed by public law.

1.4. **Candidate** - an economic operator that has sought an invitation or has been invited to take part in a procurement activity that is being conducted with restricted or negotiated procedures.

1.5. **CPA** - the Central Procurement Agency established pursuant to Title VII of this law.

1.6. **Chief Administrative Officer or CAO** – shall mean (i) for municipalities, the major of the Municipality, and (ii) for other budget organization, (a) its General Secretaries, (ii) if the budget organization has no General Secretaries, its Chief Executive Officer, or (iii) if it has neither a General Secretaries nor a Chief Executive Officer, the person who has principal day-to-day administrative authority over its operations and personnel. In the special case of an autonomous executive agency, these terms mean the director or head of that agency and not the CAO of the budget organization of which such agency is a part. In the case of a public undertaking, these terms mean the chief executive officer, managing director or other person having principal day-to-day administrative authority over its operations and personnel. In the case of diplomatic missions established by the Ministry of Foreign Affairs outside of Kosovo, this term means the head of the mission.

1.7. **Chief Financial Officer or CFO** - shall have the meaning specified in the Law on Public Financial Management and Accountability. For an undertaking that is not a public undertaking, this term refers to the person who has principal day-to-day responsibility for the financial operations of the undertaking.

1.8. **Commodities** - all products, including electricity, that are highly fungible and the prices for which are quoted in an established commodities market, commodities exchange or similar open trading platform or system.

1.9. **Common technical specification of the European Union** - a technical specification laid down in accordance with a procedure recognized by the Member States which has been published in the Official Journal of the European Union.

1.10. **Common use items** - products or services required by more than one contracting authority and for which a more cost-effective or efficient use of public funds may be achieved through the conduct of a central, common or consolidated procurement.

1.11. **Complainant** - an interested party who is filing or has filed a complaint in accordance with the provisions of Article 111 of this law.

1.12. **Confidential business information** - information classified as such pursuant to Article 11.2 of this law.

1.13. **Contracting authority** - a public authority, public service operator, public undertaking and/or any person, committee, or private company operating on basis of a special or exclusive right, or undertaking carrying out a procurement activity on behalf of or for the benefit of a public authority, public service operator or public undertaking.

1.14. **Contract management activity** - the activities required to ensure that provisions of a contract concerning timely and correct delivery and other rights of the contracting authority are effectively invoked.

1.15. **Date of publication** – shall mean (i) with respect to an indicative notice or a contract notice, the date on which such notice is first published in accordance with Article 42(2), and (ii) with respect to a contract award notice, the date on which it has been dispatched to concerned economic operators in accordance with Article 42(3).

1.16. **Design contest** - a procurement procedure having the objective of enabling a contracting authority to acquire, mainly in the fields of area planning, town planning, architecture, engineering, data processing, and the design of works of art, a plan or design selected by a jury after being put out to competition with or without the award of prizes.

1.17. **Dominant influence** – means but is not limited to, a situation where a contracting authority or an undertaking, directly or indirectly, holds a majority of an undertaking's subscribed capital, controls a majority of the votes attaching to shares issued by such undertaking, or can appoint more than half of such undertaking's administrative, management or supervisory body.

1.18. **Dynamic purchasing system** - a completely electronic process for making commonly used purchases, the characteristics of which, as generally available on the market, meet the requirements of the contracting authority, which is limited in duration and open throughout its validity to any economic operator which satisfies the selection criteria and has submitted an indicative tender that complies with the specification.

1.19. **Economic operator** - a general term meaning and covering a supplier, service provider and/or a works contractor.

1.20. **Electronic auction** - a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

1.21. **Electronic means** - the use of electronic equipment for the processing (including digital compression) and storage of data transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.

1.22. **European standard** - a standard approved (i) by the European Committee for Standardization (CEN) or by the European Committee for Electro technical Standardization (Cenelec) as a “European Standard” (EN) or “Harmonization Document” (HD), according to the common rules of those organizations, or (ii) by the European Telecommunications Standards Institute (ETSI) according to its own rules as a “European Telecommunications Standard” (ETS).

1.23. **European technical approval** - a favorable technical assessment issued by an approval body of an EU Member State on the fitness for use of a product for a particular purpose, based on fulfillment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use.

1.24. **Financial Rules** - the Financial Management and Control Rules promulgated by the relevant Minister of Finance pursuant to the Law on Public Financial Management and Accountability.

1.25. **Immovable Property Contract** - a contract for pecuniary interest concluded in writing between a contracting authority and any person, undertaking or contracting authority that relates principally or exclusively to the acquisition by the contracting authority of immovable property or an interest in immovable property.

1.26. **Interested party** - a person who can demonstrate a specific material interest in the outcome of a procurement activity conducted by a contracting authority and relating to a specific public contract or design contest including any person who has been or risks being harmed by an alleged infringement.

1.27. **KIPA** - Kosovo Institute for Public Administration.

1.28. **Large value contract** - a public contract falling within the Scope of Article 19(1) of this law.

1.29. **Large value design contest** - a design contest falling within the scope of Article 20(1) of this law.

1.30. **Low value contract** - a public contract falling within the scope of Article 19(3) of this law.

1.31. **Low value design contest** - a design contest falling within the scope of Article 20(3) of this law.

1.32. **Medium value contract** - a public contract falling within the Scope of Article 19(2) of this law.

1.33. **Medium value design contest** - a design contest falling within the scope of Article 20(2) of this law.

1.34. **Minimal value contract** - a public contract falling within the scope of Article 19(4) of this law.

1.35. **Negotiated procedures** - procurement procedures allowing a contracting authority to invite and consult with the economic operators of its choice and to negotiate the terms of contract with one or more of these.

1.36. **Non-responsive tenders** - tenders that are not in compliance with a) the tender dossier, including technical and contractual requirements, b) requirements of relevant legislation of Kosovo or that are c) otherwise incapable of meeting the requirements of the contracting authority as specified in the tender dossier.

1.37. **Open procedures** - procurement procedures allowing for any interested economic operator to submit a tender.

1.38. **Person** - a natural person.

1.39. **PPRC** - the Public Procurement Regulatory Commission established pursuant to Title VI of the present law.

1.40. **PRB** - the Procurement Review Body established pursuant to Title VIII of the present law.

1.41. **Present law or this law** - this law and the subsidiary normative acts and instruments issued in accordance with this law, including the public procurement rules and code of ethics issued pursuant to this law.

1.42. **Procurement activity** - any activity connected with the initiation or conduct of a procedure or other activity that leads to or is intended to lead to the award of a public contract.

1.43. **Procurement Officer** - the person who is designated as the director of the contracting authority's Procurement Department pursuant to paragraph 1 of Article 23.

1.44. **Public authority** - any of the following: (i) a central, regional, municipal or local executive authority, public body, ministry, department, agency, or other authority that exercises, pursuant to any normative or sub-normative act, executive, legislative, regulatory, public-administrative or judicial powers; (ii) a body governed by public law; and (iii) an association of one or more of such authorities and/or bodies.

1.45. **Public contract** - a general term covering any and all of the following specific types of contract entered into by a contracting authority: (i) a service contract, (ii) a supply contract, (iii) a works contract including a works concession contract, and/or (iv) a public framework contract".

1.46. **Public framework contract** - an agreement in writing between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

1.47. **Public Procurement Register** - the register established by the PPRC pursuant to Article 87 of this law.

1.48. **Public procurement rules** - the instructions, rules, documents, code of ethics, and standardized forms adopted and published by the PPRC in accordance with the present law.

1.49. **Public service activity** – shall mean that this law shall apply to the following activities involving (i) the provision or operation of a fixed physical network intended to provide a service to the public in connection with, inter alia, the production, transport, distribution or treatment of water, electricity, gas or heat, (ii) the supply of water, electricity, gas or heat to such a network, (iii) the exploitation of a geographical area for the purpose of exploring for or extracting oil, gas, coal or other solid fuels, (iv) the provision of airport or other terminal facilities, (v) the provision or operation of a public telecommunications network or the provision of one or more public telecommunications or postal services or (vi) the operation of a network providing a transport service to the public involving the use of rail, bus, tramway, trolley bus, cable or automated systems; such a network shall exist where such a transport service is provided under operating conditions established by a competent public authority, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service.

1.50. **Public service operator** – means (i) a public authority or a public undertaking engaged in a public service activity, and (ii) a person, undertaking, body or organization

that is neither a public authority nor a public undertaking and that is engaged, on the basis of special or exclusive rights granted by a competent public authority, in a public service activity.

1.51. **Public undertaking** - any undertaking over which one or more public authorities may exercise, directly or indirectly, a dominant influence by virtue of the ownership of such undertaking, financial participation in such undertaking and/or the rules governing such undertaking.

1.52. **Related undertaking** - any undertaking (i) over which a works concessionaire may exercise, directly or indirectly, a dominant influence, (ii) that may exercise a dominant influence over the concerned works concessionaire, or (iii) that, in common with the concerned works concessionaire, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules that govern it.

1.53. **Restricted procedures** - procurement procedures in which any economic operator may request to participate and where only those economic operators invited by the contracting authority may submit a tender.

1.54. **Review panel** - a review panel established by the President of the PRB pursuant to Title IX of the present law.

1.55. **Service concession contract** - a contract of the same type as a service contract except that the consideration for the provision of services consists either solely in the right to exploit the service or in this right together with payment.

1.56. **Service contract** - a contract other than a supply or works contract for pecuniary interest concluded in writing between a contracting authority and one or more service providers.

1.57. **Service provider** - any person, undertaking or public body, or group of such persons, undertakings and/or bodies that provides and/or offers to provide services.

1.58. **Special or exclusive rights** - rights that arise from a grant or authorization made by a competent public authority pursuant to any legislative, regulatory or administrative provision that (i) has the effect of limiting to one or more entities the right or ability to engage in certain activities, and (ii) substantially affects the right or ability of other persons, undertakings, bodies or organizations to carry out such activity on the same territory under substantially equivalent conditions.

1.59. **Supplier** - any person, undertaking or public body, or group of such persons, undertakings and/or bodies that provides and/or offers to supply products.

1.60. **Supply contract** - a contract for pecuniary interest concluded in writing between a contracting authority and one or more suppliers that relates exclusively or mainly to the purchase, lease, rental or hire-purchase, with or without option to buy, of one or more products; "products" shall be interpreted broadly to include one or more items of tangible movable property, including - but not limited to - commodities, goods, manufactures, raw materials, and equipment.

1.61. **Standard** - a technical specification approved by a recognized standardizing body and made available for the general public for repeated or continuous application, compliance with which is generally not mandatory.

1.62. **Technical reference** - any product produced by European standardization bodies, other than official standards, according to procedures adopted for the development of market needs.

1.63. **Technical specification** - in the case of public works contracts, the totality of the technical prescriptions contained in particular in the tender documents, defining the characteristics required of a material, product or supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the contracting authority. These characteristics shall include levels of environmental performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling and production processes and methods. They shall also include rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

1.64. **Technical specification** - in the case of public supply or service contracts, means a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods and conformity assessment procedures;

1.65. **Tender** - a document submitted to a contracting authority by an economic operator setting forth the terms of the economic operator's offer in response to a specific contract notice, invitation to tender or other solicitation issued or made by such contracting authority. The term "*tender*" shall include, but not be limited to, a proposal or price quotation.

1.66. **Tenderer** - an economic operator that has submitted a tender.

1.67. **Tender dossier** - has the meaning specified in Article 27 of this law.

1.68. **Undertaking** - any enterprise (including a personal business enterprise), partnership, joint venture, legal entity, association, project, branch, office, or other organization or establishment.

1.69. **A work** - the outcome of construction or civil engineering works or activities that, taken as a whole, is sufficient to fulfill an economic or technical function.

1.70. **Works concessionaire** – means (i) a person, undertaking or contracting authority that has received a works concession contract from a contracting authority, and/or (ii) any person, undertaking or contracting authority carrying out procurement activities on behalf of or for the benefit of such a person, undertaking or contracting authority.

1.71. **Works concession contract** - a works contract the performance of which is compensated, in whole or in part, by a grant of a right to exploit the object of such contract.

1.72. **Works contract** - a contract for pecuniary interest concluded between a contracting authority and one or more works contractors that has as its principal object

the execution, design and execution, or realization, by whatever means, of a work or construction or civil engineering activities, i.e. activities that are directly involved in the construction, restoration, repairing or demolition of buildings, facilities, civil engineering structures, other structures, or any part(s) thereof.

1.73. **Works contractor** - any person, undertaking or contracting authority, or group of such persons, undertakings and/or authorities, offering to execute, design and execute, or realize, by whatever means, a work or construction or civil engineering activities, i.e. activities that are directly involved in the construction, restoration, repairing or demolition of buildings, facilities, civil engineering structures, other structures, or any part(s) thereof.

1.74. **Writing** - any expression consisting of words and/or figures that can be read, reproduced and subsequently communicated. It may include information transmitted and stored by electronic means.

2. A person or undertaking that intends to award a contract to another person or undertaking shall, if 50% or more of the estimated value of such contract is either subsidized directly by a contracting authority or otherwise financed with public funds, be deemed to be a “contracting authority” within the meaning of the present law with respect to any procurement activities connected with the award of such contract. Such a person or undertaking shall therefore conduct such procurement activities in strict compliance with the applicable procedural and substantive requirements of the present law.

3. Unless the context clearly indicates another meaning, the terms and definitions specified in Article 4 of this law and used in this Law shall be interpreted and applied in a manner that is consistent with the interpretation and application given to similar or identical terms in EC directives.

4. As used in this Law, the singular includes the plural, and the plural includes the singular, and references to “Article” are references to articles of this Law unless otherwise indicated.

5. The pronoun “he” and the adjective “his” shall apply equally to either gender and shall also include a public authority or undertaking where the context reasonably permits.

6. Unless the context clearly requires another interpretation, any reference in this Law to another law, regulation or sub-legal act, or any specific provision(s) thereof, shall be interpreted as including any and all amendments thereto. If such a law, regulation or sub-legal act is repealed and replaced with successor legislation governing the same subject matter, such reference shall be interpreted as meaning such successor legislation and, where applicable, the analogous provision(s) thereof.

Article 5 Calculation of time limits

1. The time limits of the present law must start on a working day and expire on a working day. The time limit runs until 16:00 on the expiry day. The contracting authority may decide to set a different time provided that it is not earlier than 12 noon of the expiry day.

2. Saturdays, Sundays and official holidays shall count when calculating time limits. However, where the last day of the time limit falls on a Saturday, a Sunday or on an official holiday the time limit shall be extended to include the first working day thereafter.

CHAPTER II GENERAL PRINCIPLES

Article 6 Cost-Effectiveness and Efficiency

1. All contracting authorities are under an obligation to ensure that public funds and public resources are used in the most efficient and cost-effective manner taking into account the purpose and object of the procurement.
2. Public funds and public resources provided or made available under a public contract may be used only within the scope of such contract and only for the purposes specified in such contract.

Article 7 Equality of Treatment/Non-Discrimination and Transparency

1. A contracting authority shall treat economic operators equally and non-discriminatorily and shall act in a transparent way.
2. A contracting authority shall not conduct any aspect of a procurement activity in a manner that reduces or eliminates competition among economic operators or that discriminates against or in favour of one or more economic operators.
3. Without reducing the applicability of the foregoing paragraph, a contracting authority is specifically prohibited from determining its needs to be satisfied, specifying the object to be procured, dividing or aggregating lots or other objects to be procured, selecting a procurement procedure, or establishing a selection or award requirement or criterion or technical specification in a manner that favours or discriminates against one or more economic operators.
4. A contracting authority shall not create or impose, and shall take all necessary measures to prevent the creation or imposition of, circumstances or requirements resulting in territorial, physical, material, personal or organizational discrimination among economic operators.
5. A contracting authority shall not require an economic operator (i) to employ or utilize, or not to employ or utilize, any specific person or undertaking in the performance of any aspect of a public contract, or (ii) to supply or provide, or to not supply or provide, products or services originating from a specific person, undertaking or geographic area. In the event such a requirement is specifically authorized by the present law, another law or an international agreement, the exact parameters of such requirement shall be specified in, as applicable, the contract or design contest notice, the invitation to participate or tender, and the tender dossier.
6. When conducting any procurement activity, all contracting authorities shall ensure (i) the widest possible participation, in light of the value and object of the procurement, of potentially interested economic operators; (ii) the proper publication, dispatch and/or availability, as required by the present law, of all notices, invitations, information and documents relating to a procurement activity; (iii) the elimination of practices, criteria, requirements and technical specifications that discriminate in favor or against one or more economic operators; (iv) that all technical specifications and all selection and award requirements and criteria, including the relative importance of each such requirement and criterion, and the methodologies for selection and award, are specified in the concerned contract or design contest notice, the invitation to tender or participate, and/or the tender dossier; (v) that no requirement, criterion or specification that has not been so specified is used in the selection and award process; and (vi) that the

selected tender conforms, in all material respects, to the requirements, criteria and specifications that have been so specified.

CHAPTER III GENERAL REQUIREMENTS

Article 8 Procurement Forecast

1. No less than sixty (60) days prior to the beginning of each fiscal year, each contracting authority shall prepare, in case of a public authority or a public undertaking shall provide to the CPA, in writing, a preliminary procurement forecast that identifies in reasonable detail all supplies, services and works that the contracting authority intends to procure over the course of such fiscal year. Such preliminary procurement forecast shall specify:

1.1. in the case of anticipated supply contracts, the estimated total procurement by value and by product classification of the products that the contracting authority intends to procure over the fiscal year;

1.2. in the case of anticipated service contracts, the estimated aggregate value by category of each service that the contracting authority intends to procure over the fiscal year; and

1.3. in the case of works contracts, the essential characteristics of each works contract that the contracting authority intends to award over the fiscal year.

2. Within fifteen (15) days after the promulgation of the appropriations legislation for a fiscal year, each contracting authority shall prepare, in case of a public authority or a public undertaking shall provide to the CPA, in writing, a final procurement forecast that identifies in reasonable detail all supplies, services and works that the contracting authority intends to procure over the course of such fiscal year. Such final procurement forecast shall contain the information required under sub-paragraph 1.1, 1.2 and 1.3 of paragraph 1 of this Article.

3. The CPA shall immediately review and aggregate the information contained in all such forecasts. The CPA shall identify common use items and any other objects and items that may be acquired more efficiently through the application a consolidated or common procurement procedure.

4. The Government as per the proposal of the relevant Ministry of Finance shall authorize the CPA to conduct consolidated or common (joint) procurement activities.

Article 9 Determination of Needs to be Satisfied and Availability of Funds

1. Before a contracting authority may initiate any procurement activity the contracting authority's CAO shall ensure that a formal needs assessment is conducted with respect thereto and that the results of such assessment are formally recorded in writing and maintained in the contracting authority's records. This assessment shall determine (i) the precise nature and scope of the specific needs of the contracting authority that the proposed procurement is intended to satisfy; (ii) the estimated value and the proposed type and material terms of the public contract that will be the subject of the envisaged procurement; (iii) the proposed functional specifications of each object to be covered by such contract; (iv) the benefits expected from each such object; (v) in the case of equipment, durable goods and works, an estimate of the cost of ownership over the whole of the object's operational life, including acquisition, operating, and maintenance costs and residual value; (vi) an indication as to whether such procurement activity was included in the

procurement forecast required by Article 8 of this law, and, if not, a statement of reasons as to why it was not so included; and (vii) a clear statement as to how the procurement will promote the contracting authority's institutional objectives.

2. If, after the conduct of the required needs assessment, the CAO determines that needs assessment justifies the conduct of the procurement activity, the CAO shall provide a copy of the needs assessment to the contracting authority's CFO. The CFO shall formally ensure that funds are available for the concerned procurement. If the contracting authority is a public authority or a budget organization, the CFO shall formally ensure – in accordance with all applicable requirements of the Law on Public Financial Management and Accountability and the Financial Rules - that funds have been appropriated for the concerned procurement in an amount sufficient to fulfill any financial obligations that may arise during the course of the then-current fiscal year as a result of such procurement.

3. If the contracting authority is a public authority or budget organization and the concerned procurement will give rise to financial obligations that are to be satisfied from appropriations expected in future fiscal years, the CFO shall (i) ensure that the schedules attached to the Law on Appropriation provide a reasonable basis to expect that sufficient funds will be appropriated to it in such future fiscal years for the purpose of satisfying such obligations, and (ii) include in the concerned public contract a provision that clearly conditions the enforceability of such obligations on the availability, under future appropriations legislation, of funds for the purpose of satisfying, and in an amount sufficient to satisfy, such obligations

4. If the contracting authority is a public authority, such public authority shall take reasonable measures to ensure that objects meeting such needs are not available from another public authority.

5. As evidence that the contracting authority has complied with paragraphs 1 to 4 of this Article, the CAO and the CFO shall prepare and sign a written "Statement of Needs and Determination of Availability of Funds." Such "Statement of Needs and Determination of Availability of Funds" shall contain the following information: (i) a written statement of needs that summarizes the results of the needs assessment conducted by the contracting authority pursuant to paragraph 1 of this Article, (ii) a written statement affirming the availability of funds that demonstrates that the contracting authority has fulfilled its obligations under paragraph 2 of this Article, (iii) if applicable, a written statement setting forth the basis, required by paragraph 3 of this Article, for the contracting authority's expectation regarding future appropriations; and (iv) if applicable, a written statement describing the measures that the contracting authority took to comply with paragraph 4 of this Article. The CAO shall ensure that the signed original of each and every Statement of Needs and Determination of Availability of Funds is maintained in the contracting authority's records and that a copy is provided to the CFO. If the CAO determines that the contracting authority should proceed with the procurement activity, the CAO shall provide a copy of the Statement of Needs and Determination of Availability of Funds to the Authorizing Officer and to the most senior official of the contracting authority (unless the CAO is the most senior official). The PPRC shall develop a standard form "Statement of Needs and Determination of Availability of Funds" that CAOs and CFO's shall use to comply with this Article.

6. In the case of a contracting authority that is a public authority or a public undertaking, if the objects of the procurement activity have not been included in the contracting authority's final procurement forecast provided to the CPA pursuant to paragraph 2 Article 8 of this law, the CAO shall provide a copy of the concerned Statement of Needs and Determination of Availability of Funds to the CPA at least five (5) days before the Authorizing Officer authorizes the Procurement Officer the initiation of the concerned procurement activity. The CPA shall review each such statement to determine if there is another more efficient or cost-effective method of acquiring the concerned objects or other items meeting the needs of the contracting authority. In particular, if the concerned objects were not included in the contracting authority's final procurement forecast provided to the CPA pursuant to paragraph 2 Article 8 of this law, the CPA shall review such

objects to identify any common use items and any other objects and items that may be acquired more efficiently through a consolidated or common procurement procedure.

Article 10

Means to promote Transparency

1. A contracting authority shall maintain a well-ordered and comprehensive set of records for each procurement activity that it conducts, regardless of whether such activity results in a contract or design award.

2. At a minimum, the records for each procurement activity shall contain (i) all documents related to, developed or acquired in the course of, or used to initiate, conduct or conclude, a procurement activity, regardless of whether such activity results in a contract or design award, (ii) if the procurement activity has resulted in a contract or design award, all documents related to such award, and (iii) if the procurement activity has resulted in the execution of a public contract, a copy of the public contract and all documents relating to that contract and/or its performance. Documents concerning contract performance include especially the contract management plan required according to Article 81 of this Law.

3. Upon the request of any person, a contracting authority shall provide such person prompt and reasonable access to the records described in paragraphs 1 and 2 of this Article, other than confidential business information, relating to any procurement activity that has been concluded. For the purposes of paragraph 3 of this Article, a procurement activity shall be deemed to have been concluded (i) on the date of publication of the concerned contract award notice or design contest results notice, (ii) on the date of the award of the concerned contract in case of tenders according to Article 37 of this law, or (iii) if the procurement activity was formally cancelled or otherwise terminated prior to the making of an award or the selection of a winner, on the date of the cancellation notice according to paragraph 2 Article 62 of this law or the date when the activities were otherwise terminated.

4. The contracting authority shall provide the access required by paragraph 3 of this Article in a routine, uneventful, and non-obstructive manner. The contracting authority may, however, provide for the supervision of such access or take other reasonable measures to ensure that the integrity of the records is maintained.

5. A contracting authority shall, upon the request of a person or an interested party, make and provide to such person or interested party a copy of any material that such person or interested party may access pursuant to paragraph 3 of this Article.

6. The PPRC shall electronically publish the present law and the public procurement rules on its website.

7. The PPRC shall establish in the public procurement rules a reasonable charge that a contracting authority and the PPRC may access to cover the cost of producing the copies required by paragraph 5 of this Article; provided however, that such charge shall be no more than is deemed reasonably necessary to cover the cost associated with producing such copies.

8. A contracting authority shall provide access to and copies of any procurement activity records, including confidential business information, and any other procurement related information to a review expert, the PPRC, the PRB and/or a review panel immediately upon the request or order of any of these. A contracting authority shall also provide access to and copies of such records and information to a court of competent jurisdiction if such access and copies are required pursuant to an order issued by such court. The contracting authority shall immediately provide the access and copies required in a routine, uneventful, and non-obstructive manner.

9. In every case when PPRC, PRB, CPA plans to issue any secondary legislation for the implementation of this law, they are obligated to make this draft available to the public and interested parties, for a period of no less than fifteen (15) days for comments to the draft.

Article 11

Confidential Business Information

1. Without prejudice to its obligations to provide access to interested parties and members of the public to procurement activity records, a contracting authority shall respect and safeguard items classified as confidential business information in accordance with this Article.

2. Information that paragraph 3 Article 58 of this law requires to be announced and recorded at the public opening of tenders may not be classified as confidential business information.

3. A contracting authority may classify other information as confidential business information only if such information meets the following three criteria:

3.1. it has been furnished by an economic operator pursuant to a requirement established by such contracting authority under Article 68 or 69 of this law;

3.2. the concerned economic operator has provided the contracting authority with a written request expressing its desire that the contracting authority maintain such item as confidential; and

3.3. such written request contains a statement (i) attesting that such item is not in the public domain and is protected from intentional and negligent disclosure by the economic operator, and (ii) setting forth reasons that convincingly demonstrate, in the reasonable judgment of the contracting authority, that public access to such item would result in material harm to the legitimate commercial interests of such economic operator.

4. A contracting authority that has classified an item of information as confidential business information pursuant to paragraph 3 of this Article shall, if such item is contained in a document that also contains non-confidential information, prepare a "sanitized" version of such document. Such sanitized version shall be included in the material to which interested parties and members of the public are entitled to access under paragraph 3 Article 10 of this law. The contracting authority shall attach to the front of such sanitized version a notice that (i) the contracting authority has classified certain items of information in the original document as confidential business information at the request of the concerned economic operator, and (ii) the attached sanitized version has been prepared by the contracting authority and is an accurate copy of the original after the removal or deletion of such confidential business information.

5. If a document contains only information that a contracting authority has classified as confidential business information pursuant to paragraph 3 of this Article, and such contracting authority therefore decides to withhold such document from the material to which interested parties and members of the public are entitled to access under paragraph 3 Article 10 of this law, the contracting authority shall prepare and include in the accessible material a document containing a general summary of the contents of the withheld document. The contracting authority shall attach to the front of such summary a notice that (i) the contracting authority has classified all the information contained in the original document as confidential business information at the request of the concerned economic operator and (ii) the attached document has been prepared by the contracting authority and is a general non-confidential summary of the original.

6. If, in connection with the conduct of any procurement activity, a contracting authority requires an economic operator to submit information covered by Article 68 and/or 69 of this law, such contracting authority shall include a statement in the tender dossier notifying economic operators

that, if they desire any or all of such information to be classified and treated as confidential business information, they must submit a written request conforming to paragraph 3 of this Article.

Article 12
Currency, Payment and Customary Contract Terms

1. All prices and values specified in any public contract, any tender dossier, notice or invitation to tender or participate shall be stated, and all payments with respect thereto shall be required to be made, in Euro.
2. The terms and conditions of public contracts shall conform to usual and customary public and commercial practices applicable to the specific type and subject matter of the concerned contract.

Article 13
Use of languages in the public procurement documents

1. The contracting authority shall prepare all tender dossiers, notices, invitations and other documents published or provided to economic operators during the conduct of a procurement activity leading to the award of a minimal, low, or medium value contract or design contest in Albanian and Serbian language. The contracting authority may also prepare such documents in the English language.
2. A contracting authority shall prepare all tender dossiers, notices, invitations and other documents published or provided to economic operators during the conduct of a procurement activity leading to the award of a large value contract or design contest in the Albanian, Serbian and English languages.
3. Whenever a document is required in more than one language, it must be stated and on the front page of all documents the relevant language version that prevails.
4. An economic operator may submit a tender, a request for participation or other document required or that is permitted to be filed during the procurement activity, in Albanian, Serbian or English language.

Article 14
Grantees of Special or Exclusive Rights to Engage in a Public Service Activity

If a person, or undertaking other than a contracting authority – regardless of its legal status – receives or has received a grant of special or exclusive rights to engage in any public service activity, such person, or undertaking shall observe the rules and procedures of the present law when awarding medium or large value public contracts to third parties.

CHAPTER IV
RULES FOR VALUING AND CLASSIFYING PUBLIC CONTRACTS AND DESIGN CONTESTS

Article 15
Classifying Mixed Contracts

1. If a supply contract includes provisions requiring the supplier(s) to deliver, site and/or install the concerned item(s), the existence of such provisions shall not affect the classification of such contract as a supply contract.

2. A contract covering both supplies and services shall be considered a service contract if the estimated value of the services exceeds the estimated value of the supplies. If the contract includes provisions for the delivery, sitting and/or installation of the concerned supplies, the estimated value of such activities shall be included in the valuation of the supplies components of such contract.

3. A contract having as its principal object the provision of a professional construction-related service (e.g., architectural and/or engineering services, geotechnical or geodetic site investigation services, structure or structure design assessment services, or construction supervision or construction management services) shall be considered a service contract even if such contract also covers, by way of addition to such principal object, the performance of one or more activities referred to in the definition of “works contract.”

4. A contract having as its principal subject the conduct of activities referred to in the definition of “works contract,” but that also covers the provision of professional construction-related services, shall be considered a “works contract” if such services are necessary for the performance of such contract.

5. A contract that has as its subject both the supply of products and the conduct of activities referred to in the definition “works contract” shall be classified as a “works contract” unless such activities consist only of sitting and/or installation activities.

6. Any contract, regardless of its structure, that in substance provides that an economic operator is to receive or retain a commission or other form of compensation for the performance of sales or collection services for or on behalf of a contracting authority is a “service contract” covered by the present law, provided that such service contracts are not governed by other legislation specifically enacted for such contracts.

Article 16

Calculating the Estimated Value of a Supply Contract

1. The estimated value of a proposed supply contract shall equal the estimated price to be paid by the contracting authority for all products, services and other objects covered thereby. The estimated price of such products, services and objects shall be their estimated price on the day of dispatch of the contract notice with respect thereto. In determining the estimated value of a proposed supply contract, the contracting authority shall include all reasonably foreseeable elements of the ultimate price to be paid by the contracting authority for such products, services and objects, including any and all applicable taxes, duties and other charges.

2. In the case of contracts for the lease, rental or hire-purchase of products, the value to be taken as the basis for calculating the estimated value of the contract shall be:

2.1. in the case of fixed term public contracts, if that term is less than or equal to 12 months, the total estimated value for the term of the contract or, if the term of the contract is greater than 12 months, the total value including the estimated residual value;

2.2. in the case of a contract for an indefinite period or where there is doubt as to the duration of the contract, the monthly value multiplied by forty eight (48).

3. Where a proposed contract contains an option, the basis for calculating the estimated contract value shall be the maximum potential total amount of the purchase, lease, rental, or hire-purchase, including any amounts that may become payable as a result of the exercise of the option clause.

4. A contracting authority shall not select or use a valuation method for the purpose of lowering the value of a supply contract below a threshold specified in Article 19 of this law; nor shall any contracting authority split up a procurement requirement for a given quantity of products for the purpose of lowering the value of a supply contract below a threshold specified in Article 19 of this law.

Article 17 **Calculating the Estimated Value of a Service Contract**

1. The estimated value of a proposed service contract shall equal the estimated total remuneration and reimbursable amounts to be paid by the contracting authority under the contract throughout the term of the contract, taking account of the provisions set out in this Article. In determining the estimated value of a proposed service contract, the contracting authority shall include all reasonably foreseeable elements of the ultimate price to be paid by the contracting authority for the services and other objects covered by such contract, including any and all applicable taxes, duties and other charges.

2. Where a proposed service contract contains an option, the basis for calculating the estimated contract value shall be the maximum potential total amount to be paid under the proposed service contract, including any amounts that may become payable as a result of the exercise of the option clause.

3. For the purposes of calculating the estimated value of a proposed service contract covering insurance services, banking and other types of financial services, or design services, account shall be taken, where appropriate:

3.1. in the case of insurance services, of the premium payable;

3.2. in the case of banking and other financial services, of fees, commissions and interest as well as other types of remuneration; or

3.3. in the case of design services, of fees or commissions.

4. Where services are subdivided into several lots, each one the subject of a separate contract, the aggregate estimated value of all such lots shall be used to determine the classification of each such contract under Article 19 of this law.

5. In the case of proposed service contracts that do not specify a total price, the value to be taken as the basis for calculating the estimated contract value shall be:

5.1. in the case of a fixed-term contract having a term of forty eight (48) months or less, the total estimated contract value for its duration;

5.2. in the case of a contract of indefinite duration or with a term of more than forty eight (48) months, the average estimated monthly value multiplied by forty eight (48).

6. A contracting authority shall not select or use a valuation method for the purpose of lowering the value of a service contract below a threshold specified in Article 19 of this law; nor shall a contracting authority split up a procurement requirement for a given amount of services for the purpose of lowering the value of a service contract below a threshold specified in Article 19 of this law.

Article 18 **Calculating the Estimated Value of a Works Contract**

1. The estimated value of a proposed works contract shall equal the estimated price to be paid by the contracting authority for all works, services, products and other objects covered thereby; including – in the case of a works contract - objects that are needed to execute such contract and that are to be made available to the works contractor by the contracting authority. In determining the estimated value of a proposed works contract, the contracting authority shall include all reasonably foreseeable elements of the ultimate price to be paid by the contracting authority for such works, services, products and objects, including any and all applicable taxes, duties and other charges.
2. Where a work is subdivided into several lots, each one the subject of a separate contract, the aggregate estimated value of all such lots shall be used to determine the classification of each such contract under Article 19 of this law.
3. Where a proposed works contract contains an option clause, the basis for calculating the estimated contract value shall be the maximum potential total amount to be paid under the proposed works contract, including any amounts that may become payable as a result of the exercise of the option clause.
4. Where it is reasonably foreseeable that a proposed works contract may be extended, renewed or followed by a successor contract for new works within the meaning of Article 35.2.4 of this law, the basis for calculating the estimated contract value of such proposed works contract shall be the maximum potential total amount to be paid under the proposed works contract, including the maximum potential total amount to be paid under any such reasonably foreseeable extension, renewal or successor contract.
5. A contracting authority shall not split up a work or a works contract for the purpose of lowering the value of a work or works contract below a threshold specified in Article 19 of this law.

Article 19
Classifying a Public Contract by Estimated Value

1. The following shall be considered as a large value contract:
 - 1.1. a supply contract or a service contract the estimated value of which is equal to or greater than, or can reasonably be expected to be equal to or greater than one hundred twenty five thousand (125.000) euro; or
 - 1.2. works contracts the estimated value of which is equal to or greater than, or can be reasonably expected to be equal to or greater than, five hundred thousand (500.000) euro.
2. The following shall be considered as a “medium value contract:”
 - 2.1. a supply contract or a service contract the estimated value of which is equal to or greater than, or can reasonably be expected to be equal to or greater than, ten thousand (10,000) euro but less than one hundred twenty five thousand (125.000) euro; or
 - 2.2. works contracts the estimated value of which is equal to or greater than, or can be reasonably be expected to be equal to or greater than, ten thousand (10,000) euro, but less than five hundred thousand (500.000) euro.
3. The following shall be considered as a “low value contract:” Any public contract the estimated value of which is equal to or greater than, or can reasonably be expected to be equal to or greater than, one thousand (1000) euro, but less than ten thousand (10,000) euro.

4. The following shall be considered a minimal value contract:” Any public contract the estimated value of which is less than, or can reasonably be expected to be less than, one thousand (1000) euro.

Article 20
Classifying a Design Contest by Value

1. The following shall be considered as a “large value design contest:”

1.1. design contest that is organized as part of a procedure leading to or involving the award of a service contract the estimated value of which is equal to or greater than, or can be reasonably expected to be equal to or greater than, one hundred twenty five thousand (125.000) euro; or

1.2. a design contest where the total amount of contest prizes and payments to participants is to be equal to or greater than, or can be reasonably expected to be equal to or greater than, one hundred thousand (100,000) euro.

2. The following shall be considered as a “medium value design contest:”

2.1. a design contest that is organized as part of a procedure leading to or involving the award of a service contract the estimated value of which is equal to or greater than, or can be reasonably expected to be equal to or greater than, ten thousand (10,000)euro, but less than one hundred twenty five thousand (125.000) euro; or

2.2. a design contest where the total amount of contest prizes and payments to participants is to be equal to or greater than, or can be reasonably expected to be equal to or greater than, ten thousand (10,000)euro but less than one hundred thousand (100,000) euro.

3. A design contract that does not fall within the scope of paragraph 1 or 2 of this Article shall be considered a “low value design contest.”

Article 21
Restrictions on the Use of Articles 16-20

1. A contracting authority shall use the provisions of Articles 16-20 solely for the purpose of determining whether a proposed public contract or design contest is to be classified as having a large, medium, low or minimal value. The provisions of Articles 16-20 shall be used for no other purpose.

2. Furthermore, no information regarding the specific or general estimated value of a public contract or design contest, and no information regarding the funds available for the financing of such contract or design contest, shall be disclosed to any person until the procurement activity has been concluded. However, a contracting authority shall provide such information to the PPRC, CPA, a review expert, the PRB or a court immediately upon the request or order of any of these.

CHAPTER V
AUTHORIZATION TO INITIATE A PROCUREMENT ACTIVITY AND TO SIGN A PUBLIC CONTRACT

Article 22
Initiation of a Procurement Activity

1. For each proposed procurement activity at a contracting authority, the CAO shall designate one person to act as the Authorising Officer for that procurement activity. In making such designation, the CAO shall comply with any requirements in the Law on Public Financial Management and accountability and the Financial Rules issued by the Treasury. Such Authorizing Officer shall not authorize the Procurement Officer to initiate a proposed procurement activity until the contracting authority's CAO has provided the Authorizing Officer with the concerned Statement of Needs and Determination of Availability of Funds, signed by both the CAO and CFO of the contracting authority, as required by paragraph 5 Article 9 of this law.

2. If the CAO provides the Authorizing Officer with a properly prepared Statement of Needs and Determination of Availability of Funds signed by both the CAO and the CFO, the Authorizing Officer shall then authorize the Procurement Officer to initiate the procurement activity. The Authorizing Officer shall authorize the initiation of the procurement activity by providing the Procurement Officer with a written instruction to initiate the concerned procurement activity together with a copy of the signed Statement of Needs and Determination of Availability of Funds. The Procurement Officer shall maintain a copy of these documents in the procurement records for the concerned procurement. The Authorizing Officer shall also provide a copy of this written instruction to the contracting authority's CFO and CAO. The Authorizing Officer shall also provide a copy of this written instruction to the most senior official of the contracting authority, unless the CAO is most senior official.

Article 23 Procurement Officers

1. The CAO of the contracting authority shall designate one person to serve as the contracting authority's Responsible Procurement Officer. If other employees of the contracting authority are civil servants, the Procurement Officer shall also be a civil servant.

2. A person may serve as a responsible procurement Officer if the person holds a university degree, and a valid basic or advanced procurement professional certificate issued in accordance with Article 25 of this law.

3. No person may serve as a Procurement Officer or as a staff member of a Procurement Department if he/she would be ineligible to participate in a procurement activity by reason of a provision of paragraph 3 Article 65 of this law. Two or more contracting authorities that have limited procurement work may agree to designate the same person as their Procurement Officer.

4. No person may serve as a Procurement Officer or as a staff member of a Procurement Department unless and until he/she has executed a written declaration under oath declaring that he/she (i) is not ineligible to serve as Procurement Officer under this article, (ii) shall honestly and faithfully conduct the procurement activities of the contracting authority in strict conformity with this law, and (iii) shall professionally and immediately discharge all other duties specified in this law. The declaration under oath shall be submitted to the PPRC, which shall immediately register the declaration and provide the person submitting the declaration with a receipt evidencing such registration. The PPRC shall maintain all such declarations submitted in accordance with this Article in the PPRC's publicly available records

5. Each contracting authority shall ensure that the person designated as its Responsible Procurement Officer meets the requirement of paragraph 2 of this Article, is not ineligible and has executed the declaration required by paragraph 4 of this Article. Each contracting authority shall ensure that all other staff members of its Procurement Unit are not ineligible and have executed the declaration required by paragraph 4 of this article.

6. If a Procurement Officer becomes ineligible to hold that position, the CAO shall immediately remove such person from that position. If the concerned Procurement Officer is a civil servant,

the CAO shall ensure that such removal is done in a manner that complies with the law on the civil service.

Article 24

Procurement Officers to Conduct Procurement Activities

1. Every procurement activity is the responsibility of the concerned contracting authority notwithstanding the distribution of tasks within the contracting authority laid down in Article 22 of this law. This does not apply in those cases when the Minister if the relevant Ministry of Finance has assigned the procurement activity to the CPA in accordance with the present law. Whenever CPA performs the procurement activities on behalf of a contracting authority, responsibilities for these activities are taken over by CPA.
2. The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are conducted in strict compliance with the present law.
3. The Procurement Officer of a contracting authority shall be responsible for immediately reporting to the PPRC any procurement activities of such contracting authority that are inconsistent with the present law.
4. In case of any indication that a procurement Officer has become ineligible to hold that position for a reason specified in paragraph 3 Article 23 of this law, the contracting authority shall immediately notify the PPRC. The PPRC decides whether such ineligibility exists, instructs, as the case may be. In case of the removal of the procurement Officer the provisions of the Law on Civil Servants apply.

Article 25

Training of Procurement Officers

1. KIPA in cooperation with PPRC is responsible to develop training modules and curriculum for procurement qualifications. KIPA and PPRC is required to identify, experienced in public procurement, suitable to teach the procurement courses designed by PPRC. KIPA shall arrange for the development and delivery, of a procurement training courses having duration of at least fifteen (15) days. PPRC in cooperation with KIPA ensures that such courses are developed and delivered by a trained person or training organizations having substantial expertise in best international procurement practices and the procurement system of the EU.
2. KIPA shall be responsible for organizing examinations.
3. Any interested person may attend a procurement professional training course. Contracting authority shall in relation to employed Procurement Officers treat such training time as time spent at work and shall compensate its Procurement Officer for such time in the same manner as that applicable to time spent at work. The contracting authority may also provide such person, in accordance with the applicable normative and sub-normative acts, reimbursement for expenses that such person necessarily incurs in order to attend such training.
4. KIPA shall issue a “basic procurement professional certificate” only to persons who have satisfactorily completed all of the basic courses and who are recommended by the trainer. KIPA shall issue an “advanced procurement professional certificate” only to persons who have satisfactorily completed all of the advanced courses.
5. A certificate shall be valid for three (3) years unless it is earlier revoked in accordance with paragraph 8 of this Article. A person holding a basic certificate who fails to obtain an advanced certificate within that three (3) year period shall not be eligible to be a Procurement Officer until he/she obtains an advanced certificate. A person holding an advanced certificate who fails to

obtain a new advanced certificate within the three (3) year validity period of his/her current advanced certificate shall not be eligible to be a Procurement Officer until he/she obtains a new advanced certificate.

6. Persons holding an internationally recognized advanced or masters certificate or diploma in procurement are exempt from the KIPA certification requirements specified in paragraphs 4 and 5 of this Article. However, such persons still required to comply with the on-going training requirements of paragraph 1 of this Article.

7. Any interested person may attend a procurement professional training course at KIPA if there is sufficient space still available after accommodating Procurement Officers and the staff members of Procurement Units. KIPA may impose a reasonable fee to be charged to persons for attending the courses; however, no such fee may be charged to persons who are Procurement Officers, staff members of Procurement units or civil servants. KIPA shall make a copy of the training materials available to any interested person for a reasonable fee to cover the copying costs of the concerned material; however, persons who are Procurement Officers, staff members of Procurement Units or civil servants shall have the right to obtain one copy of such material at no charge.

8. Any procurement professional certificate issued by KIPA may be revoked by PRB if it is determined that the person holding such certificate does not meet, or no longer meets, the eligibility requirements specified in Article 23 of this law or has committed a serious violation of this Law or the procurement rules. If the holder of the certificate is a civil servant, the revocation process must comply fully with the requirements of the Law on Civil Servants. If the holder of the certificate is not a civil servant, the person shall first be entitled to receive ninety (90) days' advance written notice of PPRC's intent to revoke his/her certificate; and such notice shall give the affected person the right to challenge such action in accordance with the Law on Administrative Procedures and, if the person is dissatisfied with the result or the conduct of the process under such law, the person may submit a complaint on the revocation to the Supreme Court of Kosovo.

9. On request from a contracting authority PPRC determines whether the eligibility requirements specified in Article 23 for a procurement professional certificate are met. If PPRC considers that the requirements mentioned are not met, the PPRC submits their recommendation to PRB with a request for revocation of the certificate in accordance with the procedures mentioned in paragraph 8 of this Article.

Article 26

Signing of Public Contracts

1. Except as provided for in paragraph 2 and 3 of this Article, the responsible Procurement Officer shall be the only person authorized to enter into or sign a public contract on behalf of such contracting authority. The signature confirms that the contract has been awarded in compliance with the present law.

2. Besides the signature of the responsible procurement officer as mentioned in paragraph 1 of this Article contracts of large value of contracting authorities shall also be signed on behalf of such contracting authority by the Chief Administrative Officer, as well as the Minister or other relevant public authority concerned. The signatories designated in this Article accept the rights and obligations established by the contract and confirm that the contract is in full compliance with this Law. Contracts not signed as mentioned in paragraph 1 and 2 of this Article shall be unenforceable.

3. If the Minister of Finance designates the CPA as the body having the authority to conduct a procurement activity, persons authorized to enter into or sign the concerned contract shall be the persons mentioned in paragraph 1 and 2 of this Article.

4. The persons having signing authority under paragraph 1 and 2 or 3 of this Article may sign such contract only if the following conditions are met:

4.1. at least ten (10) days have passed since the date of publication of the concerned contract award notice; provided, however, that this condition shall not apply to an emergency procurement conducted pursuant to Article 35.2.1(iii); or to procurement activity conducted pursuant to Article 36 or to minimal value contracts;

4.2. the persons have reconfirmed that the information contained in the concerned "Statement of Needs and Determination of the Availability of Funds" is still accurate;

4.3. the persons have received no communication from the PRB or the Court indicating that such contract should not be signed.

PART II

CHAPTER I

RULES GOVERNING TECHNICAL SPECIFICATIONS AND TENDER DOSSIERS

Article 27

Tender Dossier

1. Except as provided in paragraph 2 of this Article, a contracting authority shall draw up a tender dossier providing all relevant information on the concerned contract, including all material terms and conditions thereof, the applicable procurement procedure, any applicable eligibility requirements or selection criteria, the procedure governing complaints and such other information as the present law may require or the contracting authority deems necessary. If the concerned procurement activity requires the publication of a contract notice, the tender dossier shall contain a copy of such notice and such other relevant information that may be necessary to clarify and supplement the information contained in such notice. A contracting authority shall designate in the tender dossier the applicable technical specifications and, where appropriate, performance requirements, the scope for variants and information concerning subcontracting in accordance with Articles 28, 29, 30 and 31 of this law.

2. The tender dossier requirements of paragraph 1 of this Article shall not apply to a procurement activity for a minimal value contract.

3. Whether tender dossier is required or not, the supplies, services or works of the contract must be described by means of the appropriate common procurement vocabularies and codes. The PPRC shall have the authority to establish rules on these matters.

4. Whenever a procurement activity requires the publication of a contract notice, the tender dossier must be completed before the publication of the contract notice; PPRC may decide on monitoring of this provision with sub-acts.

Article 28

Technical Specifications

1. The contracting authority shall set forth all mandatory technical specifications in the tender dossier. If the concerned procurement activity requires the publication of a contract notice, the contracting authority shall (i) set forth such specifications in such notice or (ii) provide a clear statement in such notice indicating where such technical specifications may be obtained. Whenever possible these technical specifications should be defined so as to take into account accessibility criteria for people with disabilities or design for all users.

2. A contracting authority shall establish technical specifications in a manner that is both consistent with the purpose of the procurement and directed at providing the greatest possible access to all potentially interested economic operators and tenderers. A contracting authority is specifically prohibited from establishing a technical specification that favors or disfavors one or more economic operators.

3. The technical specifications shall be formulated either by reference to applicable standard, specification, approval or technical reference required by paragraph 4 and 5 of this Article or as an alternative in terms of performance or functional requirements, including environmental characteristics, according to paragraph 9 of this Article. The contracting authority may choose to use the standards or other specifications of paragraph 4 and 5 of this Article for certain characteristics and performance or functional requirements for other characteristics.

4. A contracting authority shall formulate a technical specification by reference to (i) a Kosovo standard implementing a European standard, (ii) a European standard, (iii) a European technical approval, (iv) a common technical specification, (v) an international standard or (vi) any other technical reference system produced by European standardisation bodies.

5. If an applicable standard, specification or approval required by paragraph 4 of this Article does not exist, or if its use would either require a contracting authority to use products or materials incompatible with equipment already in use or would entail disproportionate costs or technical difficulties, such contracting authority may formulate the concerned technical specification by reference to (i) a Kosovo standard or (ii) a Kosovo technical approval.

6. If a tenderer can show in his tender, by any appropriate means (such as a technical dossier or a test report by an independent third party), that the solution proposed by the tenderer satisfies in an equivalent manner the requirements defined by a technical specification, a contracting authority may not reject a tender on the grounds that the product or service tendered does not comply with a technical specification formulated by reference to any of the specifications mentioned in paragraph 4 and 5 of this Article.

7. A contracting authority shall not establish a technical specification that refers to a specific make or source, or a particular process, or to trademarks, patents, types or a specific origin or production. Notwithstanding the foregoing, a contracting authority may, on an exceptional basis, establish a technical specification making such a reference if the contracting authority can clearly demonstrate that it is not possible to develop a sufficiently precise and intelligible description of the subject matter of the contract in accordance with paragraph 3-6 of this Article or otherwise; provided, however, that any such reference shall be accompanied by the words "or equivalent".

8. Performance and functional requirements must be sufficiently precise to allow tenderers to determine the subject matter of the contract and to allow contracting authorities to award the contract. Standards or other specifications of paragraph 4 and 5 of this Article may be used as a means of presuming conformity with such performance or functional requirements.

9. Where a contracting authority has prescribed a technical specification in terms of a performance or functional requirement, it may not use such requirement as a basis for rejecting a tender of a product or service that complies with a specification referred to in paragraph 4 or 5 of this Article, if such specification addresses the same performance or functional requirement and is appropriate. The tenderer must demonstrate in his tender, by any appropriate means (such as a technical dossier or a test report by an independent third party), that the product or service complying with the above specifications also meets the functional or performance requirements of the contracting authority.

Article 29

Variants of Technical Specifications

1. If a contract is to be awarded to the most economically advantageous tender, contracting authorities may authorize tenderers to submit variants.
2. Contracting authorities shall indicate in the tender dossier whether or not they authorize variants; variants shall not be authorized without this indication.
3. Contracting authorities authorizing variants shall state in the tender dossier the minimum requirements to be met by the variants and any specific requirements for their presentation.
4. Only variants meeting the minimum requirements laid down by these contracting authorities shall be taken into consideration. In procedures for awarding public supply or service contracts, contracting authorities which have authorized variants may not reject a variant on the sole ground that it would, if successful, lead to a service contract rather than a public supply contract or a supply contract rather than a public service contract.

Article 30 Subcontracting

The tenderer must indicate in his tender any share of the contract he may intend to subcontract to third parties and any proposed subcontractors. Such indication has no effect on the contractual liability of the tenderer in relation to the contracting authority or others.

Article 31 Performance of contract

1. Contracting authorities can lay down special requirements concerning the manner in which the contract must be performed, provided that the requirements do not contravene the principles of Article 7 and are indicated in the tender dossier. Such requirements concerning performance of a contract have the purpose of ensuring a certain level of labour conditions or environmental protection.
2. Contracting authorities may refer to conditions of the performance of the contract in particular such which concern environmental protection, employment protection and working conditions in force in Kosovo by law or regulation, provided that these conditions are indicated in the contract notice and included in the technical specifications.
3. A contracting authority may state in the contract documents the body or bodies from which a candidate or tenderer may obtain the appropriate information on the obligations relating to taxes, to environmental protection, to the employment protection provisions and to the working conditions which are in force.

CHAPTER II TYPES AND APPLICABILITY OF PROCUREMENT PROCEDURES

Article 32 General Rules

1. When conducting any procurement activity, a contracting authority shall use an open or restricted procedure. If a provision of Articles 34-37 of this law specifically authorizes the use of a different procurement procedure, the contracting authority may use that procedure or an open procedure. The conduct of any procurement procedure shall comply with all applicable provisions of the present law.

2. The PPRC shall establish the rules and conditions, consistent with both the present law and best international practice, governing the implementation of each of the procurement procedures established by Articles 32-38 of this law.

3. When a contracting authority uses a procedure described in Articles 34 of the this law, the contracting authority shall set forth in the tender dossier a detailed explanation of the reasoning used and the factors considered by the contracting authority in deciding that the use of such alternative procedure is both appropriate and authorized by the this law.

4. If during the conduct of a procurement activity, less than two (2) responsive tenders or, where applicable, requests to participate are received; the contracting authority shall cancel the procurement activity.

5. Notwithstanding the requirements established by paragraph 4 of this Article when less than two responsive tenders or requests to participate have been submitted in response to an open procedure, a restricted procedure or negotiated procedure after publication of the contract notice, provided that a) the initial contract specifications are not changed and b) that the contracting authority has demonstrated that due to a severely limited competitive market for the contract in question a new open, restricted or negotiated procedure after publication of a contract notice will not result in an increased number of responsive tenders, where applicable, requests to participate, the contracting authority may waive the requirement. However the PPRC must be notified by the concerned contracting authority, within two days from the date of the decision, for the waiver of the requirement.

Article 33 Open and Restricted Procedures

1. Unless a provision of Articles 34 – 37 specifically authorizes the use of different procurement procedures, a contracting authority shall select and use open or restricted procedure when conducting procurement activities leading to the award of a public contract.

2. A contracting authority may use restricted procedures to conduct a procurement activity leading to the award of any public contract on the basis of objectively verifiable factors and without any discriminatory intent.

3. Following the receipt of requests to participate, a contracting authority shall in writing invite to submit tenders candidates that fulfil the minimum selection criteria specified in the contract notice and the tender dossier in accordance with Article 51 of the present law. Candidates not so selected shall be eliminated from further participation.

Article 34 Negotiated Procedures After Publication of a Contract Notice

1. In exceptional cases, a contracting authority may use negotiated procedures after publication of a contract notice to conduct a procurement activity. The responsible Procurement Officer, on the basis of objectively verifiable factors and without any discriminatory intent, must in advance make a formal written determination that:

1.1. it is due to the nature of certain insurance, banking and investment, management, consultancy or other intellectual services not possible to establish contract specifications for them in a manner that would permit the award of the contract by selecting the best tender according to the rules governing open or restricted procedures.

1.2. the nature of the services or the risks attaching thereto do not permit prior overall pricing.

- 1.3. the nature of financial services, services involving the design of works or other intellectual services is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selection of the best tender according to the rules governing open or restricted procedures.
2. The written determination required by paragraph 1 of this Article shall be included in the tender dossier.
3. Following the receipt of requests to participate, a contracting authority shall invite to submit tender/proposal candidates that fulfil the minimum selection criteria specified in the contract notice and the tender dossier in accordance with Article 49-54 of this law. Candidates not so selected shall be eliminated from further participation.
4. The contracting authority shall then negotiate with each tenderer to try to adapt its tender/proposal to the requirements that the contracting authority has set out in the contract notice and the tender dossier. During this process the contracting authority shall be required to identify and award the contract to the tenderer submitting the best and most economically advantageous tender/proposal.
5. During the negotiations, a contracting authority shall ensure that all tenderers are treated in an equal and fair manner and that all tenderers have equal and timely access to the same information, with the exception of information relating to or contained in any competing tender.
6. Provided that the possibility has been indicated in the contract notice or the tender dossier, a contracting authority may provide for the negotiated procedure to take place in successive stages in order to reduce over time the number of tenders to be negotiated by applying the award criteria that have been specified in the contract notice or the tender dossier.

Article 35

Negotiated Procedures Without Publication of a Contract Notice

1. A contracting authority may use negotiated procedures without publication of a contract notice to conduct a procurement activity only after it has complied with this Article. PPRC must be notified by the concerned contracting authority within two days of the date when decision about using such procedures has been taken. The contracting authority shall in the notification provide a detailed explanation of the facts considered and the justification for using the procedure.
2. A contracting authority may use negotiated procedures without prior publication of a contract notice to conduct a procurement activity having as its object the award of:
- 2.1. any public contract:
- (i) if, for objective and compelling technical or artistic reasons, the contract may be awarded only to a particular economic operator;
 - ii) if, for reasons of protection of intellectual or industrial property right or other exclusive rights, the contract may be awarded only to a particular economic operator;
 - (iii) if, insofar as is strictly necessary for reasons of extreme urgency brought about by objectively verifiable events that were not reasonably foreseeable by the concerned contracting authority, such contracting authority cannot afford the time required to conduct any other procedure provided for by the present law. Provided, however, that if the circumstances creating the situation of extreme urgency can be attributed to the negligent or purposeful acts or omissions of a contracting authority, this provision may not be invoked;

2.2 a supply contract:

(i) for additional deliveries by the original supplier where such additional deliveries are replacements for previously delivered products or installations or constitute an extension of current product deliveries or installations *if* a change of supplier would necessarily require the concerned contracting authority to accept products or installations having technical or other characteristics that are materially different from the products or installations previously acquired and these differences would result in incompatibility or disproportionate technical difficulties in operation and maintenance. Provided, however, that this Article 35.2.2(i) can only be invoked to cover one or more contracts for additional deliveries that, alone or in the aggregate, have a value that is not greater than ten percent (10%) of the value of the supply contract covering the original deliveries; or

(ii) if the concerned contracting authority is a public service operator, for the purchase of commodities at a commodities market, commodities exchange, or similar open trading platform or system.

2.3. a service contract:

(i) that follows from a design contest conducted pursuant to open or restricted procedures, and that is required, under the applicable rules, to be awarded to the successful candidate;

(ii) to be awarded to a contracting authority that enjoys, pursuant to a legislative or regulatory normative or sub normative act, an exclusive right to provide such service.

2.4. a service or works contract:

(i) for the performance or execution of additional services or works that were neither included in the original conception of a previously awarded works project nor provided for in the concerned works contract previously concluded, but which have, through unforeseen circumstances, become necessary for the performance of the services or works described in such project and contract. Provided, however, that this Article 35.2.4(i) may only be invoked if (a) the contract covering such additional services or works is to be awarded to the economic operator performing the original services or works and (b) such additional services or works cannot be technically or economically separated from the main contract without major inconvenience to the contracting authority or (c) when such works or services, although separable from the performance of the original contract, are strictly necessary for its completion. Provided, further, that this Article 35.2.4(i) may only be invoked to cover one or more contracts for additional services or works that, alone or in the aggregate, have a value that is not greater than ten percent (10%) of the value of the original contract.

(ii) for new works or services consisting in the repetition of similar works or services entrusted to the economic operator to whom the same contracting authorities awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded according to the open or restricted procedure. As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authorities when they apply the valuation rules of Chapter 4. Public authorities may use this procedure only during a period of two years after the conclusion of the original contract. Provided, however, that this Article

35.2.4(ii) can only be invoked to cover one or more contracts for new services that, alone or in the aggregate, have a value that is not greater than ten percent (10%) of the value of the earlier services contract.

3. The conduct of a negotiated procedure without publication of a contract notice shall not in any way relieve a contracting authority of its obligation (i) to play an active role in determining the terms of the contract, with special reference to prices, delivery deadlines, quantities, technical characteristics and guarantees, (ii) to ensure that the contracted price is not higher than the concerned market price, and (iii) to carefully assess the quality of the concerned product, service or works.

Article 36 Price Quotation Procedures

1. A contracting authority may use price quotation procedures to conduct a procurement activity having as its object the award of a minimal or low value works, supply or service contract if

1.1. regarding a works contract it consists only of repair or maintenance; or

1.2. regarding supply or services (i) the concerned supplies or services are readily available from economic operators, (ii) the concerned supplies or services do not need to be specially produced or customized in order to satisfy the requirements of the contracting authority, and (iii) there is an established market for such supplies or services.

2. The contracting authority shall simultaneously send a written request for price quotations to at least three (3) economic operators and, to the extent practicable, to as many additional economic operators as is necessary to ensure that effective competition for the concerned contract is not impaired.

3. The contracting authority shall select such economic operators and otherwise conduct the procurement activity in a manner that is not intended to discriminate against or in favour of any economic operator.

4. An economic operator that did not receive a request for price quotations that was sent to other economic operators shall have the right to obtain, immediately upon request, such request for price quotations from the concerned contracting authority. An economic operator that did not receive a request for price quotations that was sent to other economic operators shall also have the right to submit a price quotation in response to such request, even if such economic operator obtained a copy or information about such request for price quotations from someone other than the contracting authority.

5. A written request for price quotations shall (i) describe, in accordance with Article 28, the concerned works, goods or services, (ii) inform all economic operators that their quotations must contain a lump sum fixed price that the contracting authority would need to pay to obtain the concerned works, goods or services and that such lump sum fixed price shall include any and all applicable taxes and duties as well as any transportation, insurance, installation or other charges, fees or expenses of any description; and (iii) specify the date by which price quotations must be received.

6. For a procurement activity conducted pursuant to paragraph 1 of this Article, the date by which price quotations must be received shall be no less than five (5) days from the date of the dispatch of the written request for price quotations.

7. If, in a procurement activity conducted pursuant to paragraph 1 of this Article, less than three (3) economic operators that routinely offer the concerned works, goods or services on the market submit responsive written quotations on or before the specified deadline, the contracting authority shall cancel the procurement activity. In such event, the contracting authority shall, if it still desires to procure the concerned works, goods or services, initiate a new procurement activity for such goods or services.

8. An economic operator may submit only one price quotation during the concerned procurement activity. An economic operator may not change its price quotation after such quotation has been submitted.

9. For the purposes of the applicability of the other provisions of the present law, a request for price quotations shall constitute an "invitation to tender."

Article 37 Procedures for Minimal Value Contracts

The PPRC shall have the authority to establish in the public procurement rules a special procedure to govern the award of minimal value contracts. The PPRC shall ensure that such procedure fulfils the conditions in Article 6 and 7 of this law.

Article 38 Public Framework Contracts

1. A contracting authority may use open, restricted or negotiated procedures to award a public framework contract. A public framework contract may not be awarded through the use of any other procedure.
2. No public framework contract shall have duration of more than 36 months. A public framework contract shall not be extendable or renewable and its terms may not otherwise be changed.
3. A contracting authority may award a public framework contract where it plans to award several identical contracts over the period to be covered by the public framework contract, and the conclusion of a public framework contract covering such contracts would reduce the procurement and administration costs of the contracting authorities concerned.
4. Following award according to paragraph 1 of this Article the public framework contract allows the contracting authority throughout its duration to place orders or to conclude subsidiary contracts on the basis of mini-tenders.
5. Public framework contracts can be awarded
 - 5.1. either to one economic operator and must in that case include all terms required to allow orders to be placed on the basis of the contract alone, or
 - 5.2. to more than one economic operator, however at least three, and must in that case include the award criteria to be used for mini-tenders. Such framework contracts may explicitly leave certain specific terms to be established in the subsidiary contracts.
6. Only the economic operators that are party to the framework contract can participate in the mini-tenders, as mentioned under sub-paragraph 5.2, paragraph 5 of this Article. The contracting authority invites in case of a use of a mini-tender all economic operators that are party to the framework contract to submit their bids in writing. The time limit for submission of bids must be at least 5 days. Contracting authorities shall award the contract to the economic operator who has submitted the best bid on the basis of the award criteria set out in the invitation to bid. Each

award of contract according to sub-paragraph 5.2, paragraph 5 of this Article shall be subject to the notice requirements of Article 41 of this law, the signing requirements of Article 26 of this law, and the award of each such subsidiary contract shall be subject to the rules governing the filing of complaints and the other review provisions of Title IX.

7. The PPRC shall have the authority and responsibility to develop and promulgate rules and procedures governing the award and use of public framework contracts. Such rules and procedures shall (i) promote competition for such contracts, (ii) ensure the transparency and reasonableness of the process, (iii) observe the applicable provisions of the present law, especially the principles of cost-effectiveness and non-discrimination specified in Articles 6 and 7 of this law; and (iv) be consistent with the best practices of EU member countries.

CHAPTER III RULES ON ADVERTISING AND TRANSPARENCY

Article 39 Indicative Notice

1. When a contracting authority has the intention of awarding, over a future 12- month period, one or more supply, services or works contracts having an estimated value, alone or in the aggregate, of five hundred thousand (500,000) Euros regarding each of the mentioned categories of contracts, the contracting authority shall prepare an indicative notice that specifies:

1.1. in the case of anticipated supply contracts, the total procurement by product area that the contracting authority intends to procure over such 12-month period;

1.2. in the case of anticipated service contracts, the estimated aggregate value of each category of service that the contracting authority intends to procure over such 12- month period; and

1.3. in the case of anticipated works contracts, the essential characteristics of the works contracts that the contracting authority intends to award over such 12- month period.

2. An indicative notice shall be prepared in the Albanian, Serbian and English languages. The contracting authority shall ensure that all language versions of an indicative notice comply with the present law and contain materially identical information.

3. In the case of an indicative notice referred to in sub-paragraphs 1.1 and 1.2 of paragraph 1 of this Article the contracting authority shall prepare such indicative notice as soon as possible after the beginning of the concerned fiscal year.

4. In the case of an indicative notice referred to in sub-paragraph 1.3 of paragraph 1 of this Article, the contracting authority shall prepare such indicative notice immediately after the decision approving the planning of the concerned works contracts.

Article 40 Contract Notice

When a contracting authority intends to conduct a procurement using open or restricted procedures or negotiated procedures after the publication of a contract notice, the contracting authority shall prepare a contract notice in the languages required by Article 13. The contracting authority shall ensure that all language versions of a contract notice comply with the present law and contain materially identical information.

Article 41 Contract Award Notice

If a contracting authority has awarded any public contract using open, restricted, or negotiated procedures, or price quotation procedures, such contracting authority shall, within two (2) days after the award of such contract, prepare a contract award notice in the languages required by Article 13 of this Article. The contracting authority shall ensure that all language versions of a contract award notice comply with the present law and contain materially identical information

Article 42 Publication of Notices

1. A contracting authority shall immediately submit to the PPRC all language versions of any notice that it has prepared pursuant to Article 39, 40 or 41 of this law. The PPRC shall establish rules governing the submission of such notices.
2. Within two (2) days after the PPRC receives such a notice from a contracting authority pursuant to paragraph 1 of this Article, the PPRC shall publish all language versions of such notice on the PPRC's website and in the Public Procurement Register. The PPRC can within the same time limit demand that the contracting authority rectifies mistakes and omissions in the notice. The contracting authority will in the cases covered by paragraph 4 of this Article publish and circulate corrections.
3. A contracting authority shall dispatch a contract award notice, immediately after it has been prepared, to all economic operators that tendered. A contracting authority shall dispatch such a notice to the concerned economic operators by the most rapid means available.
4. No notice, nor any information in a notice, may be made public or disclosed to any person or undertaking prior to its publication pursuant to paragraph 2 of this Article.

Article 43 Form and Content of Notices

Every notice shall be drawn up in accordance with the applicable standard form adopted by the PPRC.

Article 44 General Rules for Setting a Time Limit for the Receipt of Tenders or Requests to Participate

1. Any time limit set by a contracting authority for the receipt of tenders or requests to participate shall be of a duration that is sufficient to give potentially interested economic operators a reasonable amount of time to prepare and submit such documents. In setting such a time limit, a contracting authority shall take into consideration the object and complexity of the concerned procurement and the contract to be awarded as well as the level of difficulty and/or complexity involved in the preparation of a responsive tender or request to participate.
2. In a procurement using open procedures, the contracting authority shall set a time limit for the receipt of tenders that is:
 - 2.1. if the concerned contract is a large value public contract, not less than forty (40) days; and
 - 2.2 if the concerned contract is not a large value public contract, not less than twenty (20) days.
3. In a procurement using restricted procedures, the contracting authority shall set time limits for the receipt of requests to participate and tenders that are:

3.1. if the concerned contract is a large value public contract, not less than twenty (20)days for the receipt of requests to participate and not less than forty (40)days for the receipt of tenders; and

3.2. if the concerned contract is not a large value public contract, not less than fifteen (15) days for the receipt of requests to participate and not less than twenty (20) days for the receipt of tenders.

4. In a procurement using negotiated procedures after the publication of a contract notice, the contracting authority shall set time limits for the receipt of requests to participate and tenders that are:

4.1. if the concerned contract is a large value public contract, not less than twenty (20) days for the receipt of requests to participate and not less than forty (40) days for the receipt of tenders; and

4.2.. if the concerned contract is not a large value public contract, not less than fifteen (15) days for the receipt of requests to participate and not less than twenty (20) days for the receipt of tenders.

5. In a procurement using price quotation procedures, the contracting authority shall set a time for the receipt of tenders as specified in paragraph 6 Article 36 of this law.

Article 45

Special Rules for Setting a Time Limit for the Receipt of Tenders for a Public Contract Covered by an Indicative Notice

1. Notwithstanding the provisions of Article 44, in a procurement activity using open or restricted procedures and having as its object a large value contract that has previously been the subject of an indicative notice, the contracting authority may set a time limit for the receipt of tenders that is no less than twenty four (24) days from (i) in the case of open procedures, the date of publication of the concerned contract notice, or (ii) in the case of restricted procedures the date on or by which all invitations to tender are sent.

2. The time limit referenced in paragraph 1 of this Article may only be used if (i) the concerned indicative notice included all the information specified in the applicable standard form adopted by the PPRC and (ii) the date of publication of such indicative notice occurred no less than forty (40) days and no more than twelve (12) months prior to the date of publication of the concerned contract notice.

Article 46

Special Rules Permitting the Reduction of Time Limits

1. If circumstances exist that (i) necessitate the conduct of a procurement activity on an urgent basis, (ii) make it impracticable to observe the time limits specified in Article 44 of this law or, if applicable, Article 45 of this law, (iii) do not give rise to the kind of extreme urgency anticipated by Article 35.2.1(iii) are not attributable to the acts and omissions of a contracting authority, a contracting authority may conduct the procurement using the accelerated time limits established in this Article.

2. In a procurement activity using open procedures, the contracting authority may set a time limit for the receipt of tenders that is:

2.1. if the concerned contract is a large value public contract, not less than fifteen (15) days; or

2.2. if the concerned contract is not a large value public contract, not less than ten (10) days.

3. In a procurement activity using restricted or negotiated procedures, the contracting authority may set a time limit that is (i) not less than fifteen (15) days for the receipt of requests to participate and/or (ii) not less than ten (10) days for the receipt of tenders.

Article 47

Commencement of Time Limits for Receipt of Requests to Participate and Tenders

1. The time limits specified in Articles 44 - 46 of this law shall be calculated according to Article 5 and commence to run as follows:

1.1. for the receipt of tenders in a procurement activity using open procedures, on the date of publication of the contract notice;

1.2. for the receipt of requests to participate in a procurement activity using restricted procedures or negotiated procedures after the publication of a contract notice, on the date of publication of the contract notice;

1.3. for the receipt of tenders in a procurement activity using restricted procedures or negotiated procedures after the publication of a contract notice, on the date on which all invitations to submit a tender are sent; and

1.4. for the receipt of tenders in a procurement activity using price quotation procedures, on the date on which all invitations to submit a price quotation are sent.

Article 48

Delivery of Tender Dossiers

1. If an economic operator has timely filed a request to obtain a tender dossier that meets the requirements set forth in the concerned contract notice, the concerned contracting authority is strictly required to send the requested tender dossier free of charge to such economic operator as follows:

1.1. if the time limit set for the receipt of tenders is more than thirty (30) days, no later than six (6) days after receiving such request;

1.2. if the time limit set for the receipt of tenders is more than twenty (20) but less than thirty (30) days, no later than four days after receiving such request; and

1.3. if the time limit set for the receipt of tenders is less than twenty (20) days, no later than three days after receiving such a request.

2. Notwithstanding submission of tender dossier free of charge as mentioned in paragraph 1 of this Article, the contracting authority may demand a payment in cases, where the price of production of tender material is regarded as exceptional expensive for instance, when containing models or large number of technical prints. The amounts of money charged in such cases may not exceed the production costs of the material.

Article 49

Means of Transmission of Requests to Participate

A request to participate in a procurement activity leading to the award of any public contract may be submitted by electronic means, letter or fax.

Article 50
Dispatch and Contents of Invitations to Tender

1. In restricted procedures, negotiated procedures after the publication of a contract notice, and price quotation procedures, the contracting authority shall simultaneously in writing dispatch to all selected candidates the concerned invitation to tender.
2. In restricted procedures and negotiated procedures after the publication of a contract notice, all invitations to tender shall be sent together with the tender dossier, except to the extent that the contracting authority has made tender dossier material available electronically. If the contracting authority has made such material available electronically, the invitation letter shall provide sufficient information to enable the candidate to access such material.
3. In price quotation procedures, the invitation to tender shall contain all material information needed by the candidates to submit responsive price quotations.
4. The form and content of any invitation, material or other information sent to a candidate shall be identical to that sent to any other candidate. No candidate shall be given greater or lesser access to any material or information than any other candidate.
5. If a procurement activity using restricted procedures is being conducted under accelerated time limits authorized by paragraph 3 Article 46 of this law, the contracting authority shall dispatch the invitations to submit a tender by the most rapid means of communication possible.

Article 51
Notification of Selection Criteria

1. A contracting authority shall state in the contract notice, and specify in full in the tender dossier, any and all selection criteria that an interested economic operator is required to meet in order to be considered qualified (i) in the case of open procedures, to be awarded a contract, or (ii) in the case of restricted procedures or negotiated procedures after the publication of a contract notice, to receive an invitation to tender. All such selection criteria shall be limited to requirements necessary to ensure that only economic operators possessing the professional, financial and technical ability necessary to fulfil the terms of the concerned contract shall be considered qualified to receive a contract award or an invitation to tender. In no case shall a contracting authority establish, specify or use selection criteria that are based on considerations other than those permitted under the provisions of Articles 65 – 70 of this law.
2. A contracting authority shall (i) specify in the contract notice, to the extent practicable, any and all documents or other information that an interested economic operator is required to submit with its tender or request to participate, and (ii) specify in full in the tender dossier any and all such documents and information. All such documentary and information requirements shall be limited to such documents and information as may be reasonably necessary to allow the contracting authority to verify that the concerned economic operator (i) is not ineligible under Article 65 of this law, and (ii) if applicable, satisfies the minimum selection criteria specified in the contract notice and the tender dossier. In no case shall a contract notice or a tender dossier require an interested economic operator to comply with documentary or information submission requirements that are not in conformity with the provisions of Articles 65-70 of this law.
3. All selection criteria and documentary and information requirements established and noticed under this Article shall be both directly relevant and proportionate to the subject matter of the concerned contract

Article 52
Notification of Contract Award Criteria

1. A contracting authority shall in the contract notice and the tender dossier specify the criteria to be used for awarding the contract. The criteria can be either lowest price only or the economically most advantageous tender.

2. If the contracting authority has specified that the award of a public contract shall be made to the economic operator submitting the economically most advantageous tender, such contracting authority shall specify in the contract notice and the tender dossier the criteria for determining the winning tender and the weighting assigned to each criterion. To the greatest extent practicable, the contracting authority shall specify each criterion in an objective and quantifiable manner and express the weighting assigned thereto.

3. Only criteria that are objectively assessable and have been disclosed in advance in the tender dossier may be used for the evaluation. A contracting authority may use only criteria that are directly relevant to the subject matter of the contract. Such criteria may concern for example, quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales service and technical assistance.

4. The contracting authority must ensure that a clear distinction is drawn between the criteria in paragraph 3 of this Article and the selection criteria concerning general professional, financial and technical ability established according to Article 51 of this law and that there is no overlap between these two categories of criteria.

Article 53
Providing Additional Information to Candidates and Tenderers

1. When preparing a tender, any economic operator may make a written request to the concerned contracting authority for additional or clarifying information that the economic operator believes is needed to prepare or submit a responsive tender; provided, however that any such written request shall be received by the contracting authority:

1.1. no less than twenty (20) days prior to the date set for the receipt of tenders, if the time limit set for the receipt of tenders is forty (40) days or more;

1.2. no less than fifteen (15) days prior to the date set for the receipt of tenders if the time limit set for the receipt of tenders is thirty (30) days or more but less than forty (40) days;

1.3. no less than ten (10) days prior to the date set for the receipt of tenders if the time limit set for the receipt of tenders is twenty (20) days or more but less than thirty (30) days; or

1.4. no less than three (3) days prior to the date set for the receipt of tenders if the time limit set for the receipt of tenders is five (5) days or more but less than twenty (20) days.

2. Such a request may be submitted to the contracting authority by electronic means, letter or fax.

3. The contracting authority shall specify the date by which such a request must be received in the tender dossier and, if applicable, the invitation to tender.

4. A contracting authority shall immediately review any such request received to determine whether or not economic operators need the requested additional or clarifying information in order to prepare responsive tenders.

5. If the contracting authority determines that economic operators do not need the requested information, the contracting authority shall immediately communicate a denial of the request in writing to the concerned economic operator.

6. If the contracting authority determines that any of the requested additional or clarifying information is needed by economic operators, the contracting authority shall immediately and simultaneously provide such information in writing, by the most rapid means possible, to all economic operators who have obtained or received from the contracting authority the concerned tender dossier or invitation to tender. The contracting authority shall not reveal the identity of the economic operator that requested the clarifying information.

7. If, in a procurement activity involving the use of open, restricted or negotiated procedures, the contracting authority provides any additional or clarifying information to economic operators, and the date on which such information is provided is less than 10 days from the deadline set for the receipt of tenders, the contracting authority shall extend such deadline to give economic operators at least ten (10) days from the date on which such information is provided to submit their tenders. If an economic operator has already submitted a tender, such economic operator shall be permitted to submit an amendment to such tender, but such amendment shall be limited to changes that are reasonably related to such additional or clarifying information.

8. If, in a procurement activity involving the use of price quotation procedures, the contracting authority provides any additional or clarifying information to economic operators, and the date on which such information is provided is less than three (3) days from the deadline set for the receipt of tenders, the contracting authority shall extend such deadline to give economic operators at least three (3) days from the date on which such information is provided to submit their tenders. If an economic operator has already submitted a tender, such economic operator shall be permitted to submit an amendment to such tender, but such amendment shall be limited to changes that are reasonably related to such additional or clarifying information.

9. If, at any time prior to the deadline set for the receipt of tenders, a contracting authority determines or becomes aware – by any means - that any additional or clarifying information is needed by economic operators, the contracting authority shall immediately and simultaneously provide such information in writing, by the most rapid means possible, to all economic operators that have received a tender dossier or invitation to tender from the contracting authority. In such event, the contracting authority shall extend the deadline for the receipt of tenders in accordance with paragraph 7 or 8 of this Article, whichever is applicable.

Article 54

Notification to Eliminated Candidates and Tenderers

1. Whenever a contacting authority eliminates a candidate or tenderer from further participation in a procurement activity, such contracting authority shall immediately notify such candidate or tenderer in writing.

Such notification must at least contain information specifying such reasons in accordance with the following:

1.1. in the case of an eliminated candidate, the statement shall specify the reasons for the rejection of that candidate's request to participate.

1.2. in the case of an eliminated tenderer who was eliminated for submitting an irregular or otherwise non-responsive tender, the statement shall specify the deficiencies in such tender.

1.3. in the case of an unsuccessful tenderer who submitted a responsive tender, the statement shall specify the characteristics and relative advantages of the winning tender and the name of the winning tenderer.

Article 55
Means of Communication

1. Except during the conduct of a site visit or a pre-tender meeting, all communication and information exchange between economic operators and a contracting authority shall be performed (i) in writing - whether by letter, fax and/or electronic means - and (ii) in conformity with all other applicable provisions of the present law.

2. If the contracting authority formally arranges a site visit or a pre-tender meeting for interested economic operators, a contracting authority may communicate orally with economic operators attending such site visit or pre-tender meeting if (i) all interested economic operators have been afforded reasonable notice of, and a reasonable opportunity to attend, such site visit or pre-tender meeting, (ii) the oral communications are made in a public and transparent manner, and (iii) a written summary of all material aspects of such oral communications is immediately prepared by the contracting authority and provided or made available to all interested economic operators.

3. Such communication and information exchange shall be carried out in such a way as to ensure that the integrity of data and the confidentiality of tenders and all information supplied by economic operators are preserved, and that a contracting authority examines the content of a tender or request to participate only after the time limit set for the receipt thereof has expired.

CHAPTER IV
CONDUCT OF PROCUREMENT PROCEDURES

Article 56
General Provisions on the Selection of Participants and the Award of Contracts

1. All public contracts shall be awarded, in accordance with the procedure established to such selection, and by:

1.1. firstly, assessing tenderers and candidates in accordance with the eligibility requirements specified in the contract notice and the tender dossier in accordance with paragraph 2 of Article 51, and tenders in accordance with the technical specifications required pursuant to Article 28 of this law;

1.2. secondly, evaluating the tenders on the basis of criteria set out in Article 60 of this law.

2. In the case of restricted procedures and negotiated procedures after the publication of a contract notice, a contracting authority shall select the candidates that will be invited to submit a tender or proposal only on the basis of:

2.1. the selection criteria specified in the contract notice and the tender dossier in accordance with paragraph 2 of Article 51; and

2.2 the documents, information and/or evidence of qualifications submitted by candidates in direct response to the requirements stated in the contract notice and the prequalification documents. Candidates not so selected shall be eliminated from further participation. All candidates who are determined to meet the specified selection criteria and who have not been disqualified under this paragraph shall be invited to submit a tender unless the number of such candidates exceeds six (6). In such a case the

contracting authority shall only invite the six (6) most qualified candidates to submit a tender. The PPRC shall establish in the public procurement rules a detailed procedure that contracting authorities shall be required to follow when making such a selection. The PPRC shall ensure that such procedure is (i) in accordance with best international practice, (ii) provides for adequate competition and transparency, (iii) implements the principle of non-discrimination, and (iv) otherwise complies with all applicable provisions of this law.

3. A tenderer, in the case of open procedures, or a candidate, in the case of restricted procedures and negotiated procedures after the publication of a contract notice, shall not be disqualified, excluded or eliminated from such procedures on the basis of any requirement or criterion not specified in the contract notice and the tender dossier.

Article 57 Tender Security

1. In a procurement activity leading to the award of large or medium value contract, a contracting authority may require a tenderer to post tender security. Tender security posted by a tenderer shall be forfeited in the event:

1.1. the contracting authority determines, on the basis of objectively verifiable evidence, that such tenderer has provided materially false or misleading information to the contracting authority;

1.2. such tenderer withdraws its tender after the deadline for the submission of tenders but prior to the expiration of the tender validity period specified in the tender dossier; or

1.3. such tenderer is awarded the concerned contract on the basis of its tender and the tenderer then refuses or fails (i) to post any required performance security that was specified in the tender dossier, (ii) to comply with any other condition precedent to the signing of the concerned contract that was specified in the tender dossier, or (iii) to execute a contract that conforms to the terms and conditions specified in the tender dossier.

2. If the contracting authority imposes a tender security requirement, such requirement shall apply to all tenderers. The contracting authority shall reject and not evaluate a tender received from a tenderer that has failed to comply with an applicable tender security requirement.

3. If the contracting authority imposes a tender security requirement, the amount of the tender security required shall be no less than three percent (3%) and no greater than five percent (5%) of the estimated value of the public contract or design contest, but shall in no case be less than one thousand (1.000) Euros.

4. If the contracting authority imposes a tender security requirement, the contracting authority shall specify in the tender dossier:

4.1. any requirements regarding the nature, form, amount and other terms and conditions applicable to the required tender security; provided, however, that such requirements must be consistent with the present law and the public procurement rules;

4.2. the precise amount of the tender security and the required validity period of the tender security;

4.3. the deadline for the receipt of the tender security, which shall be the same as that for the receipt of tenders; and

4.4. a statement of the events, in accordance with paragraph 1 of this Article, that will cause such security to be forfeited.

5. Tender security may always be posted in cash or a cash equivalent, such as a bank wire or bank transfer. Tender security may also be posted in the form of a certified check, letter of credit or bank guarantee; however, the contracting authority shall specify in the tender dossier any requirements – as specified in the public procurement rules - that the issuer of such a check, letter of credit or guarantee must meet.

6. Each contracting authority shall establish, in accordance with the Financial Rules, a separate interest-bearing account at a licensed commercial bank in Kosovo for the purpose of receiving and holding funds received as tender security or received under a letter of credit or bank guarantee that had been posted as tender security. A contracting authority shall immediately deposit and hold all such funds in such account. A contracting authority shall not return, transfer, use or make any other disposition or use of such funds except as specifically authorized by paragraph 7, 8 and 9 of this Article.

7. If no event has occurred requiring the forfeiture of tender security, as specified in paragraph 1 of this Article, a contracting authority shall return the funds or document constituting such tender security within five (5) days after the occurrence of any of the following events:

7.1. the expiration of the tender validity period;

7.2. the award and entry into force of the concerned public contract;

7.3. the formal cancellation or termination of the procurement activity prior to the award or entry into force of the concerned public contract; or

7.4. the withdrawal of the tender prior to the deadline set for the submission of tenders, unless the tender dossier specifically states that no such withdrawal is permitted.

8. If a contracting authority determines that an event requiring the forfeiture of tender security, as specified in paragraph 1 of this Article, has occurred, such contracting authority shall notify the concerned tenderer in writing of such determination. However, if the concerned tender security has been posted in the form of a letter of credit or bank guarantee, the contracting authority shall first take whatever measures may be necessary to obtain the concerned funds from the issuer before providing the tenderer with the notification required by the preceding sentence. A contracting authority shall leave such funds on deposit in the account specified in paragraph 6 of this Article until the concerned tenderer has exhausted all of its rights to appeal the contracting authority's determination. Once the tenderer has exhausted its rights to appeal such decision, and no order has been received from the PRB, or a court of competent jurisdiction requiring the concerned contracting authority to make another disposition of the concerned funds, the contracting authority shall:

8.1. if the contracting authority is subject to the normative acts on public budgetary and appropriations matters, treat such forfeited tender security as a fine and/or penalty and transfer the concerned funds to the Kosovo Consolidated Fund in accordance with the relevant provisions of such acts; or

8.2. if the contracting authority is not subject to such acts, transfer the concerned funds to its general operating account and treat such funds, for accounting and tax purposes, in the same manner as other general revenue of such contracting authority.

Article 58

Opening of Tenders

1. Tenders received in a procurement activity conducted using open or restricted procedures shall only be opened publicly. A contracting authority shall specify both the location and the time for the public opening of tenders in the contract notice and in the tender dossier. If a contracting authority issues, in conformity with the present law, a document extending the deadline for the submission of tenders, the contracting authority shall specify in such document a new time for the public opening of tenders. The time set for the public opening of tenders shall be a time occurring immediately after the expiration of the deadline for the submission of tenders. A contracting authority shall not open a tender at any other place or at any other time.

2. All tenders that have been submitted prior to the deadline for the submission of tenders shall be opened at the time and location specified in accordance with paragraph 1 of this Article. Tenders that have been submitted after such deadline shall not be opened or considered and shall be immediately returned, unopened, to the concerned economic operator. Every tenderer shall have the right to have a representative present to observe the opening of tenders.

3. The concerned Procurement Officer shall open the tenders. As each tender is opened, the concerned Procurement Officer shall announce to those present (i) the name and place of the concerned tenderer, (ii) the total tender price specified in such tender, except where the concerned document is only the technical proposal component of a two-part tender and any remarks. All information so announced shall be immediately recorded in the minutes of the public tender opening, which shall, at the conclusion of such meeting, be signed by the concerned Procurement Officer, the Bid Opening Commission and each representative of a tenderer who is present at such meeting. Such minutes shall immediately be included in the records for such procurement activity required by paragraph 1 of Article 10 of the present law and copies of such minutes shall immediately be sent to all tenderers.

4. In the case of a two-part tender, consisting of a technical proposal and a financial proposal, both proposals shall be submitted at the same time, but in separate envelopes. The contracting authority shall specify in the tender dossier that the technical proposals will be publicly opened on one date and the financial proposals publicly opened on a later date. On the date set for the opening of the financial proposals, the Procurement Officer shall first publicly announce the scores of all technical proposals and shall then open the financial proposals. The requirements of paragraph 3 of this Article shall apply to both opening ceremonies.

Article 59 **Examination, Evaluation and Comparison of Tenders**

1. Contracting authority shall establish an Evaluation Commission for examination, evaluation and comparison of offers.

2. A contracting authority may, in writing, request a tenderer to provide a written clarification of any aspect of its tender in order to assist in the examination, evaluation and comparison of tenders. No change in any material term or aspect of a tender shall be solicited or accepted by a contracting authority or offered by a tenderer.

3. A contracting authority shall correct an error in a tender that is of a purely arithmetical nature if such an error is discovered during the examination of tenders. A contracting authority shall promptly provide all tenderers a written notice of any such correction.

4. A contracting authority shall regard a tender as responsive only if it conforms to all requirements set forth in the contract notice and the tender dossier. Notwithstanding the foregoing, a contracting authority may regard a tender as responsive if (i) it contains only errors or oversights that are capable of being corrected without altering any material term or aspect of such tender, or (ii) it contains only minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the contract notice and the

tender dossier; provided, however, that any such deviations shall be quantified, to the extent possible, and appropriately taken account of in the evaluation and comparison of tenders.

5. Except for the communications that are specifically authorized by Articles 34, 35 of this Law and paragraph 2 and 3 of this Article, no communications, discussions or negotiations of any description shall take place between the contracting authority and an economic operator with respect to a tender that has been submitted.

Article 60 Contract Award Criteria

1. A contracting authority shall make an award of a public contract to the economic operator submitting either:

1.1. the lowest-priced responsive tender;

1.2. the most economically advantageous tender on the basis of the criteria and weighting that have been specified in the tender dossier in accordance with paragraph 3 of Article 52 of this law.

2. If the contracting authority specifies in the tender dossier that the award of the contract shall be made to the economic operator submitting the most economically advantageous responsive tender, such award shall be made only on the basis of the criteria and weighting that have been specified in the tender dossier in accordance with paragraphs 2 and 3 of Article 52 of this law.

Article 61 Abnormally Low Tenders

1. If an economic operator submits a tender that, considered objectively, is or appears to be abnormally low, the contracting authority shall send a written request to the tenderer asking for the tenderer to supply a written submission providing: (i) a detailed breakdown of the relevant constituent elements of the tender; and (ii) explanations, in accordance with paragraph 2 of this Article regarding the bases for its tender.

2. In determining if a tender is or appears to be abnormally low, the contracting authority shall take into consideration explanations provided by the tenderer relating to:

2.1. the economics of the manufacturing process, of the services provided and/or of the construction method;

2.2. any technical solutions offered or chosen;

2.3. any exceptionally favourable conditions available to the tenderer for supplying the products, providing the services, executing the works project and/or performing the construction activities being procured; and/or

2.4. the originality of the supplies, services, work or works proposed.

3. After taking into consideration the information and explanations provided by the tenderer pursuant to paragraph 1 of this Article, if the contracting authority concludes that the tenderer has provided a satisfactory explanation of the bases of its tender, the contracting authority shall treat such tender in the same manner as any other tender.

4. After taking into consideration the information and explanations provided by the tenderer pursuant to paragraph 1 of this Article, if the contracting authority concludes that the tender is abnormally low, the contracting authority shall reject the tender.

5. The contracting authority is obliged to notify the PPRC within two days from the date any rejection under paragraph 4 of this Article. The notification must provide the information, explanations and reasons mentioned in that Article.

Article 62 Termination of a Procurement Activity

1. A contracting authority may terminate that procurement activity that does not result in the award of a contract only for one of the following reasons:

1.1. a violation of the present law has occurred or will occur in the procurement procedure, which cannot be remedied or prevented through a lawful amendment of the procurement conditions, including cases where a provision of the present law requires the cancellation of the procurement activity

1.2. all responsive tenders contain prices that substantially exceed the contracting authority's budget for the procurement activity; or

1.3. prior to the opening of tenders, the termination of the procurement activity has been made necessary due to objective and demonstrable events and/or reasons that are beyond the contracting authority's control and that were not predictable at the time of the initiation of the procurement activity.

2. Where a contract notice has been published and the concerned procurement procedure has been cancelled without the award of a public contract, the contracting authority shall (i) publish a cancellation notice in the form, and containing the information, required by the PPRC, and (ii) include in the procurement records required by paragraph 1 of Article 10 of this law a written statement setting forth in detail the factual reasons and legal basis for such cancellation.

Article 63 Performance Security

1. A contracting authority shall require an economic operator that has been awarded a contract to post performance security as a pre-condition to the signing and entry into force of such contract if (i) such contract is a works contract, (ii) such contract is a service contract for software development services, or (iii) there is a risk that a breach of such contract would cause substantial damage to the contracting authority and/or require the contracting authority to incur substantial expense in obtaining the completion of such contract.

2. A contracting authority shall ensure that the amount of any performance security that is required by paragraph 1 of this Article: (i) is equal to at least ten percent (10%) of the value of the contract and (ii) is otherwise set at a level that is consistent with usual and customary public and commercial practices applicable to the specific type and subject matter of the concerned contract.

3. In the case of a medium or large contract, a contracting authority shall require an economic operator to post performance security for the benefit of and enforcement at the instance of the contracting authority as a precondition to the signing and entry into force of such contract and the value of such security shall be equal to damages and expenses that the contracting authority reasonably expects it will incur in the event of a breach of such contract by the economic operator.

4. A contracting authority shall ensure that the tender dossier and the concerned public contract contain detailed provisions on the nature, form, amount, status, term, forfeiture, and return of any required performance security. Such provisions shall conform to usual and customary public

and commercial practices applicable to the specific type and subject matter of the concerned contract. In particular, the concerned contract shall include provisions (i) requiring the contracting authority to provide the economic operator with written notice of any alleged failure of the economic operator to perform the contract, and (ii) giving the economic operator a usual and customary amount of time to correct such failure.

5. Performance security may always be posted (i) in cash or a cash equivalent, such as a bank wire or bank transfer, (ii) certified check, letter of credit, performance bond, or bank guarantee issued by a reputable bank that undertakes to pay to the contracting authority, without further proof or conditions and without deduction or set-off, any amount or amounts up to the amount specified, on receipt of the contracting authority's demand in writing in the event that the economic operator is in breach of its obligations to the contracting authority. The contracting authority shall specify in the tender dossier any additional requirements the issuer of such a performance security must meet.

6. Each contracting authority shall establish, in accordance with the Financial Rules, a separate interest-bearing account at a licensed commercial bank in Kosovo for the purpose of receiving and holding funds received as performance security. A contracting authority shall immediately deposit and hold all such funds in such account. A contracting authority shall not return, transfer, use or make any other disposition or use of such funds except as specifically authorized by paragraph 8 and 9 of this Article.

7. If no event has occurred requiring the forfeiture of performance security, a contracting authority shall return the funds or document constituting such performance security in accordance with the terms of the concerned contract.

8. If a contracting authority determines that an event requiring the forfeiture of performance security, as specified in the concerned contract, has occurred, such contracting authority may exercise such rights conferred on it by the contract, the letter of credit, performance bond or bank guarantee, or by Law. On receipt of any funds obtained pursuant to forfeiture of the performance security the contracting authority shall:

8.1. if the contracting authority is subject to the normative acts on public budgetary and appropriations matters, treat such forfeited performance security as a fine and/or penalty and transfer the concerned funds to the Kosovo Consolidated Fund in accordance with the relevant provisions of such acts; or

8.2. if the contracting authority is not subject to such acts, transfer the concerned funds to its general operating account and treat such funds, for accounting and tax purposes, in the same manner as other general revenue of such contracting authority.

CHAPTER V REQUIREMENT OF SUITABILITY AND QUALIFICATION

Article 64 Proof of Requirements

A candidate or tenderer shall prove by certificate, attestation or other sufficient evidence reasonably required by the Contracting Authority that: (i) the grounds for ineligibility under Article 65 of this law do not apply; (ii) verify his professional suitability as required by the Contracting Authority under Article 66 of this law; (iii) meet the criteria required by the Contracting Authority under Articles 68 to 71 of this law.

Article 65
Eligibility of the Candidate or Tenderer

1. An economic operator shall not be eligible to participate in a procurement activity or in the performance of any public contract if such economic operator, or any employee, executive, manager or director thereof:

1.1. participated in the preparation of the concerned contract notice or tender dossier, or any part thereof, being used by the concerned contracting authority; or

1.2. received assistance in preparation of its tender or requests to participate from a person or undertaking who or that participated in the preparation of the concerned contract notice or tender dossier, or any part thereof.

2. Notwithstanding the foregoing, a contracting authority shall afford an economic operator who is ineligible under paragraph 1 of this Article an opportunity to demonstrate to the contracting authority that such economic operator has not gained a competitive advantage from such participation or assistance. If the economic operator can convincingly demonstrate this to the contracting authority, such economic operator shall not be ineligible under paragraph 1 of this Article. Any decision of the contracting authority on such a matter shall be appealable to the PRB by the economic operator or any other interested party.

3. An economic operator shall not be eligible to participate in a procurement activity or in the performance of any public contract if such economic operator, or any executive, manager or director thereof, has, in the past ten years:

3.1. been determined by a court of competent jurisdiction to have committed a criminal or civil offence involving corrupt practices, money laundering, bribery, kickbacks or activities described, or similar to those described, in paragraph 1 of Article 130 of this law under the laws or regulations applicable in Kosovo or any country, or under international treaties or conventions;

3.2. been declared ineligible , where the contracting authority finds this to constitute grave professional misconduct;

3.3. been determined by a court of competent jurisdiction to have committed a serious offence by participating in the activities of a criminal organization, defined as a structured association established over a period of time and operating in a concerted manner to achieve financial gain through activities that are criminal or otherwise illegal where they take place; or

3.4. been determined by a court of competent jurisdiction to have committed an act of fraud or an act equivalent to fraud;

3.5. been determined to have engaged in unprofessional conduct by a court of competent jurisdiction, administrative agency or organization responsible for enforcing standards of professional conduct; or

3.6. been determined by a court of competent jurisdiction to have made serious misrepresentations to any public authority in Kosovo or elsewhere.

4. An economic operator shall not be eligible to participate in a procurement activity or in the performance of any public contract if such economic operator:

4.1. has, in the past two years, been adjudged to be bankrupt or insolvent by a court of competent jurisdiction, or is currently the subject of proceedings: (i) for a declaration of

bankruptcy, (ii) for an order for compulsory winding up or administration by the court; or (iii) of any other similar proceedings under the law of Kosovo or any other jurisdiction;

4.2. is being wound up or administered, or its affairs are being wound up or administered, by a court of competent jurisdiction;

4.3. currently has in place an agreement or arrangement with its creditors providing for extended or reduced terms of payment if such terms were agreed to by such creditors because the economic operator had previously been unable to satisfy its obligations as they came due;

4.4. is in any situation analogous to sub-paragraphs 4.1, 4.2 or 4.3 of this paragraph arising from a similar procedure under the laws of its place of establishment or of a place where it conducts business;

4.5. is currently the subject of a judicial or administrative order suspending or reducing payments by or to such economic operator and resulting in the total or partial loss of the economic operator's right to administer and/or dispose of its property;

4.6. is currently the subject of legal or administrative proceedings that may result in a judicial or administrative order suspending or reducing payments by or to such economic operator if such proceedings may also result in the economic operator being adjudged bankrupt or insolvent;

4.7. has, in the past three years, been adjudged by a court of competent jurisdiction to have seriously breached a contract with any public entity, public authority or public undertaking in Kosovo or elsewhere;

4.8. is currently delinquent in the payment of any social security or tax contributions in Kosovo or the economic operator's country of establishment, except where such debt is deemed to be insignificant in Kosovo;

4.9. is more than ninety (90) days' delinquent in the payment of any wages owed to employees or in the payment of any amount owed to a public service operator in Kosovo;

4.10. has not yet complied with an order issued by a court of Kosovo, the PRB or a review panel; or

4.11. has a place of business in Kosovo but does not have a current and valid certificate of registration issued by the public authority responsible for registering business organizations in Kosovo

5. The historical time periods specified in this Article shall relate to the period immediately preceding the date of publication of the contract notice or, in the case of negotiated procedures without a contract notice, the communication of the invitation to participate or tender.

Article 66 Professional Suitability

1. Where an economic operator desiring to participate in a procurement activity or the performance of a public contract is required to register in – as appropriate – a professional, commercial and/or corporate register in order to carry on the activities for which such registration is required, the contracting authority may require the economic operator to submit a document issued by the appropriate public authority in the economic operator's country of establishment evidencing the economic operator's registration in that country.

2. If the object of any procurement activity is a public contract involving the provision of professional services, and if such services are of a type that may normally only be provided by an economic operator holding an authorization or license from a public authority or having membership in a particular organization, the contracting authority may require economic operators to provide reasonable evidence that they hold such an authorization or license or have such a membership in their country of establishment or a declaration under oath that no such requirement exists in their country of establishment.

Article 67 Documentary Evidence

1. The PPRC shall develop and adopt the rules regarding the types of documents, evidence and/or declarations that an economic operator must provide in order to demonstrate that such economic operator is not excluded by any provision of Article 65 of this law. The PPRC shall also develop and adopt rules regarding the types of documents that a contracting authority may require an economic operator to provide to demonstrate its professional suitability under Article 66 of this law. The PPRC shall ensure that such rules do not strictly require documents or declarations that are not available in certain countries or regions. The PPRC shall ensure that such rules reasonably accommodate the abilities of economic operators in this respect by allowing the submission of declarations under oath, notarized statements and the like. In all cases, the submitting economic operator shall be required to acknowledge the possibility of criminal and civil sanctions, penalties and damages if such economic operator intentionally or negligently submits any document, declaration or statement containing materially false or misleading information.

2. The contracting authority shall disqualify any candidate or tenderer that has failed to submit: (i) required certifications or attestations demonstrating or affirming that such candidate or tenderer is not disqualified under Article 65 of this law, (ii) a certificate, document or other sufficient evidence that has been reasonably required by a contracting authority under Article 66 of this law for the purpose of verifying the professional suitability of the candidate or tenderer, or (iii) sufficient evidence, as described under Articles 68 and 69 of this law, reasonably demonstrating that such candidate or tenderer meets the minimum financial, technical and professional capacity requirements specified in the tender dossier or contract notice.

Article 68 Economic and Financial Standing

1. A contracting authority may require economic operators to submit evidence demonstrating that they meet the minimum economic and financial requirements specified in the tender dossier and the contract notice. Economic operators shall, as a general rule, be permitted to satisfy such a requirement by submitting, as may be relevant and appropriate, one or more of the following references:

1.1. an appropriate statement or statements from one or more banks;

1.2. evidence of a relevant policy of insurance issued by a reputable licensed insurance company;

1.3. certified copies of one or more balance sheets or extracts from balance sheets if publication of such balance sheets is required under the law of the economic operator's country of establishment; or

1.4. copies of income statements and management reports certified by a reputable licensed auditing firm.

2. A contracting authority shall specify, in the contract notice or in the invitation to tender or participate, which of the references mentioned in paragraph 1 of this Article and/or other references it requires.

3. If, for any valid reason, the economic operator is unable to provide the references requested by the contracting authority, such economic operator may be permitted to demonstrate its economic and financial standing by any other document that the contracting authority, in the exercise of reasonable discretion, considers appropriate.

4. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary, for example, by producing an undertaking by those entities to that effect. Under the same conditions, a group of economic operators may rely on the capacities of participants in the group or of other entities.

Article 69 **Technical and/or Professional Capability**

1. A contracting authority may require economic operators to provide reasonable evidence demonstrating they possess the minimum technical and professional qualifications specified in the tender dossier and the contract notice. In establishing such a requirement, a contracting authority may require economic operators to provide, as is relevant and appropriate, any or all of the items specified in this Article.

2. In procedures leading to the award of a public contract covering the delivery of products, economic operators may be required to prove their technical capability through one or more of the following means, according to the nature, quantity and purpose of the products to be supplied:

2.1. a list specifying each of the economic operator's relevant principal deliveries effected in the past three years, specifying the products involved, contract amount, date and recipient; (i) where the delivery was made to a public authority in Kosovo or elsewhere, evidence of such delivery shall be a copy of the relevant certificate(s) issued or countersigned by such public authority; (ii) where the delivery was to a private purchaser, evidence of such delivery shall be a copy of any document executed by the purchaser and evidencing such delivery;

2.2. a description of the economic operator's technical facilities, quality assurance measures and research and development facilities;

2.3. an indication of the technicians or technical bodies involved, especially those responsible for quality control;

2.4. product samples, descriptions, graphic representations and/or photographs of the products to be supplied, the authenticity and representative quality of which must be certified if the contracting authority so requests; and/or

2.5. certificates drawn up by official quality control institutes or agencies of recognized competence attesting the conformity of products clearly identified by references to specifications or standards.

3. If, in connection with procedures leading to the award of a public contract covering the delivery of products, any of the products to be supplied are complex or, exceptionally, are required for a special purpose, the contracting authority may require participating economic operators to submit to an inspection for the purpose of verifying their production capacities and, if relevant,

research and development facilities and quality assurance measures. Such an inspection may, at the contracting authority's expense, be carried out by the contracting authority or a competent independent body in the country in which the concerned economic operator is established.

4. In procedures leading to the award of a public contract covering the provision of services, a contracting authority may require economic operators to provide evidence demonstrating their ability to provide such services; in particular, evidence may be required with respect to their skills, capacity, efficiency, experience and reliability. Evidence of the economic operators' technical capabilities may be required to be furnished by one or more of the following means according to the nature, quantity and purpose of the services to be provided:

4.1. the educational and professional qualifications of the economic operator's managerial staff and, in particular, those of the person or persons directly responsible for providing the concerned services;

4.2. a list specifying each of the economic operator's relevant principal service contracts performed during the past three years, specifying the type of services involved, contract amount, date and recipient; (i) where the services were provided to a public authority in Kosovo or elsewhere, evidence of such provision shall be a copy of the relevant certificate(s) issued or countersigned by such public authority; (ii) where the services were provided to a private purchaser, evidence of such provision shall be a copy of any document executed by the purchaser and evidencing such provision;

4.3. an indication of the technicians or technical bodies involved, whether or not belonging directly to the economic operator, especially those responsible for quality control;

4.4. a statement of the economic operator's average manpower and average number of managerial staff for each of the last three years;

4.5. a statement of the tools, plant or technical equipment available to the economic operator for carrying out the services;

4.6. a description of the economic operator's measures for ensuring quality and research and development facilities;

4.7. an indication of the elements of the concerned contract that the economic operator intends to sub-contract; and/or

4.8. other appropriate and relevant information.

5. If, in connection with procedures leading to the award of a public contract covering the provision of services, any of the services to be provided are complex or, exceptionally, are required for a special purpose, the contracting authority may require participating economic operators to submit to an inspection for the purpose of verifying their technical and professional capacities and, if relevant, research and development facilities and quality assurance measures. Such an inspection may, at the contracting authority's expense, be carried out by the contracting authority or a competent independent body in the country in which the concerned economic operator is established.

6. In procedures leading to the award of a public contract covering the execution of works projects or the performance of construction activities, a contracting authority may require economic operators to provide evidence demonstrating their technical and professional ability to execute such projects or to perform such activities; in particular, a contracting authority may require evidence of:

- 6.1. the educational and professional qualifications of the economic operator's managerial staff, and, in particular, those of the person or persons directly responsible for executing the works project or performing the construction activities;
 - 6.2. a list specifying each of the economic operator's works projects and construction activities carried out over the past three years, accompanied by certificates of satisfactory execution and/or completion for the most important works projects and/or construction activities; the certificates shall indicate the value, date, nature and site of the works projects and/or construction activities and shall specify whether they were executed and/or performed according to the rules of the trade and properly completed; whenever possible, the economic operator may be required to arrange for the competent public authority in Kosovo or elsewhere to submit the concerned certificates directly to the contracting authority;
 - 6.3. a statement of the tools, plant and technical equipment available to the economic operator for executing the works project or performing the construction activities;
 - 6.4. a statement of the economic operator's average manpower and average number of managerial staff for each of the last three years;
 - 6.5. a statement of the technicians or technical divisions that the economic operator can call upon for executing the works project or performing the construction activities, whether or not they belong to the economic operator; and/or
 - 6.6. other appropriate and relevant information.
7. A contracting authority shall specify in the tender dossier which of the items specified in this Article it requires.
8. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for the execution of the contract, for example, by producing an undertaking by those entities to place the necessary resources at the disposal of the economic operator. Under the same conditions a group of economic operators may rely on the abilities of participants in the group or in other entities.

Article 70 **Quality Assurance Standards**

Should a contracting authority require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, the contracting authority shall refer to quality assurance systems that are (i) based on the relevant Kosovo, European or international standards and (ii) certified by bodies that conduct their activities in conformity with those standards on certification activity. A contracting authority shall recognize equivalent certificates issued by any certification body, regardless of location, if such body is recognized by a member state of the EU. A contracting authority shall also accept other reasonably reliable evidence of equivalent quality assurance measures from economic operators who have no access to such certificates or no possibility of obtaining them within the relevant time limits.

Article 71
Groups of Economic Operators and Foreign Economic Operators

1. A request to participate or a tender may be submitted by a group of economic operators. No such group may be required to assume a specific legal form in order to submit the tender; however, the group selected may be required to do so after it has been awarded the concerned contract, to the extent that such a requirement is necessary for the satisfactory performance of the contract.

2. If a tender is submitted by such a group, the group must be required to submit with its tender a signed statement from each of the members, confirming their participation in the group and that they do not participate in any other group taking part in the same procurement procedure. All contracting authorities shall set forth this requirement in their tender dossiers. In case of a member participating in several groups, each of the groups concerned shall be deemed ineligible.

3. All members of such a group shall be jointly and severally liable to the contracting authority for the contents of the group's tender and, if the concerned contract is awarded to such group, the performance of such contract. All contracting authorities shall include in their tender dossiers a notice to this effect.

4. If a tender is submitted by a group of economic operators, each member of the group shall be required to demonstrate or confirm, in a manner that complies with Article 67 of this law, that it is not ineligible under any provision of Article 65 of this law. Any requirements imposed by a contracting authority pursuant to Articles 66, 68 or 69 of this law and shall only be applicable to the group as a whole and not to its individual members.

Article 72
Additional documentation and information

The contracting authority may invite economic operators to supplement or clarify the certificates and documents submitted pursuant to Article 65 to 71 of this law.

TITLE III
RULES GOVERNING DESIGN CONTESTS

Article 73
General Provisions

1. The rules for the organization and conduct of a design contest shall be in conformity with the provisions set forth in this Title III and shall be communicated to all persons and undertakings responding to the concerned design contest notice.

2. A design contest shall be conducted in the same general manner, and using the same time limits and deadlines, as those applicable to a procurement activity for a large value contract conducted with open or restricted procedures.

3. If, without any intent to discriminate against or in favour of any person or undertaking, a contracting authority determines that (i) the solicited design can only be supplied, provided or performed by a person or undertaking having adequate technical or professional qualifications and (ii) such contracting authority will therefore only accept submissions from persons or undertakings possessing certain minimum qualifications, the contracting authority shall establish such qualification requirements in a manner that is clear, objective and non-discriminatory and publish all such requirements in the design contest notice.

Article 74
Scope

The provisions of this Title shall apply to any design contest.

Article 75
Design Contest Notices

When a contracting authority intends to conduct a design contest, the contracting authority shall prepare a design contest notice in the languages required by Article 13 of this law. The contracting authority shall immediately submit to the PPRC all language versions of such notice.

Article 76
Form and Content of Design Contest Notices

All notices regarding design contests shall be drawn up and published in accordance with the applicable standard form adopted by the PPRC.

Article 77
Publication of Design Contest Notices

1. The rules governing the publication of a design contest notice shall be the same as those set forth in Article 42 of this law governing the publication of a contract notice for a contract having the same value as the concerned design contest.
2. The rules governing the dispatch and publication of a design contest results notice shall be the same as those set forth in Article 42 of this law governing the dispatch and publication of a contract award notice for a contract having the same value as the concerned design contest.
3. With the exception of a design contest results notice that has been dispatched by a contracting authority to a participant, no notice, nor any information in a notice, may be made public or disclosed to any person or undertaking prior to its publication in accordance with this Article.

Article 78
Design Contest Results Notice

A contracting authority that has held a design contest shall, within two (2) days of the conclusion of such contest, prepare a notice on the results of the design contest in the languages required by Article 13 of this law. The contracting authority shall immediately submit to the PPRC all language versions of such notice.

Article 79
Means of Communication

1. All communication and information exchanges mentioned in this Title may be made or performed by letter, fax or electronic means, according to the choice of the contracting authority.
2. The communication and information exchanges covered by this Title shall be carried out in such a way as to ensure that the integrity and confidentiality of all information supplied by participants are preserved, and that a contracting authority may only examine the content of any submitted plans, designs or projects after the time limits set for receiving these has expired.
3. The contracting authority shall ensure that the design contest notice and the rules specified in paragraph 1 of Article 73. indicate that, if plans, designs or projects are submitted by electronic means, the submitting participant shall be required to submit to the contracting authority the

physical original – or, where appropriate, copies thereof - of any documents, certificates, attestations and declarations required by the contracting authority not later than the deadline set for the receipt of such plans, designs or projects.

Article 80

Composition and Decisions of the Jury

1. The jury shall be composed of an uneven number of natural persons, but in no case less than three (3). These persons shall be selected by the contracting authority and shall not in any way be related to or affiliated with a participant in the contest. If the participants are required to possess a specific professional qualification, at least two thirds of the members of the jury shall also have that qualification or its equivalent.
2. The jury shall decide the contest only on the basis of the criteria indicated in the design contest notice. The identity of the participants shall not be disclosed to the members of the jury.
3. The award criteria used for design contests are only obliged to weigh criteria and to express the weighting in monetary terms wherever possible and are not confined to those criteria mentioned in paragraph 3 of Article 52, as also criteria related to artistic value may be considered. Only criteria that are objectively assessable and have been disclosed in the tender dossier may be used.
4. No person outside the jury shall influence or attempt to influence the decision of the jury or the opinion of any jury member.
5. Only the decision of the jury shall be disclosed to a person who is not a jury member. The substance of the deliberations of the jury and the opinions of the individual jury members shall be maintained as confidential by all jury members. Except where required by a written order of the PPRC, the PRB or a court of competent jurisdiction, no jury member shall disclose or discuss the substance of such deliberations or the opinion of any individual jury member with any person who is not also a member of the jury.

TITLE IV

Article 81

Contract Management Activities

1. Contracting authorities must as part of the preparation of the procurement activity:
 - 1.1. produce a contract management plan in particular matters of organisational, economical, technical and legal aspects of contract management including as appropriate: (i) project management teams; (ii) frequent review of the contract; (iii) protocols for handover of commissioned equipment; (iv) regular dialogue with the contractor; (v) use of correct quality standards; (vi) management of payments/claims; (vii) complaints procedures; (viii) control remedies specified in the contract, and (ix) performance security is held for defects/corrections; and
 - 1.2. establishes procedures for the following whenever appropriate: (i) inspection of worksites, materials and production facilities; (ii) insurance of effective delivery, storage and security of the items covered by the contract; (iii) scheduling handovers; (iv) variation/changes.
2. The management plan must be agreed between the parties to the contract and signed by them before implementation of the contract is initiated. The PPRC is authorised to issue a standard

format for contract management plan and further rules detailing and supplementing the above mentioned topics in relation to management of contracts.

3. The contract management plan must at least include (i) the name of the officer(s) of the contracting authority responsible for the management of the contract, and where applicable, the supervising qualified resident or project engineer(s); (ii) number and categories of assisting personnel available to the officer for contract management purposes, including externally recruited technical experts; (iii) a time schedule or a project plan Gantt charts, diagrams on contract management activities covering the duration of the contract. The PPRC monitors contract managing.

TITLE V PROCUREMENT ACTIVITIES OF PUBLIC SERVICE OPERATORS

Article 82 Scope

1. Articles 83 – 85 of this law may only be utilized by Public Service Operators, and not by any other contracting authority. Public Service Operators may use such provisions when awarding any contracts that support public service activities.

2. A public Service Operator engaged in a public service activity as mentioned in Article 4.1.49(i) of this law may procure electricity for their net without following the provisions in Part II of this law.

Article 83 Invitation to tender by means of Indicative Notice

1. Contract Notices inviting requests to participate in restricted procedures or in negotiated procedures after the publication of the contract notice may be replaced by an Indicative Notice. The Indicative Notice must in each case (a) refer specifically to the supplies, works or services which will be subject of the contract to be awarded, (b) indicate that the contract will be awarded in a tender involving only invited economic operators without further publication of a notice, and (c) invite interested economic operators to express their interest in writing.

2. Public Service Operators shall subsequently and at least within twelve (12) months following the date of the publication of the Indicative Notice according to paragraph 1 of this Article invite all interested economic operators to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations.

3. PPRC issues rules concerning the form and content of the Indicative Notice when it is to be used as allowed in paragraph 1 of this Article above as well as the information required in the invitation according to paragraph 2 of this Article.

Article 84 Qualification System

1. Contract Notices and selection of participants according to Article 56 may in the case of the procedures mentioned in paragraph 1 of Article 83 of this law be replaced by a notice according to paragraph 2 of this Article concerning a qualification system. Invitations to tenders must in that case be restricted to economic operators included as qualified in a qualification system.

2. Public Service Operators that wish to set up a qualification system must publicise a notice which alerts economic operators to the existence of the system and invites them to apply for inclusion. A qualification system must be set up for a maximum of three years and notices must be published annually.

3. PPRC issues rules concerning the form and content of the Qualification System when it is to be used as allowed in paragraph 1 of this Article.

4. Public Service Operators which establish or operate a qualification system shall ensure that economic operators can apply anytime to be included in the system and that an amount of at least three qualified economic operators are included at all times to ensure sufficient competition.

5. The Public Service Operators must keep a written record of qualified economic operators, eventually divided into categories according to the type of contract for which their qualification is valid.

Article 85 **Evaluation of Applicants to Qualification System**

1. Economic operators that apply for inclusion in the qualification system must be evaluated according to the eligibility requirements established for the system in accordance with the normal rules in Articles 56, 65 – 70 of this law. A qualification system may include different levels of eligibility requirements valid for different types of contracts.

2. A group of economic operators as referred to in Article 71 may rely on the combined capacity of participants in the group to fulfil the requirements established according to paragraph 1 of this Article. The agreement according to paragraph 2 of Article 71 of this law must in that case contain an undertaking to the effect that the necessary capacities will be available to the group throughout the period of the validity of the qualification system.

3. Documentation concerning eligibility requirements shall be made available immediately to any economic operator on request and within fifteen (15) days of the date of such a request. Any updating of these requirements shall be publicised in a notice according to paragraph 2 of Article 84 and within the above time limit the necessary documentation must be communicated to economic operators upon request.

4. Economic operators that have applied for inclusion must be informed about the decision on their application as soon as possible. If the decision is estimated to take longer than one month, the Public Service Operators shall inform the applicant, within fifteen (15) days of the date of the application, of the reasons justifying the longer period and of the date by which his application will be accepted or rejected. The total period must in any case not exceed four months from the date of the application.

5. Economic operators whose application is rejected shall be informed in writing about the reasons for the rejection as soon as possible and within fifteen (15) days of the date of the rejection. The reasons shall be based on the requirements in paragraph 1 of this Article.

6. Public Service Operators can remove economic operators from the qualification system only if they no longer fulfill the requirements in paragraph 1 of this Article. Any planned removal shall be notified in writing to the economic operator in advance and at least fifteen (15) days before the date on which the removing is due to take effect, together with the reasons justifying the proposed decision.

**TITLE VI
PUBLIC PROCUREMENT REGULATORY COMMISSION**

**Article 86
Public Procurement Regulatory Commission**

1. The PPRC is an independent regulatory agency, meaning that no public official may exert or attempt to exert any influence over the PPRC with respect to any specific operational or regulatory decision or action of the PPRC.

2. The PPRC is a public authority and a budget organization. The PPRC is therefore subject to all applicable provisions of all other laws and regulations of Kosovo to the same extent as any other public authority or budget organization.

**Article 87
Principal Functions of the PPRC**

1. The PPRC shall be responsible for the overall development, operation and supervision of the public procurement system in Kosovo and shall carry out the functions assigned to it by the present law.

2. In addition to the matters specified above, the PPRC shall have the responsibility and authority to:

2.1. conduct investigations of procurement and contract management activities for the purpose of monitoring the application of this law;

2.2. issue an order requiring law enforcement officials to assist the PPRC in obtaining compliance with another order of the PPRC;

2.3. issue opinions to contracting authorities regarding their decisions, actions or omissions during procurement and contract management activities;

2.4. examine reports from contracting authorities concerning the application of paragraph 4 of Article 32 and Article 35 of this law;

2.5. establish and publish detailed public procurement rules to ensure the proper implementation of the present law by contracting authorities, including rules governing the use and conduct of each of the procedures provided for in Articles 33-37 of this law; provided, however, that such rules shall be consistent with the requirements and principles established by the present law and any applicable mandatory requirements of the EU relating to procurement;

2.6. prepare and disseminate procurement manuals, guidelines, standard form tender and contract documents, standard forms and models pursuant to the present law for the benefit of contracting authorities and economic operators;

2.7. reinforce awareness among contracting authorities and economic operators of public procurement legislation as well as its objectives, procedures and methods;

2.8. provide technical assistance and advice to both contracting authorities and economic operators on the application and interpretation of the provisions of the present law and any documents issued by the PPRC;

2.9. provide and publish written administrative interpretive rulings to both contracting authorities and economic operators on the application and interpretation of the provisions of the present law and any documents issued by the PPRC;

2.10. establish and maintain an electronic Public Procurement Register that shall serve as the repository for electronic copies of all notices, invitations, declarations, tender dossiers, reports, complaints and decisions filed or issued in connection with each and every procurement activity conducted or initiated by a contracting authority;

2.11. establish manual and electronic systems for monitoring the compliance of the contracting authorities with the present law, including the preparation of reporting forms to be completed by all contracting authorities subject to the present law;

2.12. collect, analyse and publish information about public procurement procedures and awarded public contracts;

2.13. for each calendar year, prepare and submit to the Government and the Assembly an annual report analyzing public procurement activities in Kosovo occurring in that calendar year and setting forth any recommendations for the improvement of the public procurement system and/or the present law, such report to be submitted no later than the end of February of the following calendar year;

2.14. establish and maintain an information website that provides the public with unrestricted access to (i) the present law and all secondary legislation issued under the authority of the present law, (ii) any interpretive rulings and documents referred to in this Article, and (iii) all information contained in the Public Procurement Register;

2.15. develop a web-site and a Kosovo-wide electronic information system to improve the publication of the notices required by the present law;

2.16. support KIPA and other public training and educational authorities to ensure the attainment and maintenance by procurement officers and other procurement professionals of a high level of competence with respect to the implementation of sound procurement practices and the observance of the present law;

2.17. support the development of electronic procurement, e-auction and communication within the field of public procurement;

2.18. develop and maintain a list of contracting authorities that identifies all entities subject to the present law provided, however, that if the PPRC fails to include an entity in such a list, such failure shall not be determinative of the question as to whether or not such entity is a contracting authority for the purposes of the present law;

2.19. liaise and cooperate with other organisations at home and abroad on matters associated with public procurement; and

2.20. develop and implement detailed rules regarding Contracting Authorities' disposal of assets

Article 88

Monitoring and Supervisory Functions of the PPRC

1. The PPRC shall also have the authority and responsibility to monitor and supervise the implementation of the provisions of the present law and the rules issued by the PPRC under the authority of the present law.

2. To this end, the PPRC shall develop and operate an appropriate reporting methodology and mechanism supported by an electronic management information system that will enable it to (i) monitor the implementation of the present law; (ii) produce output and performance reports identifying strengths and weaknesses in the implementation of the present law and the procurement system; (iii) identify those areas that are in need of improvement and development, (iv) produce the annual reports required by the present law in a manner that provides a general but accurate assessment of the state of the national procurement system and specific assessments of the degree of compliance/non-compliance by individual contracting authorities; and (v) make appropriate recommendations for changes to the primary and secondary procurement legislation.

Article 89 Appointment of Members

1. The PPRC shall be comprised of three (3) individuals. PPRC's members shall be appointed for a term of five (5) years, and may be reappointed only once.

2. The President and the other members of PPRC shall be nominated by the Government and appointed by the Assembly. In making such nominations, the Government shall give regard to the requirements for membership specified in paragraph 3 and 4 of this Article.

3. No person shall be nominated, appointed or serve as a member of the PPRC if he/she would be ineligible to participate in a procurement activity by reason of a provision listed in paragraph 3 Article 65 of this law. The Government and the Assembly shall ensure that no such person is nominated or appointed as a member of the PPRC.

4. The Government and Assembly shall also ensure that each person nominated or appointed as a member of the PPRC meets one of the following criteria: (i) he/she is a lawyer, economist or other professional holding a university degree and possessing substantial procurement or other relevant experience, or (ii) he/she holds a university degree in engineering or architecture and has substantial experience in executing works projects.

Article 90 Organization and Voting of the PPRC

1. The President shall represent, manage and organize the work of the PPRC.

2. The President shall have the authority to designate a member to organize and manage the work of the PPRC in a particular subject area.

3. The President shall convene meetings of the PPRC when and as he considers necessary or when requested by two other members of the PPRC.

4. The PPRC shall make every effort to reach decisions at its meeting by consensus. In the event that the chairperson of the meeting determines that consensus cannot be reached, the matter shall be put to a vote. Decisions shall require the support of a majority of the members.

5. The President shall chair the PPRC meetings. In exceptional cases where it is necessary for the PPRC to meet in the absence of the President, the President shall authorize one of the other members of the PPRC to chair the meeting.

6. The PPRC may establish, as it deems necessary, additional procedural rules to govern its operations. The PPRC shall provide to any person who so requests a copy of such rules.

Article 91 Implementing Measures

1. In exercising its functions under paragraph 2 of Article 87 of this law, the PPRC shall be responsible for developing and promulgating the detailed implementing measures prescribed by the present law. Such implementing measures shall consist of rules, instructions, guidelines, standard form tender and contract documents and other documents and forms that contracting authorities, procurement officers, undertakings and persons shall follow, use and/or take into consideration when executing or participating to the procurement activities governed by the present law.
2. The PPRC shall also develop a procurement code of ethics to be observed by public officials, civil servants and other persons employed by contracting authorities. Such code of ethics shall, at a minimum, contain a clear set of mandatory rules on the avoidance of conflicts to interest.
3. To assist the work of PPRC in formulating implementing measures, it shall canvass as widely as possible the opinions of those involved in procurement activities in Kosovo. To this end, it shall regularly solicit the written comments and views of the Director of the CPA, the Director of the Treasury; the procurement officers of contracting authorities (including public service operators), and organizations representing economic operators.
4. With respect to the provisions of paragraph 2 of Article 57 of this law on tender security and paragraph 5 of Article 63 of this law on performance security, the PPRC, after consultation with the Central Bank of Kosovo and the Treasury, shall include in the public procurement rules detailed provisions on the requirements that financial institutions that issue certified checks, letters of credit and bank guarantees must meet in order for such instruments to be acceptable as security; provided, however, that such minimum qualification requirements shall be non-discriminatory and limited to solely to requirements that are directly related to ensuring the financial stability and reliability of such issuers.
5. If any person or contracting authority believes that the PPRC has taken a decision or action, or issued a procurement rule or issued or used an implementing measure or interpretive ruling that is not authorized by or inconsistent with one or more provisions of this law, such person or contracting authority may challenge such decision, act, rule, measure or ruling by submitting a complaint to the competent court in accordance with the normal rules governing the juridical review of administrative decisions.

Article 92 Confidentiality

The PPRC may protect from disclosure to the public or unauthorized persons information developed or received by the PPRC during the conduct of its work, but only to the extent permitted by both this law and the Law on Access to Public Documents. Notwithstanding the foregoing, the PPRC shall provide access to and copies of any information and records in its possession or control, including confidential information and records, to the Auditor General, the PRB and/or a review panel immediately upon the request or order of any of these. The PPRC shall also provide access to and copies of such information and records to a court of competent jurisdiction if such access and copies are required pursuant to an order issued by such court.

Article 93 Removal and Suspension of Members

1. If, at any time, the Government or the Assembly considers that there are grounds for the removal of any member of the PPRC, it may refer the matter to a court of competent jurisdiction for decision, furnishing its substantiated reasons and all evidential documents required by the court.

2. A court of competent jurisdiction shall issue an order removing or suspending a member of the PPRC from office if, after the conduct of a full and fair hearing on the issue, such court determines that the concerned member (i) does not meet, or no longer meets, the requirements for membership specified in Article 89, (ii) has committed a criminal or unethical act in the course of or relating to the conduct of his official duties, (iii) has been involved in an event described in paragraph 1 of Article 130 of this law or (iv) has intentionally violated or more than once negligently disclosed information that the PPRC has lawfully classified as “confidential”.

3. If the court determination specified in paragraph 2 of this Article is subject to further proceedings or appeals, the court shall issue an order suspending the member until a final determination on the issue is entered. If the court determination specified in paragraph 2 of this Article is not subject to further proceedings or appeals, the court shall issue an order removing the member.

4. If a member of the PPRC becomes the subject of a court proceeding involving allegations that the member has committed a criminal or unethical act in the course of or relating to the conduct of his official duties or has been involved in an event described in paragraph 1 of Article 130 of this law, the court may issue an order suspending such member until the court has the opportunity to conduct a full and fair hearing on the allegations and to make a determination thereon. During the period of suspension, the PPRC shall not permit the concerned member (i) to participate in any of its activities, (ii) to discuss any of its matters or activities with any member or personnel of the PPRC, (iii) to have access to or the use of any of the PPRC’s premises, facilities, equipment, records, information or personnel.

5. A member of the PPRC who is suspended pursuant to this Article shall continue to receive his/her salary until such member is removed or such suspension is cancelled.

TITLE VII CENTRAL PROCUREMENT AGENCY

Article 94 Central Procurement Agency

1. Pursuant to this law there shall be established under the Ministry of Finance the Central Procurement Agency (“CPA”). The CPA shall exercise and perform functions and responsibilities specified in this law.

2. All assets, including all archives and the premises hereto habited by PPA and personnel of PPA are transferred to the Central Procurement Agency

Article 95 Procurement Activities of the CPA

1. For reasons of professional expertise, cost-effectiveness, efficiency or other legitimate concerns the Minister of the Ministry of Finance have authority to designate the CPA as the responsible contracting authority for the conduct of such procurement activity. In such a case: (i) the Minister of the Ministry of Finance shall notify the concerned contracting authority or authorities of such determination, which shall no longer have any authority to conduct the concerned procurement, and (ii) the CPA shall, for all purposes of the present law, be deemed the “contracting authority” for the concerned procurement activity. The Minister of the Ministry of Finance shall obtain the agreement of the relevant supervisory board if the contracting authority is a Publicly Owned Enterprise.

2. The government as per the proposal from the Ministry of Finance shall establish a list of any commodities or common use items the procurement of which it has assigned to the CPA. Such

list shall be adopted in the form of an Administrative Instruction. Such list and any amendment thereto shall be published in the media and made accessible on the PPRC website referred to in sub-paragraph 2.11 paragraph 2 of Article 87 of the this law.

3. A contracting authority shall place an order with the CPA for any goods, works or services procured by the CPA in accordance with the present Law and shall not conduct a procurement activity with respect thereto.

4. A contracting authority may appoint the CPA to conduct a procurement activity on its behalf. A contracting authority may also request the CPA to assist such contracting authority in the conduct of any procurement activity being conducted by such contracting authority.

Article 96

Appointment, removal and suspension of the Director of the CPA

1. CPA shall be administered by a Director appointed for a term of three (3) years.
2. The Director of CPA shall be appointed in accordance with procedures determined in the Law on Civil Servants for appointment of high ranking positions.
3. The Director shall have a position equivalent to the General Secretaries and shall be subject to all legal provisions governing civil servants in high ranking positions.
4. No person may be nominated, appointed or serve as the Director of the CPA if he/she would be ineligible to participate in a procurement activity by reason of one of the provisions listed in paragraph 3 of Article 65 of this law.
5. The Director must meet one of the following criteria: He/she is a lawyer, economist or other professional holding a university degree and possessing substantial procurement experience.

Article 97

Confidentiality

The CPA may protect from disclosure to the public or unauthorized persons information developed or received by the CPA during the conduct of its work, but only to the extent permitted by *both* the present law and the Law on Access to Public Documents. Notwithstanding the foregoing, the CPA shall provide access to and copies of any information and records in its possession or control, including confidential information and records, to the Auditor General, the PPRC and/or the PRB immediately upon the request or order of any of these. The CPA shall also provide access to and copies of such information and records to a court of competent jurisdiction if such access and copies are required pursuant to an order issued by such court.

TITLE VIII

PROCUREMENT REVIEW BODY

Article 98

Procurement Review Body

1. The PRB is an independent review body and exercises the authority, powers, functions and responsibilities specified in the provisions of this law.
2. **The PRB is an independent administrative review body.** The PRB consists of five (5) Board members. For administrative support the PRB is assisted by a Secretariat led by Head of the Secretariat. No person or public official may exert or attempt to exert any political or illicit influence over the PRB or any of its employees with respect to any specific decisions. Influence

shall not be regarded political or illicit if it is exerted openly, in accordance with the rule of law and of procedure, and in good faith to fairly advance a complaint or defense.

3. The PRB is a public authority and a budget organization. The PRB is therefore subject to all applicable provisions of all other laws and regulations of Kosovo to the same extent as any other public authority or budget organization

Article 99 Functions and Powers of the PRB

1. The PRB shall be responsible for implementing the procurement review procedures established in Title IX of the present law and shall have the authorities and responsibilities specified in that Title.

2. Upon a written request of a contracting authority regarding the submission, by an economic operator, of false information or documents forged, the PRB is obliged and is authorized to review and disqualify the economic operator from participation in public procurement up to a period of one year.

3. All decisions issued by the PRB may be reviewed by the competent Court in accordance with the law on the judicial review of administrative matters.

Article 100 Appointment of Members of the PRB

1. The PRB shall be comprised of five (5) members; all members shall be appointed for a term of five (5) years, and may be reappointed only once.

2. Members of the PRB who were appointed under a previous enactment shall serve until expiration of that appointment, and may only be re-appointed if they were eligible for re-appointment under the law in force at the time of their appointment.

3. Upon the expiration of the initial terms provided for in paragraph 2 of this Article of the present law, any reappointment or new appointment shall be for a term of five (5) years.

4. Each member of the PRB shall be nominated by the Government and appointed by the Assembly based on a recommendation made by an independent selection body established by the Assembly. The independent selection body shall be comprised of three duly appointed judges designated by the Kosovo Judicial Council.

5. Each person so appointed shall possess the following qualifications and meet the following criteria:

5.1. be a citizen resident of Kosovo;

5.2. be of high moral integrity;

5.3. possess a law degree that is valid in accordance with Kosovo law;

5.4. meet eligibility requirements for appointment as a judge;

5.5. have a minimum of three (3) years of professional experience in the legal field;

5.6. ability to perform impartially, conscientiously, diligently, decisively and responsibly the duties of the office for which she he or she is being considered.

6. The Assembly, within thirty (30) days, shall consider and appoint the selected persons pursuant to paragraph 4 of this Article. It may seek additional clarifications from the independent selection body regarding the selected persons. In such case the time limit for the appointments by the Assembly may be postponed for 10 (ten) days from the day the additional clarifications are received. If no action is taken by the Assembly to make the appointments within the time-frame prescribed in this Article, the persons selected shall be deemed as appointed by the Assembly.

7. In the event that the number of procurement complaints that must be decided by review panels under Title IX places an excessive burden on the PRB and thereby impairs the PRB's ability to fulfil the functions assigned to it by the present law in a timely and efficient manner, the Assembly based on a decision made by the independent selection body established by the Assembly, may, upon the written application of the President of the PRB, appoint on a temporary and ad hoc basis one or more additional persons to serve as review panel members. Paragraph 6 of this Article shall apply similarly.

Article 101
Suspension and Removal of a Member of the PRB

The removal and suspension of a member of the PRB shall be subject to the same rules and procedures indicated in this law for PPRC's members.

Article 102
Organization of the PRB

1. The President shall represent, manage and organize the work of the PRB and is responsible for supervising the day-to-day administration and operations of the PRB.
2. In the event the President is incapacitated or absent through ill-health his powers and functions shall be exercised by a person elected by and having the support of a majority the remaining members.
3. The President shall have the authority to designate a member to organize and manage the work of the PRB in a particular subject area.

TITLE IX
PROCUREMENT REVIEW PROCEDURES

CHAPTER I
GENERAL PROVISIONS

Article 103
Scope

The provisions of this Title establish certain substantive and procedural rights and remedies available to an interested party as that term is defined in Article 4 of this law.

Article 104
Basic Principles

- 1.A procurement review proceeding shall be conducted and concluded in an expeditious, fair and non-discriminatory manner that is directed at achieving a fair, lawful and effective resolution

of the subject matter involved. Any procurement review proceeding shall be carried out in conformity with the applicable provisions of this Title IX.

2. Neither the conduct of any review proceeding nor any decision by the PRB shall be done or made in any manner that discriminates in favor of or against any participant in the proceeding or any other person or undertaking.

3. All interested parties shall have equal access to the procurement review proceedings and remedies established in this Title.

4. In taking any action or measure provided for by this Title IX, the PRB shall (i) act as expeditiously as possible, (ii) act in a manner that is proportionate to the alleged violation or other matter complained of, and (iii) take into account the probable consequences of such action or measure for all interests likely to be harmed, including the public interest.

CHAPTER II

Article 105 Powers of PRB

1. PRB can determine that complaints shall be heard by a review panel established under PRB in accordance with Article 106 of this law.

2. PRB shall have the competence, authority, power and responsibility, under the conditions specified in this Title IX, to:

2.1. review complaints from interested parties containing allegations of violations of the present law;

2.2. enquire into and determine the facts giving rise to such complaints and allegations;

2.3. issue an order to any person, undertaking or public authority requiring such person, undertaking or authority to produce, transfer, submit and/or grant access to data, information, documents (other than privileged legal advice), and/or other items of movable and/or immovable property that the review panel considers, in the exercise of reasonable discretion, relevant to the conduct of an investigation or a procurement review proceeding;

2.4. issue an order to any person to appear at a procurement review proceeding and provide testimony regarding any matter that the review panel considers, in the exercise of reasonable discretion, relevant to the subject matter of such proceeding;

2.5. take any other action necessary and appropriate to verify arguments or claims made by the parties;

2.6. if the concerned contract has not yet been lawfully signed by both parties, and in so far permitted by this Law, issue an order setting aside or suspending an award of a public contract or a result of a design contest;

2.7. issue an order to a contracting authority, in so far permitted by this Law, requiring such authority to suspend or terminate the conduct of a procurement activity or the implementation of a decision of such authority related to or made in the course of such activity;

2.8. issue an order in so far permitted by this Law, to a contracting authority requiring such authority to cancel or revoke a decision of such authority related to or made in the course of a procurement activity, including unlawful conditions and specifications in the tender dossier;

2.9. issue an order to a contracting authority requiring such authority to pay compensation to a complainant;

2.10. issue an order to a contracting authority requiring such authority to correct an alleged violation and/or to prevent further damage to the complainant and/or another interested party;

2.11. issue an order requiring a contracting authority to remove discriminatory technical, economic, financial or selection specifications, requirements or criteria contained in any notice, invitation, tender dossier, contract document or other document relating to a procurement activity;

2.12. issue an order requiring law enforcement officials to assist the PRB obtain compliance with another order of the PRB ;

2.13. issue order that renders a concluded and signed contract ineffective, if it has been concluded without prior publication in accordance with Article 42, or if the signing of the contract was done before expiry of the time limit mentioned in sub-paragraph 1 of paragraph 4 Article 26 of this law;

2.14. impose penalties on any contracting authority that, despite the issuance of an order under sub-paragraph 2.13 of this Article, continues to observe or implement the contract that is the subject of such order; and

2.15. other competences determined by this law or relevant laws.

Article 106 **Establishment and Composition of Review Panels**

The PRB organizes its work in a number of review panels. Depending on the value or size of the proposed contract or on the difficulty or importance of the issues raised by the case, the PRB shall be responsible for issuing the internal rules concerning the appointment of PRB members for such review panels, which shall be signed by the President of PRB. The review panel may consist of one, three or five members.

Article 107 **Rules of PRB procedures**

1. The PRB shall establish rules of procedure to govern the conduct of review proceedings. Any rules so established shall be consistent with the present law, especially the provisions of this Title IX. Such rules shall establish procedures to ensure especially: (i) the right of the parties to be heard, including right to make written submissions; (ii) the right of the parties to be informed about arguments and allegations advanced by the other party and to respond to such arguments and allegations; (iii) the right of the parties to have legal representation; (iv) the right of the parties to present evidence and arguments in a hearing before the PRB, including examination and cross-examination of witnesses; (v) the right of the parties to request the appointment of technical witnesses; The President shall be responsible for organizing and managing the development of such rules. The PRB shall publish the procedural rules on its information website and provide to any person who so requests a copy of such rules.

**Article 108
Confidentiality**

1. The PRB may protect from disclosure to the public or unauthorized persons information developed or received by the PRB during the conduct of its work, but only to the extent permitted by both the present law and the Law on Access to Public Documents. Notwithstanding this obligation, the PRB shall provide access to and copies of any information and records in its possession or control, including confidential information and records, to the Auditor General or a court of competent jurisdiction if such access and copies are required pursuant to an order issued by the Auditor General or such court.

**CHAPTER III
INITIATION AND INITIAL CONDUCT OF REVIEW PROCEEDINGS**

**Article 109
Time Limits for Submission of a Complaint**

1. A complaint may be submitted by an interested party at any stage of any procurement activity and with respect to any act or omission of the concerned contracting authority that is alleged to be in violation of this law.

2. If the contract has been awarded or the design contest has been decided, or a procurement activity has been terminated, a complaint may be filed only within the ten (10) day period following the date of the contract award notice or design contest results notice is sent to the complainant. In the case of tenders according to Article 36 of this law the period runs from the date of the award of the contract. If the procurement activity was formally cancelled or otherwise terminated prior to the making of an award or the selection of a winner, the period runs from the date that the procurement activity was formally cancelled by means of a cancellation notice or the date where the activities were otherwise terminated.

**Article 110
Authority to pursue complaints**

In case of withdrawal of complaints lodged according to Title IX of the present law the PRB has the authority to continue on its own behalf and discretion the review of any allegations directly or indirectly made in such a complaint.

**Article 111
Filing and Basic Contents of a Complaint**

1. Any interested party may file a complaint with the PRB; however, the PRB shall take action on such complaint only if such complaint:

- 1.1. sets forth the name, address and contact information of the complainant;
- 1.2. sets forth the name of the concerned contracting authority;
- 1.3. sets forth a reasonably specific description of the concerned procurement activity;
- 1.4. attaches a copy of the concerned contract award notice or design contest results notice, if such has been issued or published;
- 1.5. demonstrates that the complainant qualifies as an "interested party," as defined under Article 4 of this law;

1.6. describes the factual circumstances constituting or giving rise to the alleged violation;

1.7. specifies the provision or provisions of the present law that have allegedly been violated; and

1.8. describes how the alleged violation has caused, or threatens to cause, material damage to the complainant in cases where the complainant includes a claim for compensation

2. The complainant shall file the original of such complaint with the PRB and simultaneously dispatch, by the same means or by ordinary post, a copy thereof to the contracting authority.

3. The PRB shall, upon the receipt of a complaint, immediately review such complaint to ensure that it meets the requirements of paragraph 1 of this Article. The PRB shall complete such review within one (1) day after receiving the complaint.

4. If the PRB determines that a complaint does not meet the requirements of paragraph 1 of this Article, the PRB shall immediately notify the complainant in writing, by the most rapid means possible, of the nature of the deficiencies. If the filing period has expired or will expire in less than four (4) days, the complainant shall have four (4) days after receiving such a notification to correct the deficiencies and to resubmit the complaint. If the filing period has not yet expired and will not expire in less than two (2) days, the complainant may re-submit the complaint any time prior to the expiration of the filing period.

5. If the PRB determines that the complaint has been timely filed and meets the requirements of paragraph 1 of this Article, the PRB shall immediately (i) assign a review expert in accordance with Article 113 of this law and (ii) establish a review panel to review the allegations alleged in such complaint.

Article 112

Automatic suspension of Procurement Activity

1. Unless and until the concerned review panel makes another determination in writing, the filing of a complaint shall automatically require the concerned contracting authority to suspend the conduct of the procurement activity to which the complaint relates.

2. Notwithstanding the foregoing, if requested by the contracting authority, the President of the PRB may issue an order removing the automatic suspension required by paragraph 1 of this Article if, taking into account the probable consequences of such suspension for all interests likely to be harmed, including the public interest and the complainant's interest, the President determines that the negative consequences of such suspension exceed the benefits that may be achieved thereby. Prior to taking any action on the contracting authority's request, the complainant shall be given an opportunity to submit written arguments to the President as to why the suspension should not be removed. The President shall notify the complainant and the concerned contracting authority in writing of his/her decision.

3. A decision removing such a suspension shall not in any way prejudice or otherwise negatively affect the complaint or the complainant.

Article 113
Initial Review by Review Expert

1. The PRB shall immediately assign to one of its review expert the task of reviewing the conduct of the concerned procurement activity and to assess the validity of the allegations contained in the complaint.
2. The PRB must employ a sufficient number of review experts. The review experts must be impartial and with a high level of knowledge of the conduct of procurement activities and of the present law.

Article 114
Responsibilities of the Review Expert and the Contracting Authority

1. A review expert shall, within the ten (10) days period immediately following the day of his/her assignment, (i) review the contracting authority's procurement documentation and related records, (ii) interview, as he/she deems appropriate and necessary, any official, employee or consultant of the contracting authority or the complaining party, and (iii) provide to both the review panel, the complainant and the head of the contracting authority a written assessment of the procurement activity and the validity of each of the allegations contained in the complaint.
2. The expert shall recommend the corrective action necessary to be taken by a contracting authority which may involve, as necessary and appropriate under the circumstances: (i) canceling the procurement activity, the contract award or the result of a design contest (ii) extending a deadline (iii) reversing or voiding a decision of the contracting authority and/or (iv) taking any other action needed to correct a violation by the contracting authority.

Article 115
Decision of the Contracting Authority

1. The contracting authority shall, within four (4) days after receiving the review expert's assessment specified in paragraph 1 Article 114 of this law, issue to the review expert, the review panel and the complainant in writing the contracting authority's decision regarding the matters set forth in the complaint.
2. The written decision required by paragraph 1 of this Article shall set forth the contracting authority's detailed assessment of the validity of each of the allegations contained in the complaint. If the decision sets forth an assessment of an allegation that differs from the assessment provided by the review expert, the contracting authority shall include a detailed statement explaining the reasons for such difference. If the decision rejects an allegation or denies its validity, the contracting authority shall include a statement explaining the reasons for such rejection or denial.
3. If, in its decision, the contracting authority determines that any or all of the allegations are valid, and the complainant has not objected, it shall, within five (5) days or the time allowed by the expert, take the corrective action recommended by the expert to bring the concerned procurement activity into compliance with the present law and to eliminate as far as possible any resulting damage or threat of damage to the complainant or other economic operators.
4. The contracting authority shall promptly notify the review panel, the complainant and the other concerned economic operators of any corrective action taken.
5. If, within the time limit specified in paragraph 1 of this Article, the contracting authority fails to issue the required decision or issues a decision that rejects or denies the validity of an allegation or that fails to assess the validity of an allegation, the complaint shall be referred to the review panel.

6. If the contracting authority issues a decision determining that an allegation contained in the complaint is valid, but fails to take appropriate and effective corrective action within the time limit specified in paragraph 4 of this Article, the complainant may then, within three (3) days of the expiration of such time limit, file a written notice with the review panel and the contracting authority regarding such failure and requesting the review panel to review the matter and to issue an order to the contracting authority under Article 105.2.10 of this law.

7. If the contracting authority timely receives a written notice from the complainant pursuant to paragraph 6 of this Article, the contracting authority shall, within three (3) days after receiving such notice, transfer all documents and records relating to the concerned procurement activity to the review panel.

CHAPTER IV PROCEEDINGS BEFORE PRB

Article 116 Decision-making Procedures

1. Matters that a complainant has identified in a notice filed pursuant to paragraph 5 and 6 Article 115 of this law, shall be reviewed and decided by PRB.

2. The proceedings shall be conducted in accordance with the provisions of this Title IX and the rules of procedure established pursuant to Article 107 of this law.

3. Before making a final decision on a matter, the PRB may require the contracting authority and/or the complainant to provide additional information and/or explanations. The PRB shall have the right to require any person, undertaking or public authority to submit material or evidence that it reasonably believes may have relevance to the matter. Similarly, the PRB shall have the right to require any person, undertaking or public authority to provide testimony that it reasonably believes may have relevance to the matter.

4. On request from the complainant or the contracting authority the PRB may allow for an opportunity to present additional information and/or explanations. Paragraph 3 of this Article applies in a similar manner.

5. If any party to the proceedings fails or refuses to participate fully in such proceedings or to comply with a requirement of this Title IX, the rules of procedure established pursuant to Article 107 of this law, or an order issued by PRB, the review panel shall reach its decision on the facts available to it and on the basis of evidence and arguments brought to its attention by those parties actively participating in the proceedings. The PRB shall have the authority to address any such refusal or failure by, as it deems appropriate: (i) deciding any concerned legal issue and/or factual matter in favour of the opposing party, and/or (ii) deciding any concerned allegation in favour of the opposing party.

Article 117 Decision-Making Deadline

1. The PRB shall issue its final written decision, together with a written statement of the factual and legal bases justifying such decision, and any order required to give effect to such decision not later than fifteen (15) days following the expiration of the time limit specified in paragraph 7 of Article 115 of this law or following submission of additional information and /or explanations or hearings according to paragraph 3 or 4 Article 116 of this law. Where the matter involves particularly complex issues or facts, the PRB may designate the matter as a particularly complex

matter and may then extend the deadline for the issuance of such decision, statement of reasons and order by a maximum of an additional twenty (20) days.

2. The decision taken by PRB shall be published on the PRB's web-site within five (5) days in the original language of the decision and within fifteen (15) days with regard to other languages, as well as in English for all cases with high contract value.

Article 118 Security, Penalties and Damages

1. All complainants are required to pay a complaints fee to the PRB the amount of five hundred (500) Euros together with the filing of a complaint. Payment shall be made in cash or cash equivalent into the account established by the PRB in accordance with the Financial Rules.

2. The PRB shall dismiss the complaint if it is not accompanied by the fee.

3. The fee shall be reimbursed to the complainant whenever PPB approves the complaint as grounded.

4. If the review panel determines that all allegations made by the complainant in its complaint are frivolous, the PRB may require the complainant to pay an additional penalty of up to five thousand (5,000) Euros. In such event, the complainant shall be ineligible to participate in any manner in a procurement activity covered by the present law until (i) such penalty is paid in full or (ii) a court of competent jurisdiction rescinds the order of the PRB requiring the payment of such penalty. If the PRB assesses a penalty pursuant to paragraph 4 of this Article, it shall issue an order to the complainant that (i) requires the complainant to pay such penalty, (ii) references paragraph 4 of this Article. and (iii) notifies the complainant that until such penalty is paid in full or a court of competent jurisdiction rescinds the subject order, the complainant shall be ineligible to participate in any manner in a procurement activity covered by the present law.

5. If an allegation made by the complainant is determined to be valid, the review panel may (i) assign a member to calculate, in accordance with the applicable normative acts, the damages, if any, suffered by the complainant as a result of the violations committed by the concerned contracting authority and (ii) issue an order requiring such contracting authority to pay the amount of such damages to the complainant.

6. The PRB shall establish, in accordance with the Financial Rules, a separate interest-bearing account at a licensed commercial bank in Kosovo for the purpose of receiving and holding (i) funds received as security or under a letter of credit or bank guarantee that had been posted as security pursuant to paragraph 1 of this Article and (ii) funds received in payment of a penalty assessed under paragraph 4 of this Article. The PRB shall immediately deposit and hold all such funds in such account. The PRB shall not return, transfer, use or make any other disposition or use of such funds except as specifically authorized by paragraph 7 of this Article.

7. The PRB shall leave such funds on deposit in the account specified in paragraph 6 of this Article until (i) their return is required by paragraph 3 of this Article or (ii) the complainant has exhausted all of its rights to appeal the review panel's determinations made under paragraph 4 of this Article. Once a complainant has exhausted its rights to appeal such determinations and no court of competent jurisdiction has issued an order to the PRB instructing the PRB to make another disposition of the concerned funds, the PRB shall treat such forfeited security and, if applicable, assessed penalties as a fine or penalty and transfer the concerned funds to the Kosovo Consolidated Fund in accordance with the relevant provisions of the applicable normative acts on public budgetary and appropriations matters.

8. If a contracting authority is a budget organization or a part of a budget organization, and such contracting authority fails to implement a final judgment issued by the PRB requiring the

contracting authority to pay damages to the complainant, the complainant may utilize the provisions of Article 40 of the Law on Public Financial Management and Accountability to secure such payment.

Article 119 Court Actions

1. If a complainant believes that a final decision or determination of the PRB is contrary to the facts or the present law, the complainant may request the Supreme Court to review such decision. The request to the Supreme Court must be filed within a time limit of thirty (30) days from the publication of the decision in accordance with paragraph 2 Article 117 of this law.

2. If, after conducting such a review, the court finds that an allegation made by the complainant in its earlier complaint before the PRB was not frivolously made, the Court shall issue an order requiring the PRB to return to the complainant and any penalty assessed pursuant to the Article 118 of this law.

3. If after conducting such a review, the court finds that an allegation made by the complainant in its earlier complaint before the PRB was validly made, the court shall issue an order (i) rescinding or reversing any order or determination issued or made by the PRB, and/or (ii) if the complainant can show that it has been damaged by the concerned act or omission of the concerned contracting authority, requiring such contracting authority to pay adequate compensation to the complainant.

CHAPTER V REPORTING

Article 120 Reporting to the Assembly

The PRB shall annually report to the Assembly on the operation of the procurement review procedures established by or pursuant to this Title IX.

Article 121 Conveying Information

1. For each calendar year, the PRB shall provide to the Assembly, not later than the end of February of the following calendar year, the following information and data by individual types of proceedings and the object of the concerned procurement activity:

1.1. the total number of complaints received;

1.2. the number of complaints that were dismissed for lack of timeliness or insufficiency under Article 109 or Article 111 or failure to post the security required by Article 118 of this law;

1.3. the number of complaints determined to contain no valid allegation;

1.4. the number of procurement activities that were cancelled as the result of a complaint;

1.5. detailed information on any event where a contracting authority failed to respect an order of the PRB; and

1.6. the number of review proceedings that resulted in a determination that the concerned a procurement activity had been validly conducted and the award or decision validly made.

2. The Government shall, in consultation with the PRB and on the basis of information referred to in paragraph 1 of this Article, develop a proposal for measures aimed at reducing or eliminating certain repeated violations, including proposed amendments to the present law.

TITLE X SPECIAL PROCUREMENT RULES FOR DIPLOMATIC AND CONSULAR MISSIONS

Article 122 Procurement Responsibilities at Diplomatic and Consular Missions

1. The head of the diplomatic or consular mission, or his/her authorized official, shall conclude the minimal and low value contracts for procurement activities of diplomatic and consular missions.

2. Medium and large contracts for procurement activities, for which the head of diplomatic/consular mission is authorized, or his/her authorized official, shall be signed by the head of the diplomatic/consular mission.

3. The Head of the Diplomatic/Consular mission shall be responsible for budget expenditures within the Diplomatic/Consular mission.

4. Article 26 of this Law, paragraphs 1, 2, 3 and 4 of this law shall not be applicable to diplomatic/consular missions.

Article 123 Medium and Large Value Contracts

Medium and large procurement activities for diplomatic and consular missions shall be executed by the Ministry of Foreign Affairs in compliance with procedures defined by PPL, with the exception of procurement activities that are delegated to diplomatic/consular missions.

Article 124 Approval

1. Medium and large procurement activities for the purchase of vehicles, health insurances, renovations and adoptions of space within the mission premises and security of mission premises shall be executed by the diplomatic/consular missions after the approval of the Minister of the Ministry of Foreign Affairs.

2. In host countries, where bid dossier forms are not appropriate, the forms shall be considered non-compulsory. In these cases, the usage of standard forms of the host country for business organizations shall be applied.

Article 125 Use of Negotiated Procedure

1. Diplomatic/consular missions may apply negotiated procedures without the publication of contract notice for the execution of procurement activities with the purpose of the award of contract for the purchase of mission vehicles, health insurances, renovations and adoptions to the mission premises and security of mission premises.

2. The head of diplomatic/consular mission shall initially make a written request to the CAO justifying the need for the purchase of vehicles. After the approval of the request, a commission shall be established by the CAO in MFA, which shall conduct an assessment of the most appropriate vehicle brand and decide on the type and specificities of the vehicle to be purchased by diplomatic/consular missions. After a decision is reached by MFA commission, the head of the diplomatic mission shall establish a commission, within the mission, to conduct direct negotiations for the purchase of vehicles with the representatives of vehicle brands or their representation offices on the basis of the principles of transparency, non-discrimination and best value for money. Head of diplomatic/consular mission shall be responsible for the conclusion of contracts and admission of vehicles.

3. For the procedures for the purchase or rents of premises for the diplomatic/consular missions of the Republic of Kosovo, the Government of Kosovo in accordance with the proposal of the Ministry of Foreign Affairs and the Ministry of Finance issues secondary legislation.

Article 126

Use of Price Quotation Procedures

1. Exemptions from procurement procedures defined by Article 37 of this Law shall be applicable for the execution of procurement activities for diplomatic/consular missions that do not exceed the amount of one thousand (1,000) Euros.

2. Diplomatic and consular missions shall execute price quotation procedures for supplies and services for their own needs.

3. PPRC shall define special procedures for price quotation for diplomatic/consular missions and shall draw up secondary legislation for this procedure within thirty (30) days after the entry into force of this Law.

4. In cases when price quotation forms approved by PPRC are not appropriate for the execution of procedures, these forms shall be disregarded and bids received from bidders shall equally considered.

5. Ministry of Foreign Affairs shall oversee the execution and conclusion of these procedures.

Article 127

Non-Applicability of Articles 57 and 63

Articles 57 and 63 of this Law shall not be applicable to diplomatic/consular missions.

Article 128

Consultation between PPRC and MFA

All issues with regards to public procurement procedures in diplomatic missions that are not regulated by this Law shall be regulated with PPRC secondary legislation in consultation with Ministry of Foreign Affairs.

TITLE XI

Article 129

Electronic procurement

1. Government shall be authorised to issue rules concerning the contracting authorities' use of electronic procurement methods.

2. Electronic procurement methods may include a dynamic purchasing system and electronic auctions.

3. Government in coordination with PPRC shall be authorized to issue rules regarding devices for the electronic transmission and receipt of tenders and to devices for the electronic receipt of requests to participate. These rules must include an advanced electronic signature, in conformity with international standards;

4. Use of electronic procurement is not mandatory. The contracting authorities decide whether they want to make use of such methods.

TITLE XII REMEDIAL, PUNITIVE AND FINAL PROVISIONS

CHAPTER I VIOLATIONS OF LAW AND PENALTIES

Article 130 Unlawful Influence

1. Without prejudice and subject to the relevant criminal and other applicable law, it shall be a violation of the present law punishable and enforceable in accordance with the relevant applicable law for any persons:

1.1. to provide, offer, solicit or accept or express or indicate a readiness to provide, offer, solicit or accept anything of value (including, but not limited to, money, an offer of employment, tangible or intangible property, a favor or service) for the direct or indirect benefit or enrichment of an employee, former employee, official or former official of a contracting authority, or any person or undertaking related to or associated with such an employee, former employee, official or former official wholly or partly for the purpose of influencing or attempting to influence a decision or action affecting or connected with the initiation, conduct or outcome of a procurement activity or review;

1.2. to take any actions, or to express or indicate a readiness to take any of action, for the purpose of intimidating, coercing, harming or causing harm (physically, financially, or otherwise) to any person or undertaking, wholly or partly for the purpose of influencing, attempting to influence, or retaliating for a decision or action related to the initiation, implementation or outcome of a procurement activity or review;

1.3. to solicit or enter into any agreement, arrangement or understanding with any other person or undertaking, if such agreement, arrangement or understanding has the purpose or effect of preventing, restricting or distorting competition for any public contract; or

1.4. to facilitate or encourage any person or undertaking to engage in any conduct specified in item "1.1.," "1.2." or "1.3." above.

2. Sub-paragraph 1.3 of paragraph 1 of this Article shall not apply to the negotiation or execution of a formal written agreement by a group of economic operators if such agreement concerns the establishment of the group and as such to make a tender.

3. Any civil servant or employee or official of a contracting authority who becomes aware, by any means, of an offence described in paragraph 1 of this Article or an event that could be expected to involve such an offence shall immediately notify the Ministry of Internal Affairs thereof.

4. Upon learning of such an offence or event the Ministry of Internal Affairs shall immediately conduct a preliminary investigation into the matter and, and if there are sufficient grounds to conclude that such an offence may have occurred, the Ministry shall formally refer the matter to the competent law enforcement authority for further investigation in accordance with the applicable law and immediately take whatever other lawful measures the Ministry deems necessary and appropriate to remedy the situation.

5. Any person or undertaking who or that knowingly or recklessly provides, or causes or encourages another person or undertaking to provide, materially false or misleading information, testimony or evidence to the Ministry of Internal Affairs or the office of the public prosecutor alleging or tending to prove or disprove the occurrence of an offence specified in paragraph 1 of this Article shall be subject to prosecution under the criminal laws of Kosovo for such action and shall also be liable for any financial or other damage to third persons or undertakings caused thereby.

6. Where an offence specified in paragraph 1 of this Article is alleged to have been committed by or on behalf of an undertaking, the natural person or persons actually involved in the events giving rise to such offense shall also be criminally liable therefore. Furthermore, any director or senior executive officer of such undertaking who knew or – in the exercise of reasonable managerial diligence – should have known of the events giving rise to such offense shall also be criminally liable therefore. Where the offence is an offence specified in paragraph 5 of this Article, such persons, directors and officers shall, together with the undertaking, be jointly and severally liable for any financial or other damage to third persons or undertakings caused thereby.

Article 131 **Violations by a Contracting Authority**

The PRB shall impose a fine of not less than five thousand (5,000) euro on any contracting authority that fails to implement a decision or to comply with an order of the PRB within five (5) days.

Article 132 **Procurements Concluded in Violation of the Present Law**

1. A public contract or design contest may be voidable, in whole or in part, by the PRB or a court if any of these bodies determines that a public contract or design contest:

1.1. was awarded without prior publication of a notice when required by this law;

1.2. was concluded during the period of standstill according to Article 26 of this law or during the period of imposition of any interim measures ordered by the PRB or a court forbidding the conclusion of a contract;

1.3. concerns subject matter that the contracting authority divided into lots in order to avoid the applicability of a procurement procedure required by the present law;

1.4. has been awarded to or entered into with an economic operator or contestant that was selected (i) in a manner contrary to the concerned selection criteria, requirements and specifications or (ii) pursuant to selection criteria, requirements or specifications not prepared or published in conformity with the present law;

1.5. has been awarded to or entered into with an economic operator or contestant that failed to meet the eligibility requirements specified in the present law and the applicable notice, invitation or tender dossier;

1.6. has been amended in a manner that is contrary to a provision of the present law or in furtherance of a purpose to avoid a provision of the present law; or

1.7. has been awarded or entered into in violation of a decision or order of the PRB.

2. In the event that the PRB or a court determines that a public contract or design contest is voidable for a reason specified in Article 132.1 of this law, the PRB or court may issue an order:

2.1. voiding the public contract in whole or in part;

2.2. requiring the contracting authority to conduct a new procurement for the public contract or design contest or any part thereof that has not yet been substantially performed;

2.3. if there is substantial evidence of wrongful conduct by the economic operator that prevailed in the original procurement activity, requiring such economic operator to pay damages to the contracting authority and/or another economic operator harmed by such conduct;

2.4. if there is substantial evidence of wrongful conduct by the contracting authority during the original procurement activity, requiring such contracting authority to pay damages to any economic operator that was harmed by such wrongful conduct.

3. In determining whether to void a public contract or design contest, in whole or in part, the PRB or the court shall take due account of the harm to the public interest that may result from such action. If the PRB or the court determines that the harm to the public interest would be substantial, the PRB or the court shall not void the public contract or design contest, but shall instead seek to remedy the matter solely through the issuance of an order awarding damages under sub-paragraphs 2.3 and/or 2.4 of paragraph 2 of this Article.

4. If an order issued by the PRB or a court under this Article is subject to further judicial review or appeal, and the concerned economic operator and/or contracting authority timely notifies the body issuing the order of its intent to file such an appeal or request for review, the body issuing the order shall suspend the enforcement of that order until the order is no longer subject to further judicial review or appeal. In such case, the body issuing the order shall order the concerned economic operator and/or contracting authority to immediately post security in an amount that is at least equal to (i) the damages, if any, that are specified in the order plus (ii) any other reasonable amount that the body issuing the order deems necessary to secure the rights of the other parties and/or to ensure the performance of the order if such order is confirmed at the conclusion of such judicial review or appeal. The security required by this paragraph may be posted in the same form as that required for tender security or performance security.

5. If the concerned economic operator and/or contracting authority fails to post the security required under paragraph 4 of this Article within seven (7) days after being informed of the amount of the security, the order shall no longer be suspended and shall be immediately enforceable.

6. Nothing in this Article or any other provision of the present law limits, or shall be interpreted as limiting, any power of any court: (i) to suspend any procurement activity of a contracting authority or any proceedings of the PRB or a lower court during the pendency of a judicial appeal or review; (ii) to suspend, modify or uphold any order issued by the PRB or a lower court (iii) to issue any temporary order that is to be observed during the pendency of a judicial appeal or review; or (iv) to issue any other order that such court deems appropriate to preserve the status quo or the effectiveness of any potential judgment that may be made in the future by such court on the matter concerned.

Article 133
Declarations of Ineffectiveness

1. A public contract or design contest shall be declared ineffective, in whole or in part, by the PRB or a court, if either determines that a public contract or design contest by any reason mentioned in paragraph 1 of Article 132 of this law.

2. The PRB or a court may decide that a contract should not be rendered ineffective, even though it has been awarded illegally on the grounds mentioned in paragraph 1, if after having examined all relevant aspects, there are overriding reasons relating to a general interest that require that the effects of the contract should be maintained. Provided that:

2.1. Economic interests in the effectiveness of the contract may only be considered as overriding reasons if in exceptional circumstances ineffectiveness would lead to disproportionate consequences.

2.2. Economic interests directly linked to the contract concerned shall not constitute overriding reasons relating to a general interest.

2.3. Economic interests directly linked to the contract include, inter alia, the costs resulting from the delay in the execution of the contract, the costs resulting from the launching of a new procurement procedure, the costs resulting from the change of the economic operator performing the contract and the costs of legal obligations resulting from the ineffectiveness.

3. A contract shall not be declared to be ineffective even if there are grounds for doing so if:

3.1. the contracting authority considers that the award of a contract without prior publication of a contract notice is in accordance with this Law,

3.2. the contracting authority has published a notice expressing its intention to conclude the contract, and,

3.3. the contract has not been concluded before the expiry of a period of at least ten (10) days with effect from the day following the date of the publication of this notice.

4. Where PRB or a court decides not to declare a contract as ineffective even though there are grounds for so declaring then it shall consider whether it can impose alternative penalties in form of fines on the contracting authority as mentioned in Article 132 of this law. The award of damages shall not constitute an appropriate alternative penalty.

5. Any interested party as stated in paragraph 6 of this Article may request a declaration of ineffectiveness from PRB or the Court. Such request shall be made

5.1. before the expiry of thirty (30) days after publication of the award notice; or

5.2. the contracting authority informed the tenderers and candidates concerned of the relevant reasons for conclusion of the contract.

6. Tenderers shall be deemed to be an interested party if they have not yet been definitively excluded from a tender and an exclusion is definitive if it has been notified to that tender and has either been considered lawful by an independent review body or can no longer be subject to a review procedure.

7. Candidates shall be deemed to be an interested party if the contracting authority has not made available information about the rejection of their application before the notification of the contract award decision to the tenderers concerned.

CHAPTER II FINAL PROVISIONS

Article 134 Repeal of the previous Legislation

1. This law and the public procurement rules issued under this law shall supersede all prior legislation and rules governing public procurement in Kosovo. Such prior legislation and rules shall cease to have any force or effect as of the effective date of this law.

2. This law applies to procurement activities published after the entering into force of the Law and reading procurement activities without publication such procedures initiated after the same time.

3. Upon implementation of this Law, the current board members will continue to perform duties determined by this law until the expiration of their mandate.

Article 135 Entry into Force

This Law shall enter into force fifteen (15) days after its publication in Official Gazette of the Republic of Kosovo.

**Law No. 04/L-042
29 August 2011**

Kosova Cumhurbaşkanı Atifete Jahjaga'nın 31.08.2011 tarih ve DL-032-2011 sayılı Kararnamesiyle ilan edilmiştir.