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au Kosovo

PROVISIONAL INSTITUTIONS OF SELF GOVERNMENT

KUVENDI I KOSOVËS
СКУПШТИНА КОСОВА
ASSEMBLY OF KOSOVO

LAW NO. 2003/17
LAW ON PUBLIC PROCUREMENT IN KOSOVO
As Amended on 08.02. 2007

The Assembly of Kosovo,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, "On the Authority of the Interim Administration in Kosovo," as amended; UNMIK Regulation No. 1999/24 of 12 December 1999, "On the Law Applicable in Kosovo," as amended; UNMIK Regulation No. 2001/9 of 15 May 2001, "On a Constitutional Framework for Provisional Self-Government in Kosovo," especially Sections 5.1(b), 5.7, 9.1.1, 9.1.26(a), 9.3.3 and 11.2 thereof; and UNMIK Regulation 2001/19 of 13 September 2001, "On the Executive Branch of the Provisional Institutions of Self-Government in Kosovo," especially Sections 1.6 and 1.7 thereof and point (ix) of Annex II and point (vi) of Annex IX thereto; and

Recognizing the need to bring procurement activities in Kosovo generally into compliance with European Union requirements and internationally recognized best standards and practices;

Hereby adopts the following,

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TITLE I
GENERAL MATTERS

Chapter 1
Purpose, Scope, Exemptions, Definitions

Section 1
Purpose

1.1 The purpose of the present 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.

1.2 The present 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.

1.3 Finally, the present 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.

Section 2
Scope

2.1 The present 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 the present law.

2.2 The present 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 the present law; such persons, operators, undertakings are also required to observe and comply with the applicable procedural and substantive requirements of the present law.

Section 3
Exemptions

3.1 Notwithstanding any other provision of the present law, a contracting authority shall not be required to use or comply with any specific procurement procedure nor to observe the provisions of the present law on transparency to the extent that such compliance and/or observance would compromise legitimate secrecy or security concerns when conducting procurement activities leading to the award of a public contract that the SRSG and the Prime Minister have agreed to exempt from the application of the present law because (i) the performance of such contract requires, under the law applicable in Kosovo, the use of special security measures, or (ii) the SRSG and the Prime Minister have agreed to classify the subject matter of such contract as secret. Without prejudice to the powers of the SRSG in respect of reserved responsibilities, exemptions under this section in respect of reserved matters shall be granted in conformity with the principle set out in section 4.2 of the Law on Access to Official documents as promulgated by UNMIK- Regulation No.2003/32.

3.2 The present 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 UNMIK or the Government and an intergovernmental, bilateral, multilateral or international financing institution.

3.3 The present law shall not apply to a procurement activity leading to the award of employment or an employment contract if such procurement activity is subject to other rules established by another law or an UNMIK regulation.

3.4 The present law shall not apply to a socially owned enterprise under the administration of the Kosovo Trust Agency if such enterprise does not receive public funds and does not engage, on the basis of special or exclusive rights granted by a competent public authority, in a public service activity.

Section 4 Definitions

4.1 Whenever used in the present law, each of the following terms shall have the indicated meaning unless the context within which such term appears clearly intends another meaning.

“Authorizing Officer” shall mean the person designated by the contracting authority’s Chief Administrative Officer under Section 20.1 of the present law as having the authority to authorize the initiation of a procurement activity.

“Autonomous executive agency” means a public authority that (i) is not itself a budget organization but is part of another budget organization, *and* (iii) 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.

“Body governed by public law” means 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 public funds and/or 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.

“*Candidate*” means 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 or price quotation procedures.

“*Chief Administrative Officer*” or “*CAO*” means, with respect to a budget organization, (i) its Permanent Secretary, (ii) if it has no Permanent Secretary, its Chief Executive Officer, or (iii) if it has neither a Permanent Secretary 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.

“*Chief Financial Officer*” or “*CFO*” shall have the meaning specified in the Law on Public Financial Management.

“*Commodities*” means 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.

“*Common technical specification*” shall mean a technical specification drawn up in accordance with a procedure recognized by the Member States of the EU with a view to uniform application in all such Member States and published in the Official Journal of the European Communities.

“*Common use items*” means 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.

“*Complainant*” shall mean an interested party who is filing or has filed a complaint in accordance with the provisions of Section 106 of the present law.

“*Confidential business information*” means information classified as such pursuant to Section 10.2 of the present law

“*Contracting authority*” means a public authority, public service operator, public undertaking and/or any person, committee or undertaking carrying out a procurement activity on behalf of or for the benefit of a public authority, public service operator or public undertaking.

“*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 Section 40.3, and (ii) with respect to a contract award notice, the date on which it has been dispatched to concerned economic operators in accordance with Section 40.4.

“*Design contest*” means 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.

“*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.

“*Economic operator*” is a general term meaning and covering a supplier, service provider and/or a works contractor.

“*Electronic means*” 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.

“*European specification*” shall mean a common technical specification, a European technical approval or a national standard implementing a European standard.

“*European standard*” shall mean 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).

“*European technical approval*” shall mean 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, as provided for in Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products.

“*Financial Rules*” means the Financial Rules issued by the Treasury

“*Government*” means the Government established pursuant to Sections 1.5(c) and 9.3 *et seq.* of UNMIK Regulation 2001/9 “On a Constitutional Framework for Provisional Self-Government in Kosovo” and any successor government or central executive authority.

“*Immovable Property Contract*” means a contract for pecuniary interest concluded 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.

“*Interested party*” shall mean a person who, or an undertaking that, has or had 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.

“*KIPA*” means the Kosovo Institute for Public Administration.

“*Large value contract*” means a public contract falling within the Scope of Section 18.1 of the present law.

“*Large value design contest*” means a design contest falling within the scope of Section 19.1 of the present law.

“*Low value contract*” means a public contract falling within the scope of Section 18.3 of the present law.

“*Low value design contest*” means a design contest falling within the scope of Section 19.3 of the present law.

“*Medium value contract*” means a public contract falling within the Scope of Section 18.2 of the present law.

“*Medium value design contest*” means a design contest falling within the scope of Section 19.2 of the present law.

“*Minimal value contract*” means a public contract falling within the scope of Section 18.4

“*Negotiated procedures*” means 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.

“*Open procedures*” means procurement procedures allowing for any interested economic operator to submit a tender.

“*Person*” means a natural person.

“*PIFC Rules*” means the Public Internal Financial Control Rules issued by the Treasury.

“*PPA*” means the Public Procurement Agency established pursuant to Title VI of the present law.

“*PPRC*” means the Public Procurement Regulatory Commission established pursuant to Title V of the present law.

“*PRB*” means the Procurement Review Body established pursuant to Title VII of the present law.

“*Present law*” means the present law and the subsidiary normative acts and instruments issued in furtherance of or under the authority of the present law, including the public procurement rules and code of ethics issued pursuant to or under the authority of the present law.

“*Procurement activity*” means 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.

“*Public authority*” means 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.

“*Public contract*” is 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, (iv) a public framework contract” and/or (v) an immovable property contract.

“*Public framework contract*” means an agreement for a limited period between a contracting authority and an economic operator, the purpose of which is to establish the framework for contracts to be awarded during the period, in particular with regard to the object of the contracts and, where appropriate, the amounts, extent or quantity envisaged, as well as the price.

“*Public funds*” means (i) money or financial assets in the custody or under the control of any public authority, including money that is held by a public authority for the benefit of a person, body, organization or undertaking other than a public authority; (ii) money or financial assets in the custody or under the control of any person, body, organization or undertaking maintaining such custody or exercising such control for or on behalf of a public authority and (iii) any money or financial assets provided or appropriated, directly or indirectly, to any contracting authority or undertaking under the Kosovo Consolidated Budget or from the Kosovo Consolidated Fund.

“*Public Procurement Register*” means the register established by the PPRC pursuant to Section 82 of the present law.

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

“*Public service activity*” means an activity 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, (vi) the collection or management of waste, or (vii) 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.

“*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.

"Public undertaking" means 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.

"Related undertaking" means 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.

"Restricted procedures" means procurement procedures described in Section 31 of the present law.

"Review panel" means a review panel established by the President of the PRB pursuant to Title VIII of the present law.

"Service concession contract" means 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."

"Service contract" means a contract for pecuniary interest concluded between a contracting authority and one or more service providers that relates exclusively or mainly to the provision of services.

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

"Special or exclusive rights" means 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.

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

"Supply contract" means a contract for pecuniary interest concluded 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.

"Standard" shall mean a technical specification approved by a recognized standardizing body for repeated or continuous application, compliance with which is generally not mandatory.

"Technical specifications" shall mean technical requirements defining the characteristics of a set of works, material, product, supply or service, and enabling a piece of work, a

material, a product, a supply or a service to be objectively described in a manner such that it fulfils the use for which it is intended by the contracting authority. Technical specifications may include quality, performance, safety or dimensions, as well as requirements applicable to the material, product, supply or service as regards quality assurance, terminology, symbols, testing and test methods, packaging, marking or labeling. In the case of works contracts, they may also include rules for the design and costing, the test, inspection and acceptance conditions for works and techniques or methods 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.

“*Tender*” means 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.

“*Tenderer*” means an economic operator that has submitted a tender.

“*Tender dossier*” has the meaning specified in Section 27.

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

“*Violation*” means a failure to comply with one or more provisions of the present law.

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

“*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.

“*Works concession contract*” means 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.

“*Works contract*” means 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.

“*Works contractor*” means 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.

"Writing" means 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.

4.2 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.

4.3 More detailed definitions of the terms used in the present law, as well as definitions of other terms, may be established by or set forth in the public procurement rules; provided, however, that such more detailed definitions and definitions of other terms shall not impair the operation of any provision of the present law.

Chapter 2 **General Principles**

Section 5 **Cost-Effectiveness and Efficiency**

5.1 All contracting authorities, economic operators, persons, undertakings, and works concessionaires conducting or involved in any procurement activity 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.

5.2 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.

Section 6 **Equality of Treatment/Non-Discrimination**

6.1 A contracting authority shall not conduct any aspect of a procurement activity in a manner that reduces or eliminates competition among economic operators.

6.2 A contracting authority shall not conduct any stage or element of a procurement activity in a manner that discriminates against or in favour of one or more economic operators.

6.3 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 favors or discriminates against one or more economic operators.

6.4 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.

6.5 Unless an authorization for the imposition of such a requirement is specifically provided for in the present law, another law or an international agreement, 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.

6.6 When conducting any procurement activity, all contracting authorities shall take reasonable and necessary measures to 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 3 **General Requirements**

Section 7 **Procurement Forecast**

7.1 No less than sixty (60) calendar days prior to the beginning of each fiscal year, each contracting authority shall prepare and provide to the PPA, 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:

- a. 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;

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

7.2 Within fifteen (15) calendar days after the promulgation of the appropriations legislation for a fiscal year, each contracting authority shall prepare and provide to the PPA, 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 points a - c of Section 7.1.

7.3 The PPA shall immediately review and aggregate the information contained in all such forecasts. The PPA 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. The PPA shall submit such list to the Government.

7.4 The Government shall have the authority, in accordance with Section 91.1 of the present law, to designate the PPA as the body having the exclusive authority to conduct a procurement activity, including a consolidated or common (joint) procurement activity, on behalf of one or more public authorities.

Section 8

Determination of Needs to be Satisfied and Availability of Funds

8.1 Prior to initiating the conduct of any specific procurement activity or procedure having as its object the acquisition of any products, services or works, a contracting authority shall conduct a formal needs assessment with respect thereto. 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 Section 7, 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.

8.2 After the conduct of the required needs assessment, the contracting authority shall formally ensure 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.

8.3 If the concerned procurement will give rise to financial obligations that are to be satisfied from appropriations expected in future fiscal years, the contracting authority shall (i) ensure that the existing Medium Term Expenditure Framework, as developed under the Law on Public Financial Management and Accountability, provides 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.

8.4 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.

8.5 As evidence that the contracting authority has complied with Sections 8.1 – 8.4, the contracting authority shall prepare and maintain 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 section 8.1, (ii) a written statement affirming the availability of funds that demonstrates that the contracting authority has fulfilled its obligations under Section 8.2, (iii) if applicable, a written statement setting forth the basis, required by Section 8.3, 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 Section 8.4. The PPRC shall develop a standard form “Statement of Needs and Determination of Availability of Funds” that contracting authorities shall use to comply with this Section 8.5.

8.6 If the objects of the procurement activity have not been included in the contracting authority’s final procurement forecast provided to the PPA pursuant to Section 7.2, the contracting authority shall provide a copy of the concerned “Statement of Needs and Determination of Availability of Funds” to the PPA at least five (5) business days before initiating the concerned procurement activity. The PPA 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 PPA pursuant to Section 7.2, the PPA 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. The PPA shall submit a list of such items to the Government. The Government shall have the authority, in accordance with Section 91.1 of the present law, to designate the PPA as the body having the exclusive authority to conduct a procurement activity for such items.

Section 9 Transparency

9.1 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.

9.2 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.

9.3 Upon the request of any person, a contracting authority shall provide such person prompt and reasonable access to the records described in Sections 9.1 and 9.2, other than confidential business information, relating to any procurement activity that has been concluded for more than ten (10) business days. For the purposes of this Section 9.3, 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) if the present law does not require the publication of such a notice for the concerned procurement activity, on the date of the award of the concerned contract, 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 that the procurement activity was formally cancelled or otherwise terminated.

9.4 The contracting authority shall provide the access required by Section 9.3 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.

9.5 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 Section 9.3.

9.6 The PPRC shall provide to any person who so requests a copy of the present law and/or a copy of the public procurement rules.

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

9.8 The PPRC shall establish in the public procurement rules a reasonable charge that a contracting authority and the PPRC may assess to cover the cost of producing the copies required by Sections 9.5 and 9.6; provided, however, that such charge shall be no more than is deemed reasonably necessary to cover the cost associated with producing such copies.

9.9 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 PPA, 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 by this Section 9.9 in a routine, uneventful, and non-obstructive manner.

Section 10 Confidential Business Information

10.1 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 Section 10.

10.2 Information that section 56.3 requires to be announced and recorded at the public opening of tenders may not be classified as confidential business information.

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

- a. it has been furnished by an economic operator pursuant to a requirement established by such contracting authority under Section 63 or 64 of the present law;
- b. 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
- c. 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.

10.4 A contracting authority that has classified an item of information as confidential business information pursuant to Section 10.3 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 Section 9.3. 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.

10.5 If a document contains only information that a contracting authority has classified as confidential business information pursuant to Section 10.3, 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 Section 9.3, 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.

10.6 If, in connection with the conduct of any procurement activity, a contracting authority requires an economic operator to submit information covered by Section 63 and/or 64 of the present 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 Section 10.3 of the present law.

Section 11 Currency and Payment

11.1 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.

11.2 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.

Section 12 Languages Used in Public Procurement Documents

12.1 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 minimal, low or medium value contract or design contest in the Albanian and the Serbian languages which shall be equally authentic. A contracting authority may also prepare such documents in the English language.

12.2 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.

12.3 In the event that there is an inconsistency among the different language versions of the same document, the English language version, if one has been prepared, shall control. If an English version has been prepared, the fact that such version shall control any inconsistencies among the different language versions shall be clearly stated on the first page of all concerned documents.

12.4 If no English language version has been prepared, and there is an inconsistency between the Albanian and Serbian versions that can reasonably be expected to cause material prejudice to an economic operator's ability to timely submit a responsive tender or request to participate, the contracting authority shall, as soon as it becomes aware of such an inconsistency, comply with Section 51.9 of the present law by providing all concerned economic operators with whatever clarifying information is needed and extending any applicable deadlines. If such measures would be insufficient to eliminate such potential prejudice, or if the time established by Section 51.9 for using such measures has passed, the contracting authority shall cancel the concerned procurement activity.

12.5 An economic operator may submit a tender, a request to participate or other document required or permitted to be filed during the conduct of a procurement activity in the Albanian, Serbian or English languages.

12.6 All tender dossiers, notices and invitations shall clearly indicate that an economic operator may, as provided for in Section 12.5, submit a tender, request to participate and other documents required or permitted to be filed during the conduct of a procurement activity in the Albanian, Serbian or English language.

Section 13

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 4

Rules for Valuing and Classifying Public Contracts and Design Contests

Section 14

Classifying Mixed Contracts

14.1 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.

14.2 A contract covering both products and services shall be considered a service contract if the estimated value of the services exceeds the estimated value of the products. If the contract includes provisions for the delivery, sitting and/or installation of the concerned products, the estimated value of such activities shall be included in the valuation of the product's component of such contract.

14.3 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.”

14.4 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.

14.5 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.

14.6 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.

Section 15
Calculating the Estimated Value of a Supply Contract

15.1 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.

15.2 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:

- a. in the case of a fixed-term contract, the total contract value including the estimated residual value; or
- b. 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 48.

15.3 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.

15.4 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 Section 18; 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 Section 18.

Section 16
Calculating the Estimated Value of a Service Contract

16.1 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 Section 16. 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.

16.2 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.

16.3 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:

- a. in the case of insurance services, of the premium payable;
- b. in the case of banking and other financial services, of fees, commissions and interest as well as other types of remuneration; or
- c. in the case of design services, of fees or commissions.

16.4 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 Section 18.

16.5 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:

- a. in the case of a fixed-term contract having a term of 48 months or less, the total estimated contract value for its duration;
- b. in the case of a contract of indefinite duration or with a term of more than 48 months, the average estimated monthly value multiplied by 48.

16.6 Where it is reasonably foreseeable that a proposed service contract may be extended, renewed or followed by a successor contract for new services within the meaning of Section 34.2.c(iii), the basis for calculating the estimated contract value of such proposed service contract shall be the maximum potential total amount to be paid under the proposed service contract, including the maximum potential total amount to be paid under any such reasonably foreseeable extension, renewal or successor contract.

16.7 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 Section 18; 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 Section 18.

Section 17

Calculating the Estimated Value of a Works Contract and an Immovable Property Contract

17.1 The estimated value of a proposed works or immovable property contract shall equal the estimated price to be paid by the contracting authority for all works, services, products, immovable property, 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 or immovable property 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.

17.2 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 Section 18.

17.3 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.

17.4 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 Section 34.2.d, 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.

17.5 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 Section 18.

Section 18
Classifying a Public Contract by Estimated Value

18.1 The following shall be considered as a “large value contract:”

- a. 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, 100,000 Euros; or
- b. Works or immovable property contracts the estimated value of which is equal to or greater than, or can be reasonably expected to be equal to or greater than, 250,000 Euros.

18.2 The following shall be considered as a “medium value contract:”

- a. 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, 10,000 Euros, but less than 100, 000 Euros; or
- b. Works or immovable property contracts the estimated value of which is equal to or greater than, or can reasonably be expected to be equal to or greater than, 10,000 Euros, but less than 350,000 Euros.

18.3 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, 1000 Euros, but less than 10,000 Euros.

18.4 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, 1000 Euros.

Section 19
Classifying a Design Contest by Value

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

- 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, 100,000 Euros; or

- b. 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, 100,000 Euros.

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

- a. 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, 10,000 Euros, but less than 100,000 Euros; or
- b. 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, 10,000 Euros but less than 100,000 Euros.

19.3 A design contract that does not fall within the scope of Section 19.1 or 19.2 shall be considered a “low value design contest.”

Section 19A

Restrictions on the Use of Sections 15-19

19A.1 A contracting authority shall use the provisions of Sections 15-19 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 Sections 15-19 shall be used for no other purpose.

19A.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 PPA, a review expert, the PRB or a court immediately upon the request or order of any of these.

Chapter 5

Authorization to Initiate a Procurement Activity and to Sign a Public Contract

Section 20

Initiation of a Procurement Activity

20.1 For each proposed procurement activity at a contracting authority, the CAO shall designate one person to act as the Authorizing 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 initiation of the proposed procurement activity until the contracting authority’s CFO has confirmed in writing that the requirements of Section 8 of the present law and all other applicable requirements of the Law on Public Financial Management and Accountability and the Financial Rules have been complied with.

20.2 If the CFO provides the written confirmation required by Section 20.1, the Authorizing Officer shall then have the authority to initiate the procurement activity. The Authorizing Officer shall initiate the procurement activity by providing the concerned Procurement Officer with the “Statement of Needs and Availability of Funds” specified by Section 8 of the present law. Thereafter, the Procurement Officer shall have exclusive authority over the conduct of the procurement activity.

Section 21

Contracting Authorities to Establish Procurement Departments

21.1 Every contracting authority shall designate one person to serve as its Procurement Officer. If other employees of the contracting authority are civil servants, the Procurement Officer shall also be a civil servant. Two or more contracting authorities that have limited procurement work may agree to designate the same person as their Procurement Officer. To the extent necessary, a contracting authority shall ensure that its Procurement Officer is supported by a sufficient number of trained personnel to enable the Procurement Officer to efficiently and professionally conduct the contracting authority’s procurement activities in strict accordance with the present law.

21.2 A person may only serve as a Procurement Officer if such person holds a university degree and a current and valid “procurement professional certificate,” issued by the KIPA, evidencing that such person has satisfactorily completed KIPA’s course of training on the present law and best procurement practices in the EU. Provided, however, that these requirements shall not become obligatory for all Procurement Officers until 1 January 2008; prior to such date, a person may be engaged as a Procurement Officer if he/she holds a current and valid “procurement professional certificate” that has been validly issued by either by KIPA or the PPRC.

21.3 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 Section 61.2 of the present law.

21.4 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 shall honestly and faithfully conduct the procurement activities of the contracting authority in conformity with the present law.

21.5 Each contracting authority shall ensure that the person designated as its Procurement Officer meets the requirement of Section 21.2, is not ineligible under Section 21.3, and executes the declaration required by Section 21.4. Each contracting authority shall ensure that all other staff members of its Procurement Department are not ineligible under Section 21.3 and execute the declaration required by Section 21.4.

Section 22

Procurement Officers to Conduct Procurement Activities

22.1 Every procurement activity of a contracting authority shall be conducted by its Procurement Officer, except in those cases where the Government has assigned the procurement activity to the PPA in accordance with the present law.

22.2 The Procurement Officer of a contracting authority shall be responsible for ensuring that all procurement activities of such contracting authority are conducted by the Procurement Department and in strict compliance with the present law.

22.3 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.

22.4 If a Procurement Officer becomes ineligible to hold that position for a reason specified in Section 21.3, the contracting authority shall immediately remove such person from that position and shall notify KIPA and the PPRC of such action. If a Procurement Officer is a civil servant and such person becomes ineligible to hold a civil service position under the law and rules governing the civil service, the concerned contracting authority shall notify KIPA and the PPRC of such person's ineligibility. In either case, the body that issued such person's "procurement professional certificate", whether KIPA or the PPRC, shall immediately revoke and cancel such certificate.

Section 23 Training of Procurement Officers

23.1 KIPA shall arrange for the development and delivery, at least two times per year, of a procurement professional training course having a duration of at least ten (10) business days. KIPA is required to ensure that each such course is developed and delivered by a person or organization having substantial expertise in best international procurement practices and the procurement system of the EU. KIPA shall be responsible for engaging, in accordance with the present law, such a person or organization to develop and deliver such courses. KIPA shall require such person or organization to become professionally familiar with and to cover all material aspects of the present law.

23.2 KIPA shall issue a "procurement professional certificate" only to persons who, on the basis of objective (and, whenever possible, anonymous) testing by the trainer, complete such course to the satisfaction of the trainer. KIPA shall not issue a "procurement professional certificate" to any person without the written consent of the trainer.

23.3 Any interested person may attend a procurement professional training course. A Procurement Officer is required to attend such a training course at least once a year, and the concerned contracting authority shall ensure that such Procurement Officer is available to attend every day of such training. The concerned contracting authority shall 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.

23.4 KIPA shall immediately revoke the procurement professional certificate of any Procurement Officer who fails, on the basis of objective testing by the trainer, to successfully complete any required training course. KIPA shall immediately notify the contracting authority of such action, and the contracting authority shall immediately remove the concerned person from the Procurement Officer position.

Section 24
Signing of Public Contracts

24.1 Except as provided for in Section 24.2, the Procurement Officer of a contracting authority shall be the only person authorized to enter into or sign a public contract on behalf of such contracting authority. A public contract that is not signed by the contracting authority's Procurement Officer shall be void and unenforceable. A public contract signed by a Procurement Officer in violation of this Section 24 or in disregard of an order or notification received from the PRB, a review panel or a court of competent jurisdiction shall be void and unenforceable.

24.2 If the Government designates the PPA as the body having the authority to conduct a procurement activity, the only person authorized to enter into or sign the concerned contract shall be the Procurement Officer of the PPA.

24.3 The person having signing authority under Section 24.1 or Section 24.2 may sign such contract only if the following conditions are met:

- a. at least three (3) business 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 Section 34.2.a(iv) or 35.2;
- b. such person has reconfirmed that the information contained in the concerned "Statement of Needs and Determination of the Availability of Funds" is still accurate;
- c. such person has no reason to believe that a complaint has been filed or will be filed within the time period specified in Section 105.2; provided, however, that this condition shall not apply if the President of the PRB has issued a decision pursuant to Section 107 that the filing of a complaint shall not bar the signing of the contract; and
- d. such person has received no communication from the PRB, a review panel or a court of competent jurisdiction indicating that such contract should not be signed.

24.4 Notwithstanding the other provisions of this Section 24, if the concerned public contract is of large value, the person having signing authority under Section 24.1 or Section 24.2 may, for ceremonial purposes only, permit a senior public official who is not a civil servant to also sign such contract. In such event, the person having signing authority shall ensure that such contract contains an additional signature line for this purpose. However, the concerned senior public official shall not sign until the person having signing authority has signed.

Section 25
[Repealed]

Section 26
[Repealed]

TITLE II
RULES GOVERNING PUBLIC CONTRACTS

Chapter 1
Rules Governing Technical Specifications and Tender Dossiers

Section 27
Tender Dossier

27.1 Except as provided in Section 27.2, 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, indicate its willingness to consider variants, but only in accordance with Sections 28 and 29 of the present law.

27.2 The tender dossier requirements of Section 27.1 shall not apply to a procurement activity for (i) a minimal value contract or (ii) a contract to be awarded using price quotation procedures.

Section 28
Technical Specifications

28.1 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.

28.2 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.

28.3 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, and/or (v) an international standard.

28.4 If an applicable standard, specification or approval required by Section 28.3 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, (ii) a Kosovo technical approval, or (iii) any other technical reference produced by European standardisation bodies; provided, however, that such a reference shall be accompanied by the words "or equivalent."

28.5 If an applicable standard, specification, approval or technical reference required by Sections 28.3 and 28.4 do 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 in terms of either a performance or a functional requirement; however, it shall be sufficiently precise to allow tenderers to determine the subject matter of the contract and to allow a contracting authority to award the contract.

28.6 If, in the case of a works contract, there is no applicable European standard, European technical approval or common technical specification, and it is impossible to formulate the specification in terms of a performance or functional requirement, the technical specification may be defined by reference to a Kosovo technical specification relating to the design, method of calculation or execution of works or to the use of material; provided, however, that such a reference shall be accompanied by the words "or equivalent."

28.7 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 Sections 28.3 – 28.6 or otherwise; provided, however, that any such reference shall be accompanied by the words "or equivalent".

28.8 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 Kosovo standard implementing a European standard, a European standard, a European technical approval, a common technical specification, an international standard, Kosovo standard, Kosovo technical specification or Kosovo technical approval.

28.9 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 standard, specification or technical approval referred to in Section 28.3 or 28.4, if such standard, specification or approval 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 standard, specification or approval also meets the functional or performance requirements of the contracting authority.

Section 29
Variants of Technical Specifications

29.1 If a contract is to be awarded to the tenderer submitting the most economically advantageous tender, a contracting authority may consider a tender proposing an item or service that complies with a variant of a designated technical specification and meets the minimum functional or performance requirements or the minimum specification of the contracting authority.

29.2 A contracting authority shall state in the tender dossier the minimum specifications to be respected by a variant and any specific requirements for the presentation of a variant.

29.3 If a tenderer may not propose an item or service that complies with a variant of a designated technical specification, the contracting authority shall indicate this in the tender dossier.

Chapter 2
Types and Applicability of Procurement Procedures

Section 30A
General Rules

30A.1 When conducting any procurement activity, a contracting authority shall use an open procedure as required by Section 30. If a provision of Sections 31-36 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.

30A.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 Sections 30-36.

30A.3 When a contracting authority uses a procedure described in Sections 31-34 of the present 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 present law.

30A.4 If during the conduct of a procurement activity, less than three (3) responsive tenders or, where applicable, requests to participate are received, the contracting authority shall cancel the procurement activity. In such event, the contracting authority shall, if it still desires to procure the concerned objects, initiate a new procurement activity for such objects. The foregoing requirements of this Section 30A.4 shall not apply to a procurement activity conducted pursuant to section 34.

30A.5 Notwithstanding the requirements established by Section 30A.4, if the contracting authority determines there are compelling reasons to believe that cancelling the procurement activity and initiating a new procurement activity will not result in an

increased number of responsive tenders or, where applicable, requests to participate, the PPA shall have the authority to waive the requirement of Section 30A.4 of the present law if (i) the PPA receives a written request from the concerned contracting authority explaining why it believes the requirement of Section 30A.4 of the present law should be waived, and (ii) the PPA determines that such explanation provides a convincing basis to waive such requirement. However, the PPA shall not waive the requirements of Section 30A.4 for procurements conducted pursuant to Section 35.

30A.6 A contracting authority shall have the right to request the PRB to review any negative decision, or failure to decide, of the PPA pursuant to Section 30A.5 of the present law. The PRB shall accord the highest priority to such request and shall have the authority to (i) reverse the PPA's decision if it determines that such decision is unreasonable and (ii) if the PPA has failed to timely respond to a request of a contracting authority under Section 30A.5 of the present law, issue the concerned decision on behalf of the PPA.

Section 30 Open Procedures

Unless a provision of Sections 31 – 36 specifically authorizes the use of different procurement procedures, a contracting authority shall select and use open procedures when conducting procurement activities leading to the award of a public contract.

Section 31 Restricted Procedures

31.1 A contracting authority may use restricted procedures to conduct a procurement activity leading to the award of any public contract if the concerned Procurement Officer, on the basis of objectively verifiable factors and without any discriminatory intent, makes a formal written determination that:

- a. the concerned product, service or works – by reason of its/their highly complex or specialized nature – can only be supplied, provided or performed by an economic operator having adequate technical, professional and/or financial capacity, and
- b. it would be more economically efficient for the contracting authority to first review the qualifications of interested economic operators and then to invite those possessing certain specified minimum qualifications to submit tenders.

31.2 The written determination required by Section 31.1 shall be included in the tender dossier.

31.3 Following the receipt of requests to participate, a contracting authority shall invite to submit a tender all candidates that fulfill the minimum selection criteria specified in the contract notice and the tender dossier in accordance with Section 49 of the present law. Candidates not so selected shall be eliminated from further participation.

Section 32 [Repealed]

Section 33
Negotiated Procedures After Publication of a Contract Notice

33.1 In exceptional cases, a contracting authority may use negotiated procedures after publication of a contract notice to conduct a procurement activity leading to the award of a public contract for services if the concerned Procurement Officer, on the basis of objectively verifiable factors and without any discriminatory intent, makes a formal written determination that the technical, financial, professional or other highly intellectual or complex nature of the desired services is such that:

- a. it is impossible to establish the contract specifications 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, or
- b. the nature of the services or the risks attaching thereto do not permit prior overall pricing.

33.2 The written determination required by Section 33.1 shall be included in the tender dossier.

33.3 Following the receipt of requests to participate, a contracting authority shall invite to submit a tender/proposal all candidates that fulfil the minimum selection criteria specified in the contract notice and the tender dossier in accordance with Section 47-52 of the present law. Candidates not so selected shall be eliminated from further participation.

33.4 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.

33.5 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.

33.6 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.

Section 34
Negotiated Procedures Without Publication of a Contract Notice

34.1 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 Section 34 and received a written authorization from the PPA. If the contracting authority is the PPA, it shall also comply with this Section 34; however, in such a case, the authorization request and the statement required by this Section 34 shall be submitted to the PPA's CAO, and the written authorization required by this Section 34 may be issued only by such officer.

34.2 A contracting authority may seek an authorization to use negotiated procedures without prior publication of a contract notice to conduct a procurement activity having as its object the award of:

a. *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 valid legal reasons requiring the respect of exclusive rights, the contract may be awarded only to a particular economic operator;
- (iii) for the delivery of water, electricity, gas or heat, if the contract requirements, because of objective and compelling physical or technological constraints, can only be met by one economic operator; or
- (iv) 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.

b. *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 significant compatibility or technical difficulties. Provided, however, that this Section 34.2.b(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;

c. *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; or
- (iii) for the performance or execution of new services that are highly similar to services that are covered by an earlier works contract, if (a) such new

contract is to be awarded to the same economic operator that was awarded such earlier works contract, (b) such new services are connected with the same basic project for which such earlier works contract was awarded, and (c) such earlier works contract was awarded pursuant to open or restricted procedures. Provided, however, that this Section 34.2.c(iii) 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; or

d. *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 Section 34.2.d(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. Provided, further, that this Section 34.2.d(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.

34.3 A contracting authority desiring to obtain the authorization required by Section 34.1 shall first prepare a written statement affirming that the contracting authority has, without any intent to discriminate against or in favour of any economic operator, has determined that a provision of Section 34.2 permits the use of negotiated procedures without the publication of a contract notice to conduct such activity. The contracting authority shall also set forth in the statement required by this Section 34.3 a detailed explanation of the reasoning used and the factors considered by the contracting authority in reaching this determination.

34.4 The contracting authority shall then submit to the PPA in writing an authorization request and the statement specified in Section 34.3. The PPA shall either issue the requested authorization or deny the request in writing within five (5) business days after receipt.

34.5 The PPA may authorize a contracting authority to use negotiated procedures without the publication of a contract notice only if (i) the PPA has received from such contracting authority in writing the authorization request and statement specified above, and (ii) the PPA has reviewed such statement and determined that, objectively considered, such statement convincingly demonstrates that the determination made by the contracting authority is valid.

34.6 Whenever the PPA authorizes a contracting authority to use negotiated procedures without the publication of a contract notice, the PPA shall publish a copy of such authorization in the Public Procurement Register.

34.7 If the PPA receives a request from a contracting authority that desires to invoke Section 34.2.a(iv), the PPA shall immediately accord the highest possible priority to the development of a response to such request. The PPA may authorize a contracting authority to use negotiated procedures without publication of a contract notice on the basis of paragraph 34.2.a(iv) only if the PPA first verifies in writing that (i) events necessitating an extremely urgent procurement have occurred, (ii) such events were not reasonably foreseeable by the contracting authority, (iii) such events require the conduct of the concerned procurement on a more accelerated basis than even the time limits provided for in Section 44 allow, and (iv) the occurrence of such events cannot be attributed to the negligent or purposeful acts or omissions of a contracting authority.

34.8 Even if the PPA determines that the criteria specified in Section 34.7 have been fulfilled, if the concerned procurement involves a low or medium value contract for goods or services meeting the description specified in Section 35.1, the PPA shall, whenever feasible, deny the request and instead direct the contracting authority to use the price quotation procedures set forth in Section 35.

34.9 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.

Section 35 Price Quotation Procedures

35.1 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 supply or service contract if (i) the concerned goods or services are readily available from economic operators, (ii) the concerned goods 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 goods or services.

35.2 A contracting authority shall use price quotation procedures to conduct an emergency procurement involving the award of a low or medium value supply or service contract when directed to do so by the PPA, pursuant to section 34.8

35.3 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.

35.4 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 favor of any economic operator.

35.5 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.

35.6 A written request for price quotations shall (i) describe, in accordance with Section 28, the concerned 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 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.

35.7 For a procurement activity conducted pursuant to Section 35.1, the date by which price quotations must be received shall be no less than ten (10) calendar days from the date of the dispatch of the written request for price quotations. For an emergency procurement conducted pursuant to Section 35.2, the date by which price quotations must be received shall be no less than three (3) business days from the date of the dispatch of the written request for price quotations.

35.8 If, in a procurement activity conducted pursuant to Section 35.1, less than three (3) economic operators that routinely offer the concerned 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 goods or services, initiate a new procurement activity for such goods or services.

35.9 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.

35.10 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.”

Section 36

Procedures for Minimal Value Contracts and Immovable Property 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 also have the authority to establish special procedures to govern the award of immovable property contracts. The PPRC shall ensure that such procedure provides for adequate competition, transparency and the most cost-effective use of public funds. The PPRC shall also ensure that such procedure observes the principle of non-discrimination and all applicable provisions of the present law.

Section 36A

Public Framework Contracts

36A.1 A contracting authority may use open or restricted procedures to award a public framework contract. A public framework contract may not be awarded through the use of any other procedure.

36A.2 No public framework contract shall have a duration of greater than 24 months. A public framework contract shall not be extendable or renewable.

36A.3 Under a public framework contract, the contracting authority shall be entitled throughout the period of such contract, and in strict accordance with the terms of such contract, to conclude subsidiary contracts or to place orders with the successful tenderer without following the procedures of the present law in respect of each such subsidiary contract concluded (or order placed) under the public framework contract. Provided, however: (i) each such subsidiary contract proposed to be awarded under a public framework contract shall be subject to the notice requirements of Section 39 and the signing requirements of Section 24, and (ii) 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 VIII.

36A.4 A contracting authority may consider awarding a public framework contract only if one or several of the following circumstances are present:

- a. the subject of the contract are goods, services, or works that cannot be categorized as long-term assets;
- b. the subject of the contract are continuous repair or maintenance services; or
- c. where the contracting authority plans to award several identical contracts over the period to be covered by the public framework contract, and the conclusion of one public framework contract covering two or more of such contracts would reduce the contracting authority's procurement and administration costs.

36A.5 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 Sections 5 and 6 of the present law; and (iv) be consistent with the best practices of EU member countries.

Chapter 3 **Rules on Advertising and Transparency**

Section 37 **Indicative Notice**

37.1 When a contracting authority has the intention of awarding, over a future 12-month period, (i) one or more supply contracts having an estimated value, alone or in the aggregate, of 250,000 Euros, (ii) one or more service contracts having an estimated value, alone or in the aggregate, of 250,000 Euros, or (iii) one or more works contracts having an estimated value, alone or in the aggregate, of 250,000 Euros, the contracting authority shall prepare an indicative notice that specifies:

- a. 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;

- b. 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
- c. 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.

37.2 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.

37.3 In the case of an indicative notice referred to in Section 37.1.a or b, the contracting authority shall prepare such indicative notice as soon as possible after the beginning of the concerned fiscal year.

37.4 In the case of an indicative notice referred to in Section 37.1.c, the contracting authority shall prepare such indicative notice immediately after the decision approving the planning of the concerned works contracts.

Section 38 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 Section 12. The contracting authority shall ensure that all language versions of a contract notice comply with the present law and contain materially identical information.

Section 39 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) business days after the award of such contract, prepare a contract award notice in the languages required by Section 12. The contracting authority shall ensure that all language versions of a contract award notice comply with the present law and contain materially identical information.

Section 40 Publication of Notices

40.1 A contracting authority shall immediately submit to the PPRC all language versions of any notice that it has prepared pursuant to Section 37, 38 or 39. The PPRC shall establish rules governing the submission of such notices.

40.2 Within two (2) business days after the PPRC receives such a notice from a contracting authority pursuant to Section 40.1, the PPRC shall publish all language versions of such notice on the PPRC's website and in the Public Procurement Register.

40.3. A contracting authority shall publish a notice that it has prepared in the required languages in a major Albanian language publication of general circulation in Kosovo and a major Serbian language publication; provided, however, that this publication requirement shall not apply to contract award notice for a low or minimal value contract. A contracting authority shall comply with this Section 40.3 within three (3) business days after submitting the concerned notice to the PPRC as required by Section 40.1. All language versions of a notice shall be published on the same date or dates, in the same manner. The PPRC establish rules governing the publication of notices.

40.4 A contracting authority shall dispatch a contract award notice, immediately after it has been prepared, to all economic operators that received an invitation to tender or submitted a request to participate or tender. A contracting authority shall dispatch such a notice to the concerned economic operators by the most rapid means available.

40.5 Except as provided for in Section 40.4, 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 Section 40.2 or 40.3.

Section 41 Form and Content of Notices

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

Section 42 General Rules for Setting a Time Limit for the Receipt of Tenders or Requests to Participate

42.1 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.

42.2 In a procurement using open procedures, the contracting authority shall set a time limit for the receipt of tenders that is:

- a. if the concerned contract is a large value public contract, not less than 40 calendar days; and
- b. if the concerned contract is not a large value public contract, not less than 25 calendar days.

42.3 In a procurement using restricted procedures, the contracting authority shall set time limits for the receipt of requests to participate and tenders that are:

- a. if the concerned contract is a large value public contract, not less than 25 calendar days for the receipt of requests to participate and not less than 40 calendar days for the receipt of tenders; and

- b. if the concerned contract is not a large value public contract, not less than 15 calendar days for the receipt of requests to participate and not less than 20 calendar days for the receipt of tenders.

42.4 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:

- a. if the concerned contract is a large value public contract, not less than 25 calendar days for the receipt of requests to participate and not less than 40 calendar days for the receipt of tenders; and
- b. if the concerned contract is not a large value public contract, not less than 15 calendar days for the receipt of requests to participate and not less than 20 calendar days for the receipt of tenders.

42.5 In a procurement using price quotation procedures, the contracting authority shall set a time for the receipt of tenders as specified in Section 35.7.

Section 43

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

43.1 Notwithstanding the provisions of Section 42, 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 24 calendar 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.

43.2 The time limit referenced in Section 43.1 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 40 calendar days and no more than 12 months prior to the date of publication of the concerned contract notice.

Section 44

Special Rules Permitting the Reduction of Time Limits

44.1 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 Section 42 or, if applicable, Section 43, (iii) do not give rise to the kind of extreme urgency anticipated by Section 34.2.a(iv), and (iv) 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 Section 44.

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

- a. if the concerned contract is a large value public contract, not less than 15 calendar days; or
- b. if the concerned contract is not a large value public contract, not less than 10 calendar days.

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

Section 45

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

The time limits specified in Sections 42 - 44 shall commence to run as follows:

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

Section 46

Delivery of Tender Dossiers

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 to such economic operator as follows:

- a. If the time limit set for the receipt of tenders is more than 30 calendar days, no later than five calendar days after receiving such request;
- b. if the time limit set for the receipt of tenders is more than 20 calendar but less than 30 calendar days, no later than four calendar days after receiving such request; and
- c. if the time limit set for the receipt of tenders is less than 20 calendar days, no later than three calendar days after receiving such a request.

Section 47

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.

Section 48

Dispatch and Contents of Invitations to Tender

48.1 In restricted procedures, negotiated procedures after the publication of a contract notice, and price quotation procedures, the contracting authority shall simultaneously dispatch to all selected candidates the concerned invitation to tender.

48.2 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.

48.3 In price quotation procedures, the invitation to tender shall contain all material information needed by the candidates to submit responsive price quotations.

48.4 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.

48.5 If a procurement activity using restricted procedures is being conducted under accelerated time limits authorized by Section 44.3, the contracting authority shall dispatch the invitations to submit a tender by the most rapid means of communication possible.

Section 49

Notification of Selection Criteria

49.1 A contracting authority shall make reference 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 Sections 61 – 65.

49.2 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 section 61 of the present 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 Sections 61-65.

49.3 All selection criteria and documentary and information requirements established and noticed under this Section 49 shall be both directly relevant and proportionate to the subject matter of the concerned contract.

Section 50 Notification of Contract Award Criteria

50.1 A contracting authority shall specify in the contract notice and the tender dossier either (i) that the contract shall be awarded to the economic operator submitting the lowest-priced tender or (ii) that the contract shall be awarded to the economic operator submitting the most economically advantageous tender.

50.2 If the contracting authority has specified that the award of a public contract shall be made to the economic operator submitting the most economically advantageous tender, such contracting authority shall specify in 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 in monetary terms. In specifying such criteria, a contracting authority shall ensure that such criteria are directly linked to the objects and requirements of the concerned public contract.

50.3 Only criteria that are objectively assessable and have been disclosed in advance in the tender dossier may be used. A contracting authority may only specify criteria that relate to: (i) the tender price (ii) the terms of payment, (iii) operating, maintenance and other life-time costs, (iv) the delivery date, delivery period or period of completion, (v) objectively assessable functional, environmental or similar characteristics, (vi) the provision and availability of after-sales service and technical assistance, (vii) the terms of any warranties, guarantees and exclusions, and/or (viii) other legal terms.

Section 51 Providing Additional Information to Candidates and Tenderers

51.1 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:

- a. no less than 20 calendar days prior to the date set for the receipt of tenders, if the time limit set for the receipt of tenders is 40 calendar days or more;
- b. no less than 15 calendar days prior to the date set for the receipt of tenders if the time limit set for the receipt of tenders is 30 calendar days or more but less than 40 calendar days;

- c. no less than 10 calendar days prior to the date set for the receipt of tenders if the time limit set for the receipt of tenders is 20 calendar days or more but less than 30 calendar days; or
- d. no less than 6 calendar days prior to the date set for the receipt of tenders if the time limit set for the receipt of tenders is 10 calendar days or more but less than 20 calendar days.

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

51.3 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.

51.4 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.

51.5 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.

51.6 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.

51.7 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 calendar days from the deadline set for the receipt of tenders, the contracting authority shall extend such deadline to give economic operators at least 10 calendar 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.

51.8 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 5 calendar days from the deadline set for the receipt of tenders, the contracting authority shall extend such deadline to give economic operators at least 5 calendar 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.

51.9 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 Section 51.7 or Section 51.8, whichever is applicable.

Section 52 Notification to Eliminated Candidates and Tenderers

52.1 Whenever a contracting 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 of such event.

52.2 If a contracting authority receives from an eliminated candidate or tenderer a written request for a statement of the reasons upon which such candidate or tenderer was eliminated, the contracting authority shall, within 15 calendar days from the date on which such request is received, send such eliminated candidate or tenderer a statement specifying such reasons in accordance with the following:

- a. In the case of an eliminated candidate, the statement shall specify the reasons for the rejection of that candidate's request to participate.
- b. 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.
- c. 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.

Section 53 Means of Communication

53.1 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.

53.2 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 an economic operator 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.

53.3 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 4 **Conduct of Procurement Procedures**

Section 54

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

54.1 All public contracts shall be awarded on the basis of the criteria specified in Section 58 and in accordance with the procedure established pursuant to such section.

54.2 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 ineligible under Section 61, (ii) a certificate, document or other sufficient evidence that has been reasonably required by a contracting authority under Section 62 for the purpose of verifying the professional suitability of the candidate or tenderer, or (iii) sufficient evidence, as described and evaluated under Sections 63 and 64, reasonably demonstrating that such candidate or tenderer meets the minimum financial, technical and professional capacity requirements specified in the contract notice in accordance with Section 49.

54.3 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 (i) the selection criteria specified in the contract notice and the tender dossier in accordance with Section 49.2 and (ii) the documents, information and/or evidence of qualifications submitted by candidates in direct response to the requirements stated in the contract notice and the tender dossier. Candidates not so selected shall be eliminated from further participation. 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 the present law

54.4 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.

Section 55 **Tender Security**

55.1 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:

- a. 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;
- b. 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
- c. 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.

55.2 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.

55.3 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 1000 Euros.

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

- a. 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;
- b. the precise amount of the tender security and the required validity period of the tender security;
- c. the deadline for the receipt of the tender security, which shall be the same as that for the receipt of tenders; and
- d. a statement of the events, in accordance with Section 55.1, that will cause such security to be forfeited.

55.5 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.

55.6 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 Sections 55.7 – 55.9.

55.7 If no event has occurred requiring the forfeiture of tender security, as specified in Section 55.1, a contracting authority shall return the funds or document constituting such tender security within five (5) business days after the occurrence of any of the following events:

- a. the expiration of the tender validity period;
- b. the award and entry into force of the concerned public contract;
- c. the formal cancellation or termination of the procurement activity prior to the award or entry into force of the concerned public contract; or
- d. 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.

55.8 If a contracting authority determines that an event requiring the forfeiture of tender security, as specified in Section 55.1, 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 Section 55.6 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, a review panel or a court of competent jurisdiction requiring the concerned contracting authority to make another disposition of the concerned funds, the contracting authority shall:

- a. 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
- b. 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.

Section 56
Opening of Tenders

56.1 Tenders received in a procurement activity conducted using the procedures specified in Sections 30-33 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.

56.2 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 Section 56.1. 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.

56.3 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 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 (iii) any discounts offered in the tender. Any discounts not so announced shall not be considered in the evaluation of tenders. 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 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 Section 9.1 of the present law and copies of such minutes shall immediately be sent to all tenderers.

Section 57 Examination, Evaluation and Comparison of Tenders

57.1 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.

57.2 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 to the concerned tenderer written notice of any such correction.

57.3 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.

57.4 A contracting authority shall evaluate and compare tenders that have been timely submitted by eligible and – if applicable – qualified economic operators in order to ascertain the successful tender. The successful tender shall be chosen in accordance with Section 5857.5 Except for the communications that are specifically authorized by Sections 57.1 and 57.2, 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.

57.6 Notwithstanding the prohibition of Section 57.5, a contracting authority may, in a procurement activity that is being conducted with negotiated procedures, negotiate with the selected economic operator; provided, however, that the PPRC shall establish in the public procurement rules a detailed procedure that contracting authorities shall be required to follow when conducting such negotiations. 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 the present law.

Section 58 Contract Award Criteria

58.1 Except as provided for in Sections 58.2 and 58.3, a contracting authority shall make an award of a public contract to the economic operator submitting the lowest-priced tender.

58.2 If, in accordance with Section 50, the contracting authority has specified in the tender dossier that the award of a public contract shall be made to the economic operator submitting the most economically advantageous 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 Section 50.3.

58.3 The PPRC shall establish in the public procurement rules a detailed procedure that contracting authorities shall be required to follow when examining, evaluating and comparing tenders and awarding public contracts. 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) and otherwise complies with all applicable provisions of the present law.

Section 59 Abnormally Low Tenders

59.1 If an economic operator submits a tender that, considered objectively, is or appears to be abnormally low in relation to the object of any procurement procedure and the tender therefore gives rise to a reasonable belief that the economic operator has submitted an un-performable tender, 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 Section 59.2 regarding the bases for its tender .

59.2 The contracting authority shall take into consideration explanations provided by the tenderer relating to:

- a. the economics of the manufacturing process, of the services provided and/or of the construction method;
- b. any technical solutions offered or chosen;
- c. any exceptionally favorable 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
- d. the originality of the supplies, services, work or works proposed.

59.3 After taking into consideration the information and explanations provided by the tenderer pursuant to Section 59.1, 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.

59.4 After taking into consideration the information and explanations provided by the tenderer pursuant to Section 59.1, if the contracting authority concludes that there is still good reason to believe that the tenderer has submitted an un-performable tender, the contracting authority may either (i) reject the tender, if it first receives the written permission of the PPA to do so; or (ii) award the concerned contract to such tenderer on the condition that the tenderer post performance security in accordance with Section 60.

Section 59A Termination of a Procurement Activity

59A.1 When a contracting authority initiates a procurement activity by publication of a contract notice, it may terminate that procurement activity only for one of the following reasons:

- a. the procurement activity has resulted in the award of a public contract;
- b. a provision of the present law requires the cancellation of the procurement activity;
- c. an order issued by a competent public authority under a provision of the present law or another law requires the cancellation of the procurement activity;
- d. all responsive tenders contain prices that substantially exceed the contracting authority's budget for the procurement activity; or
- e. 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.

59A.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 Section 9.1 of the present law a written statement setting forth in detail the factual reasons and legal basis for such cancellation.

Section 60
Performance Security

60.1 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, (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, (iv) the contract involves many workers, subcontractors, and/or material suppliers that might be left unpaid in the event of a breach of such contract by the economic operator or (v) the contracting authority has, after complying with Section 59, good reason to believe that an economic operator has submitted an un-performable tender.

60.2 A contracting authority shall require an economic operator that has been awarded any other medium or large value contract to post performance security as a pre-condition to the signing and entry into force of such contract if there is a risk that a breach of such contract would cause material damage to the contracting authority and/or require the contracting authority to incur material expense in obtaining the completion of such contract.

60.3 A contracting authority shall ensure that the amount of any performance security that is required by Section 60.1 (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.

60.4 A contracting authority shall ensure that the amount of any performance security that is required under Section 60.2 (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 sufficient to cover any 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.

60.5 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. Notwithstanding the foregoing, a performance security requirement established pursuant to Section 60.1(v) need not be specified in the tender dossier.

60.6 Performance security may always be posted in cash or a cash equivalent, such as a bank wire or bank transfer. Performance 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.

60.7 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 or received under a letter of credit or bank guarantee that had been posted 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 Sections 60.8 – 60.9.

60.8 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.

60.9 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 shall notify the concerned economic operator in writing of such determination. However, if such performance 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 Section 60.7 until the concerned economic operator has exhausted all of its rights to appeal the contracting authority's determination. Once the economic operator has exhausted its rights to appeal such decision, and no order has been received from the PRB, a review panel or a court of competent jurisdiction requiring the concerned contracting authority to make another disposition of the concerned funds, the contracting authority shall:

- a. 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
- b. 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 5

Eligibility Requirements

Section 61

Eligibility of the Candidate or Tenderer

61.1 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:

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

61.1A Notwithstanding the foregoing, a contracting authority shall afford an economic operator who is ineligible under Section 61.1 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 Section 61.1. 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.

61.2 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:

- a. 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 Section 117.1 of the present law under the laws or regulations applicable in Kosovo or any country, or under international treaties or conventions;
- b. been declared ineligible, by reason of conduct such as that described above, by any bank, institution or organization providing funds for general development, public investment or reconstruction;
- c. 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
- d. been determined by a court of competent jurisdiction to have committed an act of fraud or an act equivalent to fraud;
- e. 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
- f. been determined by the PRB or a court of competent jurisdiction to have made serious misrepresentations to any public authority in Kosovo or elsewhere.

61.3 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:

- a. 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 (iiii) of any other similar proceedings under the law of Kosovo or any other jurisdiction;
- b. is being wound up or administered, or its affairs are being wound up or administered, by a court of competent jurisdiction;
 - c. 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;
 - d. is in any situation analogous to a, b or c above arising from a similar procedure under the laws of its place of establishment or of a place where it conducts business;
 - e. 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;
 - f. 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;
 - g. 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;
 - h. is currently delinquent in the payment of any social security contributions in Kosovo or the economic operator's country of establishment, or is more than thirty (30) days' delinquent in the payment of any amount owed to a public service operator in Kosovo for water, electricity, gas or heat;
 - i. is currently delinquent in the payment of taxes in Kosovo or the economic operator's country of establishment;
 - j. has not yet complied with an order issued by the PRB or a review panel; or
 - k. has a place of business in Kosovo but does not have a current and valid certificate of registration issued by the Kosovo Registry of Business Organizations and Trade Names.
- 61.4 The historical time periods specified in this Section 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.

Section 62
Professional Suitability

62.1 A contracting authority may require an economic operator desiring to participate in a procurement activity or the performance of a public contract 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's – as appropriate – professional, commercial and/or corporate register.

62.2 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.

Section 62A
Documentary Evidence

62A.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 Section 61. 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 Section 62. 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.

62A.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 Section 61 of the present law, (ii) a certificate, document or other sufficient evidence that has been reasonably required by a contracting authority under Section 62 of the present law for the purpose of verifying the professional suitability of the candidate or tenderer, or (iii) sufficient evidence, as described under Sections 63 and 64 of the present 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.

62A.3 The foregoing Section 62A.2 shall not operate to disqualify a candidate or tenderer where the failure is not material and does not affect in any substantial way the scope, quality or performance of the goods and which does not affect unfairly the competitive position of any other tenderer; provided always that, in the event that the failure is the responsibility of a candidate or tenderer to whom the contracting authority intends to award the contract, that candidate or tenderer remedies the failure before the award of the contract.

Section 63
Economic and Financial Standing

63.1 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:

- a. an appropriate statement or statements from one or more banks;
- b. evidence of a relevant policy of insurance issued by a reputable licensed insurance company;
- c. 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
- d. copies of income statements and management reports certified by a reputable licensed auditing firm.

63.2 A contracting authority shall specify, in the contract notice or in the invitation to tender or participate, which of the references mentioned in Section 63.1 and/or other references it requires.

63.3 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.

Section 64
Technical and/or Professional Capability

64.1 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 Section 64.

64.2 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:

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

- c. an indication of the technicians or technical bodies involved, whether or not belonging directly to the economic operator, especially those responsible for quality control;
- d. 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
- e. certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of products clearly identified by references to specifications or standards.

64.3 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.

64.4 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:

- a. 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;
- b. 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;
- c. an indication of the technicians or technical bodies involved, whether or not belonging directly to the economic operator, especially those responsible for quality control;
- d. a statement of the economic operator's average manpower and average number of managerial staff for each of the last three years;
- e. a statement of the tools, plant or technical equipment available to the economic operator for carrying out the services;
- f. a description of the economic operator's measures for ensuring quality and research and development facilities;
- g. an indication of the elements of the concerned contract that the economic operator intends to sub-contract; and/or

h. other appropriate and relevant information.

64.5 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.

64.6 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:

- a. 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;
- b. 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;
- c. a statement of the tools, plant and technical equipment available to the economic operator for executing the works project or performing the construction activities;
- d. a statement of the economic operator's average manpower and average number of managerial staff for each of the last three years;
- e. 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
- f. other appropriate and relevant information.

64.7 A contracting authority shall specify in the tender dossier which of the items specified in this Section 64 it requires.

Section 65 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.

Section 66

Groups of Economic Operators and Foreign Economic Operators

66.1 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.

66.2 If a tender is submitted by such a group, the group shall be required to submit with its tender a signed original of the agreement establishing such group. All contracting authorities shall set forth this requirement in their tender dossiers.

66.3 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.

66.4 If an economic operator located outside Kosovo is awarded a contract that requires the performance of services and/or works within Kosovo, and such foreign economic operator is not already registered with the Kosovo Registry of Business Organizations and Trade Names, such foreign economic operator shall be required to effect such registration within a reasonable time after it is awarded the contract.

TITLE III

RULES GOVERNING DESIGN CONTESTS

Section 67

General Provisions

67.1 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.

67.2 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.

67.3 If, without any intent to discriminate against or in favor 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.

Section 68

Scope

The provisions of this Title shall apply to any design contest described in Section 19 of the present law.

Section 69

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 Section 12 of the present law. If the contracting authority is not the PPA, the contracting authority shall immediately submit to the PPA all language versions of such notice to the PPA.

Section 70

Design Contest Results Notice

A contracting authority that has held a design contest shall, within two (2) business days of the conclusion of such contest, prepare a notice on the results of the design contest in the languages required by Section 12. If the contracting authority is not the PPA, the contracting authority shall immediately submit to the PPA all language versions of such notice.

Section 71

Publication of Design Contest Notices

71.1 The rules governing the publication of a design contest notice shall be the same as those set forth in Section 40 governing the publication of a contract notice for a contract having the same value as the concerned design contest.

71.2 The rules governing the dispatch and publication of a design contest results notice shall be the same as those set forth in Section 40 governing the dispatch and publication of a contract award notice for a contract having the same value as the concerned design contest.

71.3 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 Section 71.

Section 72

Form and Content of Design Contest Notices

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

Section 73
Means of Communication

73.1 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.

73.2 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.

73.3 The contracting authority shall ensure that the design contest notice and the rules specified in Section 67.1 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.

Section 74
Composition and Decisions of the Jury

74.1 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 Procurement Officer of 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.

74.2 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.

74.3 No person outside the jury shall influence or attempt to influence the decision of the jury or the opinion of any jury member.

74.4 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, a review panel 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
[Repealed]

Sections 75-80
[Repealed]

TITLE V
PUBLIC PROCUREMENT REGULATORY COMMISSION

Section 81
Establishment of the Public Procurement Regulatory Commission

81.1 Pursuant to this law there shall be established a procurement regulatory commission to be known as the Public Procurement Regulatory Commission (the “PPRC”). The PPRC shall be responsible for carrying out the functions assigned to it by the present law with respect to the overall development and operation of the public procurement rules and the public procurement system in Kosovo.

81.2 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.

81.3 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.

81.4 Except as provided for in the transitional provisions set forth in Section 89A.2 of the present law, the PPRC shall henceforth exercise and perform only the authority, powers, functions and responsibilities specified in the present law.

Section 82
Principal Functions of the PPRC

82.1 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.

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

- a. 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 Sections 30-36 of the present 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.
- b. 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;
- c. reinforce awareness among contracting authorities and economic operators of public procurement legislation as well as its objectives, procedures and methods;
- d. 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;

- e. 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;
- f. 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;
- g. 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;
- h. collect, analyse and publish information about public procurement procedures and awarded public contracts;
- i. 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;
- j. 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 Section 70, and (ii) all information contained in the Public Procurement Register;
- k. develop a web-site and a Kosovo-wide electronic information system to improve the publication of the notices required by the present law and to publish tender documents;
- l. 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;
- m. initiate and support the development of electronic procurement and communication within the field of public procurement;
- n. 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; and
- o. liaise and cooperate with other organisations at home and abroad on matters associated with public procurement.

Section 83
Monitoring and Supervisory Functions of the PPRC

83.1 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.

83.2 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.

Section 84
[Repealed]

Section 85
[Repealed]

Section 86
Appointment of Members

86.1 The PPRC shall be comprised of three (3) individuals. Except as provided for in the transitional provisions set forth in Section 89A.1_ of the present law, all members shall be appointed as provided in this Section 86 for a term of five (5) years, and may be reappointed only once.

86.2 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 Sections 86.3 – 86.4.

86.3 No person shall be nominated, appointed or serve as a member of the PPRC if (i) he/she would be ineligible to participate in a procurement activity by reason of a provision of Section 61.2, or (ii) from 1 January 2008 and thereafter, he/she does not hold a current and valid procurement professional certificate issued by KIPA. The Government and the Assembly shall ensure that no such person is nominated or appointed as a member of the PPRC.

86.4 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.

Section 87
Organization and Voting of the PPRC

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

87.2 The President shall have the authority to designate a member to organize and manage the work of the PPRC in a particular subject area. 87.3 The President shall convene meetings of the PPRC when and as he considers necessary or when requested by two other members of the PPRC.

87.4 The quorum for meetings of the PPRC shall be three (3) members.

87.5 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.

87.6 The PPRC shall make every effort to reach decisions at its meetings 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 present. In the event of a tie vote, the chairperson of the meeting shall have the deciding vote.

87.7 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.

Section 87A
Implementing Measures

87A.1 In exercising its functions under Section 82.2 of the present 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.

87A.2 If a provision of the present law does not explicitly require an implementing measure, the PPRC may, if and to the extent it deems necessary for the benefit of contracting authorities or economic operators, develop rules implementing or covering the subject matter of such a provision, provided always that such implementing rules are consistent with the present law and otherwise promote the integrity and fairness of the procurement process.

87A.3 If an interested party or a contracting authority believes that the PPRC has taken a decision or action, or issued or used an implementing measure or interpretive ruling, that is not authorized by or inconsistent with one or more provisions of the present law, the interested party or contracting authority may appeal such decision, act, measure or ruling to the PRB. Decisions of the PRB on such may be submitted to the courts for review in

accordance with the normal rules governing the judicial review of administrative decisions.

87A.4 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.

87A.5 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 PPA, the Director of the Treasury; the procurement officers of contracting authorities (including public service operators), and organizations representing economic operators.

87A.6 With respect to the provisions of Section 55.5 on tender security and Section 60.6 on performance security, the PPRC, after consultation with the Central Banking Authority 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.

Section 88 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* the present law and the Law on Access to Official 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.

Section 89 Removal and Suspension of Members

89.1 If, at any time, the Government, the Assembly or any other public authority or public official 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.

89.2 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 Section 86, (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 Section 117.1 or (iv) has intentionally

violated or more than once negligently disclosed information that the PPRC has lawfully classified as “confidential”.

89.3 If the court determination specified in Section 89.2 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 Section 89.2 is not subject to further proceedings or appeals, the court shall issue an order removing the member.

89.4 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 of illicit influence as described in Section 117.1, 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, (ii) to have access to or the use of any of the PPRC’s premises, facilities, equipment, records, information or personnel.

89.5 A member of the PPRC who is suspended pursuant to this Section 89 shall continue to receive his/her salary until such member is removed or such suspension is cancelled.

Section 89A Transitional Provision

89A.1 Each member of the PPRC holding office as of 31 December 2006 shall continue to serve in that capacity, unless he/she resigns or is removed pursuant to Section 89, until the expiration of his/her term as determined in accordance with the procurement legislation that was in force when he/she was appointed. No new member of the PPRC shall be appointed under Section 86 of the present law unless and until (i) the term of an existing member expires, (ii) an existing member resigns, or (iii) an existing member is removed in a manner provided for in the present law.

89A.2 The PPRC shall exercise the review functions and responsibilities assigned by the present law to the PRB until such time as the President of the PRB requires their transfer, which shall occur no later than 30 June 2007. At that time, the PPRC shall cooperate fully with the PRB to ensure the orderly transfer of such functions and responsibilities.

TITLE VI **PUBLIC PROCUREMENT AGENCY**

Section 90 Establishment of the Public Procurement Agency

Pursuant to the present law, there shall be established within the Government, an autonomous executive agency to be known as the Public Procurement Agency (“PPA”). The PPA shall exercise and perform only the authority, powers, functions and responsibilities specified in the present law.

Section 91
Procurement Activities of the PPA

91.1 If the Government determines that a proposed procurement activity should - for reasons of professional expertise, cost-effectiveness, efficiency or other legitimate concerns - be conducted by the PPA instead of one or more other contracting authorities, the Government shall have the authority to designate the PPA as the responsible contracting authority for the conduct of such procurement activity. In such a case: (i) the Government 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 PPA shall, for all purposes of the present law, be deemed the “contracting authority” for the concerned procurement activity.

91.2 The Government shall establish a list of any commodities or common use items the procurement of which it has assigned to the PPA. 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 Section 82.2.k of the present law.

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

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

Section 92
Appointment, Removal and Suspension
of the Director and the Executive Board of the PPA

92.1 Until 30 June 2009, the PPA shall be administered by the Director and the members of the Executive Board holding those positions on 31 December 2006. The terms of all such persons shall expire on 30 June 2009.

92.2 As of 1 July 2009, the Executive Board shall be dissolved and the PPA shall thereafter be administered only by a Director, who shall be appointed as provided for in this Section 92 for a term of three (3) years.

92.3 The Director shall be nominated by the Government and appointed by the Assembly. In making such nomination and appointment, the Government and the Assembly shall implement the requirements specified in Sections 92.7 and 92.8 of the present law.

92.4 The Director and the members of the Executive Board shall not be subject to removal or suspension prior to the expiration of his/her term except by an order of a court of competent jurisdiction. Such removal or suspension shall be subject to the same conditions provided for in Section 89 of the present law for the removal and suspension of a member of the PPRC. In all other respects, the Director and each member of the

Executive Board shall have the status of a civil servant and shall be subject to the same laws and rules governing civil servants to the same extent as any other civil servant.

92.5 If the Director or a member of the Executive Board is suspended pursuant to Section 89.4, he/she shall continue to receive his/her salary until he/she is removed or the suspension is cancelled. During the period of suspension, the PPA shall not permit the concerned person (i) to participate in any of its activities, (ii) to discuss any of its matters or activities with any official or personnel of the PPA, (ii) to have access to or the use of any of the PPA's premises, facilities, equipment, records, information or personnel.

92.6 If the Director is suspended or removed, the Government shall appoint an interim director to serve in that position until the suspension is cancelled or a new Director is appointed pursuant to Section 92.3.

92.7 No person may be nominated, appointed or serve as the Director of the PPA if he/she would be ineligible to participate in a procurement activity by reason of a provision of Section 61.2 of the present law.

92.8 The Government and Assembly shall ensure that any person nominated to be the Director meets one of the following criteria: he/she is a lawyer, economist or other professional holding a university degree and possessing substantial procurement experience.

Section 93 Confidentiality

The PPA may protect from disclosure to the public or unauthorized persons information developed or received by the PPA during the conduct of its work, but only to the extent permitted by *both* the present law and the Law on Access to Official Documents. Notwithstanding the foregoing, the PPA 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, the PRB and/or a review panel immediately upon the request or order of any of these. The PPA 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 VII **PROCUREMENT REVIEW BODY**

Section 94 Establishment of the Procurement Review Body

94.1 Pursuant to this law there shall be established a procurement review body to be known as the Procurement Review Body (the "PRB"). The PRB shall be responsible for carrying out the functions assigned to it by Section 95 and the other provisions of the present law.

94.2 The PRB shall be an independent administrative review body. No person or public official may exert or attempt to exert any political or illicit influence over the PRB,

a member of the PRB or a review panel or a review expert with respect to any specific operational, fact-finding or decisions or actions.

94.3 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.

Section 95

Functions and Powers of the PRB

95.1 The PRB, and the review panels established by the PRB, shall be responsible for implementing the procurement review procedures established in Title VIII of the present law and shall have the authorities and responsibilities specified in that Title.

95.2 Upon the written request of a contracting authority or an interested party, the PRB shall also have the authority and responsibility for reviewing and determining the validity of any decision, action, measure, interpretation or ruling that has been taken, used issued or promulgated by the PPA or the PPRC. If the PRB determines that the concerned decision, action, measure, interpretation or ruling is not authorized by or inconsistent with one or more provisions of the present law, the PRB may issue a decision invalidating the concerned decision, action, measure, interpretation or ruling and order the PPA or PPRC to take any corrective measures that the PRB deems appropriate. All decisions and orders of the PRB issued under this Section 95.2 shall be reviewable by a court of competent jurisdiction in accordance with the applicable law on the judicial review of administrative matters.

Section 96

Appointment of Members of the PRB

96.1 The PRB shall be comprised of five (5) persons. Subject to the provisions of Section 96.2 of the present law, all members shall be appointed for a term of five (5) years, and may be reappointed only once.

96.2 The initial terms of the members of the PRB shall be as follows: The President and two (2) other members shall be appointed for a term of five (5) years; the other two (2) members shall be appointed for a term of four (4) years.

96.3 Upon the expiration of the initial terms provided for in Section 96.2 of the present law, any reappointment or new appointment shall be for a term of five (5) years.

96.4 Each member of the PRB shall be nominated by the Government and appointed by the Assembly. Each person so nominated or appointed shall possess the same qualifications and meet the same criteria as those required under the law applicable in Kosovo for a judicial appointment.

96.5 In addition, no person shall be nominated, appointed or serve as a member of the PRB if (i) he/she would be ineligible to participate in a procurement activity by reason of a provision of Section 61.2, or (ii) from 1 January 2008 and thereafter, he/she does not hold a current and valid procurement professional certificate issued by KIPA. The Government and the Assembly shall ensure that no such person is nominated or appointed as a member of the PRB.

Section 97
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 governing the removal and suspension of a judge.

Section 98
Organization of the PRB

98.1 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.

98.2 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 VIII
PROCUREMENT REVIEW PROCEDURES

Chapter 1
General Provisions

Section 99
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 Section 4. Duties and obligations owed by contracting authorities under the present law are duties owed to interested parties.

Section 100
Basic Principles

100.1 In conducting any procurement review proceeding specified in this Title, all participating persons, undertakings and public authorities shall ensure that such proceeding is 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.

100.2 Neither the conduct of any review proceeding nor any decision by the PRB, a review panel established by the PRB, a member or employee of the PRB or a review expert 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.

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

100.4 Any procurement review proceeding shall be carried out in strict conformity with the applicable provisions of this Title VIII.

100.5 In taking any action or measure provided for by this Title VIII, the PRB or a review panel 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 2 **Review Panels**

Section 101 **Authority of Review Panels**

101.1 All complaints lodged with the PRB shall be heard by a review panel established in accordance with Section 102.

101.2 A review panel shall have the competence, authority, power and responsibility, under the conditions specified in this Title VIII, to:

- a. review complaints received by the PRB from interested parties containing allegations of violations of the present law;
- b. assign review experts and conduct investigations and procurement review proceedings for the purpose of determining the facts giving rise to such complaints and allegations;
- c. 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;
- d. 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;
- e. take any other action necessary and appropriate to ascertain whether a violation has occurred;
- f. if the concerned contract has not yet been lawfully signed by both parties, issue an order setting aside or suspending an award of a public contract or a result of a design contest;
- g. issue an order to a contracting authority 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;
- h. issue an order 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;

- i. issue an order to a contracting authority requiring such authority to pay compensation to a complainant;
- j. 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;
- k. 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; and
- l. issue an order requiring law enforcement officials to assist the PRB or a review panel obtain compliance with another order of the PRB or a review panel.

Section 102

Establishment and Composition of Review Panels

102.1 The President of the PRB shall be responsible for the appointment and composition of each review panel.

102.2 Depending on the value or size of the proposed contract or on the difficulty or importance of the issues raised by the case, the President shall appoint a review panel of one or three members of the PRB using objective criteria or mechanisms. If the case raises issues of significant importance and interest, the review panel shall be composed of all five permanent members of the PRB.

102.3 In the event that the number of procurement complaints that must be decided by review panels under this Title VIII 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 Prime Minister 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 and/or review experts.

102.4 The Prime Minister shall ensure that every person appointed as a review panel member pursuant to Section 102.3: (i) holds a university law degree and possesses substantial procurement or other relevant experience or (ii) possesses the same qualifications as those required under the law applicable in Kosovo for a judicial appointment. The Prime Minister shall ensure that every person appointed as a review expert pursuant to Section 102.3: holds a current and valid procurement professional certificate.

Section 103

Rules of Procedure for Review Panels

The PRB shall establish rules of procedure to govern the conduct of review proceedings by review panels. Any rules so established shall be consistent with the present law, especially the provisions of this Title VIII. 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.

Section 104
Confidentiality

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 Official Documents. Notwithstanding the foregoing, 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 3
Initiation and Initial Conduct of Review Proceedings

Section 105
Time Limits for Submission of a Complaint

105.1 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 the present law.

105.2 If the concerned contract has been awarded or the concerned design contest has been decided, a complaint may be filed only within the eight (8) calendar day period following the date of publication of the concerned contract award notice or design contest results notice. Such eight (8) calendar day period shall begin at midnight of the date of publication of the concerned notice.

105.3 If a complaint is filed after the date of publication of the concerned contract award notice or the design contest results notice, a review panel may reject an allegation set forth in such complaint if:

- a. the allegation concerns an act or omission of a contracting authority that is alleged to have occurred ten (10) or more calendar days prior to such date of publication;
- b. the complainant, in the judgment of the review panel, knew or reasonably should have known - eight (8) or more calendar days prior to such date of publication – of the act or omission;
- c. the complainant, in the judgment of the review panel, knew or reasonably should have known – eight (8) or more calendar days prior to such date of publication - that the act or omission constituted a violation of the present law; and
- d. the complainant, in the judgment of the review panel, had sufficient time to prepare and file a complaint containing such allegation prior to such date of publication.

Section 106
Filing and Basic Contents of a Complaint

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

- a. sets forth the name, address and contact information of the complainant;
- b. sets forth the name of the concerned contracting authority;
- c. sets forth a reasonably specific description of the concerned procurement activity;
- d. attaches a copy of the concerned contract award notice or design contest results notice, if such has been issued or published.
- e. demonstrates that the complainant qualifies as an “interested party,” as defined under Section 4 of the present law;
- f. describes the factual circumstances constituting or giving rise to the alleged violation;
- g. specifies the provision or provisions of the present law that have allegedly been violated; and
- h. describes how the alleged violation has caused, or threatens to cause, material damage to the complainant.

106.2 The complainant shall file the original of such complaint with the PRB and simultaneously dispatch, by the most rapid means possible, a copy thereof to the contracting authority.

106.3 The PRB shall, upon the receipt of a complaint, immediately review such complaint to ensure that it meets the requirements of Section 106.1. The PRB shall complete such review within one (1) business day after receiving the complaint.

106.4 If the PRB determines that a complaint does not meet the requirements of Section 106.1, 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 two (2) business days, the complainant shall have two (2) business 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) business days, the complainant may re-submit the complaint anytime prior to the expiration of the filing period.

106.5 If the complainant re-submits a deficient complaint, the PRB shall dismiss the complaint with prejudice, and the complainant shall have no further right to file a complaint setting forth any allegation contained in the dismissed complaint.

106.6 If the PRB determines that the complaint has been timely filed and meets the requirements of Section 106.1, the PRB shall immediately (i) appoint a review expert in

accordance with Section 108 and (ii) establish a review panel to review the allegations alleged in such complaint.

Section 107
Automatic Suspension of Procurement Activity

107.1 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.

107.2 Notwithstanding the foregoing, if requested by the contracting authority, the President of the PRB may issue an order removing the automatic suspension required by Section 107.1 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.

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

Section 108
Engagement of Review Expert

108.1 In order to protect the interests of both the contracting authority and the complainant, and to ensure impartiality in deciding the issues raised by the complaint, the PRB shall immediately appoint a review expert to review the conduct of the concerned procurement activity and to assess the validity of the allegations contained in the complaint.

108.2 The PRB shall develop and maintain a list of qualified review experts. In selecting and engaging review experts, individuals shall be sought that are impartial, professional and familiar with the conduct of procurement activities and with the present law. Whenever possible, the PRB shall select and engage as review experts persons that hold a current and valid procurement professional certificate.

Section 109
Responsibilities of the Review Expert and the Contracting Authority

109.1 A review expert shall, within the seven (7) calendar day period immediately following the day of his/her appointment, (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 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.

109.2 The contracting authority is specifically required to (i) cooperate fully with the review expert, (ii) provide the review expert with immediate, open and unfettered access to all documents and records, without regard to location or type, that have any relation to the contracting authority's procurement activities, and (iii) comply fully, promptly and invasively with any request of the review expert.

Section 110 Decision of the Contracting Authority

110.1 The contracting authority shall, within four (4) calendar days after receiving the review expert's assessment specified in Section 109.1, 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.

110.2 The written decision required by Section 110.1 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.

110.3 If, in its decision, the contracting authority determines that any or all of the allegations are valid, it shall, within five (5) calendar days, take whatever corrective action may be necessary 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. In doing so, the contracting authority may seek the written advice and suggestions of the review expert, the review panel, the PPRC, the complainant and/or the other concerned economic operators. The corrective action taken by a contracting authority 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.

110.4 The contracting authority shall promptly notify the review panel, the complainant and the other concerned economic operators of any corrective action taken.

110.5 If, within the time limit specified in Section 110.1, 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 complainant may then, within three (3) calendar days after it receives such decision or the expiration of the time limit specified in Section 110.1, whichever occurs earlier, file a written notice with the review panel and the contracting authority identifying the allegations that the complainant intends to pursue further before the review panel.

110.6 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 Section 110.4, the complainant may then, within three (3) calendar 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 Section 101.2.j of the present law.

110.7 If the contracting authority timely receives a written notice from the complainant pursuant to Section 110.5 or 110.6, the contracting authority shall, within three (3) calendar days after receiving such notice, transfer all documents and records relating to the concerned procurement activity to the review panel.

Chapter 4 **Proceedings Before a Review Panel**

Section 111 **Competence and Responsibility of the Review Panel**

111.1 Matters that a complainant has identified in a notice filed pursuant to Section 110.5 or 110.6, shall be reviewed and decided by the review panel established pursuant to Section 106.6.

111.2 The review panel's proceedings shall be conducted in accordance with the provisions of this Title VIII and the rules of procedure established pursuant to Section 103.

111.3 Before making a final decision on a matter, the review panel may require the contracting authority and/or the complainant to provide additional information and/or explanations. The review panel 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 review panel 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.

111.4 If any party to the proceedings fails or refuses to participate fully in such proceedings or to comply with a requirement of this Title VIII, the rules of procedure established pursuant to Section 103, or an order issued by the review panel, 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 review panel 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 favor of the opposing party, and/or (ii) deciding any concerned allegation in favor of the opposing party.

111.5 In addition to the above, if a party fails or refuses to appear – either in person or through its authorized representative or legal counsel - at any scheduled hearing of a review panel, and that party had actually received reasonable prior notice regarding the time and place of the hearing, the review panel shall assess an administrative fine on the concerned party in the amount of 1000 Euros and send notice to the concerned party regarding such fine.

Section 112
Decision-Making Deadline

112.1 In order to protect the interests of the contracting authority and the concerned economic operators, proceedings before the review panel shall be efficient and concluded within the shortest period possible while respecting the provisions of the present law and the rules of procedure established pursuant to Section 103. .

112.2 The review panel shall issue its final written decision, together with a written statement of the bases for such decision, and any order required to give effect to such decision not later than fifteen (15) calendar days following the expiration of the time limit specified in Section 110.7. Where the matter involves particularly complex issues or facts, the review panel 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) calendar days.

112.3 The review panel shall promptly send its final written decision, its written statement of the bases for such decision, and any accompanying order to the contracting authority and the complainant.

112.4 In addition, after the decision has been issued, the complaint and the decision shall be published on the PRB's web-site.

Section 113
Security, Penalties and Damages

113.1 All complainants are required to post security within three (3) business days after the filing of a complaint. The amount of such security shall be equal to five percent (5%) of the estimated value of the public contract or design contest, but not less than 1,000 Euros and not more than 5,000 Euros. Such security may be posted in cash, by wire or by bank transfer. Such security may also be posted in the form of a certified check, letter of credit or bank guarantee, if the form and the issuer of such an instrument meet the requirements established by the PPRC in the public procurement rules.

113.2 If the full amount of such security is not posted within the specified three (3) business days, the PRB shall dismiss the complaint with prejudice, and the complainant may not again file a complaint setting forth any allegation contained in the dismissed complaint.

113.3 The PRB shall promptly return any security that is posted in connection with a complaint that has been dismissed for lack of timelines or insufficiency under Section 105 or 106.

113.4 If a complaint has not been dismissed for a reason specified in Section 105,106 or 113.2, the concerned review panel shall, at the conclusion of the review process, review each allegation in such complaint to determine whether the complainant had made such allegation frivolously. The review panel shall determine that an allegation was made frivolously if the review panel determines that, at the time the complainant filed the complaint, the complainant knew or should have known that there was no objective basis in fact or that there was no reasonable basis in law for such allegation.

113.5 The PRB shall promptly return the security to the complainant if the review panel determines that any allegation in the complaint was not made frivolously. If the review panel determines that all allegations in the complaint were made frivolously, the complainant's security shall be forfeit. In such event, the PRB shall notify the complainant in writing of such determination. However, if the concerned security has been posted in the form of a letter of credit or bank guarantee, the PRB shall first take whatever measures may be necessary to obtain the concerned funds from the issuer before providing the complainant with the notification required by the preceding sentence.

113.6 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 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 this Section 113.6, it shall issue an order to the complainant that (i) requires the complainant to pay such penalty, (ii) references this Section 113.6 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.

113.7 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.

113.8 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 Section 113.1 and (ii) funds received in payment of a penalty assessed under Section 113.6. 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 Section 113.9.

113.9 The PRB shall leave such funds on deposit in the account specified in Section 113.8 until (i) their return is required by Section 113.3 or 113.5 or (ii) the complainant has exhausted all of its rights to appeal the review panel's determinations made under Sections 113.4, 113.5 and, if applicable, 113.6. 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.

Section 114
Actions in the Courts

114.1 If a complainant believes that a final decision or determination of a review panel or the PRB is contrary to the facts or the present law, the complainant may request a court of competent jurisdiction to review such decision in accordance with the applicable law on administrative procedures. However, the filing, conduct or outcome of such request for judicial review shall have no further effect on the conduct of the concerned procurement.

114.2 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 any security declared forfeit and any penalty assessed pursuant to the Section 113.

114.3 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 may issue an order (i) rescinding or reversing any order or determination issued or made by the PRB or the review panel, 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 5
Reporting

Section 115
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 VIII.

Section 116
Conveying Information

116.1 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:

- a. the total number of complaints received;
- b. the number of complaints that were dismissed for lack of timeliness or insufficiency under Section 105 or Section 106 or failure to post the security required by Section 113
- c. The number of complaints determined to contain no valid allegation;
- d. the number of procurement activities that were cancelled as the result of a complaint;
- e. detailed information on any event where a contracting authority failed to respect an order of the PRB or a review panel; and

- f. 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.

116.2 The Government shall, in consultation with the PRB and on the basis of information referred to in Section 116.1 above, develop a proposal for measures aimed at reducing or eliminating certain repeated violations, including proposed amendments to the present law.

TITLE IX
REMEDIAL AND PENALTY PROVISIONS AND FINAL MATTERS

Chapter 1
Violations and Penalties

Section 117
Unlawful Influence and Retribution

117.1 It shall be a criminal violation of the present law punishable and enforceable under the relevant provisions of the criminal laws of Kosovo for any person to:

- a. 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;
- b. 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;
- c. 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
- d. to facilitate or encourage any person or undertaking to engage in any conduct specified in item “a,” “b” or “c” above.

117.2. Item “c” of Section 117.1 shall not apply to the negotiation or execution of a formal written agreement by a group of economic operators if such agreement falls within the scope of Section 66.2.

117.3 Any civil servant or employee or official of a contracting authority who becomes aware, by any means, of an offence described in Section 117.1 or an event that could be expected to involve such an offence shall immediately notify the Ministry of Internal Affairs thereof.

117.4 Upon learning of such an offence or event, by any means, the Ministry of Internal Affairs shall immediately conduct a preliminary investigation into the matter and, if it determines that there is any credible physical and/or testimonial evidence indicating that such an offence has occurred, the Ministry shall formally refer the matter to the office of the public prosecutor and immediately take whatever other lawful measures the Ministry deems necessary and appropriate to remedy the situation.

117.5 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 117.1 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.

117.6 Where an offence specified in Section 117.1 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 offence 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 offence shall also be criminally liable therefore. Where the offence is an offence specified in Section 117.5, 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.

Section 118

Violations By a Contracting Authority

118.1 The PRB shall impose a fine of not less than 5,000 Euros on any contracting authority that fails to implement a decision or to comply with an order of the PRB, a review panel or the PPA within three (3) business days.

118.2 The civil servant, employee or official of the contracting authority causing such failure shall be dismissed and fined not less than 1,000 Euros. Such person may not again become a civil servant, employee or official of a contracting authority during the three (3) year period following such dismissal.

Section 119

Procurements Concluded in Violation of the Present Law

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

- a. has been awarded or entered into for a purpose or pursuant to a procedure or activity not explicitly authorized by the present law;
- b. has been awarded or entered into pursuant to a procedure or activity not conducted in conformity with the present law;
- c. 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;
- d. 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;
- e. 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;
- f. 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
- g. has been awarded or entered into in violation of a decision or order of the PRB, a review panel or the PPA.

119.2 In the event that the PRB or a court determines that a public contract or design contest is voidable for a reason specified in Section 119.1, the PRB or court may issue an order:

- a. voiding the public contract in whole or in part;
- b. 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;
- c. 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;
- d. 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.

119.3 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 items “c” and/or “d” of Section 119.2

119.4 If an order issued by the PRB, a review panel or a court under this Section 119 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 Section 119.4 may be posted in the same form as that required for tender security or performance security.

119.5 If the concerned economic operator and/or contracting authority fails to post the security required under Section 119.4 within seven (7) calendar days after being informed of the amount of the security, the order shall no longer be suspended and shall be immediately enforceable.

119.6 Nothing in this Section 119 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 (iii) 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.

Chapter 2 **Final Provisions**

Section 120 **Repeal of the previous Legislation**

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.

Section 121 **Entry into Force**

This law shall enter into force four months after its promulgation

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