Document of
The World Bank

KOSOVO

COUNTRY FIDUCIARY ASSESSMENT

Operational Services and Quality
Europe and Central Asia Region
The World Bank

March 2012
# Currency Equivalents

Currency unit = EURO  
EUR 1.00 = US$1.271  
US$1 =  EUR 0.787  
(As of January 11, 2012)

# Government Fiscal Year

January 1st – December 31st

## Abbreviations and Acronyms

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>AG</td>
<td>Auditor General</td>
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<td>ACA</td>
<td>Anti-Corruption Agency</td>
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<tr>
<td>BLI</td>
<td>Baseline Indicator</td>
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<tr>
<td>CBK</td>
<td>Central Bank of the Republic of Kosovo</td>
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<tr>
<td>CFA</td>
<td>Country Fiduciary Assessment</td>
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<tr>
<td>CFAA</td>
<td>Country Financial Accountability Assessment</td>
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<tr>
<td>CHU</td>
<td>Central harmonization unit</td>
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<td>COM</td>
<td>Council of Ministers</td>
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<td>CPA</td>
<td>Central Procurement Agency</td>
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<td>CPS</td>
<td>Country Partnership Strategy</td>
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<td>DFID</td>
<td>Department For International Development</td>
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<td>DPL</td>
<td>Development Policy Lending</td>
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<td>EBRD</td>
<td>European Bank for Development Bank</td>
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<td>EC</td>
<td>European Commission</td>
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<tr>
<td>E-GP</td>
<td>Electronic Government Procurement</td>
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<td>ESW</td>
<td>Economic Sector Work</td>
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<td>EU</td>
<td>European Union</td>
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<td>EULEX</td>
<td>European Union Rule of Law Mission in Kosovo</td>
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<td>FAI</td>
<td>Finance Administration Instruction</td>
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<tr>
<td>FMIS</td>
<td>Financial Management Information System</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GOK</td>
<td>Government of Kosovo</td>
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<td>GRECO</td>
<td>Group of States Against Corruption</td>
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<td>IAU</td>
<td>Internal Audit Unit</td>
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<td>IBRD</td>
<td>International Bank for Reconstruction and Development</td>
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<td>ICI</td>
<td>International Court of Justice</td>
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<td>ICO</td>
<td>International Civilian Representative Office</td>
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<td>IFC</td>
<td>International Finance Corporation</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>INTOSAI</td>
<td>International Organization of Supreme Audit Institutions</td>
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<td>ISN</td>
<td>Interim Strategy Note</td>
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<td>ISPIIA</td>
<td>International Standards for the Professional Practice of Internal Audit</td>
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<td>KAA</td>
<td>Kosovo Anti-Corruption Agency</td>
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<td>KFMIS</td>
<td>Kosovo Financial Management Information System</td>
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<td>KEK</td>
<td>Kosovo Energy Corporation</td>
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<td>KAP</td>
<td>Kosovo Agency for Privatization</td>
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<td>KIPA</td>
<td>Kosovo Institute of Public Administration</td>
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<td>LFFMA</td>
<td>Law on Public Financial Management and Accountability</td>
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<td>MCC</td>
<td>Millennium Challenge Corporation</td>
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<td>MTBP</td>
<td>Medium-Term Budget Program</td>
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<td>MTEF</td>
<td>Medium Term Expenditure Framework</td>
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<td>MOPA</td>
<td>Ministry of Public Administration</td>
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<td>MOF</td>
<td>Ministry of Finance</td>
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<tr>
<td>MPA</td>
<td>Ministry of Public Administration</td>
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<tr>
<td>MEAT</td>
<td>Most Economically Advantageous Tender</td>
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<td>NATO/KFOR</td>
<td>The North Atlantic Treaty Organization - Kosovo Force</td>
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<tr>
<td>OAG</td>
<td>Office of the Auditor General (OAG)</td>
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<td>OECD-DAC</td>
<td>Organization for Economic Co-operation and Development - Development Assistance Committee</td>
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<tr>
<td>OPR</td>
<td>Operational Procurement Review</td>
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<td>OSCE</td>
<td>Organization for Security and Co-operation in Europe</td>
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<td>PEFA</td>
<td>Public Expenditure and Financial Accountability</td>
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<td>PEIR</td>
<td>Public Expenditure and Institutional Review</td>
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<td>PER</td>
<td>Public Expenditure Review</td>
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<td>PFM</td>
<td>Public Financial Management</td>
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<td>PFMRAP</td>
<td>Public Financial Management Reform Action Plan</td>
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<td>PIFC</td>
<td>Public Internal Financial Control</td>
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<td>PIU</td>
<td>Project Implementation Unit</td>
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<td>PIP</td>
<td>Public Investment Plans</td>
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<td>POEs</td>
<td>Publicly Owned Enterprises</td>
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<td>PMU</td>
<td>Policy and Monitoring Unit</td>
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<td>PRB</td>
<td>Procurement Review Body</td>
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<td>PPRC</td>
<td>Public Procurement Regulatory Commission</td>
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<td>PPA</td>
<td>Public Procurement Agency</td>
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<td>PPL</td>
<td>Public Procurement Law</td>
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<td>PPP</td>
<td>Public-Private Partnership</td>
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<td>PTK</td>
<td>Kosovo Post &amp; Telecommunication</td>
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<td>SBA</td>
<td>Stand-by Arrangement</td>
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<td>SEDPP</td>
<td>Sustainable Employment Development Policy Program</td>
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<tr>
<td>SIGMA</td>
<td>Support for Improvement in Governance and Management, a joint initiative of the OECD and the EU, principally financed by the EU</td>
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<td>SMEs</td>
<td>Small and Medium Enterprises</td>
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<td>SOE</td>
<td>Socially Owned Enterprise</td>
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<td>SOEs</td>
<td>State Owned Enterprises</td>
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<tr>
<td>TSA</td>
<td>Treasury Single Account</td>
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<td>TD-MOF</td>
<td>Treasury Department in the Ministry of Finance</td>
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<td>USAID</td>
<td>United States Agency for International Development</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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<tr>
<td>UNCAC</td>
<td>United Nations Convention against Corruption</td>
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<tr>
<td>UNICEF</td>
<td>United Nations Children's Fund</td>
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<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific and Cultural Organization</td>
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<td>UNIFEM</td>
<td>United Nations Development Fund for</td>
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## Kosovo – Country Fiduciary Assessment

### Abbreviations and Acronyms

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<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<td>UNFPA</td>
<td>United Nations Population Fund</td>
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<td>UNWHO</td>
<td>United Nations World Health Organization</td>
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<tr>
<td>UNCITRAL</td>
<td>United Nations Commission on International Trade Law</td>
</tr>
<tr>
<td>UNMIK</td>
<td>United Nations Interim Administration</td>
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<tr>
<td>UNSCR</td>
<td>United Nations Security Council resolution</td>
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<tr>
<td>WB</td>
<td>World Bank</td>
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<td>WBG</td>
<td>World Bank Group</td>
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### Acknowledgments

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<tr>
<td>Philippe H. Le Houerou</td>
<td>Regional Vice President, ECAVP</td>
</tr>
<tr>
<td>Jane Armitage</td>
<td>Country Director, ECCU4</td>
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<tr>
<td>Gerard A. Byam</td>
<td>Sector Director, ECSOQ</td>
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<tr>
<td>Devesh Chandra Mishra</td>
<td>Regional Procurement Manager, ECSO2</td>
</tr>
<tr>
<td>Majed M. El-Bayya</td>
<td>Task Team Leader, Lead Procurement Specialist, ECSO2</td>
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COUNTRY FIDUCIARY ASSESSMENT

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PREFACE

Basis of the Report
This Country Fiduciary Assessment (CFA) was prepared on the basis of findings from three World Bank (WB) missions that visited Kosovo in October 2010, June 2011, and October 2011. During the last mission, the Task Team Leader discussed with the Government counterparts a draft action plan to address the Bank recommendations. The work was carried out by a task team led by Majed M. El-Bayya (Lead Procurement Specialist, ECSO2) and composed of Lewis Hawke (Sr. Financial Management Specialist-ECSO3), Anders Hjorth Agerskov, (Lead Specialist-INTSC), Kashmira H. Daruwalla (Sr. Procurement Specialist, ECSO2), Seda Aroymak, (Sr. Financial Management Specialist-ECSO3), Belita Manka (Counsel, LEGOP), Arben Maho (Procurement Specialist-ECSO2), and Denis Boskovski, (Country Operations Officer-ECCMK).

As part of the World Bank program in Kosovo and in anticipation for the preparation of the Country Partnership Strategy (CPS) and for assisting the Government in assessing the recent reform in the public procurement and financial management systems, the Bank prepared this Country Fiduciary Assessment (CFA).

Objectives and Scope
The role of the CFA is to analyze and identify strengths and weaknesses in the existing public procurement and public financial management systems. Sound public procurement policies and practices are among the essential elements of good governance.

The main objectives of the CFA are: a) to analyze Kosovo public procurement and financial management systems including the existing legal framework, organizational responsibilities, control and oversight mechanisms and capacity, current procedures and practices, and how well these work in practice; b) to assess the quality and actual performance of the public procurement system using international baseline indicators; and c) based on these analyses and review, identify key areas for improvements in public financial management and procurement and, where possible, prepare an action plan for implementation. The assessment of the public procurement system would apply to all governmental institutions and local governments.

CFA Process
The WB team worked in close collaboration with the Government of Kosovo (GoK) including the Ministry of Economy and Finance, Public Procurement Regulatory Commission (PPRC), and key public procurement and financial management entities. The CFA team based their work on a review of all relevant legislation and other background documentation (including sample procurement files), discussion with the Government working committee on amending the public procurement law, a workshop with Public Procurement Units (PIU) staff, and interviews with decision-makers in public (central and local governments), private sector, and civil society representatives as well
as the donor community. Since the Government was in the process of amending the Public Procurement Law (hereinafter referred to as “PPL”) while the team was preparing the assessment report, the WB team provided the government with comments on the procurement law immediately after the main mission was completed in June 2011, for consideration during the revision process of the procurement law. The majority of these comments were considered in the amended PPL which was approved by the parliament on August 29, 2011. After the draft PPL was approved by the Government and before it was approved by the Assembly, the Bank conducted another review of the draft PPL and provided key comments to the Government working committee. During the October 2011 mission, the WB team discussed a preliminary draft of the action plan with the Government counterparts. After sharing the draft CFA report with the Government for comments, the implementing regulations were prepared and approved in late February 2012. Also the rules and procedures of the Central Procurement Agency were approved in early March 2012. Based on these developments, the report has to be updated in early March 2012 again. The WB Team proposed to the Government to disseminate the final CFA report, including the action plan in a general dissemination workshop that would include representatives of the public and private sectors and of civil society associations and key donors. A list of persons met during the missions is provided in Annex A, and key documents reviewed are listed in Annex B.

**Report Structure**

The report has four chapters; I. Introduction; II. Assessment of the Public Procurement System; III. Assessment of the Public Financial Management; and IV. Recommendations and Action Plan. A summary of the main findings and recommendations is provided in the Executive Summary at the beginning of the report. The detailed assessment of the Baseline Indicators and the Performance Indicators are provided in Annexes C and D at the end of the report. Additional Provisions for National Competitive Bidding under Bank-financed operations is provided in Annex E at the end of the report.

The assessment of the public procurement system in Chapter II is further divided into four parts in order to relate the discussion to the four pillars developed by the Organization for Economic Cooperation and Development’s Development Assistance Committee (OECD/DAC) with the WB. Discussion in this chapter goes beyond the issues raised under the OECD/DAC/WB sub-indicators where other issues were found. In particular, in assessing procedures and practices, a different set of 14 performance indicators was used. At the end of each issue discussed, the main recommendations, if any, are presented.

**Acknowledgements**

The WB team would like to express its appreciation to the various government officials and private sector representatives and donor representatives that met with the team and provided valuable input. Special thanks go to the Minister of Finance for his support of the CFA preparation, the Government counterpart team including the Chairman of PPRC, Public Procurement Review Committee (PRB), and Central Procurement Agency (CPA), Anti Corruption Agency, the chair of the Government steering committee on amending the procurement law for their close coordination with the Bank mission.
The team would like to thank Ms. Jane Armitage, Country Director, Europe and Central Asia Region (WB), Mr. Ranjit Nayak, Former Country Manager for Kosovo, Europe, and Central Asia Region (WB), and Mr. Jan-Peter Olters, Country Manager for Kosovo, Europe, and Central Asia Region (WB) for their guidance and continuous support of the work.

The team is thankful for the valuable comments of the peer reviewers: from the World Bank: Mr. Naushad A Khan, Consultant, SARPS; Mr. Ivor Beazley, Lead Public Sector Specialist, ECSP4; Ms. Laurence Folliot Lalliot (at the concept note stage) Consultant, LEGOP; Ms. Elisabetta Piselli, Senior Counsel, LEGOP; and Ms. Pamela Bigart, Consultant, OPCPR; and from EBRD: Ms. Eliza Niewiadomska, Counsel, Legal Transition Team - Public Procurement, and from SIGMA: Mr. Olivier Moreau, SIGMA (Support for Improvement in Governance and Management), a joint initiative of the OECD and the EU, principally financed by the EU.

The team is also thankful to Mr. Devesh C. Mishra, Regional Procurement Manager and Mr. Ahmadou Moustapha Ndiaye; Former ECA Regional Financial Manager, for their review of the report and advice throughout the preparation of the assessment.
EXECUTIVE SUMMARY

As part of the World Bank program in Kosovo and as an input to the Country Partnership Strategy (CPS) and for assisting the Government in assessing the recent reform in public procurement and financial management systems, the World Bank prepared this Country Fiduciary Assessment (CFA).

The main objectives of the CFA are: to analyze the strengths and weaknesses of Kosovo’s public procurement and financial management systems using international baseline indicators and identify key areas for improvements in public financial management and procurement and, where possible prepare an action plan for implementation.

The public expenditures in Kosovo involve a wide range of sectors at the central and local government institutions. Kosovo’s 2011 budget was Euro 1,063 million while for 2010 it was Euro 1,272 million. The total public expenditures subject to procurement in Kosovo during the year 2011 was Euro 788.32 million.

Public Procurement

The Government's main goal is to align its legislation with the EU Procurement Directives. To that end, the Public Procurement Law (PPL) in Kosovo has undergone frequent changes in recent years aiming at increased alignment and improvement of the overall institutional framework in public procurement. A new PPL was approved by the Assembly on September 30, 2010 and was further amended on August 29, 2011.

Generally, the current PPL reflects adequately the main principles of a sound public procurement system and is consistent with international good practices in public procurement. The EU Commission refers in its 2011 progress report on Kosovo as "this version of the PPL addresses most of the deficiencies of the previous law and significantly increases the compatibility with EU standards".

The PPL reflects some of the main elements of a transparent procurement system including but not limited to: the procurement legislative framework readily available to the public, the economic operators clearly know both the rules to be applied and advance notice on specific tender opportunities, the tender notice specifies what is intended to be purchased, the evaluation and qualification criteria are set forth in the tender notice, the unsuccessful tenderers are notified about whom the winning economic operator is and the amount of contract.

The PPL establishes an independent complaints review mechanism to handle protests from aggrieved parties. It also establishes an independent Public Procurement Regulatory Commission responsible for the regulatory aspect as well as monitoring the enforcement of the public procurement system. The scope of the PPL is wide enough to capture activities related to the main procurement categories including: supplies, works,
and services as well as to include a broad range of contracting authorities by ensuring uniformity in the application of the PPL at all levels of government, be it central or local.

The main institutional change brought by the current PPL includes transformation of the Public Procurement Agency (PPA) from an independent agency reporting to the Assembly with mixed roles and responsibilities to a centralized purchasing agency named Central Procurement Agency (CPA) within the MoF responsible for conducting centralized procurement.

On procedural aspects, the arrangements related to contract signing were further amended to involve senior government staff of the contracting authority in signing large value contracts in addition to the procurement officer.

Although the current PPL provides a good legal basis for the public procurement system, there is room for further improvement. The areas which may benefit from further improvement are provided below:

The PPRC should prepare and implement a strategy to enhance the performance of the public procurement system and compliance with the PPL. The PPRC should monitor enforcement of the PPL and should consider devoting more resources to compliance tests in order to develop a risk map of key vulnerabilities in the public procurement process and among contracting entities and types of procurement. The PPRC should work closely with KIPA to increase the capacity of the procuring entities and control bodies in implementing procurement and provide access to different procurement and contract management training. The PPRC should facilitate access to capacity building to economic operators on the public procurement law and its implementing regulations as well as on preparation of bids. The PPRC should also consider establishing a system for the performance evaluation of procurement officers and the Government to include in the civil administration a clear path for professional growth of procurement officers.

The recent transformation of the CPA as a fully executive central procurement agency in the Ministry of Finance presents a timely opportunity to focus and limit its role vis-a-vis other contracting authorities to procurement of “common use” goods and/or other items upon the request of a contracting authority. Given its limited resources identified in the past, the CPA’s capacity needs strengthening and enhancement in the field of framework agreements and centralized procurement of common use items to enable it to conduct the first procurement activities.

Currently the PPL provides for the review of complaints by Procurement Review Body (“PRB”) only and does not provide for the complaints to be filed with the contracting authority as a first stage. A complaint to the contracting authority may offer clear advantages, especially in cases where a genuine and obvious mistake is made offering the contracting authority the possibility to rectify at an early stage. In addition, the decisions of the PRB to lift the automatic suspension of a procurement activity as a result of a complaint and other critical matters should be made collegially with the participation of all PRB members. Furthermore, selection of the members and of the President of the PRB
should preferably be made by open competition from a pool of qualified candidates based on the qualifications criteria set forth in the PPL. Additionally, neither the PPL nor the PRB’s Rules of Procedure set forth the main features of the debarment process.

**Integrity and Transparency in Public Procurement**

The Government recognizes that corruption is still widespread with several high profile cases currently under investigation. The key areas affected include procurement, civil works, transport, energy, health, and land administration. Progress has been made through the establishment of a Procurement Code of Ethics, launch of an Internet website carrying full details of public procurement, and commencement of a procurement training program. Further work is still needed to develop a debarment process, institute due diligence on bids reviews, scale-up compliance reviews, and build capacity to prosecute high-profile fraud and corruption cases successfully.

**Public Financial Management (PFM)**

The public financial management system has shown steady improvements since independence. The key strengths of the system are the sound legal framework, integrated central treasury system, and an increasingly effective external audit office. The strengths are offset by limited professional and technical capacities and gaps in implementation. There is considerable scope for improving the quality of budget planning and preparation, internal financial control, audits, debt management, and capital investment management. The authorities are aware of these limitations, and progress is occurring with support from international bodies. Specific areas where improvements are needed include:

- Coordination of budgets, MTEF, sector plans, and budget ceilings is limited. There is a need to have a stronger focus on development and use of plans within sectors and budget organizations consistent with national priorities.

- Budget preparation and Treasury systems are not fully linked. This limits the ability to ensure that budget decisions are fully reflected in budget execution and can weaken the value of monitoring and reporting.

- Delays of the 2011 budget created problems for some users. The delays caused by formation of a new parliament were very disruptive, but hopefully it will be a one-off problem.

- Arrears occur because of over-commitment of budget. Despite the improvements in legislation, systems, and procedures, it is still possible for budget users to by-pass the system and for arrears to accumulate.

- Financial management control and audit are not fully effective. The Government is implementing its strategy for PIFC but there is a significant gap between current practice and best practice.
Financial reporting is weak in some municipalities. Poor audit opinions on audit reports for municipalities indicate that considerable improvement is necessary. External audit independence and capacity needs strengthening. Although the OAG is increasing in strength each year, reliance on contract auditors remains along with a risk that the OAG budget is vulnerable to political factors, which could undermine its independence.

All World Bank projects in Kosovo are managed by financial services units operating separately from the main administrative units of the implementing agencies. Staffing, budgeting, accounting, reporting, internal control, and auditing are all undertaken separately from the main activities of the implementing agencies. The only area where country systems are used is in relation to funds-flow through the central treasury system. Potential to increase reliance on country systems in this area exists; however, the current approach of applying \textit{ex-ante} controls and reimbursement of expenditures is acceptable to the government so no change is proposed at this time.

The OAG has suggested that it would be interested in commencing audit of World Bank projects subject to available capacity. The use of OAG on a pilot basis should be considered – subject to any limitations imposed by the current single-vendor contract for audit of World Bank projects in Kosovo.

Limitations in institutional capacity and experience in implementing World Bank projects, combined with high risk of fraud and corruption in Kosovo, severely restrict the scope for increasing the use of country systems in PFM. It is possible that the improvements occurring as a result of actions by the Government, including the MoF, to address weaknesses may pave the road for greater use of country systems.

**Action Plan**

The task team discussed with the Government an action plan to address the key recommendations in this CFA report. The action plan is included in Chapter IV. The key actions that require Government attention in the coming 6 months are listed below:

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<thead>
<tr>
<th>Recommendation</th>
<th>Responsible Entity</th>
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<tr>
<td>The CPA to be adequately resourced with staff so as to carry out properly the tasks assigned by PPL.</td>
<td>MOF, CPA</td>
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<tr>
<td>Identify items suitable for central purchase “common used goods” and prepare and conduct the first central purchasing.</td>
<td>CPA</td>
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<td>Conduct training for all contracting authorities on the new public procurement law and regulations including about bidding documents and contract management.</td>
<td>KIPA</td>
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<tr>
<td>Recommendation</td>
<td>Responsible Entity</td>
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<td>Conduct awareness campaign for all contracting authorities’ high level staff about the new PPL</td>
<td>PPRC</td>
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<td>Publish the anti-corruption plans of the contracting authorities as well as their level of implementation (on a quarterly basis).</td>
<td>KAA</td>
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<tr>
<td>Propose appropriate arrangements to enforce the timely and full filing of assets and incomes of officials, and make available the names of individuals that have not filed such disclosures to the public and take any other appropriate actions for those who do not comply.</td>
<td>KAA</td>
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<tr>
<td>Increase the statute of limitation for prosecuting corruption (currently two years); enhance the capacity of the District Prosecutor’s Office in Pristina and other districts as relevant; and publish a statistical summary report by type of offense, sector, procurement/tax/other system impacted, for all allegations related to fraud and corruption irrespective of the investigating and prosecuting authority and how they have been addressed by the government and EULEX, including any sanction.</td>
<td>Prosecutor of financial crimes</td>
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CHAPTER I. INTRODUCTION

A. Country Economic Context

1. The area of Kosovo is about 11 thousand square km. According to Census 2011 the population registered was 1.73 million. The population density is close to 200 per square kilometer, one of the highest in Europe.

2. With a GDP per capita of Euro 2,610, Kosovo is one of the poorest countries in Europe. Poverty remains widespread but has been declining – according to the latest available data (from 2009); 34 percent of the population is living below the national poverty line, and an estimated 12 percent are extremely poor. Extreme poverty is disproportionately high among children, the elderly, households with disabled members, and female-headed households. However, the narrowness of the poverty gap suggests that poverty is not deep.

3. With a 45.4 percent official unemployment rate, Kosovo has the weakest employment track record in Europe, and Kosovo’s 48.1 percent labor participation rate among the working age population is substantially below the average for all transition economies (65 percent).

4. Kosovo’s economic growth has been steady since the end of the conflict in June 1999, attributable in part to large public investments in post-conflict reconstruction as well as an increase in private consumption and investment (albeit from a very low base).

5. Growth slowed from 6.9 percent in 2008 to about 2.9 percent in 2009 and recovered to 5 percent in 2011 in the wake of the global economic crisis, a much better outcome than in the rest of Southeast Europe, which mostly suffered declines in output.

6. The relatively small impact of the global financial and economic crisis on real growth up to this point reflects Kosovo’s limited integration with the global economy.

7. The most recent World Bank Country Economic Memorandum suggests that growth rates would need to be double their current levels for the next decade in order for Kosovo to reach the income levels of neighboring countries.

8. In the absence of active monetary policy instruments, fiscal policy is the main anchor for macroeconomic stability. Import-related taxes and duties collected at the borders account for close to three-quarters of total tax revenues.

9. While revenue collection has remained relatively strong, significant deficiencies in fiscal policy and planning have become apparent in recent years, including lack of clarity on policy priorities and loose management of expenditures.

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1 The Census done in April 2011 has revealed a lower population than previously estimated. That resulted in a higher GDP per capita than estimated before the census.
10. The budget achieved a series of surpluses through 2007 when the primary surplus reached 7.1 percent of GDP due to a conservative policy on recurrent spending, rising government revenues, and under-spending of the capital budget. Since 2008, the Government has shifted towards a much more expansionary stance, partly to address Kosovo’s severe infrastructure and social gap and partly to cover the costs of implementing commitments as a result of its independence. As a result, the budget moved from the 2007 surplus to a balance in 2008, a deficit of 0.8 percent of GDP in 2009 and a wider deficit of about 2.6 percent in 2010. The 2011 end year estimated actual fiscal deficit was only 1.8 percent of GDP.

11. This increase was driven mostly by a larger allocation for capital projects, but also by increases in recurrent expenditures, including wages. Another significant contributor to the deterioration in the public balance in 2009 was the need to finance the publicly-owned energy company.

12. The 2010 budget had to be substantially revised in a mid-year budget review (in July) following the new policy initiatives introduced in the first half of the year. The largest new cost item was the commencement of construction of a highway to Albania, which is estimated to cost about 25 percent of the 2010 GDP over its four-year implementation period. This, as well as other spending initiatives such as expansion of pension and war-related benefits, requires more resources than the Government has at its disposal. In July 2010, the IMF Board of Directors approved an 18-month Stand-by Arrangement in the amount of SDR 92.6 million, which was terminated in spring 2011 due to the impossibility to conclude the review mission. In addition, the budget received a 30 million Euro grant from the European Commission in 2010, but failed to receive the other 20 million.

13. In the fall of 2010 Kosovo went through a political and institutional crisis, which triggered early national elections in December 2010. The elections and difficulties in forming a new coalition Government delayed the adoption of the 2011 budget by three months. Moreover, the draft budget submitted to Parliament in March 2011 envisaged a substantial increase in the wage bill which exceeded targets agreed under the IMF Stand-by Arrangement (SBA). Consequently, the IMF team could not complete the first review of the SBA.

14. Kosovo’s public debt was 5.6 percent of GDP by the end of 2011. When Kosovo became a member of the World Bank, it agreed to take on responsibility for past Federal Republic of Yugoslavia debt to the International Bank for Reconstruction and Development (IBRD) amounting to about Euro381 million. In parallel, a Bank-administered multi-donor trust fund was established to assist Kosovo to repay the debt. Thus far, the trust fund has received US$150 million from the United States, Euro5 million from the European Commission, and US$0.75 million from the Swiss Government, which have been used to finance the repayment of the IBRD loan.

15. Kosovo has adopted the Euro as the local currency, which has led to relatively low domestically-led inflation. Inflation picked up in 2008, but prices began to fall again
in 2009 (annual average inflation was negative 2.4 percent in 2009). Inflation was positive and increased to 3.5 percent in 2010, and 7.3 percent at the end of 2011.

16. The banking sector has remained stable, with deposits as well as credit to the private sector continuing to grow in double digits, including throughout the financial crisis – albeit at a slower rate.

17. Although Kosovo’s exports suffered a sharp decline (about 18 percent) in 2009 after five years of rapid growth, their still-small contribution (5 percent) to GDP meant the impact on overall growth was proportionately small. Exports rebounded in 2010 with a growth of over 77 percent (which was higher than anticipated).

18. The current account balance was projected to reach 18 percent in 2010, but has been financed predominantly by non-debt creating inflows, including foreign investment and unidentified inflows, i.e. “errors and omissions” (which are likely to be unrecorded remittances and exports).

B. Kosovo Political System

19. In March 26, 2007, UN Special Envoy Martti Ahtisari submitted to the UN Security Council his Comprehensive Proposal for the Kosovo Status Settlement (the "Ahtisaari Plan"). The Ahtisaari Plan included a main text with 15 articles that set forth its general principles, as well as 12 annexes that elaborate upon them. The Ahtisaari Plan is primarily focused on protecting the rights, identity, and culture of Kosovo's non-Albanian communities, including establishing a framework for their active participation in public life. Special Envoy Ahtisaari also proposed that Kosovo become independent, subject to a period of international supervision. On February 17, 2008, the Kosovo Assembly unilaterally declared the independence of Kosovo in line with Ahtisaari’s recommendations. In its declaration of independence, Kosovo made a binding commitment to implement fully the Ahtisaari Plan and welcomed a period of international supervision. Kosovo began to approve new legislation as envisioned in the Ahtisaari Plan, develop a constitution that enshrines the Ahtisaari’s principles, and take other measures to implement fully the Ahtisaari Plan's provisions. The Constitution was adopted by the Assembly of Republic of Kosovo on April 9, 2008 and entered into force on June 15, 2008. The Constitution creates the Republic of Kosovo as an independent, sovereign, and democratic state.

20. Based on the Ahtisaari Plan for Kosovo, Kosovo is a democratic republic based on principles of separation of powers. Respectively the (i) **Legislative Power** rests with the Assembly of the Republic of Kosovo\(^2\) which among others: adopts laws, regulations and other general acts, ratifies international agreements/treaties, elects the Government\(^3\), etc; (ii) the **Executive Power** is carried by Government that is responsible among others: for implementation of laws and state policies, proposes draft laws and other acts to the Assembly, makes decisions and issues legal acts or regulations necessary for the

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\(^2\) Constitution of Republic of Kosovo, Article 4 “Form of Government and Separation of Power.”

\(^3\) Constitution of Republic of Kosovo, Article 65 “Competencies of Assembly.”
implementation of laws\(^4\), etc.; and (iii) **Judicial System** is unique and independent and is exercised by courts. There are three kinds of courts: Basic Court, Court of Appeals, and the Supreme Court. The Supreme Court\(^5\) (is the highest judicial authority and is in charge of interpreting the Constitution). The Republic is represented by the President. The official languages of Kosovo are Albanian and Serbian\(^6\). The currency is the Euro\(^7\).

21. **Kosovo declared its independence on February 17, 2008. By mid-August 2011, Kosovo had been recognized by 80 countries.** Kosovo has also been granted the status of potential candidate by the status-neutral European Union (EU). The United Nations Interim Administration Mission in Kosovo (UNMIK) still acts under the United Nations Security Council Resolution (UNSCR) 1244. However, Kosovo authorities are of the opinion that this resolution is no longer relevant, and the national authorities govern under the Constitution of the Republic of Kosovo. In October 2008, the UN General Assembly requested an advisory opinion from the International Court of Justice (ICJ) on whether Kosovo’s declaration of independence was in accordance with international law. In July 2010, ICJ issued an advisory opinion, which concluded that Kosovo's declaration of independence did not violate general international law or Security Council resolution 1244 (1999). The UN General Assembly adopted on September 9, 2010 a joint resolution tabled by Serbia and co-sponsored by EU Member States as a follow-up to the ICJ opinion. The resolution aims at opening the way for a process of dialogue between Pristina and Belgrade to promote cooperation, achieve progress on the path to the European Union, and improve the lives of the people.

22. Kosovo has moved towards greater security and stability in recent years, but international actors continue to play significant roles to address lingering post-conflict security challenges and risks. Ethnic Albanians, who represent more than 90 percent of Kosovo’s population, overwhelmingly support independent statehood. However, ethnic Serbs, who comprise 4 to 6 percent of the population, tend to question the legitimacy of Kosovo’s government and institutions. In this context, the central government has limited control over northern Serb-dominated municipalities and enclaves, and the risk of tensions remains significant. However, the substantial – albeit evolving – international presence minimizes these risks. A NATO-led peacekeeping force (KFOR) has maintained a strong contingent in Kosovo, focusing on maintaining security in North Mitrovica and overseeing the newly established Kosovo Security Force. Since December 2008, EULEX, the EU-led status-neutral mission, has gradually assumed UNMIK’s police, judicial, and customs duties. EULEX currently has about 2,500 international and national employees in Kosovo, including in Serbian-dominated areas. The multi-ethnic Kosovo Police Service also plays a vital role in maintaining security and stability in the country.

23. **Legislative power is vested in the Assembly.** The Assembly of Kosovo has 120 members elected for a four-year term. The Assembly includes twenty reserved seats: ten

\(^4\) Constitution of Republic of Kosovo, Article 93 “Competencies of Government”.

\(^5\) Law on Courts, 03/L-199, dated July 22, 2010.

\(^6\) Constitution of Republic of Kosovo, Article 5 “Languages”.

\(^7\) Constitution of Republic of Kosovo, Article 11 “Currency”. 
for Kosovar Serbs and ten for non-Serb minorities (e.g., Bosniak, Roma, etc.). It passes all laws in Kosovo, ratifies international treaties, and appoints the President of Kosovo, Prime Minister, ministers, and justices of all courts, adopts the budget, and performs other duties.

24. The Executive of Kosovo exercises the executive power and is composed of the Prime Minister of Kosovo as the head of government, six deputy prime ministers, and 16 ministers. The Judicial System is composed of the Supreme Court and inferior level courts, and an independent prosecutorial institution. Multiple independent institutions defined by the Constitution and law as well as local governments exist.

25. The Constitution is the highest legal instrument of the Republic of Kosovo and all other legal acts should be in accordance with it. The International Agreements ratified by the Republic of Kosovo become independent parts of the internal legal system after their publication in the Official Gazette of the Republic of Kosovo. They can apply directly if they are self-applicable; if not laws are promulgated to that effect. The international agreements have superiority over the other laws of the Republic of Kosovo. The Financing Agreements between Kosovo and the World Bank, as an example, have the value of an international agreement. On the other hand, Ahtisaari’s proposal sets forth mandate and powers of legal nature by the International Civilian Representative (ICO) Office, which is assigned by both (the Constitution and the Proposal) to ensure that Ahtisaari’s Proposal is fully implemented and properly interpreted. Even though the legislation in Kosovo is in its early stages of preparation and consolidation, the legal system demonstrates features of a civil law system.

26. The organization of the administration in Kosovo and the distribution of power are special compared to other countries and determined by the large presence of international organizations holding executive powers, which is not common in other countries. In Kosovo at the moment two such organizations hold certain segments of public authority, i.e. EULEX and ICO.

C. Public Expenditure

27. Public expenditure suffers from a serious lack of credibility due to substantial increases in planned expenditure within recent years and low budget execution rates. Many of the expenditure commitments have been unfunded while over-estimates of capital expenditure have resulted in under-spending despite high velocity outflows in the last few months of each fiscal year.

28. During most of the 2000s, Kosovo has pursued a highly conservative fiscal policy, restraining expenditures as revenues continued to climb. In time, the Government has shifted toward an expansionary expenditure policy. In the short term, the Government intends to finance the resulting budget deficits from accumulated savings

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8 Constitution of Republic of Kosovo, Article 16 “Supremacy of the Constitution”.
9 Constitution of Republic of Kosovo, Article 19 “Applicability of International Law”.
10 Constitution of Republic of Kosovo, Article 146 “International Civilian Representative”.
11 Sigma Administrative Legal Assessment May 2009.
and borrowing, as well as through the sale of assets and donor budget support. Neither solution is sustainable. The 2010 Public Expenditure Review concludes that there is room to increase revenues (Kosovo’s tax burden is low by regional standards), provided that the weaknesses of the domestic tax instruments are overcome.

29. Overall, Kosovo is in a position to maintain a sustainable fiscal stance while continuing to improve the quality of public services. The public sector is small, relative to GDP, and does not bear a crushing burden of long-term obligations that threaten the finances of neighboring countries.

30. However, restraint on the expenditure side will be required. Given the well-documented shortcomings of public services in Kosovo, this will require an improvement in the quality of public expenditure—an improvement in the efficiency of public service delivery, as well as improvements in the public procurement system.

31. The public expenditures in Kosovo involve a wide range of sectors at the central and local government institutions. The total budget expenditures in 2010 were 1,272 million Euro. In 2011, the allocated budget was 1,063 million Euro. The total public expenditures subject to procurement in Kosovo during the year 2010 was Euro 482.07 million. This is an increase from the 2009 expenditures by 3.3% and from 2008 expenditures by 33.8%.

32. The Ministry of Education, Science, and Technology carried contracting during 2010 in aggregate Euro 13.14 million (2.73% of 2010 Government total expenditures), which was a decrease from 2009 and 2008 (8% and 6.75%, respectively). The Ministry of Transport recorded a lower contracting amount in aggregate Euro 9.13 million during 2010, (1.89% of 2010 Government total expenditures), compared to 19.77% and 20.79% in 2009 and 2008 respectively. KEK remains as the highest spending contacting entity with Euro 147.5 million in 2010 or 30.6% of Government total expenditures. In 2008 and 2009 the spending of Government total expenses were 31.67% and 21.89% respectively. Municipal expenditures and contracting for 2010 account for 29.34% or Euro 141.4 million out of Government total expenditures for the same year.

33. During the year 2010, 161 contracting authorities in Kosovo signed some 13,499 contracts for a total value of about Euro 482 million of which Euro 6.2 million came from donors. 41% of the total contracts value was works contracts and 45% was supplies contracts. About 85.5% of the value of contracts signed was procured using an open procedure. About 84% used the lowest price as award criteria while 16% used most advantageous criteria. About 80% of the value of contracts was signed with local economic operators.12

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D. Donors Involvement in Kosovo

34. Kosovo is still dependent on the international community for financial and technical assistance. Donors help accounts for about 15 percent of GDP\textsuperscript{13}. There are many multilateral and bilateral donors namely: multilateral donors: EU; UNDP; UNICEF; UNHCR; UNESCO; UNIFEM; UNFPA; UNWHO; NATO/KFOR; EBRD; OSCE, and WB bilateral donors: Albania; Austria; Belgium; Bulgaria; Croatia; Czech Republic; Denmark; Estonia; Finland; France; Germany; Luxembourg; Greece; Great Britain; Hungary; Italy; Japan; Malaysia; Netherlands; Norway; Saudi Arabia; Slovenia; Sweden; Switzerland; Turkey, and U.S.A.

35. The EU and USAID are among the key donors. Kosovo has received support from the Bank since 1999, including support for public financial management since 2003. In June 2004, the Bank conducted an Operational Procurement Review (OPR) and in 2008 conducted a review of the public purchasing system and opportunities for quick gains savings in Kosovo (Quick Gain). The OPR assessed the public procurement system in Kosovo and the performance of procurement under Bank-financed projects. The key recommendations of the OPR were to amend the public procurement law to correct the flaws in the institutional arrangement, to complete the legislative framework for public procurement through the promulgation of a comprehensive set of implementing regulations and standard bidding documents and to increase transparency and accountability of public officials conducting procurement. The Quick Gain is a tool to analyze government purchasing systems and provide proposals to achieve quick and transparent cost savings through increasing competition and reducing inefficiencies in the public procurement process.

36. The World Bank is one of a number of development partners supporting Kosovo. Important contributions have been made in the field of public financial management including procurement by the EC, USAID, UK DFID, GIZ, Sweden, Switzerland, and UNDP. The EC and USAID have been the major contributors in this field and continue to play a dominant role including: \textit{inter alia} budget preparation, budget execution, public investment management, internal audit and control, external audit, and revenue management.

37. The 2009 World Bank Interim Strategy Note\textsuperscript{14} identified two pillars for its partnership in Kosovo development: (i) accelerating growth that is broad-based and employment-generating; and (ii) supporting social cohesion through governance reform and transparent, inclusive institutions. Improving public financial management and procurement has a role to play within each pillar by assisting to achieve macroeconomic stability and strengthening institutions responsible for financial management and accountability.

\textsuperscript{13} According to Ministry of Finance.
\textsuperscript{14} \url{http://siteresources.worldbank.org/KOSOVOEXTN/Resources/297769-1266424306995/Kosovo_full_report.pdf}
38. Improving public financial management including procurement is a core element of two major operations approved by the World Bank Board as part of the first set of activities (Public Sector Modernization Project, First Sustainable Employment Development Policy Operation) since Kosovo became a member of the World Bank. Going forward, it will be important to assess the extent to which current initiatives by the government and development partners are sufficient to achieve strong public financial management, procurement, and governance and anti-corruption arrangements.

E. World Bank Portfolio in Kosovo

39. Since 1999, the Bank has committed about US$250 million (plus over US$200 million in donor Trust Funds) to Kosovo in a broad range of sectors. It has already provided some US$150 million through 30 operations, most of which have now been completed.

40. Since Kosovo was not a member of the World Bank until June 2009, all Kosovo operations supported by the Bank were financed through grants from a variety of sources, principally the Bank’s net income, the Trust Fund for Kosovo, the Post-Conflict Fund, and the International Development Association (IDA).

41. The activities of the International Finance Corporation (IFC) in Kosovo have been relatively limited to date – focusing mainly on the financial sector and, to a lesser extent, mining. IFC’s activities are expected to increase significantly now that Kosovo is a member of this institution. In the financial sector, the main emphasis has been on supporting small enterprise growth by developing a microfinance institution, ProCredit Bank, as well as by expanding SMEs access to credit through the formal banking sector. More recently, the IFC has supported Lydian Resources, a base metal company, to enhance exploration of lead and zinc reserves in Trepce. The portfolio of the Multilateral Investment Guarantee Agency does not currently include any projects in Kosovo.

42. On February 18, 2010, the World Bank Group (WBG) released its new two-year Interim Strategy Note (ISN) for Kosovo. The ISN is the framework of cooperation between the World Bank Group and the Government of Kosovo. The ISN proposes a strategic set of activities focused on 1) accelerating growth that is broad-based, employment-generating and sustainable; and 2) supporting social cohesion through governance reform and transparent, inclusive institutions.

43. The Sustainable Employment Development Policy Program (SEDPP) is the cornerstone of the ISN – a three-part budget support operation (US$47 million from IBRD/IDA and US$56 million from ten other donors) will promote rapid and more inclusive employment and strengthen government transparency and effectiveness. In the first SEDPP operation, a total of US$30.9 million, was approved by the Bank’s Board on September 30, 2010, and the Letters of Agreement for it were signed with the Government of Kosovo on March 11, 2011. The first operation in amount of Euro 24.3 million was disbursed in December 2011.
44. The strategy also includes continuation of World Bank Group engagement in supporting the development of the energy sector in partnership with the US Government and the European Commission.

45. The first Country Partnership Strategy (CPS) for Kosovo, since its declared independence, is under preparation and is expected to be discussed by the World Bank Board in the first half of 2012. It is being prepared to ensure close alignment with the national development priorities, and consistency with the reform agenda devised in the context of the EU integration agenda. The CPS 2012–15 proposes a selective and targeted support program aimed at (i) promoting growth and employment, and (ii) improving environmental conditions and natural resource use. Building on the direction set by previous ISNs, the CPS consolidates the shift in the Bank’s focus from post-war reconstruction support towards a clear emphasis on addressing medium-term development challenges.

46. At Project Preparation/Appraisal: Overall the procurement risk of the Bank-financed portfolio in Kosovo across sectors is considered to be “High”. As identified in the OPR of June 2004, the main procurement risks identified for each specific project would include inter alia: (i) limited technical and institutional capability to deliver technical inputs; (ii) limited experience of institution on implementing World Bank project, including weak procurement capacity of the implementing institutions; (iii) low capacity of local bidders/contractors/firms, accompanied with potential lack of competition, which may undermine bidding processes; (iv) potential interference by officials in the procurement process, selection, and contract award; (v) perception of high level of fraud and corruption in the country.

47. During project supervision, including prior review and post review missions, the procurement risk continuous to be “High”. The following main issues are observed during the supervision of projects: (a) substantial delays during bidding/selection process by implementing agency, especially in prior review contracts of substantial value, which were indicators of either certain preferences of the evaluation committee towards certain firms, or interference of officials in the bidding/selection process; (b) lack of in-house technical capacity to prepare technical specifications, leading to rebidding of the procurement process; (c) delays during contract implementation, in a few cases due to delays caused by the supplier/contractor, while in most cases caused by the client/employer/end user (not properly planning in advance the schedule of this contract, which happen to be linked with outputs from another contract, etc); (d) evaluation committees do not observe evaluation criteria established in the bidding documents; (e) signed contract did not include models for items offered by the winning firm, while in some cases, the items delivered were still in boxes, while the warranty period was going to expire, etc. (f) major contract management issues such as work being performed without signed contracts or contract amendments not executed; (g) payments made beyond the contract ceiling amount and without proper contract amendments approved by the Bank and (h) poor contract monitoring as contracts are not amended/extended before the contract end date.

48. In conclusion, the inherent risk on procurement is considered to be “High”.

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Kosovo Public Procurement System and International Free Trade Agreements

49. The supremacy of International Agreements/treaties over the Kosovo national laws originates from Article 17 of the Constitution of Republic of Kosovo. Kosovo participates in a few, regional or bilateral trade agreements which have an impact on the national public procurement policy. Kosovo is a member of the Central European Free Trade Agreement (“CEFTA”). As a signatory to CEFTA, Kosovo has committed *inter alia* to ensure that procurement takes place in a transparent and reasonable manner, treats all suppliers of the other Parties equally, and is based on the principle of open and effective competition. In addition, Parties to CEFTA agreed that by May 1, 2010 the goods, services, and suppliers of the other Parties would be granted a treatment no less favorable than that accorded to domestic goods, services and suppliers. In addition, the Government has signed a number of bilateral free-trade and economic agreements including with Republic of Albania (2005), customs-free agreement with United Stated through Overseas Private Investment Corporation (OPIC) (2009), etc.

50. In parallel, European Union adopted its first European Partnership for Kosovo in 2004 and the EU-Kosovo Stabilization Tracking Mechanism started operating in February 2005. The EU-Kosovo Stabilization and Association Act Process Dialogue (“SAPD”) with Kosovo was launched in October 2009. As part of the SAPD, Government of Kosovo is committed to bring its public procurement legislation in line with EU Procurement Directives. In these efforts, Kosovo has been supported through technical assistance by major donors including EU, USAID, and the World Bank. At the moment, Kosovo is not a member of the World Trade Organization (“WTO”) and has not taken any formal steps to join it. Further, it is not a party to the Agreement on Government Procurement (“GPA”) and a signatory of other major international fora such as: United Nations Convention on Anti-Corruption (“UNCAC”) or OECD Convention on Combating Bribery of Foreign Officials, etc.

51. Kosovo became a member of International Centre for Settlement of Investment Disputes (“ICSID”) in June 2009 and although it is not a signatory to the New York Convention on Recognition of Foreign Arbitral Awards (hereinafter named “New York Convention”), decisions of foreign international arbitration bodies are enforceable in the country as set forth in the Law on Foreign Investments.

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15 CEFTA, Article 35.
21 Law No. 02/L-33, dated November 21, 2005 “Foreign Investments”, Article 16 which also specifies ICSID as the forum for resolving any dispute between the foreign investor and the Government of Kosovo.
CHAPTER II - ASSESSMENT OF PUBLIC PROCUREMENT SYSTEM

Introduction

52. The first public procurement legislation in Kosovo was prepared by United Nations Mission in Kosovo (“UNMIK”) on December 15, 1999 known as the Finance Administration Instruction (“FAI”) no. 2/1999 on Public Procurement using Kosovo Consolidated Budget. Along with the Financial Administrative Instruction No. 1 these two instruments set the fundamentals of public procurement in Kosovo. The FAI was based on the UNCITRAL Model Procurement Law and the then-World Bank Procurement and Consultant Guidelines. Originally this instruction was thought to be an interim legislative framework, but it remained in force for more than four years until June 9, 2004 when law No. 2003/17 entered into force. This law was prepared on the basis of the EU Procurement Directives and significantly changed from the earlier law mainly due to the differences emanating from the models adopted, through changes and modifications it had undergone by the Law No. 02/L99 until an entirely new law was approved by Assembly on September 30, 2010 and made effective on December 1, 2010. According to the EU Progress Report for Kosovo the law contained a number of provisions that significantly diverged from the public procurement directives and exposed procurement officers to political interference and pressure, thus undermining the transparency and accountability of the overall process and opening up opportunities for corruption. For that reason, the Government of Kosovo engaged in drafting amendments to the law to address the gaps and deficiencies that obviate the law from being aligned with the EU procurement directives. Consequently amendments were adopted by Parliament through the Law No. 04/L-042 dated August 29, 2011. The new law was published in Official Gazette on September 19, 2011 and became effective 15 days after that publication.

53. Generally speaking, Kosovo’s legal system displays features of the civil law legal system. The same stands for the public procurement framework on the basis of which a public procurement contract is defined as a public contract. It has the formality of legal rules; laws are codified, albeit the absence of a clear hierarchy of norms and common procurement regulations for all public bodies and other agencies which act as contracting authority as per the definition in the relevant legislation exist.

54. Below is the task team’s summary assessment of the public procurement system of Kosovo according to four pillars: A--Legislative and Regulatory Framework; B--Institutional Framework and Management Capacity; C--Procurement Operations and Market Practices; and D--Integrity and Transparency of Public Procurement Systems. Detailed assessment using OECD/DAC -- World Bank baseline indicators (without scores) and performance indicators are presented in Annexes C and D, respectively.

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A. Legislative and Regulatory Framework

55. The current legislative framework of public procurement in Kosovo consists of Public Procurement Law No. 04/L-042 approved by Assembly on August 29, 2011. The PPL was published in *Official Gazette* on September 19, 2011 and became effective 15 days after the day of publication in *Official Gazette* (hereinafter named “the PPL”). To implement the PPL, secondary legislation which include Public Procurement Regulation (hereinafter named “the Regulations”) and the Operational Guidelines for Public Procurement (hereinafter named “the Guidelines”) is in place. Part of the secondary legislation is also the “Rules of Procurement Procedures” which consist of numerous forms and standard documents mandatory for use by the contracting authorities. The PPL is the primary piece of legislation regulating public procurement and any secondary procurement legislation shall be issued in accordance with it.

56. The PPL recognizes its prevalence over the Implementing Regulations. Since December 2010 when a new public procurement law was enacted, the regulations were not updated to reflect the changes made in the law. To fill the gap, a number of administrative instructions were issued to address specific aspects of the procurement process. This “ad hoc” arrangement creates ambiguity as to the effects of the instructions vis-a-vis the Regulations. More importantly, the absence of Regulations may lead to consistencies in implementation of the PPL by the contracting authorities and may create legal uncertainty. Although the PPL was revised in August 2011, the Regulations were not updated until February 2012.

57. The PPL of Kosovo sets out the objectives that govern public procurement in Kosovo and the means to achieve them. Those objectives aim at:

(i) Ensuring fair, efficient, cost-effective, and transparent and fair use of public funds;
(ii) Ensuring integrity and accountability of public officials, civil servants, and other persons conducting or involved in a procurement activity;
(iii) Promoting the establishment of an institutional culture of unbiased, ethical, and materially disinterested professionalism among public officials, civil servants, and other persons involved in public procurement.

58. Although the PPL does not state the order and/or hierarchy to these objectives, it is widely recognized that achieving a high level of transparency should assist significantly in achieving various aims. In fact Kosovo PPL reflects some of the main elements of a transparent procurement system including but not limited to: the procurement legislative framework readily available to the public, the affected parties have access both to the rules to be applied and information related to specific opportunities, the tender notice specifies what is intended to be purchased, the evaluation and qualification criteria are set forth in the tender notice, there is notification made to unsuccessful tenderers as to whom the winning economic operator is and the amount of

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24 Public Procurement Law (No. 04/L-042), Article 4(1.48).
contract. Finally, the PPL establishes an independent complaints review mechanism to handle protests from aggrieved parties.

59. **The scope of the PPL is wide** enough to capture activities related to the main procurement categories including: supplies, works, services as well as to include a broad range of contracting authorities by ensuring uniformity in application of the PPL at all levels of government, be it central or local.

60. **Updating of the Implementing Regulations was delayed.** A revised PPL was adopted by the Assembly on August 29, 2011 and the secondary legislation was updated to reflect the changes to the PPL only in February 2012.

61. **Recommendation:** The practice of enacting a law without updating implementing regulations should be discouraged as it may lead to inconsistent interpretation of the PPL and may undermine its implementation.

62. **Several aspects of procurement process are not adequately addressed in the PPL.** The PPL is a very detailed instrument and in some cases includes provisions that would normally be part of the secondary legislation. At the same time, there are certain provisions of significance to procurement process which may need to be further addressed in the PPL including inter alia:

   (i) specifying the roles and responsibilities within the contracting authority during procurement and post-award stages including *inter alia:* establishment of procurement units, responsibility for evaluation of tenders, making decisions and issuing contract award decisions, responsibility for monitoring of contracts, etc;

   (ii) setting forth the main features of a debarment process including conditions for debarment and the minimum requirements for a due process;

   (iii) specifying the rules for participation of government-owned entities as to avoid discriminative and distortive practices against the private sector;

   (iv) stating explicitly the modality for submission of tenders in addition to electronic submission (e.g. in person, mail, courier) and including provisions on physical safekeeping of tenders after submission.

63. **Recommendation:** After implementing the PPL for two to three years, the above areas may be considered and addressed in any future revisions of the PPL.

64. **The role of the Central Procurement Agency (“CPA”) is not clearly delimited.** The PPL, Article 95, specifies that the Minister of the Ministry of Finance has the authority to designate the CPA as the responsible contracting authority for reasons of professional expertise, cost-effectiveness, efficiency and *other legitimate concerns.* First, this provision creates ambiguity on the use of the term “other legitimate concerns” and therefore requires clarification. Second, it does not specify whether the mandate of CPA extends to the procurement of common use items by local government. Similarly, the legislative framework does not set any timeframe within which the CPA shall conduct the procurement including for example the deadline for consolidation and establishment of
lists of common use items. In practice, lack of such timeframes may create delays which could undermine the principles of efficiency and cost-effectiveness, on which the CPA’s functioning, is founded.

65. **Recommendation:** The role of CPA vis-à-vis the contracting authorities should be clearly delimited to procurement of common use items. The CPA should not be used to “substitute” other contracting authorities by conducting procurement on their behalf unless expressly requested by such contracting authorities. In addition, the PPL or the Regulations will need to specify whether the centralized purchasing by CPA shall include procurement of common use items financed by local government; more importantly the PPL or secondary legislation should expressly state the timeframe for the CPA to consolidate and establish the list of common use items to be procured.

66. **Recommendation:** The conditions for revocation should be unambiguously enumerated under the PPL. The responsibility for assessing the violations to PPL as well as the final decision to revoke a certificate should be vested in the PPRC as the body in charge for monitoring the implementation of public procurement legislation and responsibility for development and oversight of the procurement profession in the country.

68. **Number of tenderers invited to submit a tender under the restricted procedure is limited to six.** Article 56 of the PPL specifies that under restricted procedure, the number of candidates invited to submit a tender should not exceed six. In case of more than 6 economic operators being qualified, the contracting authority shall select the six most qualified candidates following a procedure that shall be prescribed in secondary legislation. Understandably, the intent in limiting the number of invited tenders is based on efficiency considerations. Restricting the number at six may be sufficient to ensure genuine competition, however this number is based on the assumption that six economic operators shall submit tenders and it does not take into account the case when such level of competition is not achieved. In addition, considering the embryonic stage of development of the market in Kosovo and the size of the country, such restriction may not ensure effective competition, and it could actually lead to oligopolistic markets. Finally, since the Kosovo PPL follows the model of EU Directives on this procedure, such provision may need to be considered in that context to ensure it is in line with the Directives that set a minimum of five economic operators to be invited to tender in case of restricted procedure without putting a cap on the number of economic operators to be qualified.

69. **Recommendation:** Restriction on the number of the tenders to be qualified and subsequently invited to tender should be reconsidered taking into account the context of
the market in the country. The restricted procedure should be used as an effective way to identify all qualified parties who should then be invited to tender in a subsequent stage.

70. **The current complaints review mechanism may benefit from further strengthening and enhancements.** A key feature of a transparent procurement system is the existence of mechanisms to monitor that the system’s rules are followed and to enforce them if necessary. An effective challenge mechanism is therefore an essential element towards ensuring proper functioning of the procurement system so as to promote confidence in that system. Such a mechanism helps make the PPL self-enforcing, since it provides a tool for review to suppliers and contractors that have a natural interest in monitoring compliance by procuring entities with the provisions of the PPL in each procedure. An additional function of the challenge mechanism is to act as a deterrent: its existence to discourage actions or decisions knowingly in breach of law. In this aspect, the current review system of Kosovo might benefit from a few considerations:

71. **Allow for a first-instance review by contracting authority.** Currently the PPL provides only for the review by Procurement Review Body (PRB) and does not provide for the complaints to be filed with the contracting authority outside the scope of review by PRB. In general, a first-instance review would provide the contracting authorities the chance to resolve or correct defective acts, decisions or procedures and would allow both the contracting authorities and the aggrieved party to seek relief in a manner which is less costly and time-consuming. From private sector point of view, filing a complaint with the contracting authority (outside the unit that made the procurement decision) would be more efficient and faster since the information related to the complaint resides within the contracting authority. As mentioned above, such review would be at a lower cost compared to the independent body or a court. This first level of review would avoid unnecessarily burdening the PRB with complaints that might have been resolved by parties earlier in the procurement process as well as it will enable the PRB to play an oversight role over the decisions of contracting authorities.

72. **“Debarment” implied but not well-defined in the PPL:** Article 99(2), of the PPL refers to the power of the PRB to exclude economic operators from participation in future tenders if they have submitted fraudulent and/or forged information as part of a tender. The process referred seems akin to what is known as “debarment” process; however the PPL falls short in describing the main features of such a process. Additionally, the exclusion on the basis of debarment is not included under the provisions of Article 65 of the PPL which lists the conditions for eligibility of candidates/tenderers.

73. **Recommendation:** Although it is highly desirable for the PPL to explicitly define a debarment regime and the main features of debarment process, alternatively as a short term solution specific regulations may be drafted to spell out: (i) the conditions for debarment; (ii) the agency in charge of issuing debarment regulations; (iii) the requirement for a due process for the affected parties; (iv) permitting explicitly the right to appeal to parties; (v) procedures for review of appeals against debarment decisions; (vi) amendment of Article 65 of the PPL to include debarment as a condition for exclusion.
B. Institutional Framework and Management Capacity

74. This section examines how the procurement system defined by a country’s legal and regulatory framework operates in practice when filtered through the institutions and management systems of public sector governance.

Organizational Structure of Public Procurement

75. The public procurement in Kosovo involves the following key central institutions: the Public Procurement Regulatory Commission (PPRC), the Procurement Review Body (PRB), and the Central Procurement Agency (CPA). Other institutions having a role in public procurement would include: the Treasury Department in the Ministry of Finance (TD-MoF), OAG, the Anticorruption Agency (AG), and Kosovo Institute of Public Administration (KIPA).

76. The public procurement function is fully decentralized at both central and local government levels, which for the purposes of procurement are referred to as “contracting authorities”. The contracting authorities are in charge of planning, budgeting, conducting procurement activities, signing, and implementing the individual procurement transactions. To help with procurement of common use items, the PPA has been transformed to a centralized purchasing agency named CPA and shall assist the contracting authorities to procure these items centrally. This centralized procurement is not yet conducted by the CPA and is yet to be tested. Main functions and roles of central institutions are described below:

Public Procurement Regulatory Commission

77. The PPRC is responsible for overall development, operation and supervision of the public procurement system in Kosovo. The PPRC is an independent regulatory agency\(^\text{25}\) which reports to the Assembly and Government. The Board of PPRC, composed of three members (the Head and other two Board members), is nominated by Government and appointed by the Assembly for a five-year term. Each Board member should have at least a university diploma and with at least one member with legal expertise. The PPRC is supported by several departments namely: the Rules Department (one coordinator and four procurement experts), the Monitoring Department (one coordinator and four procurement experts) and the IT and Statistics Department (one coordinator and 2 procurement experts). Also, the PPRC includes an internal auditor and other administrative staff. The budget of PPRC for year 2010 was Euro 290,968.79 including the PPRC’s 24 staff salaries, goods/services and utilities. The PPRC have adequate premises and equipment. Three specialist positions must still be filled within the PPRC and they are expected to be selected competitively during this year.

78. For the last two-and-a-half years, the PPRC has been assisted by a consulting firm contracted under EC-funded Project for Support to Public Procurement Reform in

\(^{25}\) PPL, Articles 86-93.
Kosovo, to provide assistance in the revision of the PPL, including secondary legislation, preparation of standard bidding documents templates, etc. The consulting contract, with a duration of 2.5 years (reportedly expired on January 18, 2012), includes also training for accreditation on procurement, preparation of procurement portal, preparation of framework contract template, etc.

79. According to Article 87 of the PPL the PPRC’s main functions and responsibilities include: i) preparing and publishing detailed public procurement rules, procurement manuals guidelines, standard bidding documents, and contract formats as well as forms; ii) conducting investigation of procurement and contract management activities for the purpose of monitoring the application of PPL; iii) issuing opinions to contracting authorities regarding their decisions, actions, or omissions during procurement and contract management activities; iv) providing technical assistance and advice, as well as providing and publishing written administrative interpretative 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; v) establishing and maintaining an electronic Public Procurement Register; vi) supporting the development of electronic procurement; vii) establishing manual and electronic systems for monitoring the compliance of the contracting authorities with the present law; viii) preparing and submitting to the Government and the Assembly an annual report analyzing public procurement activities in Kosovo; ix) supporting KIPA and other public training and educational authorities with respect to the implementation of sound procurement practices; x) liaising and cooperating with other organizations at home and abroad on matters associated with public procurement.

80. **Recommendation:** (i) With the expiry of the consultancy contract in early 2012, the PPRC may need resources to do its tasks; (ii) PPRC needs to prepare a strategy for the coming three-to-five year on how to enhance the performance of the public procurement system; (iii) PPRC to establish procurement performance indices in order to measure the progress in the future; and (iv) The PPRC should consider devoting more resources to compliance tests in order to develop a risk map of key vulnerabilities in the public procurement process and among contracting entities and types of procurement. In addition, the PPRC is to collect information about material and works and services pricing to facilitate contract cost estimation and help in the budget planning.

**Procurement Review Body (PRB)**

81. The PRB is responsible for implementing the procurement review procedures\(^\text{26}\). The PRB’s main roles and responsibilities include: i) reviewing all complaints directed to the PRB in public procurement field regarding violations of the PPL; ii) conducting investigations of any party involved regarding any irregularity during procurement process; iii) issuing orders to contracting authorities to suspend or terminate a procurement process, taking action to correct an alleged violation, renders ineffective a concluded and signed contract under the conditions set forth in the PPL; iv) imposing

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\(^{26}\) PPL, Articles 98-102.
penalties on any contracting authority that does not comply with its orders; v) reporting every year to the Assembly on operations of procedures for complaints reviewed.

82. The PRB is composed of five members, one of whom is the President. The members are nominated by the Government and appointed by the Assembly for a five-year term, based on recommendation by an independent selection body established by the Assembly. The PRB reports to the Assembly. Each member should be a Kosovo citizen, have high moral integrity, possess a law degree valid in Kosovo, meet eligibility requirements for appointment as judge, have not less than three years of professional experience in the legal field, have ability to perform impartially, conscientiously, diligently, decisively, and responsibly in the officer position s/he will be assigned.

83. Concerns have been raised about the transparency of the PRB’s activity. Representatives of the private sector and the law enforcement community reported that the decisions and appointments of Procurement Review Board members are not sufficiently transparent. The appointment by the Assembly of all members of the Review Board (Article 100(4)) runs the risk of selecting officials that would be vulnerable to returning the political favor that led to their appointment and result in the selection of political appointees with a weak professional track record. The PRB President approves the procedures for appointing members of the Review Panels (PPL, Article 106), which may leave the President too wide-ranging discretion in such appointment decisions. The appointment of the review panels seems to have been clarified in the Rules of Procedures of the PRB updated in February 2012, which specify that depending on the size and nature of the contract, the review panels may consist of one, three, or five members. Except for the cases when the whole PRB Board is required to collegially review and decide (such as: contracts above EUR 500,000 or contracts of special importance), neither the Rules of Procedure of the PRB nor the PPL specify the circumstances when the President of PRB shall be a “designated PRB member” (as defined in the Rules of Procedure of PRB). Additionally, the PPL and the Rules of Procedure of PRB seem to be not in full consistency relating to the manner in which the lifting of an automatic suspension shall be decided.

84. The PRB is resourced with 13 technical staff: panel assistant, head of secretariat, senior legal advisor, IT officer, chief finance officer, five legal experts, archive/protocol officer, personnel officer, and translator. The budget of PRB for year 2010 was Euro 344,341 including staff salaries, goods/services, and utilities. The PRB has adequate premises and equipment. The PRB maintains its own web-page, where complaints’ decisions, and other information relevant to PRB’s work, are published.

85. Some legal safeguards are in place to ensure the independence of the Procurement Review Board. These provisions include: (i) the Procurement Review Board (PRB) is a separate and independent entity of the contracting authorities (Article 98); (ii) "no person and official may exert or attempt to exert any political or illicit influence over the PRB or any of its employees" (Article 98); and (iii) unsatisfied party has the right to appeal the

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27 Article 23 of the updated PRB Rules of Procedure which at the time of finalizing this report were not approved.
28 Rules of PRB, Article 23(6).
29 Article 18(10).
PRB's decisions to the Supreme Court, which according to the statistics only 14 of the 430 complaining economic operators have exercised in 2010. The Euro 500 fee for filing complaints may be prohibitive especially for low value contracts.

86. **Recommendation:** It is noted that the PPL contains a few areas that deserve further consideration with a view to increase transparency and credibility of the PRB. These areas would include that: (i) the members and the President are selected from a pool of qualified candidates preferably through open competition based on the qualifications criteria set forth in the PPL, (ii) the Rules of Procedure for the operation of PRB need to be approved; (ii) likewise, the conditions for participation of President of PRB as a "designated PRB member" need to be clarified; (iii) furthermore, the discrepancy between the PPL and Rules of Procedure of the PRB on the authority within PRB to issue a waiver on the automatic suspension need to be addressed and as a matter of good practice, it is advisable that such decision is made collegially\(^{30}\); (iv) the Government may need to reconsider Article 118, clause 1 of the PPL so to lower the fee of EUR 500 for filing a complaint especially for low value contracts; (v) the Auditor General should consider auditing the PRB to ensure that all fees are adequately recorded and returned promptly upon case disposition.

**Central Procurement Agency (CPA)**

87. The CPA is an executive procurement agency that is established within the Ministry of Finance\(^{31}\). The CPA was formerly known as the Public Procurement Agency (PPA). The CPA has the following key functions: i) carries out centralized purchases for use by all government contracting authorities; ii) conducts procurement on behalf of any contracting authority that delegates its procurement function to the CPA. However, the CPA has not conducted any centralized procurement or framework agreements yet and would need to be trained on how to package the consolidated procurement as well as on framework agreements.

88. The CPA is administered by a Director, who is selected and appointed based on the Law on Civil Servants for appointment of high-ranking positions, and serves for a mandate of three years. The CPA currently has five procurement professional staff and other administrative staff.

89. **Recommendation:** (i) CPA may need technical assistance including a consultant to assist it in the preparation of the first procurement of centralized purchase and to conduct the analysis of prices of common goods to establish a basis for future comparison; (ii) CPA to initiate the first centralized procurement; and (iii) CPA may need to be equipped with the required human resources in order to do its tasks.

\(^{30}\) Article 19(1) of the PRB Rules gives the power to lift automatic suspension to the Board of PRB (5 members) whereas Article 112 of the PPL gives the right to the President of PRB.

\(^{31}\) PPL, Articles 94-97.
Kosovo Institute of Public Administration (KIPA)

90. KIPA has been established as an executive agency within the Ministry of Public Services at the request of the Ministry of Public Services (MPS), with the main task to provide continuous education and certification of the Kosovo Civil Service through provision of basic, standard, and specialized trainings.

91. In fulfilling its mission, KIPA acts as a research institution for the development of public administration in Kosovo, in accordance with European standards, implements a training strategy for the Civil Service of Kosovo, reviews and evaluates periodically the needs of Civil Service of Kosovo at local and central levels, drafts appropriate programs to meet the requirements in accordance with European standards, and evaluates the results of training programs organized for this purpose. It also coordinates training activities of Kosovo civil employees, and acts as a research institution for the development of public administration in Kosovo.

92. KIPA has 14 employees, of whom seven work directly with line ministries and civil servants on various training programs, which are conducted through different ministries. The institution and its program have benefited from substantial donor support and technical assistance and have a number of education programs in different areas, among which is a series of training sessions for public procurement officers. However, the 2011 EC Progress Report for Kosovo assesses the administrative and financial capacity and the coordinating function of the Institute to be weak, which affects its capability to provide a more rational strategic approach to capacity-building for civil servants.

93. **Recommendation:** Improve the administrative and financial capacity and the coordinating function of KIPA. KIPA is to work closely with the PPRC on developing a curriculum for basic and advanced procurement training as well as providing feedback on training it conducted by addressing them in the annual PPRC report.

Organizational Arrangements in Contracting Authorities

94. The PPL covers goods, works, and services for all procurement using budget funds. Article 2 of the PPL states that it shall apply to the procurement activities of the following bodies: Public Authority\(^{32}\), Public Undertakings\(^{33}\), Public Service Operators;\(^{34}\) and any other person who undertakes carrying out procurement activity on behalf of or for the benefit of a public authority, public service operator, or public undertaking. Contracting authorities have a procurement department as part of their organizational arrangements.

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\(^{32}\) Public Authority is 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.

\(^{33}\) Public undertaking is 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.

\(^{34}\) Public Services Operator is: (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.
structure. The procurement department is headed by a director who is a certified procurement officer. Municipalities, depending on their size, may have a separate procurement department, and large municipalities are normally staffed with required procurement qualifications.

Publically and Socially Owned Enterprises

95. The Publically Owned Enterprises (POEs) in Kosovo are divided into central and local ones. These are enterprises where the Government has full ownership. The Policy and Monitoring Unit (PMU) of Public Owned Enterprises (POEs) in the Ministry of Economic Development (MED) monitors the central POEs, while the second group (local ones) and managed locally by Communes. One central POE (RTK - Kosovo radio Television) reports directly to the Kosovo Assembly, thus is not monitored by the PMU/MED.

96. Another group, socially owned enterprises (SOEs), are managed by the Kosovo Agency for Privatization (KAP), and thus are not subject to monitoring by the PMU/MED. The KAP, which is an independent institution, deals with privatization or liquidation of SOEs.

97. There are currently 18 POEs under the monitoring of PMU of MED (including railways, which is recently divided into two parts/enterprises: infrastructure and operation). They receive funds from Government, usually in the form of grants. Therefore, these POEs manage their own generated funds as well as Government funds/grants. As such, they are subject to Public Procurement Law of Kosovo as contracting authorities; further they are subject to auditing by the General Auditor Office’s of Kosovo.

98. The Management of the POE manages the POE staff. The Ministry of Finance (MoF) who is the owner of some POE, on behalf of Government, as well as the line Ministry, communicate with the POE through the POE Board. The Government, through an inter-ministerial commission, decides on the privatization of any of these POEs (as in recent cases of decisions for privatization of PTK -- Kosovo Post and Telecommunication, and of distribution of Kosovo Energy Corporation -- KEK).

99. **Recommendation:** As the PPL is silent on the conditions for participation of these entities and it is advisable to specify the conditions for participation of these entities as to avoid any perception on lack of a level playing field between these entities and the private sector operators.

Professional Capacity for Public Procurement

100. Throughout the government there is generally lack of skills in procurement and contract administration. This is largely due to the absence of dedicated cadres for professional procurement officers, and the absence of a career path. Above all, dismal capacity in contracting authorities and the three central procurement institutions (PPRC, CPA, and PRB) further hamper the efficiency, economy, and transparency of the
procurement systems. Article 25 of the PPL prescribes obligatory training for representatives of contracting authorities, performed by the Kosovo Institute for Public Administration (KIPA). There is no impact assessment of the training provided by KIPA. The training program consists of ten modules focused on procurement planning and documentation, evaluation, different procurement procedures, roles and responsibilities of PPRC, CPA and PRB, legal regulation related to public procurement, including the secondary legislation, and Code of Ethics. The program includes both a basic course and an advanced course, with appropriate set of basic and advanced procurement professional certificates. Training certificates are given to the participants on the recommendations of the trainer. The training certificate is a precondition for designation of a civil servant as Procurement Officer. The certificates are valid for three years and have to be regularly renewed. The PPL differentiates between a basic certificate (for civil servants who are new to procurement) and an advanced certificate (for experienced procurement officers who intend to renew their certificates).

101. PPRC is the principal focal point for the training curricula and keeping records of the training. As of May 2011, 521 procurement officers have attended the trainings, of whom 430 have passed the final exams. Given that Kosovo has 161 contracting authorities, the average presence of procurement officers is 3 per contracting authority.

102. Reactions from Procurement Officers in different ministries are that the training offered by KIPA has so far been too general and came down to familiarizing the attendees with the PPL. The training lacked examples and case studies and some trainers lack the required procurement experience.

103. The European Commission has introduced a Training of Trainers program for the Balkan countries, conducted in Turin, Italy, where Kosovo has 5 graduated trainers, and is expected to have 15 more by the end of 2011. Also, an introduction to the PPL is part of the training for all civil servants.

104. As Procurement is not considered to be a specialist cadre, there are no quality assurance standards and therefore address issues in skill development. There is no information on performance of procurement staff, and no indicators are set to measure procurement staff performance.

105. Training for the private sector is provided by several consulting companies, but the private sector opinion is that the training is too general.

106. **Recommendation:** (i) PPRC, in collaboration with KIPA, should undertake periodic training needs assessments, identify gaps of knowledge and develop an annual training program for specialized audiences in coordination with other concerned agencies (e.g., training on conflict of interest, detecting fraud and corruption, specialized trainings on IT procurement, etc.); (ii) A Community of Practice composed of Procurement Officers at the contracting authorities should be formed to close the gap between the procurement regulators and legislators on one side, and the procurement practitioners on the other. It could meet twice a year and exchange information, define issues, propose further trainings, etc. It would feed into the work of the PPRC and would
help advance the procurement function; and (iii) A system of evaluation of procurement officers’ performance should be established, which should lead into the recognition of procurement as a career in the government.

C. Procurement Operation and Market Practices

107. The team looked at the operational effectiveness and efficiency of the public procurement system at the level of procuring entities. In order to use private market response as one means of judging the quality and effectiveness of the system in implementing procurement procedures, the team held meetings with several contractors, suppliers, and representatives of civil society, including Kosovo Chamber of Commerce.

Procurement planning

108. The government prepares a medium-term expenditure framework as the basis for medium-term and annual budget preparation. As a requirement for the preparation of budget, each contracting authority at the central or local government level would need to prepare an initial procurement plan for their needs. These plans are normally based on previous year budget and the estimates provided by the MoF. A final procurement plan is then prepared based on the budget allocation approved by the MoF. Each contracting authority provides the CPA with a copy of the initial and final procurement plans (PPL-Art. 8). The CPA aggregates all final procurement plans; however, there is no requirement that the aggregated procurement plans or the individual procurement plans be published anywhere. The Bank learned that the current PPRC publication system does not provide any information on future business opportunities. There is a lack of information on consolidated overall procurement activities (procurement plans), which limits the capacity of the private sector to foresee opportunities to participate in future public tenders.

109. Some contracting authorities tend to conduct most of their procurement towards the second half of the fiscal year which makes them run the risk of not completing the contracts before the end of the fiscal year. In order not to lose the allocated money for the contract that is not completed by the end of the year, the Bank team learned that there is the practice of paying the contractor all the money needed to complete the work under a gentleman’s agreement that the work be completed after the end of the fiscal year. There were cases detected by the OAG where this happened but the work was not completed even after three months from the end of the fiscal year.

110. **Recommendation**: (i) As a good practice and in order to provide the private sector with information on opportunities to participate in future public tenders, the individual procurement plans shall be published on the PPRC website. (ii) Contracting authorities shall prepare proper procurement plan and make sure any contract which will not be completed by the end of the fiscal year, a special arrangement be made with the MoF so that the contract can only be paid when the work is completed to avoid any loss of the public money and also reduce corruption and fraud in contract implementation. (iii) Market surveys should be carried to establish baseline prices for items commonly procured and for high-value and high-risk items, e.g., pharmaceuticals.
Procurement methods

111. Chapter II of the PPL sets forth the procurement methods that are available to contracting authorities for procurement of goods, works, and services which are: (i) Open and Restricted Procedures (Article 33); (ii) Negotiated Procedure After Publication of a Contract Notice (Article 34); (iii) Negotiated Procedure Without Publication of a Contract Notice (Article 35); (iv) Price Quotation procedures (Article 36); (v) Procedures for Minimal Value (Article 37); (vi) Public Framework Contracts (Article 38); and (vii) Design Contest Contracts (Articles 73-80 of PPL). Consistent with the EU Procurement Directives, the PPL puts both the Open Tendering and Restricted procedure at the same level, without defining the Open Tendering as the default method of procurement. Article 32 is interpreted to intend that open and restricted procedures can be freely chosen by the contracting authorities without a need for justification. The use of negotiated procedures and the price quotation methods is conditioned to the specific circumstances set forth in the PPL. The PPL mentions also a two-part tender procedure which is not explained in the PPL under which circumstances it would apply. However, the Regulations specify that this process shall be used only for procurement of consultancy services.

112. Article 56 of the PPL specifies that under restricted procedure, all qualified candidates shall be invited to submit a tender unless the number of qualified candidates exceeds six. In case of more than 6 economic operators being qualified, the contracting authority shall select the six most qualified candidates following a procedure that shall be prescribed in secondary legislation. Understandably, the restricted procedure is intended to limit the competition only to the qualified economic operators based on efficiency considerations. Notwithstanding, although limiting the number of qualified tenders at six may be sufficient to ensure genuine competition, this number is based on the assumption that six economic operators shall submit tenders but does not take into account the case when such level of competition is not achieved. Additionally, considering the embryonic development of market in Kosovo, restricting the number of firms to submit a tender may not provide for effective competition and may create oligopolistic markets. Likewise, such provision may need to be checked for consistency with the EU Procurement Directives which set a minimum of five economic operators to be invited to tender in case of restricted procedure without putting a cap on the number.

113. Slicing and fractioning of contracts to limit competition or avoid certain firms to participate is prohibited by the PPL.

114. **Recommendation**: The number of firms to be invited under the Restricted Procedure should not be limited to six. The restricted procedure should be used as an effective way to identify all qualified parties who should then be invited to tender in a subsequent stage.

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35 PPL, Article 58(4).
36 Public Procurement Regulations, Article 22 paragraphs 2-6.
37 PPL, Article 16 Clause 4 states “A contracting authority shall not select or use a valuation method for the purpose of lowering the value of a supply contract below a threshold specified in Article 19 of this law; nor shall any contracting authority split up a procurement requirement for a given quantity of products for the purpose of lowering the value of a supply contract below a threshold specified in Article 19 of this law.”
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115. The PPL\textsuperscript{38} specifies that the contracting authority for the procurement activities to be procured through (i) Open tendering (ii) Restricted Tendering and (iii) Negotiated Procedure with prior Publication, shall prepare and publish a contract notice. The PPL exempts the following procedures from being published: (i) Negotiated Procedure without Prior Publication; (ii) Request for Price Quotation, and (iii) Minimal Value Contracts.

116. Publication of notices provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain tender documents and respond to the advertisement. The PPL\textsuperscript{39} foresees the publication of an Indicative Notice “for the upcoming 12 months when the contracting authority expects awarding of a contract is estimated at Euro 500,000”. The procurement and contract award notices shall be published on the PPRC website and the electronic Public Procurement Register. Contract award notice\textsuperscript{40} shall be published for contracts awarded through open and restricted tendering, negotiated procedures and price quotation procedures within two days after the award of such contract. The PPL\textsuperscript{41} establishes adequate timeline for the preparation and submission of tenders and it clearly spells out such timelines for each procurement method. As an exception to the above provision, the PPL\textsuperscript{42} describes special rules for setting a time limit for the receipt of tenders for a public contract covered by an Indicative Notice which reduces the time limits considerably as well as provides for special rules permitting the reduction of time limits in cases of urgency, impracticability and cases not attributable to contracting authority.

117. Article 13 of the PPL requires the contracting authorities to issue the tender documents in Albanian and Serbian languages as well as in English if so decided by the contracting authority. For large value contracts, the contracting authorities may prepare and issue the procurement documents in three languages and the economic operators may submit the tender in these three languages. However, the PPL and/or Regulations do not specify the language of the contract. 

**Recommendation:** the legal framework should clarify the language in which the contract shall be signed. As a matter of good practice and to avoid discrepancies and misinterpretation, the contract shall be signed in the language of the tender.

Rules on participation

118. The principle of nondiscrimination in public procurement is set forth in Article 7 of the PPL to ensure equal treatment of all economic operators. The PPL\textsuperscript{43} further

\textsuperscript{38} PPL, Article 40 “Contract Notice.”
\textsuperscript{39} PPL, Article 39 “Indicative Notice.”
\textsuperscript{40} PPL, Article 41 “Contract Award Notice.”
\textsuperscript{41} PPL, Article 44 “General Rules for Setting a Time Limit for the Receipt of Tenders or Requests to Participate.”
\textsuperscript{42} PPL, Article 45, Cl.1 “Special Rules for Setting a Time Limit for the Receipt of Tenders for a Public Contract Covered by an Indicative Notice.”
\textsuperscript{43} PPL, Articles 51 “Notification of Selection Criteria” and 53 “Providing Additional Information to Candidates and Tenderers.”
stipulates that all qualification and evaluation criteria as well as the documents/information required establishing the eligibility shall be disclosed in the contract notice and in full in the tender dossier. To that end, the conditions for participation are stated in the PPL and these requirements are classified in four broad categories. They are namely: (i) eligibility requirements (Art.65); (ii) professional suitability (Art. 66) and (iii) economic and financial standing (Art. 68); and (iv) Technical and Professional Capability (Art. 69), which are in line with international procurement practice.

119. With respect to eligibility criteria, the PPL specifies numerous conditions that would render an economic operator ineligible to participate. As Article 64 requires, the candidate or the tenderer shall submit a letter of representation (Declaration under Oath) confirming that he is not ineligible under any of the conditions listed in Article 65. Notably, Article 65 is missing the exclusion made by a decision of PRB in accordance with Article 99 of the PPL that empowers the PRB to exclude from future procurement a tenderer or candidate that has submitted false and forged information in previous tenders.

120. The PPL does not include special rules for participation of government-owned entities. This drawback of the PPL needs to be addressed as their participation on the same level playing field as private-sector companies without setting special rules that may distort competition. It has been reported that in practice the government-owned entities may participate as any other economic operator in tenders organized by contracting authorities with exception of tenders organized by authorities that own these entities in which case it may be considered as in-house procurement. The PPL, Article 65 mentions two situations of conflict of interest namely: “if the tenderer including any of its staff: (i) was engaged in preparation of the tender dossier or any part thereof for the subject matter of procurement, and (ii) received assistance in preparing its tender, from a person who was involved in preparation of tender dossier or notice or any part thereof”, They constitute a basis for ineligibility of the bidders. However, it must be clarified that other situations set forth in the Law on Preventing Conflict of Interest in Exercising Public Function may cause ineligibility of the economic operators. For example: the relationship of an economic operator with a Government staff, etc.

121. **Recommendation:** (i) For consistency purposes, the provisions of the PPL could make reference to the Law on Preventing Conflict of Interest in Exercising Public Function; (ii) The PPL should include debarment as a condition for exclusion. (iii) The PPL should set forth the main principles for debarment including specifying the process requirements, listing the conditions for debarment, defining the adequacy of due process, imposing provisions on transparency of debarment system, and (iv) it is advisable that the PPL provides for special rules for participation of government-owned entities.

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44 *PPL* Article 64: “A candidate or tenderer shall prove by certificate, attestation or other sufficient evidence reasonably required by the Contracting Authority that: (i) the grounds for ineligibility under Article 65 of this law do not apply; (ii) verify his professional suitability as required by the Contracting Authority under Article 66 of this law; (iii) meet the criteria required by the Contracting Authority under Articles 68 to 71 of this law.”

45 *Ibid.* Article 65 “Eligibility of the Candidate or Tenderer.”
Tender documentation and technical specifications

122. The PPL\textsuperscript{46} establishes that a tender dossier shall be drawn up for all procurement methods except for Minimal Value Contracts. In addition the PPL\textsuperscript{47} entails that tender dossier shall be ready for issuance by the time of publication of contract notice. Furthermore, the tender dossier shall be delivered free of charge to the interested economic operators. “A fee may be imposed when the cost of reproducing the documents is expensive and it includes a large number of technical prints” and in no case the fee shall exceed the production cost of the documents\textsuperscript{48}. By checking a sample of 20 tender notifications (published recently in the PPRC website), it was found that in most of cases (i.e. 18 contracts, or 90% of them) the tender dossier was issued without any charge, while in few contracts (2 cases, or 10%) the contracting authority charged a fee (of Euro 10) for obtaining tender dossier by economic operators which is a reasonable amount.

123. With respect to the technical specifications, the PPL\textsuperscript{49} provides for neutrality and lack of bias towards any economic or group of economic operators or make mention to any specific brand unless on exceptional basis the contracting authority may establish that it is not possible to develop a sufficiently precise description of the subject matter of the contract, provided however that such reference is accompanied by the term “or equivalent”.

124. Submission and opening of tenders. Except for the electronic submission of tenders which is mentioned in Regulations, the PPL and/or the Regulations do not expressly spell out the methods for submission of tenders such as: in person, by mail, courier, etc. Further the PPL\textsuperscript{50} specifies that tenders shall be open publicly and the opening shall take place immediately after the expiration of the deadline for submission of tenders. Late tenders shall not be opened, and shall be immediately returned unopened. Although Articles 79 and 55(3) of the PPL instruct the contracting authority to ensure integrity and confidentiality of the tenders and all information supplied by economic operators after submission, it is silent on the physical safekeeping of the tenders after submission.

125. For an open or restricted procedure to be acceptable the PPL\textsuperscript{51} specifies that there should be at least 2 responsive tenders or where applicable, Requests to Participate; otherwise the contracting authority will have to cancel the tendering process. However, Article 32(5) of the PPL entitles the contracting authority to waive this requirement under specific conditions and notify the PPRC within two days from such waiving decision.

126. The PPL specifies that the public opening may be attended by representatives of tenderers who choose to attend. In case of two-part tenders (which the Regulations refer to as “two-envelope process” used for consultancy services), the PPL specifies that the

\textsuperscript{46} PPL, Article 27 “Tender Dossier.”
\textsuperscript{47} PPL, Article 27(4).
\textsuperscript{48} PPL, Article 48 “Delivery of Tender Dossier.”
\textsuperscript{49} PPL, Article 28 “Technical Specifications.”
\textsuperscript{50} PPL, Article 58 “Opening of Tenders.”
\textsuperscript{51} PPL, Article 32 “General Rules.”
technical proposal shall be the first to be opened publicly. At the end of the technical evaluation, the financial proposals shall be opened in the same manner in accordance with requirements set forth for opening of tenderers in the PPL.

127. **Recommendation:** The PPL and/or the implementing regulations should specify that the contracting authority shall keep safe the tenders after submission.

**Tender evaluation and award criteria**

128. The PPL specifies that the tenders are to be evaluated in accordance with the criteria and methodology disclosed in the tender dossier. The PPL further spells out the criteria on the basis of which the procurement contracts shall be awarded. The PPL specifies two contract award criteria by name: (i) the lowest priced responsive tender; and/or (ii) the most economically advantageous tender (hereinafter “MEAT”). In case of the MEAT, the contracting authority shall determine the criteria to be used for evaluation and the weighting assigned to each of them. The PPL specifies that to the extent practicable, the contracting authorities shall specify each criterion in an objective, and quantifiable manner. The choice between the two award criteria is given to the contracting authority. While in case of award based on the lowest priced responsive tender the manner in which it applies is clear as price is the only criterion, in the case of award based on MEAT, application combines price and non-price related criteria to arrive to the “best buy” (most economical value). According to the feedback from contracting authorities, there is a general hesitancy to use the MEAT fearing being accused of exercising discretion.

129. With respect to application of discounts, the PPL. Article 58 of the PPL limits the information read out at the opening of tenders only to (i) the name and place of economic operator submitting tender and (ii) tender price. The lack of provision in the PPL can only be interpreted to imply that discounts shall not be considered and if offered by tenders, the contracting authorities are not obliged to consider the discounts offered. In this aspect, the Administrative Guideline No. 1 issued on March 11, 2011 is particularly instructive. PPRC advises that “procurement officer is not obliged and required to read the discount offered by the tenderer with the respective tender”. Such practice as advised in the Guideline negates the contracting authorities the right to benefit from discounts which would help achieve savings in public procurement.

130. In addition, the PPL prohibits communications, discussions, or negotiations with the economic operators with the exception of articles 34 and 35, which regulate negotiated procedures (with or without prior publication). However, the Bank task team learned from potential bidders that contracting authorities may clarify a bidder’s bid in a face-to-face meeting.

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52 *Ibid*. Article 60 “Contract Award Criteria.”


54 Operational Guidelines, Article 25.8.

55 *Ibid* Article 59, clause 5 “Examination, Evaluation and Comparison of Tenders.”
131. **Recommendation**: (i) The discounts should be permitted and accepted by the contracting authorities and a provision in the tender documents should be included to that effect. For a discount to be considered for evaluation it should be read out at the tender opening. (ii) Face-to-face meeting with bidders during bid evaluation should be discontinued as this may open doors for corruption. Any clarification during the bid evaluation stage shall be made in writing only.

**Contract signing**

132. In accordance with Article 26 of the PPL the procurement officer shall be the only person authorized to enter into or sign a public procurement contract on behalf of the Contracting Authority. However, for large value contracts, (which as per Article 19, is more than or equal to Euro 125,000 and 500,000 for goods/services and works, respectively) the CAO and the Minister shall sign the contract besides the procurement officer to make it enforceable. Normally, a contract may not be signed before 10 days pass after the contract award notice is published.

**Electronic Government Procurement (e-GP)**

133. The PPL refers in Article 129 to the voluntary use of e-Government Procurement but there is no progress in this regard and Kosovo will soon embark on this initiative. It is not clear who shall be the responsible agency in the government to issue the rules on e-procurement although that agency would need to coordinate with the PPRC. Under the Bank financed project “the Public Sector Modernization Project” there is a component on establishing e-Procurement. The introduction of e-GP should be considered as a major tool for the strengthening of the transparency and efficiency of Kosovo's public procurement system. To this end, e-GP must not be considered as a mere IT system but as a comprehensive program subject to several key success factors such as government leadership & management capacity, procurement policy & legislation, buyer & supplier activation, and standards & infrastructure. The following steps are suggested to bring the e-GP implementation in Kosovo on the right track:

**E-GP readiness assessment**

134. The Multilateral Development Banks' e-GP Working Group has developed an e-GP readiness assessment methodology that takes into consideration critical factors for the successful implementation of e-GP. An assessment should be conducted based on this methodology in order to create a baseline for the future e-GP implementation. The assessment would address issues such as who is leading the e-GP agenda in Kosovo, are the required procurement policies and legislation in place, what is the relevant level of awareness and capacity among contracting agencies and economic operators, is the current Internet connectivity and IT infrastructure acceptable, and to which extent are electronic means already used in the context of public procurement. The assessment can be done by an experienced international individual consultant and should not require more than 3 weeks including desk study and on-site interviews with relevant stakeholders. The result of the assessment is an e-GP readiness report that will provide the basis for further required actions as part of the e-GP strategy.
Development of an e-GP strategy

Based on the findings of the e-GP readiness assessment, an e-GP strategy for the next five years should be developed including an action plan with clearly defined roles, responsibilities, timeline, and cost estimates. This assignment should not take longer than a maximum of 4 weeks and could be bundled with the e-GP readiness assessment. Part of the strategy can be a list of functional requirements of the e-GP system (e.g. to start with e-Tendering). The strategy can be considered as the e-GP implementation roadmap and should be formally endorsed by the government of Kosovo. To this end, a workshop with public procurement stakeholders presenting and discussing the e-GP strategy may help raise the awareness and achieve collective agreement with regard to the e-GP agenda in Kosovo.

Gradual implementation of the e-GP program

Once the e-GP strategy has been endorsed by the government (maybe in the format of a government decision or decree) and a strong lead agency (typically the procurement authority) has been identified and provided with the required resources, the e-GP program should be gradually implemented following the suggested actions in the e-GP strategy. A firm could be hired which, based on the functional requirements defined in the e-GP strategy (or alternatively under a separate assignment), develops the first version of the e-GP system. After having piloted and rolled out this e-GP system version for use among contracting agencies and private suppliers, new functional features can be gradually designed and implemented in line with the suggested e-GP strategy.

Statistics of procurement conducted by procurement method

Open procedures: These procedures seem to have a decreasing trend in public procurement of Kosovo. While during 2008 these procedures weighted 77.4% (or Euro 639.7 million, out of the total Euro 823.48 contracted during that year), this was increased to 84.85% in 2009 (or Euro 660.3 million, out of the total of Euro 778.15 million contracted that year); in 2010 the weight for this method was decreased to 36.1% (or Euro 412.03 million (taking into consideration the contract for construction of Morine-Merdare Highway valued at Euro 659.8 million which was procured by negotiated procedures), out of the total of Euro 1,141.88 million contracted for this year).

Negotiated procedures after publication of contract notice: These procedures were significantly used during 2010, increasing the overall weight for these procedures due mainly to the contract for construction of Morine-Merdare Highway (Euro 659.8 million). In 2010 about 58.64% (or Euro 669.6 million) were contracted and used this method out of the yearly total contracted. During 2008 these procedures weighted 3.79% (Euro 31.3 million out of the total contracted for that year) while during 2009 such weight was reduced to 0.39% (Euro 3.03 million or the total for that year).

Negotiated procedures without publication of contract notice: The usage of this method records decreasing patterns during the last three years; for example, in 2008 these procedures weighted 16.07% (or Euro 132.85 million out of the yearly total), comparing
with 2009 where the weight was reduced to 10.8% (or Euro 84.23 million of the yearly total contracted) and 2010 where this method weighted only 2.96% (or Euro 33.84 million out of the yearly total).

140. Other procurement procedures: No restricted procedures were used during the last three years. The usage of design contest was increased from 0.1% in 2008 (Euro 0.85 million) to 0.22% in 2009 (Euro 1.69 million), while in 2010 were reduced again to 0.09% (Euro 1 million out of the yearly total). Price quotation method records an increase in 2009 recorded as 3.22% (Euro 25.1 million) comparing with 2.22% (Euro 18.3 million) in 2008; in 2010 however the usage of this method was reduced to 1.96% (or Euro 22.4 million out of the total for that year). The usage of minimal value procedures was recorded as 0.43% (Euro 3.5 million) in 2008, increased slightly during 2009 in 0.49% (Euro 3.8 million), however it was decreased in 2010 to 0.26% (Euro 2.9 million out of the yearly total contracted).

Statistics of procurement conducted by type of contracts

141. Civil works remains the most important category in public procurement structure of Kosovo, taking the highest weight in public expenditures. During the year 2010 works contract took 75.4% (Euro 860.9 million out of the total investment for this year of Euro 1,141.88 million, including also the contract for construction of Morine-Merdare Highway, Euro 659.8 million) which records an increase comparing with 54.6% in 2009 (Euro 424.13 million out of the total of yearly investments) and with 54% in 2008 (Euro 446.41 million out of the yearly investment).

142. Goods/supplies are the second largest category of public investments. For 2010 they weighted 19.23% in overall yearly investments (Euro 220.3 million), which is a decrease comparing with the weight of 37.2% in 2009 (Euro 289.4 million) and with the 40.5% recorded for 2008 (Euro 334.9 million out of the yearly investments).

143. Services contracts, including also consulting services contracts recorded a weight of 5.2% for 2010 (Euro 59.6 million out of the yearly total contracted) comparing with 8% during 2009 (Euro 62.3 million) and 5.4% for 2008 (Euro 44.24 million).

144. Design contests contracts were the lowest category in the overall investment in public sector. For year 2010 this took 0.09% (Euro 1.1 million), compared with 0.2% in 2009 (Euro 1.67 million) and 0.1% for 2008 (Euro 0.85 million).

Statistics of the Review of Procurement Complaints by PRB

145. During the year 2010, 585 complaints were filed to the PRB by the economic operators (430) and Contracting Authorities (155), who objected to the decisions of Contracting Authority for contract award and of the Public Procurement Agency (PPA). Of the 430 complaints by economic operators, (i) PRB reviewed 331 complaints filed by economic operators, who met the legal requirements for review, in accordance with articles 105, 106, and 113 of PPL; (ii) The review panel reviewed 185 complaints and approved the decision of Contracting Authorities; (iii) In 84 cases, the review panel
rendered a decision for the reassessment of bids, because of inaccurate assessment by assessment commissions, and because of certain violations of PPL and public procurement rules during the procedure of bid assessment; (iv) In 62 cases, the review panel decided on the annulment of procurement activity (Re-tendering), because of certain violations of the provisions of PPL, irregularities in tender dossier or inaccurate conduct of procurement procedures; (v) 87 complaints were rejected because of the failure to complete the complaint within the legal time limit pursuant to articles 106.4 and 113.1 of LPP; and (vi) 12 submitted complaints were withdrawn from complaining economic operators, before the review was taken by the review panel.

146. Under the previous PPL (made effective in December 2010) the contracting authorities not satisfied with the decisions taken by PPA (predecessor of CPA), also submitted requests to PRB for the review of PPA decisions related to the prohibition from applying the negotiated procedures without the publication of contract notice or revocation of article 30 A. 4 of PPL. As mentioned above, PRB reviewed a total of 155 requests of Contracting Authorities: -- (i) 42 requests submitted by Contracting Authorities to PRB, were related to the request for the revocation of article 30A. 4 -- of those, 33 requests were approved and 9 were refused; (ii) 95 requests were related to the permission for applying the negotiated procedure without the publication of contract notice -- of those, 72 requests were approved, and 23 were refused; (iii) of the 155 requests for the review of PPA decisions, 105 were approved by PRB and 32 were refused by the PRB.

147. Of a total of 430 complaints filed, 14 lawsuit cases were filed in the Supreme Court of the Republic Kosovo by the complaining economic operators who were not satisfied with the decisions of PRB. With regards to all the decisions of Review Panels, against which lawsuits were filed to the Supreme Court of Kosovo, the PRB was not notified by the Supreme Court of Kosovo about the results of the review of decisions objected by the complaining economic operators, which means that the decision was rendered in favor of the complaining party or PRB. The annual report prepared by the PRB does not include analysis on the subject of the complaints. This information, if collected, would help in identifying the areas in procurement that draw most of the complaint and address them in order to streamline the public procurement system.

148. It is clear from the statistics above, that the PRB may face many fewer complains under the new law with the transformation of the PPA into a centralized procurement agency (CPA). This shall provide the PRB with more time to enhance its performance. On the other hand, it is clear that contracting authorities need to be monitored in order that the PPL be enforced.

**Contract implementation and administration**

149. The PPL clearly state the need for contract management by the contracting authorities. Article 81 of the PPL requires the contracting authorities a) to produce a contract management plan that would need to be agreed up on between the two parties to the contract and b) to establish procedures for goods and works inspections, variation orders/changes, handing over and insurance.

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150. The general conditions of contract include detailed clauses on contract management and these clauses seem to be in line with international practice. Nonetheless, the quality of works in practice is poor. There is no institution in the country responsible for building material quality assurance and standards and thus goods and/or materials coming in the country may not be tested for quality assurance. Without the oversight on the quality of goods entering the country, low quality goods can be easily be imported to the country which may increase the risk of failure of buildings and infrastructures. There are very limited laboratories in the country capable of conducting testing of building material. Normally, contracting authorities from all over Kosovo send their samples for testing to the University of Pristina. It is not clear whether all contracting authorities require and conduct the quality assurance tests or not. Also, it appears that local contractors do not have their own testing laboratories. The private sector is not yet in the business of quality assurance testing and inspection.

151. Contractors met informed the Bank team that final payments after acceptance of projects are normally delayed. In some cases, towards the end of the fiscal year, payments are made for projects that are not yet completed in order not to lose the money allocated to the project. Compensation for damages to the contractors due to the contracting authority’s fault as ruled by the Supreme Court is not paid by the Government (MoF). Civil servants who are doing the supervision of contracts do not have the proper experience in contract management which increases the risk of overpayment and delays.

152. It appears that the MoF does not permit the issue of letters of credit (L/C) to vendors, making it riskier for suppliers to sign contracts. Foreign bidders normally assess the risks involved in getting paid on time, and payments through L/C are considered to have lower risks than direct payments when the goods are delivered. These risks are normally reflected in the bid prices of the bidders. Lack of L/C will normally lead to non-participation of foreign bidders or higher prices. Most probably no serious foreign supplier would take the risk of shipping goods without the assurance of payment that an L/C offers.

153. **Recommendation:** (i) The Government to investigate the need for establishing a standardization department to oversee the quality assurance of the building materials that enter the country; (ii) Government to encourage private sector to establish testing laboratories for building material testing; (iii) Contracting authorities to include in all contracts the requirement for testing and inspection of goods and works in accordance with international standards; (iv) PPRC to prepare a manual on contract management as well as coordinate with KIPA to provide training on contract management to interested government staff as well as private sector; and (v) the MoF considers allowing the issuance of L/C.

**Private Sector Capacity**

154. The partnership mechanisms between the public and the private sector take place on ad hoc manner. More advanced sectors such as IT companies have joined forces through an Association and were able to realize and manage a dialogue with relevant government institutions. Kosovo has one Chamber of Commerce, with 15,165 registered
members, six regional offices, and thirty professional associations. Established in 1962 by the Assembly of Kosovo, it is the legal representative of the interests of the business community in Kosovo. Kosovo Chamber of Commerce is a not-for-profit, independent organization, financed by membership fees. It seeks to advocate and represent the interests of its members, to advice on business start-ups and give professional assistance to the member companies and in particular promote investment and the development of Kosovo’s economy. Kosovo Chamber of Commerce was not able to have a meaningful partnership with the Government.

155. There is neither accurate statistics about the number of local contractors and their field nor accurate information about suppliers and consultants. This makes it difficult to understand the capacity of the private sector.

156. Kosovo companies have difficulties gaining access to financing. As an example, obtaining a bank guarantee requires the same amount as collateral and it is often required that the company has an account in the same bank who issues the guarantee. The business sector is complaining that the majority of tenders favors international companies, and government institutions are generally late with payments, which sometimes take up to six months.

157. **Recommendation:** The Chamber of Commerce should conduct an analysis of their members with regards to the type of business and specialty they have, so that they could assess the capacity of the private sector in certain fields, e.g. construction. The PPRC to engage in discussion with the chamber of commerce as well as contractors, suppliers, and consultants to listen to them on issues that restricts them from competing on public contracts.

D. Integrity and Transparency of the Public Procurement System

158. **Corruption is widespread.** According to the Kosovo Anti-Corruption Agency, “corruption is still widespread and presents a serious problem, which undermines the proper functioning of institutions and which has a negative reflection on the image of the country.” Transparency International’s Corruption Perception Index (2010) also pegs Kosovo as one of the more corrupt countries with a ranking of 110 of the 178 countries surveyed (178 is the most corrupt). This puts Kosovo on par with Benin, Bolivia, and Indonesia, and higher than any other country of the Former Republic of Yugoslavia. These findings are consistent with the Worldwide Governance Indicators and Freedom House’s *Nations in Transit*. The European Union Rule of Law Mission in Kosovo (EULEX) Acting Chief Prosecutor revealed last year that seven government ministers were under investigation for corruption, further indicating the pervasiveness of corruption in Kosovo.

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57 The Worldwide Governance Indicators (2010) rank Kosovo with a percentile score of 31.6% lower than any other country in the Europe and Central Asia Region, and slightly worse than the average for Sub-Saharan Africa (32.1%).

58 *Nations in Transit*, Freedom House, Ilir Deda, p. 286-287. The survey found inter alia that “corruption remained a serious problem in 2009, fueled in part by the government’s increasing dominance of the economy.”

59 *Corruption Arrest at Kosovo Health Ministry*, Balkan Insights, 13 July 2010.
159. **The private sector considers corruption a major constraint to doing business.** According to the *IFC Enterprise Surveys* (2008), 73.4% of the Kosovo companies surveyed identifying corruption as a major business constraint. The Kosovo Anti-Corruption Agency has identified public procurement as the most vulnerable area in Kosovo, although “only” about ten percent of the respondents in the *IFC Enterprise Survey* are on the record for stating that firms are expected to give gifts to secure a government contract. The Chamber of Commerce notes that it is customary to pay about ten percent in bribes to secure a government contract. Foreign companies tend to record bribes as marketing costs, whereas it is not common to employ agents in the payment of bribes. However, shell companies are reportedly used by corrupt officials to divert government funds.

160. **The electricity sector suffers from theft, under-billing, and slow adjudication of cases.** The *Kosovo Public Expenditure Review* (PER) found that “in 2009, 44 percent of the energy entering the network was either stolen or otherwise not paid for,” noting that 30,000 customers are not being billed, and 14,000 have illegal connections. Meter tampering, low collection rates, and employee corruption are also problems. "So far about 200 charges have been filed against customers and over 50 against employees. Also, about 200 recommendations for disciplinary action against staff have been made, including dismissals." The Kosovo Energy Corporation (KEK) has “about 11,800 pending cases for non-payment of electricity with a total value of Euro 38m and about 8,500 criminal cases for theft of electricity and other related offenses.”

161. **Recommendation:** The Penal Code should be amended to “make energy theft a criminal offense, along with having an illegal connection, meter tampering, and collusion by KEK employees,” and consideration should be given to establishing an electricity court.

162. **Procurement and payment for free services constitute two of the major integrity issues in the health sector.** The Public Expenditure Review (PER) identifies five governance risks. First, a large part of the money that private individuals used on health care in 2008 “is likely spent on informal payments to health staff working in the public sector.” This finding is echoed in a recent study by the Balkan Investigative Reporting Network. Second, only 42% of the tenders in 2007 attracted three or more bids. “As there is no reference pricing system for pharmaceuticals, Kosovo may be paying more than necessary even for pharmaceutical drugs that are based on the basis of multiple bids.” Third, too much is spent on medical technology in contravention of the Master Plan, e.g., on CT scanners. Fourth, medical treatment abroad averaging Euro

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61 Ibid, p. 60.
63 Ibid.
64 Ibid, p. 18.
6,300 is “largely confined to the well off.” Fifth, capitation payments to Primary Healthcare Centers located in areas that have lost population are presumably overpaid. In addition, the former permanent secretary at the Ministry of Health was arrested last year for tax evasion, thus potentially raising concerns about the internal control environment at the ministry.

163. **Recommendation:** The government should as noted in the PER: (i) establish a standard process to determine reference prices; (ii) provide public access to contract awards and contract administration, including information related to the price of each medicine; (iii) base the quantities to be purchased on competent demand analysis; (iv) announce simplified contract notices in international newspapers and contact regional and international pharmaceutical organizations; and (v) use the lowest evaluated substantially responsive tender as the appropriate contract award criterion. The Ministry of Health should require each Primary Healthcare Center to “set up a patient registry, in order to ensure that capitation payments reflect the volume of services they actually provide.”

164. **Serious concerns have been raised about the quality of civil works.** Capital expenditures are expected to constitute Euro 510 m or 40.7% of the state budget in 2011, which makes the quality of execution a key. Concerns have been raised about poor quality of civil works. The Economist notes that “a worse [earthquake than the one that hit Kosovo in March] would have toppled many of the country’s new, shoddily constructed buildings.” The observations listed below made by local business representatives interviewed and the Chamber of Commerce appears troubling: Some buildings have failed stability tests, while others have collapsed. Cement and static stability tests are considered optional, i.e., undertaken at the discretion of the contractor. Government supervising engineers are with some frequency paid or bribed to obtain “technical acceptance” (which is due at least in part to their low salaries). Certain companies appear to use substandard materials. Evidence of liquidated damages being used in case of delays of substandard work is scant. Late payments occur frequently, because contracting entities fail to review and sign-off on the work delivered.

165. The Balkan Investigative Reporting Network published an article raising concerns about corrupt activities in the ministry of Transport and Post-Telecommunications, including: (i) contracts being awarded to firms with little experience in the field and which failed to provide the required documentation; (ii) awards of contracts on the basis of personal relations with the owners of the companies; (iii) biased evaluation of tenders; and (iv) poor quality of roads. The Kosovo Anti-Corruption Agency (KAA) has similarly expressed concerns about corruption in the ministry.

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68 Ibid, pp. 22-23.
69 Ibid, pp. 23.
70 Budget of the State of Kosovo for 2010, Ministry of Economy and Finance, January 2010, p. 11.
71 Corruption in Kosovo – Time to go straight – The EU and America are no longer prepared to tolerate graft in Kosovo, The Economist, 18 March 2011.
72 Kosovo Minister’s Friends Flourish from Road Bonanza, Balkan Investigative Reporting Network, undated.
166. **The legal framework defines the major fraudulent and corrupt practices.** These include bribery, abuse of official position, trading in influence, falsification, and a variety of anti-competitive practices. The cornerstone is the *Provisional Criminal Code of Kosovo* (UNJMIK/REG/2003/25). In addition, the law *On Competition* (Law No. 2004/36) prohibits in Article 3.2 the fixing of purchase and selling prices, controls of production, market-sharing, and other anti-competitive practices. PPL Article 130 prohibits unlawful influence including corruption, coercion, and collusion. Both the prosecutors with EULEX and in Pristina have reported that the Penal Code has adequate prohibitions of the illicit practices for which prosecutions are sought and that the elements of crime are neither overly burdensome nor unclear. However, Kosovo is not a signatory of *United Nations Convention against Corruption* (UNCAC) or a member of the Group of States Against Corruption (GRECO), so it has not undergone a formal assessment of the national anti-corruption frameworks.

167. **Sentencing ranges are provided for a variety of misconducts.** For example, the Penal Code sets a maximum sentence of five years for accepting bribes (Article 343:§1) and three years for paying bribes (Article 344:§1). In addition, the gift or benefit will be confiscated. The violation of the competition law is subject to administrative and criminal penalties, including fines up to Euro 100,000, up to three years’ imprisonment for failing to comply with an order of the Kosovo Competition Commission, and damages.

168. **Conflict of interest provisions exist, but are imprecise.** The law *On Preventing Conflict of Interest in Exercising Public Function* (Law No. 02/L-133) defines in Article 11 eleven practices that are considered conflicts of interest. The law does not clearly describe which particular behaviors are prohibited, and several practices that in other jurisdictions are considered prohibited have been omitted.

169. **Recommendation:** The literature on conflicts of interests\(^73\) provides some practical examples that the Government should consider embedding into the law conflicts of interests, i.e.: (i) prohibition against nepotism, i.e., the hiring of family members, close relatives, and friends; (ii) cooling-off periods for politicians, political appointees, and government officials leaving their position to take on work for non-government entities (except for auditors, which are mentioned in the law) (Article 12.1); (iii) inappropriate interaction with bidders; (iv) purchase of stock under preferential terms in a company that has current and prospective business interest in the government; (v) development of too-close relationships with consultants who are then rehired; (vi) co-authoring of books with consultants who are re-hired on a sole-source basis; and (vii) dealing with a company owned or run by a spouse, family member, or close relative. Furthermore, the law would benefit from providing concise definitions of a “related person” and “close person” as well as the handling of gifts.

170. **Asset and income disclosures rules are in place.** The law on declaration, origin, and control of property of senior public officials and on declaration, origin, and control of

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\(^73\) Considerations in Drawing Conflicts of Interests Legislation, World Bank, December 2010, Richard Messick, (Forthcoming) and Improving Internal Staff Due-Diligence (revisited), Information Paper, World Bank, Integrity Vice-Presidency, 19 July 2011, (Forthcoming).
gifts of all public officials, and the law on protection of informants (whistleblowers) were adopted at the end of August. Earlier this year, the Director of the KAA noted that more than 250 senior officials have failed to disclose their assets and incomes as required under the Suppression of Corruption Law. However, a recent campaign led to 96% (1830) of officials making declarations while cases have been initiated against 84 who failed to do so.

171. **Recommendation:** The Government should implement appropriate arrangements to enforce the timely and full filing of assets and income. The names of individuals not having filed asset and income disclosures should be made public on the KAA’s web site.

### Anti-Corruption Strategy and Implementation

172. **There is a hotline for reporting fraud and corruption, and it is accessible.** The KAA operates a hotline for reporting fraud and corruption. The hotline can be accessed through telephone, e-mail, and web. Anonymous reports are allowed. A total of 430 cases were reported to the KAA in 2010, up from 175 and 130 in 2009 and 2008, respectively. No specific barriers to filing complaints have been noted. However, there appears to be a general reticence in Kosovo to discussing fraud and corruption, which is reflected in the propensity to report and the willingness of witnesses to cooperate with authorities such as the KAA.

173. **Recommendation:** Consider developing an adequately resourced communications strategy providing differentiated messages to a variety of stakeholders (e.g., procurement officials, external and internal auditors, patients, and road engineers) through a greater variety of media (e.g., complaint boxes, outreach events, and training) in order to build confidence in the complaint handling system and to increase the number of serious complaints.

174. **The KAA undertakes preliminary investigations of corrupt practices.** Cases that are substantiated by the KAA are referred to the appropriate enforcement agency, i.e., the police, the public prosecutor, or EULEX. In 2010, the KAA’s preliminary investigations substantiated 29 cases, down from 68 in 2009. In the last two years, a total of 28 cases were referred for criminal prosecution. It is unclear, whether the drop in numbers represents a trend or a temporary fluctuation.

175. **There is some evidence that corruption provisions are enforced.** There were, as of May 2011, a total of 171 ongoing corruption cases in Kosovo. A subset of these cases is handled by EULEX judges. These judges issued a total of 15 judgments on corruption cases in 2010, up from just one the year before. However, a broad range of stakeholders, also within the law enforcement community, have expressed their concerns.

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with the low number of corruption prosecutions and convictions in Kosovo, especially with regard to high-profile cases. “The overall performance of the Kosovo justice system remains weak. There is still a significant backlog of court cases and the overall efficiency is very low. Along challenges such as corruption and nepotism, the continued political interference at different levels and in different forms in a number of cases, including in the work of the Kosovo Judicial Council is a serious concern.” 79 In terms of capacity constraints, it is notable that there was only one prosecutor in the capital Pristina as of May 2011 to handle all 35 corruption cases.

176. **Recommendation:** Enhance the capacity of the District Prosecutor’s Office in Pristina; publish a detailed report on all allegations related to fraud and corruption and how they have been addressed by the government and EULEX, including any sanctions; and increase the statute of limitation for prosecuting corruption (currently two years).

177. **The Anti-Corruption Strategy provides a candid assessment of challenges, but few assurances that action has and will take place.** The Anti-Corruption Strategy 2009-2011 represents a general framework for fighting corruption. It is blunt in its assessment of the challenges in fighting corruption, noting the lack of political will, experienced and motivated staff, proper controls, and accountability for implementing mitigation measures. The strategy defines general objectives for the political sector, public administration, judiciary, public finances, private sector, and civil society. However, in light of the constraints already identified in the execution of the prior anti-corruption strategy, it is unclear how much traction this strategy has had and will have.

178. **Recommendation:** The line ministry action plans should include specific, measurable, achievable, relevant and time-bound (SMART) indicators; the KAA should follow up on the implementation of the plans on a quarterly basis and publish on its website progress against milestones; and the KAA should be given the resources in its preventive unit to pursue the effective implementation of the Anti-Corruption Strategy more efficiently.

179. **The Government has taken action on key recommendations of the 2004 Operational Procurement Review (OPR).** “The Operational Procurement Review provides an assessment of the public-sector procurement system in Kosovo, including the legislation framework, the responsibilities and capacity of the institutions entrusted with regulatory and review powers, the efficacy of current procurement practices and of the control environment.” 80 The 2004 Operational Procurement Review noted several integrity issues. On a positive note, the government has taken action on most recommendations of the OPR, i.e.: (i) completed the legislative framework for public procurement; (ii) launched an Internet website carrying full details of public procurement operations; (iii) commenced a procurement training program; and (iv) amended the Law on Public Procurement to remove from the PPA its regulatory role, create a new Public Procurement Review Commission, and abolish the Public Procurement Rules Committee.

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The current PPL includes references to a range of misconducts. As noted above, the PPL Article 130 prohibits corruption, coercion, and collusion. However, fraud and forgery have not been referenced in the PPL. This is important, because they are likely to occur with much higher frequency than corruption and collusion; and their incorporation into the Procurement Law helps ensure that they are addressed in secondary implementation. The previous procurement law (Annex 1) included a number of useful definitions of prohibited practices which are not included in the current PPL.

Recommendation: Include fraud and forgery as a sanctionable behavior in the procurement law/secondary regulations. Also, ensure that cost/labor mischarging, defective pricing, bid rigging, bid suppression, bid rotation, and complementary bidding noted in the prior Procurement Law are incorporated into KIPA’s training efforts.

There is a Code of Ethics for procurement staff, which can be further enhanced. A Code of Conduct for Civil Servants was approved on 17 May 2006, followed by an updated Procurement Code of Ethics \(^{81}\) in February 2012. The latter Code applies to any person “involved in the process of selecting supplier(s), directly or indirectly” (Article 2.2); and requires that any behavior, “which seems inappropriate or raises any ethical concerns” be “immediately report[ed] to a senior colleague or superior” (Article 3.1). Furthermore, the Code provides guidance on conflict of interest disclosures, treatment of confidential information, as well as what constitutes acceptable gifts and hospitality (Section 4). The Code will benefit from a greater degree of specificity in terms of what constitutes conflicts of interest for procurement staff and consistency with the code of conduct for civil servants.

Recommendation: The Procurement Code of Ethics should be amended to ensure that: (i) the definition of bribery in Article 4.2 is consistent with the Penal Code; (ii) the rules on the acceptance of gifts are consistent with Suppression of Corruption Law in terms of the maximum allowable value (Article 33.3), and number of gifts (Article 33.4) for official persons as well as “persons living in the domestic relationship with the official person” (Article 33.5); (iii) the typical conflict-of-interest situations for procurement officials are clearly spelled out, and may include inappropriate contact with companies, prior, during, and after contract award; acceptance of company paid visits and training; and seeking leave of absence to take on work for a bidder or contractor (Section 5); and (iv) the administrative or criminal consequences of non-compliance with the Code is described in accordance with the OECD Methodology for Assessment of National Procurement Systems (p. 45).

Several factors limit competitive bidding in public procurement. First, the domestic industry and consulting market is embryonic. Second, there are key barriers to establishing new companies such as limited access to credit and weak protection of investors. Third, participation by international bidders is hampered by Kosovo’s being landlocked, and enforcement of contracts being poor. (Kosovo ranks 157 of 183 countries on enforcement, according to Doing Business 2010). Fourth, there have been instances, where non-payment by the government left companies bankrupt. Fifth, the perception

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that many bids have been rigged to favor certain companies has created additional barriers.

185. **Recommendation:** The PPRC should identify items where limited competition and possible collusion pose the greatest risk, e.g., in certain tenders with negotiated procedures without prior publication, tenders let substantially above-cost estimates, and tenders with no or one/two bids received. The databases should be updated regularly. The KIPA should train: (i) Procurement Officers in conducting market surveys and in packaging and scheduling contracts to maximize competition; and (ii) economic operators in preparing bids as well as prepare trainers in the Chamber of Commerce and private companies so that they may also provide such training.

186. **PPRC has taken important steps to monitor the compliance with the PPL.** The PPRC is required under the PPL, Article 87, clause 2.11 to “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”. In 2010, the Department for Supervision and Monitoring of the PPRC undertook 35 of the planned 56 compliance tests, reviewing a total of 186 contracts. The Annual Report of the PPRC lists the results of the tests.

187. **The low level of compliance with the PPL poses integrity issues.** The tests show low levels of compliance, ranging from 18.3% to 47.9% of the contracts sampled with the number of transactions having at least one compliance issue probably being significantly higher than 47.9%. Effective compliance is likely to remain an issue due to the decentralized procurement model with a large number of contracting authorities, the requisite weak procurement capacity of many contracting authorities, the lack of implementing regulations following the 2010 procurement law, and the institution of the revised law last year. More important, the very high level of non-compliance raises serious concerns about the integrity of the national procurement process. The World Bank’s Operational Procurement Review carried out in 2004 found that “the enforcement of procurement rules is ineffective” and rated the procurement risks as “high”.

188. **Recommendation:** (a) The PPRC should consider devoting more resources to compliance tests in order to develop a risk map of key vulnerabilities in the public procurement process and among contracting entities and types of procurement. (b) The PPRC should consider establishing a mechanism for following-up on compliance tests, inter alia by: (i) making recommendations to the contracting authorities, which may include strengthening managerial oversight within the agency, clear definition of accountability, training of staff, exercise of contractual remedies, personnel action and referral of cases to the Kosovo Anti-Corruption Agency; and (ii) establishing a mechanism to monitor the actions taken in response to the recommendations. (c) The PPRC should consider amending its Annual Reports to: (i) distinguish in table format and description between serious and less serious compliance issues; (ii) state the number

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of procurement transactions that have had at least one serious compliance issue; (iii) describe more clearly the type of non-compliance observed; and (iv) list in Table format the recommendations made.

Stakeholder Support

189. **Some dialogue is taking place with stakeholders on how to promote integrity.** Kosovo has a vibrant civil society and candid media, which *inter alia* include the Kosovo Democratic Institute (Transparency International’s national partner), the FOL Movement, as well as printed and online media. Civil society groups appear to report frequently about public finances in the media when fraud and corruption are suspected. Multilateral and bilateral donors as well as NGOs organize workshops to discuss fraud and corruption, including in public procurement; and civil society including the Chamber of Commerce voice their support for market integrity. However, the impacts of these engagements are unclear. There is distrust among economic operators and civil society of public institutions, which makes candid dialogue difficult. Also, civil society’s capacity to analyze public procurement information appears limited.

190. **Recommendation:** (a) The Kosovo Anti-Corruption Agency should develop and deliver a practical workshop for civil society organizations on: (i) how to obtain access to relevant procurement information; (ii) identify red flags in public procurement; and (iii) engage possible partners for technical and financial support such as the PPRC, KIPA, EU, World Bank, and the Technical Assistance for Civil Society Organizations’ Kosovo Office. (b) The World Bank and other key donors in Kosovo should consider organizing a workshop with the Kosovo Anti-Corruption Agency, Prosecutors working on corruption matters, the police, EULEX, NGOs and the media to: (i) explain economic crimes and their legal definitions; (ii) how complaints and red flags are reported; (iii) the practicalities and challenges of conducting investigations and obtaining and analyzing evidence; and (iv) standards of proof in local courts, statute of limitation, etc. The objective is to create some common ground in terms of how the justice system works. Consider publishing all access to information requests by civil society and other stakeholders on the PPRC web site.
CHAPTER III. ASSESSMENT OF THE PUBLIC FINANCIAL MANAGEMENT SYSTEM

191. This chapter provides an assessment of the public financial management framework in Kosovo with particular reference to developments since the 2009 PEFA report. In general, the public financial management system in Kosovo has shown steady improvements since independence was declared. The key strengths of the system are the sound legal framework, integrated central treasury system, and an increasingly effective external audit office. The strengths are offset by limited professional and technical capacities and gaps in implementation. There is considerable scope for improving the quality of budget planning and preparation, internal financial control and audit, procurement, debt management, and capital investment management. Kosovo authorities are aware of their limitations and progress is occurring, with support from international bodies.

A. Progress on PFM Reform before 2010

192. The Bank undertook an operational financial accountability review (OFAR) in 2005 and PEFA assessment, published in April 2007, which identified substantial weaknesses across the entire spectrum of public financial management. Those assessments were followed up by a PEFA assessment initiated by the government of Kosovo, published in May 2009. The 2009 PEFA found that there had been significant improvements in several indicators since the previous assessments, particularly those benefiting from the improvement in Treasury financial systems. The 2009 PEFA also found that there had been deterioration in some indicators, notably in the tax administration area. Amongst the 2009 PEFA scores, 9 of the 28 financial management indicators were rated at C or below, indicating significant scope for improvement. All donor practices indicators were a D rating, which is the lowest score in the PEFA scale. Moreover, there is scope for improvement across almost all indicators, as mentioned in the government’s Public Financial Management Reform Action Plan (PFMRAP) in November 2009.

193. The need for further PFM reform has been highlighted by many other organizations, in addition to the government itself. Studies by the EU, OECD/SIGMA and the IMF have all identified areas for reform, consistent with the findings of the 2009 PEFA assessment. The EC 2010 Kosovo progress report summarizes the areas of need of improvement in financial control with respect to the acquis communautaire, namely, internal financial control, internal audit and external audit.

194. The Government has laid out an extensive reform agenda for the next several years in the PFMRAP using a platform approach. The plan has 11 interrelated themes, linked to PEFA indicators, as well as broader policy implications, for example, in the areas of tax administration, decentralization and fiscal risks.

195. The Government is making progress on reform, as evidenced by the achievements identified in the regular PFMRAP progress reports. This progress is being supported by international organizations but it is encouraging to see the strong leadership provided by the Minister of Finance and his ministry in seeking to maintain momentum for reform and continue to adopt worthwhile changes.

B. Institutional and legal framework for PFM in Kosovo

196. The legal and institutional framework is intended to provide the coverage and capacity for effectively meeting the requirements for prudent public financial management, and the resources to implement what is required.

197. The primary legal mechanism for financial management in Kosovo is the 2008 Law on Public Financial Management and Accountability (LPFMA), which has been subject to amendment since it came into force, most recently in 2010. The 2010 revisions to the LPFMA strengthened provisions for medium-term budget preparation and execution. The LPFMA is underpinned by the Constitution and supported by several other key pieces of legislation including the Law on the Office of the Auditor General (2008), Law on Local Government Finance (2008), Law on Internal Audit (2009), Law on Public Debt (2010), and annual budget laws.

198. Public financial management in Kosovo is highly centralized in relation to budget policy and institutional control. The annual budget covers 16 ministries, eight agencies, around 30 Independent Institutions, reserved powers, and 33 municipalities (although 4 municipalities only partially participate – excluding resources and activities funded by Serbia). The budget does not include budget for publicly owned enterprises (POEs) or Trust Funds (Prisoners’ deposits, Kosovo Property Agency deposits, etc.).

C. Budget planning and preparation

199. It is important that planning and budgeting arrangements provide an effective basis for financing of policy priorities and sustainable public finances.

200. The Kosovo budget covers all revenues including central and local government own-sourced revenues. Donor grants are not included in the budget, but receipts are recorded in the Treasury system and financial reports. The budget is administered by the Budget Department in the Ministry of Finance (MoF), which also has responsibility for preparing the Medium Term Expenditure Framework (MTEF) report each year, including macroeconomic and fiscal forecasts, budget estimates, expenditure ceilings, and other matters specified in the LPFMA. The 2010 amendments to the LPFMA included an explicit list of matters that should be included in the MTEF.

201. Budget-dependent organizations do not systematically develop their budgets in the context of sectoral plans, the national plans, the MTEF priorities, and government policies within the limits of ceilings set out in the budget instructions. Some organizations have sectoral plans but do not use them in preparing their budget proposals, for example as a basis for prioritization and medium term budgeting. The MTEF is
prepared before the budget is developed and should provide a foundation for line ministry budget submissions. In practice, the line ministry submissions have tended to be drawn up on the basis of previous years’ submissions and often do not align with the priorities and plans included in the MTEF.

202. Greater emphasis is being placed on use of the Public Investment Planning (PIP) system for submission of priority capital investment projects. New requirements have been included in the budget circular seeking program performance measures. Donor funding arrangements are still largely managed separately from budget appropriations.

203. In 2010 the National Assembly approved a World Bank project to assist a group of five budget organizations to improve their budget planning, preparation, and execution arrangements over the next three years. Their experiences will provide guidance and leadership to other budget organizations as a basis for improving the general standard of budget preparation. The MoF is also proposing to develop a training and certification program for officials responsible for budget preparation and analysis to improve the knowledge and skills of key personnel across the central public sector.

204. **Recommendation:** There is limited coordination of budgets, MTEF, sector plans and budget ceilings. There needs to be a stronger focus on development and use of plans within sectors and budget organizations consistent with national priorities. These plans and priorities need to be more effectively translated into annual and medium-term budget proposals. The results of the new project supported by the World Bank could be the tool for better budget planning and preparation first in the pilot ministries and then later across Kosovo.

205. The 2010 amendments to the LPFMA contained a new provision requiring that any proposed increase in appropriations must be at least equally offset by reductions in other expenditure or increases in revenue. Proposals for new or amended laws must be provided to the Ministry of Finance in advance to verify the expected budgetary and economic impact. This is intended to limit in-year variation in the net budget to the levels approved in the budget at the beginning of the year. These provisions were not effective in measuring or offsetting the substantial increase in salaries announced by the Prime Minister during the 2011 national election campaign and it remains to be seen whether they are effective in managing other major changes within budget years.

206. Although the LPFMA provides a sound basis for budgeting in Kosovo, the election in late 2010 created difficulties in approval and implementation of the 2011 budget. This was essentially due to the absence of an effective National Assembly from October 2010 until March 2011 requiring the use of temporary procedures for allocating pro-rata funding based on the 2010 budget before the 2011 budget was finally approved. The delays in establishing a government and appointing the new ministers also created difficulties in meeting the timetable set out in the LPFMA for preparation of the 2012 budget. Despite these challenges, the Ministry of Finance (MoF) was able to prepare a Medium Term Expenditure Framework document and issued the first Budget Circular within the timetable set in the law. The 2012 budget process proceeded largely according
to the required timetable, taking account of the need for the Government to discuss key elements of the budget and fiscal strategy with the IMF before finalization.

207. **Recommendation:** The delay in implementation of the 2011 budget caused by formation of a new parliament was very disruptive. This is likely to be a one-off problem. It is important for Kosovo to learn from this experience to ensure that any future departures from the regular budget calendar are handled as efficiently and effectively as possible.

208. The 2012 budget includes improvements in procedures for capital budgeting, requiring early involvement of the political and senior administrative officials and comprehensive use of the PIP system. The 2012 line ministry budget submissions are required, for the first time, to include additional information on performance indicators for expenditure.

D. **Budget execution**

209. The budget is executed through a central Treasury system (Free Balance) under a single treasury account structure applying International Public Sector Accounting Standards. The Treasury system is used by all budget funded organizations, including at local government level, and contains all revenues and expenditures for the General Government Sector. Many of the budget execution functions have been delegated to budget users in line ministries and local government (excluding six municipalities that have not been fully trained and have not passed required tests for control functions). The devolved functions include accounting, payments processing, and reporting within specified limits. The MoF is attempting to align the budget and treasury systems; however, this has not been fully automated to date. The EC is assisting the MOF to improve integration of systems and has achieved greater integration between the PIP and Treasury systems but further work is required to integrate or replace the budget management system.

210. **Recommendation:** Budget preparation and Treasury systems not fully linked. This limits the ability to ensure that budget decisions are fully reflected in budget execution and can weaken the value of monitoring and reporting. Significant improvements have been made in the integration of capital investment planning, budget execution, accounting, and reporting. The weak link remains the budget management system. Careful assessment of the budget system to determine if it should be integrated with other financial management systems or whether it needs to be replaced with something more appropriate for Kosovo that can be integrated with Free Balance would be beneficial.

211. All bank accounts of municipalities are centralized in the Central Bank of Kosovo (CBK), with the exception of commercial accounts to facilitate collection of own-sourced revenue. Own-sourced revenues must be recorded in the single treasury account. Treasury prepares final payment orders for the CBK for all transactions of line ministries and municipalities and prepares regular financial reports and statements. Treasury has recently taken on responsibility for debt management and central coordination of
financial management control. The MoF’s internal auditor reports to the Treasury Director.

212. Treasury processes salaries based on payroll information provided by the Ministry of Public Administration (MPA). Each budget organization is responsible for managing their own personnel lists and providing monthly updates to the MPA.

213. The 2010 amendments to the LPFMA required that no organization shall enter commitments in excess of the available budget. It places responsibility on the Chief Finance Officer in each organization for ensuring that all commitments are recorded in the KFMIS within three days of receipt. In practice, this element of the Law has not been fully effective to date. Some ministries and municipalities have created commitments that were not fully integrated into the system and exceeded the available budget for those items. The Treasury considers that this is should be a short-term problem as budget organizations adapt their devolved responsibilities for managing their budgets. Treasury has the power to request, but not direct, a special audit by the OAG if irregularities are found in the application of regulations or laws.

214. **Recommendation:** Arrears occur because of over-commitment of budget. Despite the improvements in legislation, systems, and procedures, it is still possible for budget users to by-pass the system and for arrears to accumulate. Treasury is aware of these issues and is addressing them through direct action and by promoting more effective internal control. The weaknesses in the system of budget execution will need to be monitored carefully to ensure that they are fully addressed as soon as possible.

215. Delays in approval of annual budgets made it difficult for some organizations to schedule capital investment projects and major procurements early in the year. This has been a problem in previous years as well but the delay in approval of the 2011 budget is likely to have exacerbated the problem. This is likely to result in under-expenditure of capital budgets at a significantly higher level than previous years.

216. The stronger emphasis on management internal control that has recently been introduced through the public internal financial control (PIFC) initiatives should help to address this problem. Treasury contains the central harmonization unit (CHU) for internal financial control and in May 2011 launched new guidance materials to assist organizations in understanding their obligations for financial control. The Treasury also launched a self-assessment questionnaire to gauge the readiness and capabilities of organizations for internal control as part of their CHU role. The results of the questionnaire will help to guide Treasury in future efforts to improve budget execution and financial control.

217. Treasury has established a new debt management unit. This unit will also be responsible for monitoring loans and donations from international bodies. A government securities office is being established to manage the sale and trading of securities. This will require considerable development support but, as yet, no international organizations are providing specific support for the debt management function in Kosovo.
E. Accounting, recording, and reporting

218. Kosovo applies IPSAS cash accounting standards but is planning to move to a modified accrual approach. This will involve considerable challenges in obtaining information on assets and non-cash transactions and events. All accounting and reporting is performed in the central FMIS. The system has the capability to report in many ways and with no delay. Reports can be produced on the whole of government from the KFMIS because all resources at the central and municipal levels of government are included in the system. The OAG provided an unqualified opinion on the annual financial statements for the Kosovo Consolidated Fund for 2010.

219. The OAG was unable to form an opinion on the 2010 financial statements for 9 municipalities and 16 municipalities had qualified opinions. The team understands that the results for the 2011 audit season will be better; however there remain significant weaknesses in public financial management in municipalities. USAID has embarked on a project to assist municipalities to improve accounting and reporting, with considerable success in improving the quality of annual financial statements. It has also commenced a program of municipal PEFA reviews to assist in the identification of areas for improvement and opportunities for support at the municipal level.

220. **Recommendation:** Financial reporting is weak in some municipalities. Poor audit opinions on 2009 and 2010 audit reports for municipalities indicate that considerable improvement is necessary. This should include improvements in financial management more broadly, not simply an emphasis on clean financial statements. The support provided by USAID to municipalities and the results of PEFA assessments should help to make progress in this area.

F. Internal financial control and internal audit

221. Law no. 209 on Internal Audit confirmed the establishment of the Central Harmonization Unit for Internal Audit (CHU/IA) as a special unit in the MoF, reporting to the Director of the Treasury. The CHU/IA is responsible for implementing the strategy for adopting EU harmonized arrangements for internal audit in accordance with the *acquis communautaire*. This includes central coordination, development of principles and guidelines and reporting on progress in the adoption of acceptable internal audit practices in budget organizations.

222. The Central Harmonization Units (CHUs) for internal audit and internal financial control have been established, and are implementing the PIFC strategy as agreed with the EC. Internal audit units in budget funded bodies, containing a total of 111 auditors in 2010, cover approximately 98 percent of all budget expenditure, with the exception of activities in some parts of northern Kosovo. Meetings were held in May 2011 with heads of budget organizations and local governments to present the procedures, guidance and self-assessment documents prepared by the CHU on internal financial control in consultation with key stakeholders and with support from the EU. Kosovo is finding it difficult to adapt to the PIFC ethos and expectations of management responsibility and accountability for efficiency and effectiveness, as is the case other countries which have a
history of ex-ante expenditure control and ex-post inspection. The EC continues to provide support for the PIFC strategy and the CHUs are actively building awareness and capacity.

223. A professional training program for internal auditors has commenced with the aim of producing an ongoing stream of certified professional auditors to assist management in Kosovo. A certification program has commenced using a program developed by CIPFA, with the aim of establishing a professional foundation for internal auditing. 54 internal auditors are enrolled in the initial program, which will be concluded within the next year. An additional 57 internal audit staff have been included in a program of practical team-based training with support from an international expert. The internal audit law and procedures require that internal audit units prepare reports for management on a quarterly and annual basis. The reports are also provided to the CHU, which prepares an annual report for the Government. The Government provides a report to the Assembly, following consideration of the report from the CHU. The CHU also monitors the implementation of internal audit recommendations.

224. **Recommendation:** Financial management control and internal audit are not fully effective. The government is implementing its strategy for PIFC but there is a significant gap between current practice and best practice. The training and capacity-building are underway, with support from the EU, which should address the weaknesses but this could take several years. It requires a change in attitude and approach as well as implementation of staff and technical skills. The former is perhaps even more challenging than the latter.

225. The Treasury continues to broaden the devolution of system controls to budget users. All municipalities and line ministries now have devolved responsibility for processing transactions in the central FMIS and the Treasury is extending responsibilities to spending units such as schools and health facilities, taking care to provide training and monitor use of the facilities. The Treasury has the power to override, block, and reverse transactions if they detect non-compliance, which has occurred at least once in relation to unapproved transactions.

**G. External audit and parliamentary oversight**

226. External audit is provided by the Office of the Auditor General (OAG). The Auditor General is mandated under the Kosovo Constitution and the law on the OAG. The Auditor General is appointed until the end of international supervision by the International Civilian Representative and not by the Assembly. At the end of international supervision the Constitution will be amended with a sunset Article stating that the current Auditor General will be in place till the end of his contract. It is expected that there will be a gradual transition to an Auditor General who will be Kosovo citizen with the attributes defined in the Law and appointed by the Assembly. The Constitution provides for the appointment of an Auditor General by the National Assembly for 5 years and can only be reappointed for one additional term. The budget for the OAG is decided by the National Assembly, in which the government coalition has a majority. There is
scope for increasing the independence of the OAG, which should be done before the period of international supervision is concluded.

227. The OAG has responsibility to audit central and local government bodies, the Assembly of Kosovo and other entities that are either more than 50% publicly owned or receive funding from, or provide dividends or other non-taxable revenue to the Kosovo Consolidated Fund.

228. The Office of the Auditor General (OAG) has expanded incrementally since its establishment and its audits (including subcontracted audits) cover now more than 99 percent of revenue and 87 percent of expenditure under the Kosovo Central Budget. 105 audits were conducted in the 2011-12 season, 16 more than the previous year. The OAG applies ISSAI standards as a basis for its opinions. It is also expanding its activities to include donor-funded projects and government activities outside Kosovo. One audit of an international project (Danida) was performed in 2011 and the OAG is seeking opportunities to undertake more international project audits on a fee for service basis. The OAG is establishing a performance audit capability and has established a new division for audit of the procurement system.

229. Despite the continuing increase in capacity and coverage by the OAG, there is still reliance on sub-contractors to perform audits in some municipalities and high concentration on regularity (compliance) audits in the OAG program. The AG is taking steps to broaden the skills of the office and to increase the quality of audits through training, international support and cooperation, and restructuring of the organization.

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</table>

Source: Auditor General of Kosovo

230. Around two thirds of the OAG audit opinions for 2011 were unqualified, including for Kosovo’s central budget. However, there have been serious deficiencies in financial management practices, especially in municipalities, because the OAG was unable to offer an opinion on the financial statements of 9 out of 33 municipalities audited. Following efforts by the municipalities, supported by the OAG, EU, USAID and
DFID, there has been a significant improvement in the quality of financial statements in 2011. The OAG has benefited from an EU-funded twinning program with audit offices from Slovenia, UK, and the Netherlands. It is also receiving support from the Swedish National Audit Office. A new twinning arrangement will commence in the second half of 2012.

231. All OAG reports are published on its website, including the comprehensive Annual Audit Report each August and the Annual Performance Report each April. The latter is including the audited financial statements and is a base for holding the Auditor General to account. The Kosovo Assembly’s Committee for Oversight of Public Finance considered all published reports from the OAG during 2010. External auditors are required to undertake certification through a three year program, compatible with ISAs and overseen by IFAC funded through the OAG budget.

232. Changes to the LPFMA in 2010 were implemented to strengthen the OAG’s access to information necessary for audits, to improve monitoring of the implementation of OAG recommendations and increase parliamentary scrutiny of OAG audit reports.

233. Kosovo is unable to join the international SAI organizations due to limitations imposed by its disputed national status. This prevents the OAG from participating fully in international networks, training, and development opportunities. The OAG has recently, and for the first time, has been able to participate on the working level in cooperation between the candidate country and the potential candidate countries SAIs and the European Court of Auditors.

234. **Recommendation:** The weakness in the legal protection of the independence of the Auditor General and fostering full financial and organizational independence of the OAG will be addressed before the supervision of Kosovo ends. Clarification in the mandate will be an integral part of this. To follow the implementation of the new law and continues support in securing quality and sustainability of the institution will be important as Kosovo progresses on the path to EU accession.

**H. Country systems and fiduciary risk in PFM**

235. There is potential for increasing use of FM country systems for Bank-financed activities. All projects in Kosovo are managed by financial services units that are separate from the main administrative units of the recipient organizations. Staffing, budgeting, accounting, reporting, internal control, and auditing are all undertaken separately from the main activities of the recipients. The only area where country systems are used is in relation to funds flow. World Bank funds are deposited in the Central Bank of Kosovo and are recorded in the Treasury’s single account upon receipt. Project funds are provided on a reimbursement basis upon evidence of payments being made by Kosovo. There is potential to increase reliance on country systems in the area of funds flow if ex-post controls are adopted rather than the current ex-ante controls;
however, the current approach is acceptable to the government so no change is proposed at this time.

236. The OAG has suggested that it would be interested in commencing audit of World Bank projects if capacity is available. This would offer a means to increase the skills and experience of the OAG in performing project audits and to develop an understanding of Bank requirements. If a pilot project were established to permit the OAG to audit at least one World Bank project on a full cost reimbursement basis, the impact on its capacity to perform its mandated responsibilities would be limited. The use of OAG on a pilot basis, with full cost reimbursement, should be considered – subject to any limitations imposed by the current single-vendor contract for audit of World Bank projects in Kosovo.

237. Limitations on capacity and experience in World Bank projects, and high risk of fraud and corruption in Kosovo severely restrict the scope for increasing use of country systems in other areas. It is possible that the improvements occurring as a result of other international projects and actions by the MoF and others to address weaknesses will mean that greater use of country systems will be possible in future. The situation will be monitored and, where possible, new projects will use country financial management systems where the risks are acceptable.
CHAPTER IV. RECOMMENDATIONS AND SUGGESTED ACTION PLAN

238. Based on the assessment conducted of the public procurement system, the following key recommendations and action plan are proposed for the Government’s consideration. More detailed specific recommendations addressing shortcomings in specific areas in the public procurement system are stated within the body of the report, mainly within Chapters II and III, as well as at the end of each baseline indicators in Annex D. The proposed action plan is prioritized into short, medium, and long term actions.

239. In order to promote awareness and understanding of and support for the public procurement reform process, consideration may be given to holding a one-day workshop to disseminate this report to the public and private sectors and civil societies. Such a workshop could generate understanding of and support for the public procurement reform process.

Key Recommendations and Action Plan

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Timetable</th>
<th>Responsible Entity</th>
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</thead>
<tbody>
<tr>
<td>The CPA to be adequately resourced with staff so as to properly carry out the tasks assigned by law.</td>
<td>Short to Medium term</td>
<td>MOF, CPA</td>
</tr>
<tr>
<td>Identify items suitable for central purchase “common used goods” and prepare and conduct the first central purchasing.</td>
<td>Short to Medium term</td>
<td>CPA</td>
</tr>
<tr>
<td>For the purposes of easy access and use by the public and interested parties, it is strongly recommended to centralize the procurement information in one framework website managed by PPRC with individual reference links to the main procurement institutions such as PRB and/or CPA. Publicize the PPRC website.</td>
<td>Short to medium term</td>
<td>PPRC</td>
</tr>
<tr>
<td>Enhance the e-publication system of PPRC for providing information on future business opportunities through the publication of procurement plans for all contracting authorities. Enhance the reporting on procurement (analysis of unit prices, level of competitions, etc.)</td>
<td>Short to long term</td>
<td>PPRC</td>
</tr>
</tbody>
</table>

84 Short, medium, and long terms are understood to mean approximately 6 months, one year, and two to three years, respectively.
<table>
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<tr>
<th>Recommendation</th>
<th>Timetable</th>
<th>Responsible Entity</th>
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<tbody>
<tr>
<td>Conduct training for all contracting authorities about the new laws and regulations and bidding documents.</td>
<td>Short to medium term</td>
<td>KIPA</td>
</tr>
<tr>
<td>Conduct awareness campaign for all contracting authorities’ high level staff about the new PPL.</td>
<td>Short Term</td>
<td>PPRC</td>
</tr>
<tr>
<td>Prepare a strategy and action plan for the enhancement of the performance of the public procurement system.</td>
<td>Medium term</td>
<td>PPRC</td>
</tr>
<tr>
<td>User’s guide for contract monitoring and supervision be drafted and issued to contracting authorities.</td>
<td>Medium term</td>
<td>PPRC</td>
</tr>
<tr>
<td>After implementing the PPL for some time like two to three years, the current procurement legislation should be reviewed in light of the issues raised in this (CFA) report and to the extent possible address the recommendations through future amendments to the PPL and/or adoption of relevant secondary legislation. This shall be done after implementing the current PPL for sufficient period of time and assessing its performance.</td>
<td>Long term</td>
<td>PPRC</td>
</tr>
<tr>
<td>Although the entities involved in public procurement (PRB and CPA) may be consulted in drafting of legal acts, the legislative and regulatory function should remain with only one body, which as per the present law rests with PPRC. On the other hand, the PPRC should not be involved in tasks that may put it into a conflict of interest with its current legislative and regulatory function.</td>
<td>Continuous</td>
<td>PPRC, PRB, CPA</td>
</tr>
<tr>
<td>Conduct training needs assessment and then develop different training modules for different types of procurement and needs. This shall apply to both public and private sectors.</td>
<td>Medium to long term</td>
<td>PPRC and KIPA</td>
</tr>
<tr>
<td>Strengthen the capacity of the business community by providing access to training on the preparation of bids, and encourage participation in bidding.</td>
<td>Medium to long term</td>
<td>PPRC and KIPA</td>
</tr>
<tr>
<td>Recommendation</td>
<td>Timetable</td>
<td>Responsible Entity</td>
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<tr>
<td>Establish a system for evaluating the performance of procurement officers, including setting out the performance indicators and the means to monitor the performance. The PPRC and Ministry of Public Administration (MOPA) should consider establishing a separate career stream for procurement officers in the civil service, both at central and local government levels. In relation to this, separate job descriptions, qualification requirements, career structures, and salary scales for procurement officers need to be prepared. Also work on establishing a system within the Government for establishing a clear path in the procurement career in which a procurement officer can grow.</td>
<td>Medium to long term</td>
<td>PPRC, MOPA</td>
</tr>
<tr>
<td>Identify restriction in bidding (e.g., cost associated with bidding, opening of letter of credit, required licenses, etc.) and work closely with the business community and the relevant government entities to address them.</td>
<td>Medium to Long term</td>
<td>PPRC</td>
</tr>
<tr>
<td>Enforce payment of interest clause on delays of payments by the contracting authorities. Also enforcing court decisions on compensations of vendors/tenderers for non-compliance by the Government in accordance with the applicable laws.</td>
<td>Short to Medium term</td>
<td>MOF-Treasury</td>
</tr>
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**Integrity and Transparency in Public Procurement**

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<tr>
<th>Recommendation</th>
<th>Timetable</th>
<th>Responsible Entity</th>
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<tr>
<td>Publish the anti-corruption plans of the contracting authorities as well as their level of implementation (on a quarterly basis).</td>
<td>Short term</td>
<td>KAA</td>
</tr>
<tr>
<td>Propose appropriate arrangements to enforce the timely and full filing of assets and incomes of officials, and make the names of individuals that have not filed such disclosures available to the public and take any other appropriate actions for those who do not comply.</td>
<td>Short term</td>
<td>KAA</td>
</tr>
<tr>
<td>Increase the statute of limitation for prosecuting corruption (currently two years); enhance the capacity of the District Prosecutor’s Office in Pristina and other districts as relevant; and publish a statistical summary report by type of offense, sector, procurement/tax/other system impacted, for all allegations related to fraud and corruption irrespective of the investigating and prosecuting authority and how they have been addressed by the government and EULEX, including any sanction.</td>
<td>Short term</td>
<td>Prosecutor of financial crimes</td>
</tr>
<tr>
<td>Recommendation</td>
<td>Timetable</td>
<td>Responsible Entity</td>
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<tr>
<td>Follow-up on the establishment of the key principles of an administrative debarment regime.</td>
<td>Medium to Long term</td>
<td>KAA</td>
</tr>
<tr>
<td>Introduce procedures to request a competitive selection of the members of the PRB from a pool of qualified candidates preferably through open publication.</td>
<td>Medium to Long term</td>
<td>General Assembly</td>
</tr>
<tr>
<td>Review the current use of warranties and representations, including whether contractual remedies are being applied as and when needed.</td>
<td>Continuous</td>
<td>OAG</td>
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**Financial Management**

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<tr>
<th>Recommendation</th>
<th>Timetable</th>
<th>Responsible Entity</th>
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<tbody>
<tr>
<td>Strengthen focus on development and use of plans within sectors and budget organizations consistent with national priorities.</td>
<td>Short to Medium term</td>
<td>MOF, all budget organizations</td>
</tr>
<tr>
<td>Assess options for integrating existing budget and treasury systems, or introducing new systems, as appropriate.</td>
<td>Short to Medium term</td>
<td>MOF</td>
</tr>
<tr>
<td>Ensure that satisfactory mechanisms are built into the LPFMA to minimize disruption to planning and budget execution from delays in budget implementation.</td>
<td>Short to Medium term</td>
<td>National Assembly and Government</td>
</tr>
<tr>
<td>Increase emphasis on enforcement of LPFMA provisions and internal control regulations to ensure that commitments are entered into the treasury system within the time specified in the law.</td>
<td>Short to Medium term</td>
<td>MOF</td>
</tr>
<tr>
<td>Continue, and if possible accelerate broadening the application of public internal financial control and internal audit in budget organizations, including municipalities through training and support.</td>
<td>Short to Medium term</td>
<td>MOF, all budget organizations</td>
</tr>
<tr>
<td>Continue diagnostic PEFA assessments in municipalities and develop appropriate action plans to implement improvements to address gaps identified by the Auditor General and PEFA assessments.</td>
<td>Short to Medium term</td>
<td>MOF, Municipalities</td>
</tr>
<tr>
<td>Further develop the public External Audit in addressing the efficiency and effectiveness of the procurement systems and their implementation.</td>
<td>Short to Medium term</td>
<td>OAG</td>
</tr>
<tr>
<td>Strengthen OAG independence and external audit skills and capacity, particularly in areas beyond the standard regularity audits.</td>
<td>Medium to Long term</td>
<td>OAG, National Assembly</td>
</tr>
</tbody>
</table>
ANNEX A: PEOPLE MET

Mr. Bedri Hamza  Minister of Finance
Ms Safete Hadergjonaj Chairperson, Parliamentary Committee for Budget and Finance
Mr. Ramadan Avdiu Deputy Minister, Ministry of Finance
Mr. Lulzim Aliu Legal Office, Prime Minister Office
Mr. Safet Hoxha Director, Public Procurement Regulatory Commission
Mr. Hysni Hoxha President of Procurement Review Body
Mr. Hasan Preteni Director, Anti-Corruption Agency
Mr. Mursel Rracaj Director, Central Procurement Agency
Mr. Lulzim Ismajli Director, Treasury Department
Mr Zilif Lufi Acting Director, Treasury Department
Mr. Ilaz Duli Board Member, Public Procurement Regulatory Commission
Mr. Safet Gerxhalliu President, Kosovo Chamber of Commerce
Ms. Sophie Beaumont ECLO
Mr. Freek Janmaat Economic Policy Adviser, European Commission
Mr. Lorik Fejzullahu Department of Private-Public Partnerships
Mr. Kosum Aliu Director, Internal Auditor - Ministry of Economy and Finance
Ms. Donika Palokaj Legal Adviser, Ministry of Justice
Mr. Arton Berisha Procurement Officer, Ministry of Public Administration
Ms. Merita Mustafa KDI Transparency International
Ms. Linda Heagon EULEX Prosecutor
Ms. Drita Hajdari Kosovo Prosecutor
Mr. Fitim Sadiku Permanent Secretary, Ministry of Public Administration
Mr. Sabedin Meha Private company: DATAPROGNET
Mr. Florim Muhaxheri Private company: DATAPROGNET
Mr. Riza Deshishku Private company: EXPIK
Mr. Shefki Asllani Private company: BOTEK
Mr. Gani Maloku Private company: LONI
Mr. Lulzim Aliu Legal Officer, Prime Minister Office
Mr. Krunislav Zdravkovic Head of Procurement, Strpce Municipality
Mr. Shaban Tafa Legal Officer, Strpce Municipality
Mr. Agim Rexhepi Procurement Officer, Strpce Municipality
Mr. Sinan Ymeri Head of Finance, Strpce Municipality
<table>
<thead>
<tr>
<th>Name</th>
<th>Position and Organization</th>
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<tbody>
<tr>
<td>Mr. Xhevat Filnica</td>
<td>Head of Procurement, Pristina Municipality</td>
</tr>
<tr>
<td>Mr. Njazif Thaqi</td>
<td>Head of Procurement Office, KEK</td>
</tr>
<tr>
<td>Mr. Haki Sfishta</td>
<td>Head of Department for Budget and Finance, Ministry of Education</td>
</tr>
<tr>
<td>Mr. Eroll Raskova</td>
<td>Municipality of Pristina</td>
</tr>
<tr>
<td>Mr. John Short</td>
<td>Research on Economic Policy Implementation &amp; Management, UK</td>
</tr>
<tr>
<td>Mr. Ramadan Sejdiu</td>
<td>Director, Department for Management of Public Owned Enterprises, Ministry of Economy</td>
</tr>
<tr>
<td>Mr. William Lawrence</td>
<td>Senior Policy Advisor, USAID Economic Growth Office</td>
</tr>
<tr>
<td>Mr. Kris Kauffmann</td>
<td>USAD Consultant (Deloitte Consulting LLP)</td>
</tr>
<tr>
<td>Ms. Dardane Peja</td>
<td>Development Program Specialist, USAID</td>
</tr>
<tr>
<td>Mr. Lars Lage Olofsson</td>
<td>Auditor General</td>
</tr>
<tr>
<td>Mr. Agim Krasniqi</td>
<td>Head of Budget Department, Ministry of Finance</td>
</tr>
<tr>
<td>Mr. Petrit Popova</td>
<td>Head of Department of Municipal Budget, Ministry of Finance</td>
</tr>
<tr>
<td>Mr. Azem Reqica</td>
<td>Project Manager, World Bank PSMP</td>
</tr>
<tr>
<td>Mr. Kushtrim Mehmetaj</td>
<td>National Project Officer, Swiss Cooperation Office</td>
</tr>
</tbody>
</table>
ANNEX B: KEY MATERIAL REVIEWED

European Commission, Kosovo* 2010 Progress Report, Brussels, 9 November 2010;

OECD SIGMA, Assessment: Kosovo85 – Public Expenditure Management and Control;


Republic of Kosovo, Public Financial Management Reform Action Plan (PFMRAP), November 2009;


World Bank, Kosovo: Public Expenditure and Financial Accountability Assessment, April 2007;

PPRC - Report on Public Procurement Activities in Kosovo for 2010 (Feb 2011);

PRB - Annual Work Report 2010 (Feb 2011);


Ministry of Education, Science and Technology – Annual report on public signed contracts for year 2010;


Constitution of Republic of Kosovo;

Sigma Administrative Legal Assessment May 2009;


Kosovo 2011 Progress Report, EU Commission SEC (2011) 1207, (October 12, 2011);

Public Procurement Law (No. 04/L-042),


Procurement Rules January 1, 2008

85 Under UNSCR 1244/1999.
Administrative Guidelines by PPRC, No 01-06, 2011.
Public Procurement Regulations, February 2012.
Operational Guidelines for Public Procurement, February 2012
UNCITRAL “Guide to Enactment of UNCITRAL Model Law on Public Procurement” January 21, 2011, A/CN.9/WG.I/WP.77/Add.3;
The Worldwide Governance Indicators (2010);
Kosovo Online News, 19 April 2011;
Corruption Arrest at Kosovo Health Ministry, Balkan Insights, 13 July 2010;
Kosovo Public Expenditure Review, World Bank, Report No. 53709-XK, 3 June 2010;
Ibid.;
Public Purchasing System and Opportunities for Quick Gains Savings in Kosovo, World Bank, September 2009;
Kosovo Public Expenditure Review, World Bank, Report No. 53709-XK, 3 June 2010;
Budget of the State of Kosovo for 2010, Ministry of Economy and Finance, January 2010;
The Economist, 18 March 2011;
Balkan Investigative Reporting Network, undated;
Considerations in Drawing Conflicts of Interests Legislation, World Bank, December 2010, Richard Messick, (Forthcoming); and Improving Internal Staff Due-Diligence (revisited), Information Paper, World Bank, Integrity Vice-Presidency, 19 July 2011, (Forthcoming);
Raport vejtor 2010, Anti-Corruption Agency;
Annual Report of the Judicial Activities of EULEX Judges, 2010;
Procurement Code of Ethics, Public Procurement Regulatory Commission, December 2007;
Republic of Kosovo, Public Financial Management Reform Action Plan (PFMRAP), November 2009;
Constitution of Republic of Kosovo;
UNCITRAL website;
Peter Trepte, Public Procurement in the EU: A practitioner’s Guide;
Procurement Review Body, Annual Report to Assembly (2008);
Law 02/L-28 Administrative Code of Procedures (2005/02-L28);
Law No. 03/L-215 on Access to Public Documents.
Law No. 04/L-045 on Public-Private Partnership.
Law No. 03/L-241 on Public Procurement (repealed).
PRB Rules;
Anti-Corruption Strategy 2009-2011, Kosovo Anti-Corruption Agency;
Corruption Arrest at Kosovo Health Ministry, Balkan Insights, 13 July 2010.
Corruption in Kosovo – Time to go straight – The EU and America are no longer prepared to tolerate graft in Kosovo, The Economist, 18 March 2011.
Kosovo Minister’s Friends Flourish from Road Bonanza, Balkan Investigative Reporting Network, undated.
Key protected witness in Kosovo war crimes trial found dead in Germany, *Washington Post*, By Associated Press, 28 September 2011.


Improving Internal Staff Due-Diligence (revisited), Information Paper, World Bank, Integrity Vice Presidency, 19 July 2011, (Forthcoming).


Kosovo Operational Procurement Review, June 2004, Report No. 30848-YU.


ANNEX C: KOSOVO BASELINE INDICATORS (BLIS)

Pillar I: Legislative and Regulatory Framework

This assessment was conducted amid the legislative reform in Kosovo. At the time the Bank completed its assessment and finalized its report in February 2012, the procurement law had undergone major revisions (first in December 2010 and then in October 2011), but the secondary legislation had not been updated to reflect those changes. The issuance of updated secondary legislation in February 2012 represents an important development, and the Bank has reviewed its original assessment with respect to those areas and issues previously identified as demanding further consideration, which are now being addressed in this secondary legislation. However, it is important to note that the legislative part of the report does not represent a complete review of secondary legislation, and the Bank reserves the right to comment more fully on such legislation at a later time.

A sound governance system for public procurement begins with a solid legislative and regulatory framework. To measure that, Pillar I of the OECD-DAC/World Bank BLI assessment uses two performance indicators—a legislative and regulatory framework for public procurement that meets agreed-upon standards and complies with applicable obligations, and the existence of implementing regulations and documentation.

Indicator 1: Public procurement legislative and regulatory framework achieves the agreed standards and complies with applicable obligations.

2.1. For this indicator, the team reviewed the available legal and regulatory instruments, including the revised Public Procurement Law (PPL). The purpose of this indicator is to determine the structure of the regulatory framework governing the public procurement, the extent of its coverage, and public access to the laws and regulations; the appropriateness of procurement methods; advertising rules and time limits; rules on participation; tender documentation and technical specifications; tender valuation and award criteria; submission, receipt, and opening of tenders; and the complaint resolution mechanism. This indicator has eight sub-indicators which are discussed below.

<table>
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<tr>
<th>Sub-indicator</th>
<th>Brief Explanation</th>
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<tr>
<td>1(a)—Scope of application and coverage of the legislative and regulatory framework</td>
<td>The current legislative framework of public procurement in Kosovo consists of PPL No. 04/L-042 promulgated through the presidential decree no. DL-032-2011, dated August 29, 2011. The new law was published in Official Gazette on September 19, 2011 and became effective 15 days after the day of publication in Official Gazette. To implement the PPL, there is in place secondary legislation which includes Public Procurement Regulations (hereinafter named “the Regulations”) and Operational Guidelines for Public Procurement (hereinafter named “the Guidelines”). Since the preparation of a</td>
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new procurement law (effective) in December 2010, the implementing regulations were not updated. Thus creating a legal vacuum for the contracting authorities. In August 2011 the PPL was revised and the Regulations were prepared only in late February 2012.

The PPL is the primary piece of legislation regulating public procurement and any secondary legislation shall be issued in accordance with it. All laws and regulations are published and easily accessible to the public at no cost.

The Constitution86 stipulates the rights that every person may access the public documents. Every law is published in the Official Gazette87 and it enters into force 15 (fifteen) days after its publication in the Gazette, except as otherwise specified by the law itself. On that basis, public procurement legislation in its entirety, including primary and secondary legislation is posted on the PPRC website http://krpp.rks-gov.net/ and is available to the public at no cost. Further, clauses (6) and (7) of Article 10 of PPL set forth that PPRC shall electronically publish the present PPL and the secondary legislation on its website and shall provide access to any person requesting them.

Range of contracting authorities: The legislative and regulatory body of norms covers goods, works, and services for all procurement using budget funds. Article 2 of the PPL states that it shall apply to the procurement activities of the following bodies as defined in the PPL:
- Public Authority88;
- Public Undertakings89;
- Public Service Operators;90
- and any other person, undertaking carrying out procurement activity on behalf of or for the benefit of a public authority, public service operator or public undertaking.

Scope of the PPL: The scope of PPL is very broad and it

86 Constitution of Republic of Kosovo, Article 41 “Right of access to public documents”.
87 PPL, Article 80 “Adoption of laws.”
88 Public Authority is 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.
89 Public undertaking is 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.
90 Public Service Operators is: (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.
encompasses procurement of goods, works, and services for all procurement financed by the government funds. The PPL applies to all procurement estimated above Euro 1,000. Contracts below this value are known as Minimal Value Contracts and are regulated in a separate regulation. Moreover, the PPL\(^{91}\) includes within its scope the public utilities (or procurement conducted by Public Service Operators). The procurement procedures applicable to Public Service Operators can be found in a separate chapter of the PPL\(^{92}\) which seems to allow the public utilities to use more flexible procedures adapted to commercial undertakings.

**Exemptions:** According to Article 3 of the PPL, the contracting authorities may not comply with the requirements of the PPL\(^{93}\) under the following circumstances: (i) contracts for defense and national security, (ii) employment contracts and vocational training, (iii) contracts falling within the scope of an agreement by an international institution which has its own rules of procurement, and (iv) activities leading to the award of a service or works concession works which shall be regulated by the Public-Private Partnership law; (v) contracts issued by Socially Owned Enterprise under administration of Privatization Agency of Kosovo unless such entity is engaged on the basis of special or exclusive rights granted by competent authority in a public service activity; and (vi) contracts for leasing, rental or acquisition of immovable property.

**Public Private Partnership and Concessions contracts:** Kosovo regulates the public procurement and concessions through separate laws respectively the PPL and the Concessions/ Public-Private Partnership law (hereinafter named the “PPP law”\(^{94}\)). Over a period of time, these two laws displayed significant differences in terminology and procedures, primarily attributed to the different models adopted by each law. Specifically the PPL followed the model of EU Procurement Directives, whereas the PPP law was developed based on the UNCITRAL Model Law for Privately Financed Infrastructure projects with necessary changes. On November 15, 2011 a new Law on PPPs was enacted and it sets

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\(^{91}\) PPL, Article 14 “Grantees of Special or Exclusive Rights to Engaged in a Public Service Activity.”

\(^{92}\) PPL, Articles 82 to 85.

\(^{93}\) PPL Article 3 states “Notwithstanding any other provision of this law, the contracting authority shall not be required to comply with any specific procurement procedure or to observe the provisions of this law to the extent of transparency when compliance and the respect would compromise the legitimate secrecy or the security interests when carrying out procurement activities relevant for awarding of a public contract for which the Government have agreed to exclude it from the scope of this law because, (i) the performance of the contract under applicable law in Kosovo, requires the use of special security measures, or (ii) Government have agreed to classify the object of the contract as a secret. Exclusions pursuant to this Article regarding the reserved matters shall be allowed in compliance with the Law on Access to Public Documents.

\(^{94}\) Law No. 04/L-045 dated October 21, 2011 on Public Private Partnerships and Concessions in Infrastructure and the Procedures for their Award.
forth the main principles same as public procurement law. Nonetheless, there is still need for harmonizing further the two pieces of legislation considering that they share a couple of important aspects which are: (i) they are both require contracts to be signed by the procurement officers; and (ii) complaints for both are handled by the PRB.

| 1(b)—Procurement methods | Chapter II of the PPL sets forth the procurement methods that are available to contracting authorities for procurement of goods, works and services which are: (i) Open and Restricted Procedures (Article 33); (ii) Negotiated Procedure After Publication of a Contract Notice (Article 34); (iii) Negotiated Procedure Without Publication of a Contract Notice (Article 35); (iv) Price Quotation procedures (Article 36); (v) Procedures for Minimal Value (Article 37); (vi) Public Framework Contracts (Article 38); and (vii) Design Contest Contracts (Articles 73-80). The PPL puts both the Open Tendering and restricted procedure at the same level, without defining the Open Tendering as the default method of procurement. Article 32 gives the right to the contracting authorities to freely choose between the open and restricted procedures without the need for justification. The use of negotiated procedures and the price quotation methods is conditioned to the specific circumstances set forth in the PPL.

Article 56 of the PPL specifies that under restricted procedure, the number of candidates invited to submit a tender should not exceed six. In case of more than 6 economic operators being qualified, the contracting authority shall select the six most qualified candidates following a procedure that shall be prescribed in secondary legislation. Understandably, the purpose of restricted procedure is normally done for efficiency purposes. Restricting the number to be invited at six may be adequate to ensure genuine competition, however this number is based on the assumption that six economic operators shall submit tenders and it does not take into account the case when such level of competition is not achieved. In addition, considering the embryonic development of the market in Kosovo and the size of the country, restricting the number of firms may not ensure effective competition, and it could actually lead to oligopolistic markets. Finally, since the Kosovo PPL follows the EU Directives, such provisions need to be considered from that perspective and see if it is in line with the EU Procurement Directives that set a minimum of five economic operators to be invited to tender in case of restricted procedure without putting a cap on the number to be qualified.
Slicing and fractioning of contracts to limit competition or avoid certain firms to participate is prohibited by the PPL\textsuperscript{95}. In addition, the PPL\textsuperscript{96} provides for a two-envelope process which is used for selection of consulting services.

1(c)—Advertising rules and time limits

The PPL\textsuperscript{97} specifies that for the procurement activities to be procured through (i) Open tendering (ii) Restricted Tendering and (iii) Negotiated Procedure with prior Publication, the contracting authority shall prepare and publish a contract notice. The PPL exempts the following procedures for being published: (i) Negotiated Procedure without Prior Publication; (ii) Request for Price Quotation and (iii) Minimal Value Contract.

Publication of notices provides sufficient time, consistent with the method, nature and complexity of procurement, for potential bidders to obtain tender documents and respond to the advertisement. The PPL\textsuperscript{98} foresees the publication of an Indicative Notice “when a contracting authority has the intention of awarding, over a future 12-month period, one or more supply, services or works contracts having an estimated value, alone or in the aggregate, of five hundred thousand (EUR 500,000)”. There is understanding that this requires the contracting authorities to disclose procurement of any value. The procurement and contract award notices shall be published in the PPRC website and Public Procurement Register which is in electronic form and is maintained by PPRC. Contract award notice\textsuperscript{99} shall be published for contracts awarded through open and restricted tendering, negotiated procedures and price quotation procedures within 2 (two) days after the award of such contract.

Article 13 of the PPL states that all documents related to contracts with minimum\textsuperscript{100}, low\textsuperscript{101}, medium\textsuperscript{102} value shall be prepared in Albanian and Serbian languages and English if so decided by the contracting authority. However, for large value\textsuperscript{103} contracts, the contracting authorities shall prepare the tender documents in

\textsuperscript{95} PPL, Article 16 Clause 4 states “A contracting authority shall not select or use a valuation method for the purpose of lowering the value of a supply contract below a threshold specified in Article 19 of this law; nor shall any contracting authority split up a procurement requirement for a given quantity of products for the purpose of lowering the value of a supply contract below a threshold specified in Article 19 of this law.”

\textsuperscript{96} PPL Article 58.4

\textsuperscript{97} PPL Article 40 “Contract Notice.”

\textsuperscript{98} PPL Article 39 “Indicative Notice.”

\textsuperscript{99} PPL Article 41 “Contract Award Notice.”

\textsuperscript{100} Minimal value is below EUR 1,000.

\textsuperscript{101} Low Value is greater than EUR 1000 and less than EUR 10,000.

\textsuperscript{102} Medium Value is greater than EUR 10,000 and less than EUR 125,000 for works and less than EUR 125,000 for supplies/service.

\textsuperscript{103} Large Value is greater than EUR 500,000 for works and EUR 125,000 for supplies/service.
Albanian, Serbian and English. To avoid confusion it would be useful to specify that the contract shall be signed in the language of the tender.

The PPL states that the minimum required content of a notice and the standard form shall be laid out in the forms prepared by PPRC. As a matter of international good practice, to ensure consistency and transparency, the minimum content of contract notices needs to be specified in the PPL. Nonetheless, the notice form included in the Regulations is quite comprehensive and includes adequate information for the interested economic operators. With respect to the participation of foreign bidders, the website of PPRC is the single point of access for the publication of contract notices and is easily accessible. However, an interested operator can see the notices if he enters the correct vocabulary codes of procurement in appropriate fields.

The PPL establishes adequate timeline for the preparation and submission of tenders and it clearly spells out such timelines for each procurement method. As an exception to the above provision, the PPL describes special rules for setting a time limit for the receipt of tenders for a public contract covered by an Indicative Notice which reduces the time limits considerably as well as special rules in case of emergency, impracticability and other reasons set forth in the PPL.

The principle of nondiscrimination in public procurement is set forth in Article 7 of the PPL to ensure equal treatment of all economic operators. The PPL further stipulates that all qualification and evaluation criteria as well as the documents/information required establishing the eligibility shall be disclosed in the contract notice and in full in the tender dossier. To that end, the conditions for participation are stated in the PPL and these requirements are classified in four broad categories. They are namely: (i) eligibility requirements (Article 65); (ii) professional suitability (Article 66); (iii) economical and financial standing (Article 68) and (iii) technical and professional capacity (Article 69) which are in line with international procurement practice.

<table>
<thead>
<tr>
<th>1(d)—Rules on participation</th>
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<tbody>
<tr>
<td>The principle of nondiscrimination in public procurement is set forth in Article 7 of the PPL to ensure equal treatment of all economic operators. The PPL further stipulates that all qualification and evaluation criteria as well as the documents/information required establishing the eligibility shall be disclosed in the contract notice and in full in the tender dossier. To that end, the conditions for participation are stated in the PPL and these requirements are classified in four broad categories. They are namely: (i) eligibility requirements (Article 65); (ii) professional suitability (Article 66); (iii) economical and financial standing (Article 68) and (iii) technical and professional capacity (Article 69) which are in line with international procurement practice.</td>
</tr>
</tbody>
</table>

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104 PPL, Article 43 “Form and Content of Notices.”
105 PPL Article 44 “General Rules for Setting a Time Limit for the Receipt of Tenders or Requests to Participate.”
106 Ibid. Article 45,Cl.1 “Special Rules for Setting a Time Limit for the Receipt of Tenders for a Public Contract Covered by an Indicative Notice.”
107 PPL, Articles 51 “Notification of Selection Criteria” and 53 “Providing Additional Information to Candidates and Tenderers.”
108 Ibid. Article 64: “A candidate or tenderer shall prove by certificate, attestation or other sufficient evidence reasonably required by the Contracting Authority that: (i) the grounds for ineligibility under Article 65 of this law do not apply; (ii) verify his professional suitability as required by the Contracting Authority under Article 66 of this law; (iii) meet the criteria required by the Contracting Authority under Articles 68 to 71 of this law.”
With respect to eligibility criteria, the PPL\textsuperscript{109} specifies numerous conditions that would render an economic operator ineligible to participate. As Article 64 requires, the candidate or the tenderer shall submit a letter of representation (or Declaration under Oath) confirming that he is not ineligible under any of the conditions listed in Article 65. Notably, Article 65 is missing the exclusion in accordance with the Article 99 of the PPL which empowers the PRB to exclude from future procurement a tenderer or candidate that has submitted false and forged information. Since this is related to eligibility of candidates to participate, it should be listed together with other conditions under Article 65.

In general, the PPL does not specify any kind of preference to be granted to any economic operator on basis of nationality, social policy and/or origin of goods. However, it is noted that the PPL does not include special rules for participation of government-owned entities. This drawback of the PPL need to be addressed as the participation of such entities in same level playing field with private sector companies without setting special rules, may distort competition. It has been reported that in practice the government-owned entities may participate as any other economic operator in tenders organized by contracting authorities with exception of tenders organized by authorities that own these entities. However, this statement is not substantiated by presence of any legal act. The PPL, Article 65 mentions conflict of interest as a basis for ineligibility of the bidders. The PPL lists two situation of conflict of interest as follows: ‘if the tenderer including any of its staff: (i) was engaged in preparation of the tender dossier or any part thereof for the subject matter of procurement, and (ii) received assistance in preparing its tender, from a person who was involved in preparation of tender dossier or notice or any part thereof”. However, it has to be clarified that they are not the only situations that might create a conflict of interest as they may not capture all potential situations that would similarly affect the impartiality and objectivity of parties involved in a procurement process. For example: the relationship of the economic operator with a Government staff involved in procurement.

The PPL\textsuperscript{110} establishes that a tender dossier shall be drawn up for all procurement methods except for Minimal Value Contracts. It would be desirable to have the minimum content of tender dossiers disclosed in the PPL. However, the form of contract notice provided in the Regulations is sufficiently comprehensive to inform

\textsuperscript{109} Ibid. Article 65 “Eligibility of the Candidate or Tenderer.”

\textsuperscript{110} PPL, Article 27 “Tender Dossier.”

1(e)—Tender documentation and technical specifications
the economic operators on the subject of procurement.

Article 27 of the PPL entails that tender dossier shall be ready for issuance by the time of publication of contract notice. Furthermore, the tender dossier shall be delivered free of charge to the interested economic operators. “A fee may be imposed when the cost of reproducing the documents is expensive and it includes a large number of technical prints” and in no case the fee shall exceed the production cost of the documents\textsuperscript{111}. By checking a sample of 20 tender notifications (published recently in the PPRC website), it was found that in most of cases (i.e. 18 contracts, or 90\% of them) the tender dossier was issued without any charge, while in few contracts (2 cases, or 10\%) the contracting authority charged a fee (of Euro 10) for obtaining tender dossier by economic operators, which seems reasonable.

With respect to the technical specifications, the PPL\textsuperscript{112} provides for neutrality and lack of bias towards any economic or group of economic operators or make mention to any specific brand unless on exceptional basis the contracting authority may establish that it is not possible to develop a sufficiently precise description of the subject matter of the contract, provided however that such reference is accompanied by the term “or equivalent”.

\begin{tabular}{|l|p{0.7\textwidth}|}
\hline
1(f)—Tender evaluation and award criteria & The PPL specifies that the tenders are to be evaluated in accordance with the criteria and methodology disclosed in the tender dossier. The PPL\textsuperscript{113} further spells out the criteria on the basis of which the procurement contracts shall be awarded. The PPL specifies that the award criteria include: (i) lowest priced responsive tender; and/or (ii) most economically advantageous tender (hereinafter “MEAT”). In case of the MEAT, the contracting authority shall determine the criteria to be used for evaluation and the weighting assigned to each of them.
In addition, the PPL\textsuperscript{114} specifies that to the extent practicable, the contracting authorities shall specify each criterion in an objective and quantifiable terms. The choice between the two criteria is a choice given to the contracting authority. Essentially, in the case of lowest-priced tender the manner in which it applies is clear and based on the price only, whereas the MEAT application combines price and non-price-related criteria. As a general matter, the criteria selected is required to be directly and proportionately linked to the subject matter of public contract in question.
In addition, the PPL\textsuperscript{115} prohibits communications, discussions, or
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\end{tabular}

\begin{footnotesize}
\textsuperscript{111} \textit{Ibid}, Article 48 “Delivery of Tender Dossier.”
\textsuperscript{112} \textit{Ibid}. Article 28 “Technical Specifications.”
\textsuperscript{113} \textit{Ibid}. Article 60 “Contract Award Criteria.”
\textsuperscript{114} \textit{PPL} Article 52 “Notification of Selection Criteria.”
\textsuperscript{115} \textit{PPL} Article 59, clause 4 “Examination, Evaluation and Comparison of Tenders.”
\end{footnotesize}
negotiations with the economic operators with the exception of articles 34 and 35, which regulate negotiated procedures (with or without prior publication).

| 1(g)—Submission, receipt, and opening of tenders | Clarity in the legal requirements for submission, receipt, and opening of bids is critical to promote open and fair competition, establishes predictability of procedures, and protects integrity of procurement process as a whole. The PPL generally covers most of these aspects but at the same time it is silent on the modality for submission of tenders, and especially whether they can be delivered by mail, courier or in person, etc. The Regulations\textsuperscript{116} permits the electronic submission of the tenders, however it is silent on the other forms of submission. The PPL\textsuperscript{117} specifies that tenders shall be open publicly and the opening shall be immediately after the expiration of the deadline for submission of tenders. Late tenders shall not be opened, and shall be immediately returned unopened. The PPL is silent on the safekeeping of the tenders after submission. For an open or restricted procedure to be acceptable, the PPL\textsuperscript{118} specifies that there should be at least 2 responsive tenders or where applicable, Requests to Participate, otherwise the contracting authority will have to cancel the tendering process. Nonetheless, the PPL also entitles the contracting authority to waive such requirement under specific conditions and notify the PPRC about the waiver within two days of such decision.

The PPL specifies that the public opening may be attended by representatives of tenderers who choose to attend. In case of two-part tender (defined in Regulations as a two-envelope process), the PPL specifies that the technical proposal shall be the first to be opened publicly. At the end of the technical evaluation, the financial proposals shall be opened in the same manner in accordance with requirements set forth for opening of tenderers in the PPL.

On another aspect of the procurement process, the PPL is silent on treatment of discounts. Article 58 of the PPL limits the information read out at the opening of tenders only to (i) the name and place of economic operator submitting tender and (ii) tender price. This lack of provision in the PPL can only be interpreted to assume that discounts shall not be considered and that the contracting authorities are not obliged to consider the discounts offered. In this aspect, the Administrative Guideline No. 1 issued on March 11, 2011 is particularly instructive. PPRC advises that “procurement officers is not obliged and required to read the discount offered by
the tenderer with the respective tender”. Such practice as advised in the Administrative Guideline seems to negate the contracting authorities from the right to benefit from discounts which is a way to have savings in public procurement. In the past the practice that the Administrative Instructions had used to modify the PPL had raised some concern. For example: the previous procurement law specified that contracts of any value shall be signed by the Procurement Officer. The Government issued an Administrative Instruction specifying that contracts of medium and large value shall be signed by the Minister and the Procurement Officer.

1(h) Complaints

The PPL and the Rules of Procedure of the PRB (hereinafter named the “Rules of Procedure”) discuss the procedure for review of procurement complaints. Accordingly, the body in charge for administering and handling the public procurement complaints is the PRB which operates in accordance with the Articles 98-102 of the PPL and Rules of Procedure prepared in consistency with the provisions of the PPL. The Rules of Procedures were prepared and posted in the website of PRB in February 2012, but are not yet adopted.

The Procurement Review Board (PRB) was established based on the Law on Public Procurement of Kosovo, No. 02/L-99, UNMIK regulation No. 2007/20 dated June 6, 2007. The members of the Board were nominated by Resolution of the Kosovo Assembly No. 03-0739/130, dated July 30, 2008. The PPL describes in detail the process for appointment of members of the PRB which basically gives to the Government the right to nominate the members and to Assembly the right to approve based on recommendation of a selection body established by Assembly. This independent selection body shall comprise duly appointed judges designated by Kosovo Judicial Council.

The PRB is composed of 5 members, one of whom all lawyers that meet the eligibility requirements for appointment as judge. It is assisted by the Secretariat which includes 13 staff, both professional and administrative. The removal and suspension of the PRB members is subject to same rules that apply to judges. PRB reports directly to the Assembly of Kosovo. Based on the current structure and financing, it seems that PRB enjoys independence from the Government as a whole and the contracting authorities. The PPL, however, stops short to state that the members of the PRB are selected competitively among a pool of qualified candidates identified preferably through open publication.

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120 PPL, Article 100 “Appointment of Members of PRB.”
PPL has established basic procedures and time limits for submission and administration of complaints. Article 109 of PPL states that a complaint may be instigated 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 PPL. The “interested party” is defined in the PPL and at the time of submitting a complaint, PRB determines whether the party fulfills the conditions to be an “interested party”. Article 111 of the PPL provides the minimum content for a complaint to be accepted for review by PRB. Currently, the review system in Kosovo does not provide for a first-instance review by the contracting authority.

The PPL permits signing of a contract if certain conditions are met. Those conditions include among others that [at least 10 days have passed since the date of publication of the concerned contract award notice] which in EU terminology is known as “standstill period”. Based on Article 109 of the PPL, an aggrieved party may file a complaint with PRB within the above 10 day-period. As per definition of time limits in the PPL, the term “day” represents a “working day”. Nonetheless, the Rules of Procedure of the PRB seem to mix calendar and working day to express different time limits (for example: see Article 27 and Article 18). The complaining party should simultaneously submit a copy of the complaint to the contracting authority. Along with the complaint, the aggrieved party is required to pay EUR 500 in cash or cash equivalent into the account established by PRB. Failure to pay this fee is a cause for dismissing the complaint. The filing of a complaint shall cause an automatic suspension of the procurement activity, unless the President of the PRB determines that suspension of the procurement activity shall harm the public interest and thus on request by contracting authority orders waiver of the suspension. With respect to this issue, the Rules of Procedure and the PPL seem to be not fully consistent. The PPL specifies that it is in the authority of the President of PRB to decide to waive the suspension of the procurement activity unless there are compelling reasons not to do so such as: public interest. Whereas, the Rules of Procedure indicate that “submission of a complaint within the timeline and within the PRB jurisdiction, shall suspend the procurement activity, unless otherwise decided by the PRB’s Board”.

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121 PPL Article 4, clause 1.26 “Interested party - a person who can demonstrate a specific material interest in the outcome of a procurement activity conducted by a contracting authority and relating to a specific public contract or design contest including any person who has been or risks being harmed by an alleged infringement.”

122 PPL, Article 26.

123 PPL Article 5.

124 PPL, Article 112(2).

125 Article 19(1).
Upon filing of a complaint, the President of the PRB assigns the case to (i) the review expert and (ii) establishes a review panel. Both the PPL and Rules of Procedure lack clarity in defining the basis for assigning the cases to review experts and establishing the review panels. In addition, apart from the cases when the PRB Board is required to collectively review and decide cases, it is not clear when shall the President participate as the “designated PRB member”.

Contracting authorities also assume a role in the review process of the complaint as part of the PRB review. The contracting authority shall have four days from receipt of review expert’s assessment to review and provide a “decision” with respect to the complaint. In case the contracting authority finds the complaint grounded, it will inform the review expert, who in turn shall allow it five or more days to take corrective measures. This is a way to allow the contracting authority to correct any mistakes before the complaint is moved for review by a review panel. However, other than this, no complaint shall be reviewed and/or submitted to the contracting authority.

In line with the Code of Administrative Procedures\textsuperscript{126}, the complaints are taken to court only if administrative review is exhausted and that is after PRB as the highest administrative review body issued a decision. Article 119 describes the role of the courts in reviewing procurement complaints.

**Recommendation:**

(i) Deficiencies and omissions in the current PPL (e.g., PPL missing some essential aspects of procurement process), and areas where clarity is lacking, should be addressed in any future revisions to the legal framework.

(ii) The restricted procedures in the PPL should be revised to allow all qualified economic operators to submit a tender.

(iii) The PPL and/or the regulations should specify that the contract is to be signed in the language in which the tender was offered.

(iv) It is desirable for the PPL to set forth the details of contract notices;

(v) The PPL should provide for special rules for participation of government-owned entities.

(vi) The PPL should be amended to explain explicitly a debarment regime defining the main features of the process, including inter alia: (i) the conditions for debarment; (ii) the agency in charge of issuing debarment

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\textsuperscript{126} Law 02/L-28 Administrative Code of Procedures (2005/02-L28), Article 127, clause 4.
regulations; (iii) the requirement for a due process for the affected parties; (iv) permitting explicitly the right to appeal to parties; (v) procedures for review of appeals against debarment decisions; (vi) amendment of Article 65 of the PPL to include debarment as a condition for exclusion. More details can be further elaborated in the secondary legislation, which will have to be prepared for this purpose.

(vii) The PPL and tender dossier should allow for discounts to be accepted by the contracting authorities and in that case must be read out at tender opening.

(viii) The PPL should include a provision to state that the members of the PRB should be selected competitively from a pool of qualified candidates preferably through open publication.

(ix) The circumstances for the participation of PRB’s Chairman as a “Designated PRB member” should be clearly specified in the Rules of Procedure.

(x) Considering the 3-year experience gained by PRB in handling complaints, the Government and/or the Assembly could invite consultations with the stakeholders to understand whether the current review mechanism set up is efficient and does not run counter to the value for which it was established, that is to be independent as well as to resolve the complaints timely and efficiently. In that context, the option of adding a first-instance review by the contracting authority may be considered.

**Indicator 2: Implementing regulations and documentation exist.**

2.2. This indicator verifies the existence, availability, and quality of implementing regulations, operational procedures, handbooks, standard tender documents complete with standard conditions of contracts. The higher level legislation, e.g., the PPL, provides the framework of principles and policies that govern public procurement, while regulations, resolutions, orders and instructions provide more detailed explanations of the PPL, make it operational and explain how to apply it to specific circumstances. This indicator has six sub-indicators which are discussed and scored in the following table.

<table>
<thead>
<tr>
<th>Sub-indicator</th>
<th>Brief Explanation</th>
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<tbody>
<tr>
<td>2(a)—Implementing regulations to define processes and procedures not included in the Public Procurement Regulations</td>
<td>The Public Procurement Regulations include the following main legal acts and documents:</td>
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<tr>
<td></td>
<td>❖ Part A Regulation of Public Procurement</td>
</tr>
<tr>
<td></td>
<td>❖ Part B Rules on Procurement Procedures</td>
</tr>
<tr>
<td></td>
<td>❖ Part C Contract Management</td>
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higher-level legislation

- Part D Procurement Code of Ethics
- Part F Rules of Review Procedures
- Part G Documents for Diplomatic and Consular Mission of RK

Each of the above parts comprises of other sub-parts. The Procurement Regulations and other documents forming the regulations were just updated and adopted in late February 2012. In general the Regulations are a repetition of the PPL (higher level legislation) which may not serve well the purpose of Rules as secondary legislation. This may also be the result of a very detailed PPL that includes unnecessary details that may be delegated to secondary legislation. The secondary legislation is drafted and published by the PPRC\(^\text{127}\) on its website and can be accessed easily and at no cost.

2(b)—Model tender documents for goods, works, and services

Several model tender documents prepared by PPRC exist. In February 2012, there are several standard tender dossiers including but not limited to the following:

- TD for Open tendering- Works/ Services/Supplies/
- TD for Restricted tendering- Works/Services/Supplies
- TD for price quotation
- TD for Consultancy Services
- Framework contracts- Works/Services/Supplies
- Design contest -- Open tendering/restricted tendering

The Regulations\(^\text{128}\) specify that the tender dossiers for each procurement activity shall be prepared by using standard forms approved by the PPRC.

2(c)—Procedures for prequalification

The PPL does not recognize the Prequalification process as a separate stage preceding the tendering stage. However, the first stage of the restricted procedure is very similar to prequalification as it initially invites the economic operators to express interest to participate. The PPRC has prepared Tender Dossier for Prequalification which refers to the first stage of the restricted tendering. The deadline for submission of expressions to participate is to be specified in the contract notice. The tender committee evaluates all the requests to participate within the deadline for submission of such requests. Candidates shall be evaluated against the criteria set in the tender dossier. Only those six most qualified candidates who meet the qualification criteria shall be invited to tender.

As described above, the PPL limits the number of prequalified

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\(^{127}\) PPL, Article 87 “Principal functions of PPRC.”

\(^{128}\) Article 17.2 of the Operational Guidelines.
economic operators to be invited to tender at 6. Presumably such limitation is for efficiency purposes, however given the domestic market and industry in Kosovo which is at embryonic stage, this requirement may create oligopolistic markets.

2(d)—Suitable procedures for contracting services, or other requirements in which technical capacity is a key criterion

The PPL refers to services in general without expressly distinguishing between the services and intellectual or consulting services. However, the Guidelines distinguish the “non-consultancy services” from the “consultancy services” and define them as separate categories, assigning a specific code (No. 3). The PPRC has also issued specific tender documents for consultancy services. The consulting services shall be procured by a two-envelope system. In the first stage only the technical proposal envelope shall be opened and evaluated. In the second stage, the envelope with financial proposal of only those tenders who scored above the minimum technical score shall be opened. The contract shall be awarded to the best tender who combines both scores resulting from technical and financial evaluation.

2(e)—User’s guide or manual for contracting entities

Starting from December 2010 when a new public procurement law was enacted the secondary legislation was not updated creating a vacuum for the contracting authorities. However, in late February 2012 the secondary legislation was fully updated. Very detailed Operational Guidelines were prepared also in February 2012 which provides detailed and useful guidance to the contracting authorities.

2(f)—General Conditions of Contract (GCC) for public sector contracts covering goods, works, and services consistent with national and, when applicable, international requirements

The tender dossiers include general conditions of contracts for supply, works and services. As stated above, the Guidelines make mandatory the use of tender dossiers, including general conditions of contract. The PPRC is responsible for drafting the General Conditions of Contract and posting them in the PPRC’s website for contracting authorities to use. However, the tender dossier establishes the list of documents that constitute a contract and clearly establishes an order of precedence. Below is given the example of Works Contract which comprises of the following sections:

(a) The Contract Agreement;
(b) Special Conditions of Contract;
(c) General Conditions of Contract;
(d) The Contractor’s Tender including Technical Specifications;
(e) The financial offer (Bill of Quantities); [minutes of the informative meeting/site visit]

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129 Article 53.1 of Operational Guidelines
130 PPL, Article 87(2.2) “Principal Functions of the PPRC.”
Note that the list of definitions of contract terms is not comprehensive and needs to be expanded to include all the terms in the contract to ensure uniformity in interpretations by contracting authorities.

**Recommendation:**

i. To achieve consistency with the PPL, the tender dossiers may need revision to include fraud and corruption provisions as defined in the PPL.

**Pillar II. Institutional Framework and Management Capacity**

2.3. Pillar II examines how the procurement system defined by a country’s legal and regulatory framework operates in practice when filtered through the institutions and management systems of public sector governance.

**Indicator 3: The public procurement system is mainstreamed and well integrated into the system of public sector governance.**

2.4. This indicator examines the procurement system to: (i) determine its suitability to discharge the obligations prescribed in the law without gaps or overlaps; (b) whether the necessary links with other sectors of government affecting procurement exist; (c) whether procurement operations are constrained by other external institutional factors; and (d) whether the managerial and technical capacity of the system are adequate to implement procurement without unnecessary cost or delay. This indicator deals with the degree of integration of the procurement system with other parts of government and particularly with the financial management system given the direct interaction between the two, from the budget preparation and planning to treasury operations for payments. This indicator has four sub-indicators that are discussed in the table below.

<table>
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<tr>
<th>Sub-indicator</th>
<th>Brief Explanation</th>
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<tbody>
<tr>
<td>3(a)—Procurement planning and associated expenditures included in the budget formulation process and contribute to multi-year planning</td>
<td>In accordance with the LPFMA, the government prepares a medium term expenditure framework as the basis for medium-term and annual budget preparation. The annual budget circulars provide guidance to budget organizations to consider policies and estimates set out in the MTEF as the basis for their plans at the program, sub-program and individual capital project level. Priority is given to capital projects submitted through the PIP systems, including full costing and justification.</td>
</tr>
</tbody>
</table>
### 3(b)—Budget law and financial procedures support timely procurement, contract execution, and payment

Article 37 of the LPFMA (as amended in 2010) requires that invoices or obligations (commitments) must be recorded in the KFMIS within three days of receiving or incurring them. Article 39 of the LPFMA requires that invoices be paid within 30 days of receipt.

### 3(c)—No initiation of procurement actions without existing budget appropriations

Article 37 of the LPFMA (as amended in 2010) requires that, “a budget organization shall not enter into an obligation for the current year that requires expenditure in excess of allocated funds”. The KFMIS contains built-in controls that prohibit expenditure of funds in excess of authorized allocations.

### 3(d)—Systematic completion reports prepared to certify budget execution and to reconcile delivery with budget programming

All commitments and expenditures are recorded in the KFMIS against COFOG compliant classifications, aligned to appropriations. Expenditures are also recorded against individual projects and major contracts.

### Recommendation:

1. Continued strengthening of strategic, policy-based budgeting particularly in line ministries and municipalities;
2. Strengthen financial management skills and practices in municipalities to permit prudent delegation of financial responsibilities and more effective accounting and reporting;
3. Increase the coverage of donor funds within the KFMIS and improve integration of planning and management of donor and budget funding.

### Indicator 4: The country has a functional normative/regulatory body.

2.5. This indicator, which has four sub-indicators, discussed below, deals with the existence of the functions within the public sector, the independence of the regulatory function, the effectiveness of performance and the degree of coordination between responsible organizations.
<table>
<thead>
<tr>
<th>Sub-indicator</th>
<th>Brief Explanation</th>
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<tbody>
<tr>
<td>4(a)—The status and basis for the normative/regulatory body is covered in the legislative and regulatory framework.</td>
<td>The PPL(^{131}) establishes the Public Procurement Regulatory Commissions as the regulatory and normative body in public procurement in Kosovo. This has been established under prior procurement legislation and continues its existence under the current PPL as well.</td>
</tr>
<tr>
<td>4(b)—The body has a defined set of responsibilities that include but are not limited to a set of eight identified functions.</td>
<td>This body is vested with functions of a regulatory body in that it is the primary agency (i) to promote the overall development and operation of the procurement system in Kosovo, (ii) prepares and enforces the implementing rules, standard bidding documents, standard forms, guidance notes, (iii) provides administrative interpretative opinions to both contracting authorities and economic operators, (iv) monitoring of the contract management(^{132}), (v) provision of technical assistance to both contracting authorities and economic operators on interpretation of provisions of the law(^{133}), (vi) establishing and maintaining an electronic Public Procurement Register that shall serve as repository for electronic copies of all notices, (vii) establish and maintain an information website that provides the public with unrestricted access to the law, secondary legislation, interpretative rulings, and all information contained in the public procurement register (the latter cannot be found in the website of the PPRC), (viii) support KIPA and other public training and educational authorities to ensure attainment and maintenance by procurement officers with respect to implementation of sound procurement practices. Also, with respect to (viii) given its assigned overall responsibility for development of procurement profession in Kosovo, PPRC should take the lead in designing and providing training (itself or through other agencies such as KIPA), issuance and revocation of procurement certification etc. Having KIPA or other authorities lead the training and certification process could be insufficient for the PPRC to achieve its objectives.</td>
</tr>
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\(^{131}\) PPL, Title VI Articles 86-93.  
\(^{132}\) Article 87 (2.7).  
\(^{133}\) Article 87(2.4).
4(c)—The body’s organization, funding, staffing, and level of independence and authority (formal power) to exercise its duties should be sufficient and consistent with its responsibilities.

The PPRC is composed of 3 members, one of whom is the Chairman, who are nominated by Government and approved by Assembly. PPRC is a budget organization and a public authority. It is completely independent from the Government and it reports directly to the Assembly of Kosovo. The mandate of the members of the PPRC is 4 years with a one-time re-appointment.

4(d)—The body’s responsibilities should be clearly defined and separated to avoid conflict of interest and direct involvement in execution of procurement transactions.

The current status of PPRC does not involve them in execution of procurement transactions. Any function that would give PPRC exposure in a specific ongoing tender procedure in such a way that its decisions or interpretations would affect in one way the decision of the contracting authority, should be avoided.

**Recommendation**

i. With the expiry of the consultancy contract early 2012, the PPRC may need resources to do some its tasks.

ii. PPRC need to prepare a strategy for the coming three to five year on how to enhance the performance of the public procurement system.

iii. PPRC to establish procurement performance indices in order to measure the progress in the future.

iv. The PPRC to collect information about material and works and services pricing to facilitate contract cost estimation and help in the budget planning.

v. The PPRC to strengthen monitoring of compliance with the PPL.
**Indicator 5: Existence of institutional development capacity.**

2.6. The objective of this indicator is to assess the extent to which the country or agency has systems to support and monitor the performance of the entire system, and to formulate and implement improvement plans. This requires among other things the availability of information systems, a capacity for analysis, feedback mechanisms and planning capacity for implementation of improvements. It is very important that responsibilities are clearly assigned and are being performed.

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<tr>
<th>Sub-indicator</th>
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<tr>
<td>5(a)—The country has a system for collecting and disseminating procurement information, including tender invitations, requests for proposals, and contract award data.</td>
<td>The country has a system for collecting and disseminating procurement information, including tender invitations, requests for proposals, and contract award information and for monitoring national procurement statistics. PPRC establish rules governing the publication of notices. Article 42 of the PPL regulates the publication of notices for large value contracts, and all procurement entities have to publish the procurement and award notices in both Albanian and Serbian language (English language versions are optional) through the PPRC website and in the Public Procurement Register. The PPRC publishes its annual report and all information on public procurement in Kosovo on its website <a href="http://krpp.rks-gov.net">http://krpp.rks-gov.net</a> Each Contracting Authorities send their annual procurement plans to CPA but the plans are not published as it is not required by the PPL. The private sector is well-versed in using the PPRC web site as a source of information on business opportunities.</td>
</tr>
<tr>
<td>5(b)—The country has a sustainable strategy and procedures for collecting and monitoring national procurement statistics.</td>
<td>No system fulfilling any of the conditions set forth for such an information system in this indicator exists. However, Article 87 of the PPL regulates the PPRC in cooperation with the PPA to prepare and submit to the Assembly an annual report analyzing public procurement activities in Kosovo occurring in that calendar year and make recommendations for the improvement of the public procurement system.</td>
</tr>
<tr>
<td>5(c)—A sustainable strategy and training capacity exists to provide skills</td>
<td>Throughout the government there is a dearth of skill in procurement and contract administration ranging from the development of policy to the management of the function. This is largely due to the absence of a dedicated cadre for professional procurement officers, and the absence of a career path. Above all, dismal capacity in contracting authorities and the three central procurement institutions (PPRC, CPA and PRB), further hamper the efficiency, economy, and transparency of the procurement systems. Article 25...</td>
</tr>
</tbody>
</table>
enhancement, advice, and assistance to enable government and private sector participants to understand procurement rules and regulations and how they should be implemented.

of the PPL prescribes obligatory training for representatives of contracting authorities, performed by the Kosovo Institute for Public Administration (KIPA). There is no impact assessment of the training provided by KIPA. The training program consists of ten modules focused on procurement planning and documentation, evaluation, different procurement procedures, roles, and responsibilities of PPRC, CPA, and PRB, legal regulation related to public procurement, including the secondary legislation, and Code of ethics. The program includes both a basic course and an advanced course, with appropriate sets of basic and advanced procurement professional certificates. Training certificates are given to the participants on the recommendations of the trainer. The training certificate is a precondition for designation of a civil servant as Procurement Officer. The certificates are valid for three years and have to be regularly renewed. The PPL differentiates between a basic certificate (for civil servants who are new to procurement) and advanced certificate (for experienced procurement officers who intend to renew their certificates).

Private companies are provided with training about the public procurement system by different consulting companies, but they complain the training is too general with the same basic training provided all the time.

5(d)—Quality control standards are disseminated, and used to evaluate staff performance and promote capacity development.

As Procurement is not considered to be a specialist cadre, there are no quality assurance standards and therefore do not address issues in skill development. There is no information on performance of procurement staff, and no indicators are set to measure procurement staff performance.

Recommendation:

i. PPRC, in collaboration with KIPA, should undertake a training needs assessment, identify gaps of knowledge, and develop an annual training program for specialized audiences in coordination with other concerned agencies such as the Anti-Corruption Commission (e.g., training on conflict of interest, detecting fraud and corruption, etc.); KIPA should be expanded to include provision for the development of private sector capacity in procurement as well.

ii. PPRC should assume the role of monitoring and developing the procurement profession in the country and issue Certificates, since they have the overall
responsibility for development of procurement systems in the country and have knowledge in procurement legislation and capabilities to design training programs.

iii. Quality control standards need to be developed to ensure measurement of performance in the procurement arena. Procurement should be recognized as a career in the government.

iv. Indicative annual procurement plans should be developed and published on the PPRC web site.

v. PPRC is to develop an e-procurement system (eGP) strategy.

**Pillar III. Procurement Operations and Market Practices**

2.7. The team looked at the operational effectiveness and efficiency of the public procurement system at the level of procuring entities. In order to use the market as one means of judging the quality and effectiveness of the system in implementing procurement procedures, the team held meetings with representatives of contractors, suppliers, and civil society, including the Kosovo Chamber of Commerce. The information contained in the indicators below is based on the information collected through these interviews.

**Indicator 6: The country’s procurement operations and practices are efficient.**

2.8. This indicator looks at the efficiency of the operations and operational practices of procuring entities. In summary, this means that the operational practices result in timely award of contracts at competitive market prices as determined by effective and fair implementation of procurement practices.

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<tr>
<th>Sub-indicator</th>
<th>Brief Explanation</th>
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<tr>
<td>6(a)—The level of procurement competence among government officials within an entity is consistent with their procurement responsibilities.</td>
<td>Some procurement skills are available in large procuring entities. The PPL (art. 23) implicitly refers to establishment of a Procurement Department, headed by a designated Procurement Officer, in each contracting authority. Procurement staff are designated in each entity and have clear responsibilities. The PPL also defines the level of procurement competence and proper certification of Procurement Officers. Procurement staff are selected from the civil servants already employed at the ministries and do not have clear paths of professional development. The highest rank that can be achieved is the position of Director of Procurement Department. This position is third-tier, after the positions of Minister/Deputy Minister and Permanent Secretary.</td>
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There is no clear statement on who select and appoint the evaluation committees within procuring entities.

<table>
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<tr>
<th>6(b)</th>
<th>The procurement training and information programs for government officials and for private sector participants are consistent with demand.</th>
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<tr>
<td></td>
<td>PPRC is the principal focal point for the training curricula and keeping records of the training. As of May 2011, 521 procurement officers have attended the trainings, of whom 430 have passed the final exams. Given that Kosovo has 161 contracting authorities, the average presence of procurement officers is 3 per contracting authority. Reactions from Procurement Officers in different ministries are that the training offered by KIPA has so far been too general and came down to familiarizing the attendees with the PPL. The training lacked examples and case studies. Trainers were unable to respond to all questions posed by practitioners. The European Commission has introduced a Training of Trainers program for the Balkan countries, conducted in Turin, Italy, where Kosovo has 5 graduated trainers, and is expected to have 15 more by the end of 2011. There is no assessment of the waiting time to get into a training course. Also, an introduction to the PPL is part of the training for all civil servants. Training for the private sector is provided by several consulting companies, but the private sector opinion is that the training is too general.</td>
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<tr>
<th>6(c)</th>
<th>There are established norms for protecting records and documents related to transactions and contract management.</th>
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<td></td>
<td>There are established norms for safekeeping of records and established security protocols. For each procurement activity, the procurement department (procurement entity) of the contracting authority is obliged to keep a special record that contains all information related to the respective procurement activity. This record includes all data of the procurement process, from procurement planning up to signing of the contract. The law on public procurement in Kosovo does not cover the managing of the contract.</td>
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<tr>
<th>6(d)</th>
<th>Provisions exist for delegating authority to others who have the capacity to exercise responsibilities.</th>
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<td></td>
<td>The PPL and different ministerial regulation prescribe the composition of the evaluation commission, composed of at least two persons from the department that requires the goods, works and services, and one member of the Procurement Department. In case of the absence of the Procurement Officer, the duty of signing the contract is delegated to a different person within the Procurement Department, who possesses a procurement certificate.</td>
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</table>
**Recommendation:**

i. There seems to be a gap between the procurement regulators and legislators on one side, and the procurement practitioners on the other. It is recommended that a Community of Practice be formed, composed of Procurement Officers at the contracting authorities, which could meet twice a year and exchange information, define issues, propose further trainings, etc. It would feed into the work of the PPRC and would help advance the procurement function.

ii. PPRC and KIPA should develop different training modules for different types of procurement (IT, construction) based on training needs assessment and offer them periodically.

**Indicator 7: Functionality of the public procurement market**

2.9. This Indicator assesses the market response to public procurement needs in terms of goods, works and services, and takes into consideration the general economic climate, the private sector development environment and policies, the existence of financial institutions, the attractiveness of the government as a good business partner, and the kind of goods or services required for public projects.

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<tr>
<td>7(a)—There are effective mechanisms for partnerships between the public and private sectors.</td>
<td>The partnership mechanisms between the public and the private sector take place in an ad hoc, unorganized manner. Technologically more advanced sectors (IT companies) have joined forces through an Association and were able to realize and manage a dialogue with relevant government institutions. Kosovo Chamber of Commerce, a much larger organization of private entrepreneurs was not able to have a fundamentally meaningful partnership with the Government. The Chamber is not part of the current Working Group that works on the new PPL.</td>
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<tr>
<td>7(b)—Private sector institutions are well organized and able to facilitate access to the market.</td>
<td>Kosovo has one Chamber of Commerce, with 15,165 registered members, six regional offices, and thirty professional associations. Established in 1962 by the Assembly of Kosovo, it is the legal representative of the interests of the business community in Kosovo. Kosovo Chamber of Commerce is a not-for-profit, independent organization, financed by membership fees. It seeks to advocate and represent the interests of its members, to advise on business start-ups and give professional assistance to the member companies and in particular promote investment and the development of Kosovo’s economy. Kosovo is not part of any free-trade agreements, which additionally complicates access to markets.</td>
</tr>
<tr>
<td>7(c)—There are no major systemic</td>
<td>Kosovo companies have difficulties gaining access to financing. Inadequacies in the general rule of law, virtually non-existent cadastre system and different property issues, and high demand of</td>
</tr>
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constraints (e.g., inadequate access to credit, contracting practices, etc.) inhibiting the private sector’s capacity to access the procurement market.

companies as a result of high interest rates of the Banks.

The business sector is complaining that majority of tenders favor international companies.

Government institutions are generally late with payments, which sometimes take six months.

Obtaining a bid security requires the same amount as collateral and it is often required that the company has an account in the same Bank.

In some sectors (such as construction), the Government requires for registered companies to apply for licenses which are given at the sole discretion of the Minister and may construe a tool for state capture.

2011 Doing Business report puts Kosovo at the 119th place (out of 183). Categories that are especially negatively assessed are Dealing with construction permits (173rd place), Protecting investors (173rd place) and Enforcing contracts (155th place).

Recommendation:

i. Increase competition by seeking new approaches to reduce the cost of bidder financing and improve access to available financing.

ii. PPRC to strengthen relationship with the business community by providing training to them and encourage participation in bidding.

Indicator 8: Existence of contract administration and dispute resolution provisions

2.10. For this indicator, the team reviewed the current contract administration procedures and held discussions with some procuring entities with a view to assessing the quality of contract administration practices.

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<td>8(a)—Procedures are clearly defined for undertaking contract administration responsibilities, including</td>
<td>The PPL clearly state the need for contract management by the contracting authorities. Art. 81 of the PPL require the contracting authorities (a) to produce a contract management plan that would need to be agreed up on between the two parties to the contract and (b) to establish procedures for goods and works inspections, variation orders/changes, handing over, insurance. The general conditions of contract include clauses on contract management such as “programs, supervision, and testing for quality</td>
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<tr>
<td>inspection and acceptance procedures, quality control procedures, and methods to review and issue contract amendments in a timely manner.</td>
<td>assurance, correction of the defects, compensated events, completion, and take-over. In general, these clauses are acceptable. Supply contract general conditions and define quality assurance procedures which are in line with internationally acceptable practices. Supervision of civil works is defined in the works contract. The contracting authority nominates a project manager to supervise the contract. However, it appears that quality of works is poor. There is room for improvement on inspection and testing of works and goods. There is no institution responsible for quality assurance and standards and thus goods coming in the country may not be tested for quality assurance. There are very limited quality assurance laboratories. Normally the University of Pristina has these labs. Other cities may need to take the samples to Pristina. The private sector is not yet in this business. Letters of Credit (L/C) appear not to be permitted to be used as a mode of payments. Towards the end of the year, some purchasing entities issue final payment to contractors even though the contractor has not completed the work. They normally do that to avoid losing the money allocated to that contract in the fiscal year. This in some cases resulted in the contractor taking the money and not doing the work. Final payments after acceptance are normally delayed.</td>
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| 8(b)—Contracts include dispute resolution procedures that provide for an efficient and fair process to resolve disagreements arising during contract performance. | There is an arbitration law of 2007. Standard conditions of contracts include a provision for arbitration if disputes were not resolved amicably. First, the dispute needs to be resolved amicably between the two parties to the contract. If they cannot resolve the dispute they would use conciliation through an institution indentified in the contract. If the conciliation does not resolve the dispute they may go to the court as specified in the law or they may use arbitration. The specific conditions of contract provide an option for using international dispute resolution procedures if international bidding is used and the winner is a foreign entity. |

| 8(c)—Procedures exist | Kosovo is not a member of the New York Convention since it is not yet recognized by the UN. However, Government says that NY |
to enforce the outcome of the dispute resolution process.

| convention arbitrals are accepted and recognized by the government. |
| Arbitration law Article 38 states that any arbitral award made by an arbitral tribunal shall be enforced when declared enforceable by the court. Article 39 of the same law mentions the procedures to enforce an arbitral award made outside Kosovo. |
| The PPL states in Art. 81 that the PPRC shall monitor contract management. However, the PPRC is not doing contract monitoring and it is not clear the scope of contract monitoring by the PPRC. |

**Recommendation:**

i. Improve the quality of inspection of goods, works, and services through doing the required laboratory tests.

ii. Encourage the private sector to establish building material testing laboratories for quality assurance.

iii. Government to establish building material engineering testing laboratories and standardization.

iv. PPRC to state clearly the scope of its contract monitoring in its strategy or the Rules.

v. There shall be clear instructions from the MoF that contracting authorities are not to issue documents which do not reflect the right status of contracts such as completion of contract while the contract is not completed. Also, contracting authorities are to investigate any such cases of fraud and take action towards the staff who are involved.

**Pillar IV. Integrity and Transparency of the Public Procurement System**

2.11. Pillar IV covers five indicators that are considered necessary for a system that operates with integrity, has appropriate controls to support implementation in accordance with the legal and regulatory framework, and has appropriate measures to address potential corruption. It also covers important aspects of the procurement system that include stakeholders as part of the control process. Aspects of the procurement system and governance environment are defined and structured to contribute to overall integrity and transparency of operations.

**Indicator 9: The country has an effective control and audit system.**

2.12. The objective of this indicator is to determine the quality, reliability, and timeliness of the internal and external controls. This indicator has five sub-indicators that are discussed and rated in the table below.
<table>
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<tr>
<td>9(a)—A legal framework and the organization, policy, and procedures for internal and external control and audit of public procurement operations are in place and provide comprehensive coverage.</td>
<td>There are mechanisms for control and audit to oversee the procurement function, although there is scope for independence of the external audit function to be improved. There are internal control mechanisms in central and municipal organizations covering 98 percent of budget funds with clearly defined procedures. The internal audit units have been established for less than two years in many cases and capacity of certified staff requires strengthening. There is incomplete coverage of municipal activities, particularly in the northern areas. Internal audit reports are provided to management on a quarterly and annual basis.</td>
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<tr>
<td>9(b)—Enforcement and follow-up of control framework findings and recommendations provide an environment that fosters compliance.</td>
<td>The Central Harmonization Unit follows up on implementation of recommendations and considers that they are being implemented. Implementation of external audit recommendations is improving but remains a major challenge. The OAG has introduced an interim audit and financial health-checking process to highlight areas for improvement earlier to management in an effort to raise awareness of concerns and actions required by management. The 2009 PEFA report indicated that follow up on OAG recommendations has been weak, although the OAG considers that the situation has improved since then.</td>
</tr>
<tr>
<td>9(c)—Internal control systems provide timely information on compliance to enable management action.</td>
<td>There are documented procedures for reporting of findings and recommendations by internal audit units. Reports are provided to management by internal audit quarterly and annually. The CHU considers that procedures for reporting are complied with where internal audit units exist. The reports are also sent to the CHU which prepares an annual report to Government. After considering the report, the Government provides the report to Parliament.</td>
</tr>
<tr>
<td>9(d)—Internal control systems are sufficiently defined for performance audits to be conducted.</td>
<td>A small number of performance audits (less than 5 percent of total audits) were conducted by internal audit units during the last year. It is expected that this activity will increase as experience and capacity improves.</td>
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</table>
9(e)—Auditors are sufficiently informed about procurement requirements and control systems to conduct quality audits that foster compliance.

**Recommendation**

i. Increase emphasis on internal audit recommendations by management to ensure that they are considered and implemented appropriately;

ii. Continued strengthening of training and professional certification through institutionalized professional programs comparable with international good practice for both internal and external auditors;

iii. Strengthen financial management in municipalities to allow good quality financial statements to be produced;

iv. Establish fully independent arrangements for the OAG;

v. Continue implementation of the PIFC strategy to increase the coverage, capacity, and quality of internal audit.

**Indicator 10: Efficiency of the appeals mechanism**

2.13. The appeals mechanism was covered under Pillar I with regard to its creation and coverage by the legal regulatory framework. It is further assessed under this indicator of a range of specific issues regarding efficiency in contributing to the compliance environment in the country and the integrity of the public procurement system.

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<td>10(a)—Decisions are based on available information, and the final decision can be reviewed and ruled upon by a body (or authority) with</td>
<td>As explained under sub-indicator 1(h), the complaints are handled by the PRB. Before making a final decision on a matter, PRB may require contracting authorities and the aggrieved party to provide additional information and/or explanations. For the purposes of the review, it may require any person, undertaking, or public authority to submit material or evidence that it reasonably believes may have relevance to the matter. On request from each party to the complaint (may allow an opportunity to present additional information and/or explanations. If any party to the proceedings fails or refuses to participate fully in such proceedings or to comply with the requirements of the PPL, PRB shall reach its decision on</td>
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enforcement capacity under the law.

the basis of information, evidence, and arguments brought by parties participating in the proceedings.

PPL\textsuperscript{134} and the Rules of Procedure of PRB provide for a timeline within which PRB shall issue its decisions. PRB shall issue its final decision, together with a written statement of the factual and legal basis justifying such decisions, and any remedies required to give power to such decisions, within 15 days following the expiration of deadlines for providing any additional information or hearing as permitted by the PPL. When the matter is determined by PRB to be a complex one, the deadline is extended for an additional 20 days.

The contracting authorities can review a complaint only within the context of a complaint filed with PRB. Lack of such first instance review may not yield the interest expected from a complaint review system which should allow the contracting authority to self-correct its mistakes at an early stage of the procurement process to avoid long delays. PRB’s decisions are administratively final and they can be appealed only in the Supreme Court of Kosovo.

10(b)—The complaint review system has the capacity to handle complaints efficiently and the means to enforce the remedy imposed.

For a complaint to be accepted, it should be submitted in the form prepared by PPRC and published in the website of both PPRC and PRB. Submission of a responsive compliant (as defined in the PPL) shall cause the automatic suspension of the procurement proceedings, unless decided otherwise by the President of the PRB in accordance with the provisions of the PPL\textsuperscript{135} and the detailed procedures envisaged in the Rules of Procedures. Along with the complaint (as stated in the PPL\textsuperscript{136}) or within 3 days from the filing of complaint\textsuperscript{137}, the complaining party should deposit with the PRB a security of Euro 500 in order for the complaint to be considered.

The complaint is initially reviewed by a Review Expert who is appointed by the President of the Board. The Expert starts the review and should provide an assessment within 10 days from his/her assignment (which is done by the PRB immediately\textsuperscript{138} after acceptance of the complaint).

Four days from receipt of the expert’s assessment, the contracting authority should decide whether to accept the assessment or deny/object to it. In case of accepting the complaint, the contracting authority shall take corrective measures to bring the concerned procurement activity in compliance with the law.

If the contracting authority does not agree with the assessment by

\textsuperscript{134} PPL, Article 117 “Decision-making Deadline.”
\textsuperscript{135} PPL, Article 112 “Automatic Suspension of Procurement Activity.”
\textsuperscript{136} Ibid, Article 118 “Security, Penalty, Damages.”
\textsuperscript{137} PRB Rules, Article 22 “Insurance Payments.”
\textsuperscript{138} PPL, Article 111(5) “Filing and Basic Content of a complaint.”
the expert, the case is taken before a Review Panel which shall comprise 1 to 5 members of the Board depending on the size and nature of the contract in question. The Rules of Procedure\textsuperscript{139} specify the number of Panel members depending on the size and the nature of the procurement activity disputed.

**Remedies**

Article 105 of the PPL sets forth the powers of the PRB to award remedies including *inter alia*: (i) issue an order setting aside or suspending the awarding procedure; (ii) issue an order to contracting authority to cancel or revoke a decision of such authority related to or made in the course of a procurement activity including unlawful technical specifications and qualifications in tender dossier; (iii) order contracting authorities to pay damages to an affected party; (iv) order a contracting authority to remove discriminatory technical, economic, financial criteria in the contract notice or tender dossier; (v) if contract has been signed, ineffectiveness and invalidation of a contract signed in violation of article 26 which requires signing by procurement officer.

As further set out in Article 118, clause 8 of the PPL, the Review Panel may award financial damages to the party that has suffered loss by the decisions of the contracting authority and orders the contracting authority to pay those damages. At the time of the assessment mission (June 2011), it was found that such decisions for damages may not be enforceable since the Financial Rules on Use of Public Finances do not support the PPL’s provisions authorizing the PRB to issue damages. Treasury Department in the Ministry of Finance maintains that the Law on Public Finances recognizes for execution only decisions/injections issued by Judicial Bodies and not administrative bodies such as PRB. If this is still the case, it practically implies that the decisions of PRB are not enforceable.

In addition to damages, PRB may declare ineffectiveness\textsuperscript{140} of the contract in whole or in part unless, the PRB decides otherwise for reasons of general interest that requires that the effects of the contract should be maintained. The PPL\textsuperscript{141} specifies the circumstances when a contract shall not be declared ineffective.

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<tr>
<th>10(c)—The system operates fairly, with balanced decisions justified by</th>
<th>The decisions are justified by providing a legal basis. Due to changes in the PPL in the recent years, the assessment found that there are cases when the complaints are submitted for procedures governed by an earlier version of PPL, whereas the decision of PRB is based on the new PPL. This confusion may have been caused due to the absence of updated Rules of Procedure and lack of</th>
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\textsuperscript{139} Rules of Procedure of PRB, Article 3(4).
\textsuperscript{140} PPL, Article 131 “Procurements Concluded in Violation of this Law.”
\textsuperscript{141} PPL, Article 132 “Declaration of Ineffectiveness.”
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<th>available information.</th>
<th>transitional provisions to regulate the complaints filed between enactments of two laws</th>
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<tr>
<td>10(d)— Decisions are published and made available to all interested parties and to the public.</td>
<td>Article 117(2), of the PPL provides for publication of the decisions taken by PRB on the PRB’s website within 5 days in the original language of the decision and within 15 days with regard to other languages as well as in English for high value contracts. The decisions are published promptly and are accessible by public.</td>
</tr>
<tr>
<td>10(e)—The system ensures that the complaint review body has full authority and independence for resolution of disputes.</td>
<td>As explained previously in the report, members of the PRB were nominated by Resolution of Kosovo Assembly No. 03-0739/130 dated July 30, 2008. The PPL describes in detail the process for appointment of members of the PRB which basically gives Government the right to nominate and Assembly the right to approve based on recommendation of a selection body established by Assembly. The independent selection body comprises duly appointed judges designated by Kosovo Judicial Council. Despite the presence of the Council, procedures for selection and appointment of the members may be revisited to require the selection of members from a pool of qualified candidates preferably through open publication or interview process to determine the best qualified candidates. The PRB consists of the 5 members who are collectively known as the “PRB Board” and Secretariat led by the Head of Secretariat. Its structure and budget was approved by the Budget and Finance Commission in the Assembly. The members are all lawyers, meeting the eligibility requirements for appointment as judge and the Secretariat includes 13 staff both professional and administrative. The removal and suspension of the members shall be subject to the same rules as those of judges. PRB reports only to the Assembly of Kosovo. Based on the above indications, it seems that PRB is independent from the Government as a whole and the contracting authorities.</td>
</tr>
</tbody>
</table>

**Recommendation:**

i. The members and the President are selected from a pool of qualified candidates preferably through open competition based on the qualifications criteria set forth in the PPL;

ii. The revised Rules of Procedure for the operation of PRB need to be adopted;

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142 PPL, Article 100 “Appointment of Members of PRB.”
iii. Likewise, the conditions for participation of President of PRB as a “designated PRB member”, except for the cases when the PRB Board is required to decide collectively, need to be clarified;

iv. Furthermore, the discrepancy between the PPL and Rules of Procedure on the authority within PRB to issue a waiver on the automatic suspension need to be addressed and as a matter of good practice, it is desirable that such a decision is made collegially.

v. Considering the 3-year experience gained by PRB in handling complaints, the Government and/or the Assembly could invite consultations with the stakeholders to understand whether the current review mechanism set-up is efficient and does not run counter to the value for which it was established that is to be independent as well as timely and efficiently to resolve the complaints. In parallel, the option of adding a first-instance review by contracting authority could be considered.

vi. Harmonizing the procedures of PPL with the Law on Public Finances, to ensure the enforcement of the decisions of the PRB with respect to the financial penalties.

**Indicator 11: Degree of access to information.**

2.14. This indicator deals with the quality relevance, ease of access, and comprehensiveness of information on the public procurement system.

<table>
<thead>
<tr>
<th>Sub-indicator</th>
<th>Brief Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>11(a)—Information is published and distributed through available media with support from information technology when feasible.</td>
<td>Legal framework, including bylaws, is available on the PPRC website. Furthermore, information on procurement activities is easily accessible. Information on tenders is regularly published in the media and on the PPRC website, which acts as a centralized e-publication system providing services to all the contracting authorities. The PPL (art. 42) and the Administrative Guidance No. 05/2011/PPRC requires that the contract notice for open procedure, restricted procedure, negotiated procedure with prior publication of a contract notice, and design contest shall be simultaneously sent for posting on the website of the PPRC and Public Procurement Register managed by PPRC in both official languages. PPL also requires the publication of a number of procurement steps, including notices and contract award, number of bidders, etc. The Bank learned that the current publication system does not provide any information on future business opportunities. There is a...</td>
</tr>
</tbody>
</table>
lack of information on consolidated overall procurement activities (procurement plans), which limits the capacity of the private sector to foresee opportunities to participate in future public tenders.

**Recommendation:**

i. Enhance the e-publication system for providing information, among others, future possible business opportunities.

ii. Update the information system adding procurement documents, and, as possible, translate them to a commercial language to encourage international participation.

iii. Report could be improved by adding more information in the award notices like the prices and names of the losing bidders.

**Indicator 12: The country has ethics and anticorruption measures in place.**

2.15. This indicator assesses the nature and scope of the anti-corruption provisions in the procurement system. This indicator has seven sub-indicators which are discussed and rated below.

<table>
<thead>
<tr>
<th>Sub-indicator</th>
<th>Brief Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>12(a)—The legal and regulatory framework for procurement, including tender and contract documents, includes provisions against corruption, fraud, conflict of interest, and unethical behavior; it sets out (either directly or by reference to other laws) the actions that can be taken with regard to such behavior.</td>
<td>The procurement law defines fraud and corruption, and prohibits any entity from participating in public tenders, if it has been convicted of fraud, bribery, money laundering, etc. within the past ten years. Government officials are required to report immediately to the Ministry of Internal Affairs any suspected offense. The PRB and Courts can declare void any tainted contract. However, the law does not stipulate how these offenses should be implemented in tender and contract documents. The contract conditions do not include fraud and corruption. The model tender dossier refers to fraud and corrupt practices as grounds for exclusion but do not contain the actual definitions of these two sanctionable actions. The government has in place an anticorruption program that expires this year. The assessment of challenges is candid. However, there are few if any tangible commitments by the various entities under the strategy.</td>
</tr>
<tr>
<td>12(b)—The legal system defines responsibilities, accountabilities, and penalties for individuals and firms found culpable of fraudulent or corrupt practices.</td>
<td>Legal provisions do cover a range of fraudulent and corrupt practices. However, the PPL is not internally consistent in its definitions of such practices. Conflict of interest is not sufficiently defined in terms of what is permissible behavior. There is no debarment clause in the current PPL. There is scope for improvement in the legal framework in Kosovo governing fraud and corruption. However, the legal system does define responsibilities, accountabilities, and penalties for individuals and firms found to have engaged in fraudulent or corrupt practices.</td>
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<tr>
<td>12(c)—Evidence exists of enforcement of rulings and penalties.</td>
<td>The Anti-Corruption Commission has produced cases for prosecution. However, the number of convictions – especially in high-profile cases – is relatively low due to limited capacity of the prosecutors’ offices.</td>
</tr>
<tr>
<td>12(d)—Special measures exist to prevent and detect fraud and corruption in public procurement.</td>
<td>The government has adopted the Anti-Corruption Strategy 2009-2011. However, more clearly defined roles and time-bound actions are required. There are no specific measures defined for public procurement.</td>
</tr>
<tr>
<td>12(e)—Stakeholders (private sector, civil society, and ultimate beneficiaries of procurement/end-users) support the creation of a procurement market known for its integrity and ethical behavior.</td>
<td>Civil society groups appear frequently to report in the media possible instances of fraud and corruption involving public finances. The impacts of these types of engagements are unclear, and there has not been any evidence of a systematic attempt to involve stakeholders in promoting integrity in public procurement. There appears to be significant distrust among economic operators and civil society of public institutions.</td>
</tr>
<tr>
<td>12(f)—The country should have in place a secure hotline available for reporting illicit practices, and anonymous reports are allowed. No specific barriers to filing complaints have been noted save for the possible fear of retaliation that investigative bodies will find difficult to safeguard against.</td>
<td></td>
</tr>
</tbody>
</table>
mechanism for reporting fraudulent, corrupt, or unethical behavior.

Kosovo has in place a secure mechanism for reporting fraudulent, corrupt, or unethical behavior. However, a reporting system also depends on the willingness of citizens to voice their concerns.

12(g)—Codes of conduct/ethics codes cover participants in public financial management systems and also provide for disclosure of those in decision-making positions.

The PPRC is charged with developing a procurement code of ethics to be observed by public officials, civil servants and other persons employed by contracting authorities.

There is a Procurement Code of Ethics. The code specifies a range of required and prohibited actions with some gaps and inconsistencies. Most notably, there are no administrative or criminal consequences attached to non-compliance.

Recommendation:

i) The literature on conflicts of interests\textsuperscript{143} provides some practical examples that the Government should consider embedding into the law, \textit{i.e.:} (i) prohibition against nepotism, \textit{i.e.,} the hiring of family members, close relatives and friends; (ii) cooling-off periods for politicians, political appointees, and government officials leaving their positions to take on work for non-government entities (except for auditors, which are mentioned in the law) (Article 12.1); (iii) inappropriate interaction with bidders; (iv) purchase of stock under preferential terms in a company that has current and prospective business interest in the government; (v) development of too-close relationships with consultants who are then rehired; (vi) co-authoring of books with consultants who are re-hired on a sole-source basis; and (vii) dealing with a company owned or run by a spouse, family member, or close relative. Furthermore, the law would benefit from providing concise definitions of a “related person” and “close person” as well as the handling of gifts.

ii) The Government should implement appropriate arrangements to enforce the timely and full filing of asset and income. The names of individuals not having filed asset and income disclosures should be made public on the KAA’s web site.

\textsuperscript{143} Considerations in Drawing Conflicts of Interests Legislation, World Bank, December 2010, Richard Messick, (Forthcoming) and Improving Internal Staff Due-Diligence (revisited), Information Paper, World Bank, Integrity Vice Presidency, 19 July 2011, (Forthcoming).
iii) Consider developing an adequately resourced communications strategy providing differentiated messages to a variety of stakeholders (e.g., procurement officials, external and internal auditors, patients, and road engineers) through a greater variety of media (e.g., complaint boxes, outreach events, and training) in order to build confidence in the complaint handling system and to increase the number of serious complaints.

iv) Enhance the capacity of the District Prosecutor’s Office in Pristina; publish a detailed report on all allegations related to fraud and corruption and how they have been addressed by the government and EULEX, including any sanction; and increase the statute of limitations for prosecuting corruption (currently two years).

v) The line ministry action plans should include specific, measurable, achievable, relevant, and time-bound (SMART) indicators; the KAA should follow up on the implementation of the plans on a quarterly basis and publish on its website progress against milestones; and the KAA should be given the resources in its preventive unit to pursue more effectively the active implementation of the Anti-Corruption Strategy.

vi) Amend the Procurement Law to define the key properties of the debarment regime.

vii) The Procurement Code of Ethics should be amended to ensure that: (i) the definition of bribery in Article 4.2 is consistent with the Penal code; (ii) the misuse of confidential information is expanded to include inappropriate disclosure to third parties (Article 4.3); (iii) the rules on the acceptance of gifts are consistent with Suppression of Corruption Law in terms of the maximum allowable value (Article 33.3) and number of gifts (Article 33.4) for official persons as well as “persons living in the domestic relationship with the official person” (Article 33.5); (iv) the typical conflict of interest situations for procurement officials are clearly spelled-out, which may include inappropriate contact with companies, prior, during and after contract award; acceptance of company paid visits and training; and seeking leave of absence to take on work for a bidder or contractor; (v) the “senior officer” to whom conflict of interests can be disclosed is defined; (vi) the prohibition on doing business with an entity that “does not pay Kosovo taxes” is made consistent with the Procurement Law (Article 65:§4.8) regarding tax delinquency; and (v) the administrative or criminal consequences of non-compliance with the Code is described in accordance with the OECD Methodology for Assessment of National Procurement Systems.

Amend the Procurement Law to define the key properties of the debarment regime.
ANNEX D: PERFORMANCE INDICATORS

Assessment of the procedures and practices using the Performance Indicators (PIs)

To carry out an assessment of procedures and the practices, 15 performance indicators as stipulated in Annex 3 were estimated appropriate to be the subject of a close review by the mission. The sampling for performance assessment and data collection was agreed upon with the counterpart. The meeting was held with the Ministry of Education (MoE) Procurement Department.

Number and values of the contracts issued by MoE during 2010 were 149: (i) OT = 2.8 million; (ii) NEG2 = 9.8 million, and (iii) RFQ = .370 million. All contracts awarded in 2010 based on the old PPL.

Sample adopted: The mission opted to have a sample of contracts tendered during the year 2010 in order to be able to assess contracting and delivery phases. The sample was selected from only contracts procured by MoE. The totality of contracts put to tender by MoE in 2010 was 149 contracts procured using OT, NEG2, and RFQ methods. The sample reviewed is indicated in the following table:

<table>
<thead>
<tr>
<th>Procuring Entity</th>
<th>Number of packages</th>
<th>Sample</th>
</tr>
</thead>
<tbody>
<tr>
<td>MoE</td>
<td>149</td>
<td>32 representing 21.5%</td>
</tr>
</tbody>
</table>

Accordingly, the survey of actual procurement processes was carried out by two of the Bank’s Procurement specialists who had access to records and files and interviewed the MoE Procurement office staff in charge who were cooperative in providing details and facilitated access to the database.

Conclusions resulted from assessing performance indicators will be reflected in the final Kosovo CFA report as an annex.

Analysis:

Number of contracts reviewed = 32 contracts
OT = 5 (value 1,736,773)
NEG2 = 8 (value 8,108,444)
RFQ = 19 (value 180,230)
DETAILS OF PERFORMACE INDICATORS

Indicator 1: Transparency and openness of system
Name: Advertisement of bids and publication of awards

Among the 5 OT tendered 100% were advertised and the award results were published. *(Satisfactory 95% or more)*

**Conclusion:** Satisfactory for the invitation and the award.

Indicator 2: Real Opportunity for bidders to submit bids
Name: Time for preparation of bids

Among the 3 OT time allowed for preparation of bids is averaged at 20.6 days. *(Satisfactory: 21 days)*. For urgent 2 OT contracts (continuation of civil works) the average was 16 days *(Satisfactory: 15 days or more with indicative notice)*.

For the 19 RFQ time allowed for preparation of the quotations is averaged at 10.8 days. *(Satisfactory: 10 days or more)*

**Conclusion:** Satisfactory

Indicator 3: Efficiency of bidding process
Name: Time for Bid evaluation

Among the 5 OT tendered: time for evaluation of bids is the average of 77.4 days. *(Number of days between bid opening and publication of award Satisfactory: 90 days or less)*

**Conclusion:** Satisfactory

Indicator 4: Level of confidence by private sector in the process
Name: Bidder participation

Among the 5 OT: the average number of participants is 7. *(Satisfactory: 5 bids or more)*
Among the 19 RFQ: the average number of quotes received is 3.2. *(Satisfactory: 3 quotes or more)*
Conclusion: Satisfactory

Indicator 5: Level of competition

Name: Method of procurement used

Among the 13 large value contracts reviewed: Number of bidding processes using a method less competitive than the process recommended for the estimated contract amount: 8 of high value awarded by direct contracts (NEG2) = 62% (Satisfactory 1% or less)

Conclusion: Unsatisfactory

Indicator 6: Transparency and level of competition

Name: Direct Contracting (NEG2)

Among the 13 contracts reviewed: Number of bidding processes using a method less competitive than the process recommended for the estimated contract amount: 8 of high value awarded by direct contracts = 62% (Unsatisfactory: 10% or less of number of contracts and 5% or less of total value of contracts)

Conclusion: Unsatisfactory

Indicator 7: Quality of bidding process

Name: Process cancelled

Among the 32 contracts reviewed: Number (%) of bid process declared null before contract signature is 0 out of 32 = 0% (Satisfactory: 5% or less)

Conclusion: Satisfactory

Indicator 8: Quality and fairness of process

Name: number of protests

Among the 32 contracts reviewed: Number of protests is 0 = 0%
(Satisfactory: not less than 10% and not more than 50%)

**Conclusion:** Unsatisfactory

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**Indicator 9: Efficiency and fairness of protest system**

Name: time to answer protests

Among the 32 contracts reviewed: Number of days between submission and final response to protests is away more than 21 days *(Satisfactory: 21 days or less)*

**Conclusion:** No protests to answer to for contracts awarded during 2010 by MoE

**Rating:** No rating for this particular indicator.

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**Indicator 10: Effectiveness of protest system**

Name: result of protest

Among the 32 contracts reviewed: Number (%) of contracts with award recommendation modified because of a protest is 0% *(Satisfactory: 5% or less)*

**Conclusion:** No contracts modified because of a protest awarded during 2010 by MoE.

**Rating:** No rating for this particular indicator.

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**Indicator 11: Quality and consistency of payment process**

Name: late payment

Among the 32 contracts reviewed: Number (0=0%) of payments made more than 45 days late *(Satisfactory: 10 % or less)*

**Conclusion:** Satisfactory

---

**Indicator 12: Quality of bidding and contract management**

Name: Price increase

Among the 32 contracts reviewed: percentage of increase of final contract amount due to change and amendments 0=0%
(Satisfactory: 15% or less)

**Conclusion**: Satisfactory

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**Indicator 13: Quality of Advice**

Name: restricted competition for consultants

Number (%) of processes for selection of consultants using open competition instead of a shortlist methodology *(Satisfactory: 5% or less)*

**Conclusion**: No consultancy services contract awarded during 2010 by MoE

**Rating**: No rating for this particular indicator.

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**Indicator 14: Weight of quality to price ratio used in selection**

Name: Selection method of consultant

Number (%) of processes for selection of consultants having price weighted more than 20% of the total scoring points *(Satisfactory: 5% or less)*

**Conclusion**: No consultancy services contract awarded during 2010 by MoE

**Rating**: No rating for this particular indicator.
## Performance Indicators

<table>
<thead>
<tr>
<th>No</th>
<th>Indicator Name</th>
<th>Indicator</th>
<th>Measured by</th>
<th>Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Advertisement of bids an publication of awards</td>
<td>Transparency and openness of system</td>
<td>Number of tenders (%) for which bid invitation and contract awarded results are publicly advertised <em>(Satisfactory: 95% or more)</em></td>
<td>Approximately 100% of bids tendered by the MoE. <em>Conclusion:</em> Satisfactory for the invitation and the award</td>
</tr>
<tr>
<td>2</td>
<td>Time preparation for bids</td>
<td>Real Opportunity for bidders to submit bids</td>
<td>Number of days between invitation to bid and bid opening <em>(Satisfactory: 21 days or more, but urgent OT 15 days or more if indicative notice has been published. For RFQ 10 days or more)</em></td>
<td>Average: for OT 20.6 days and for urgent OT average 16 days. RFQ average 10.8 days. <em>Conclusion:</em> Satisfactory</td>
</tr>
<tr>
<td>3</td>
<td>Time for Bid evaluation</td>
<td>Efficiency of bidding process</td>
<td>Number of days between bid opening and publication of award <em>(Satisfactory: 90 days or less)</em></td>
<td>The law does not establish a period of time during which the bid evaluation must be finalized but generally BDs indicate 90 days bid validity. Average time is 77.4 days <em>Conclusion:</em> Satisfactory</td>
</tr>
<tr>
<td>4</td>
<td>Bidder participation</td>
<td>Level of confidence by private sector in the process</td>
<td>Number of bidders submitting bids in each tendering process <em>(Satisfactory: 5 bids or more for OT and 3 quotes or more for RFQ)</em></td>
<td>Average 7 Bidders for OT and 3.2 quotations for RFQ. <em>Conclusion:</em> Satisfactory</td>
</tr>
<tr>
<td>5</td>
<td>Procurement Method used</td>
<td>Level of competition</td>
<td>Number of bidding processes using a method less competitive than the process recommended for the estimated contract amount <em>(Satisfactory 1% or less)</em></td>
<td>Direct contracts = 62%. <em>Conclusion:</em> Unsatisfactory</td>
</tr>
<tr>
<td>6</td>
<td>Direct contracting</td>
<td>Transparency and level of competition</td>
<td>Percent of contracts (by number and value) awarded on a sole source basis <em>(Satisfactory: 10% or less of number of contracts and 5% or less of total value of contracts)</em></td>
<td>Direct contracts = 62% <em>Conclusion:</em> Unsatisfactory</td>
</tr>
<tr>
<td>No</td>
<td>Indicator Name</td>
<td>Indicator</td>
<td>Measured by</td>
<td>Actual</td>
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<td>-----------------------------------------------------------------------------</td>
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<tr>
<td>7</td>
<td>Process Cancelled</td>
<td>Quality of bidding process</td>
<td>Number (%) of bid process declared null before contract signature (Satisfactory: 5% or less)</td>
<td>process declared null before contract signature is 0 out of 32 = 0%</td>
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<td></td>
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<td></td>
<td>Conclusion: Satisfactory</td>
</tr>
<tr>
<td>8</td>
<td>Number of protests</td>
<td>Quality and fairness of process</td>
<td>Number of protests posted and the number of bids submitted (Satisfactory: not less than 10% and not more than 50%)</td>
<td>Number of protests is 0 = 0%</td>
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<td></td>
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<td></td>
<td>Conclusion: Unsatisfactory</td>
</tr>
<tr>
<td>9</td>
<td>Time to answer protests</td>
<td>Efficiency and fairness of protest system</td>
<td>Number of days between submission and final response to protests (Satisfactory: 21 days or less)</td>
<td>No protests</td>
</tr>
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<td></td>
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<td>Conclusion: No Rating</td>
</tr>
<tr>
<td>10</td>
<td>Protest results</td>
<td>Effectiveness of protest system</td>
<td>Number (%) of contracts with award recommendation modified because of a protest (Satisfactory: 5% or less)</td>
<td>Number (%) of contracts with award recommendation modified because of a protest is 0%</td>
</tr>
<tr>
<td></td>
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<td>Conclusion: No Rating</td>
</tr>
<tr>
<td>11</td>
<td>Late payments</td>
<td>Quality and consistency of payment process</td>
<td>Number (%) of payments made more than 45 days late (Satisfactory: 10% or less)</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Conclusion: Satisfactory</td>
</tr>
<tr>
<td>12</td>
<td>Price increase</td>
<td>Quality of bidding and contract management</td>
<td>Percentage increase of final contract amount due to change and amendments (Satisfactory: 15% or less)</td>
<td>No price increase</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Conclusion: Satisfactory</td>
</tr>
<tr>
<td>13</td>
<td>Restricted competition for consultants</td>
<td>Quality of advice</td>
<td>Number (%) of process for selection of consultants using open competition instead of a shortlist methodology (Satisfactory: 5% or less)</td>
<td>Conclusion: No Rating</td>
</tr>
<tr>
<td>14</td>
<td>Selection method for consultants</td>
<td>Weight of quality to price ratio used in selection</td>
<td>Number (%) of process for selection of consultants having price weighted more than 20% of the total scoring points</td>
<td>Conclusion: No Rating</td>
</tr>
</tbody>
</table>

**Legend:**

**OT:** Open Tendering.

**NEG2:** Negotiated Procedures without prior publication.

**RFQ:** Request for Quotation.
ANNEX E: KOSOVO ADDITIONAL CONDITIONS FOR USE OF NATIONAL COMPETITIVE BIDDING PROCEDURE

(Based on January 2011 guidelines)

The procurement procedure to be followed for National Competitive Bidding shall be the Open Tendering Procedure set forth in the Kosovo Public Procurement Law No. 04/L-042 dated August 29, 2011 (the “PPL”), provided, however, that such procedures shall be subject to the provisions of Section I and Paragraphs 3.3 and 3.4 of the “Guidelines for Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers” (January 2011) (the “Procurement Guidelines”) and the following additional provisions:

Eligibility

Eligibility to participate in a procurement process for and to be awarded an Association-financed contract shall be as defined under Section I of the Procurement Guidelines; accordingly, no bidder or potential bidder shall be declared ineligible for contracts financed by the Association for reasons other than those provided in Section I of the Procurement Guidelines.

Registration of Contractors and Suppliers

Registration shall not be used to assess bidders’ qualifications.

A foreign economic operator shall not be required to register as a condition for submitting its bid, and a foreign bidder recommended for contract award shall be given a reasonable opportunity to register, with the reasonable cooperation of the Borrower, prior to contract signing.

Bidding Documents

Bidding documents acceptable to the Association shall be used, and shall be prepared so as to ensure economy, efficiency, transparency, and broad consistency with the provisions of Section I of the Procurement Guidelines.

Qualification

Qualification criteria shall be clearly specified in the bidding documents. All criteria so specified, and only such specified criteria, shall be used to determine whether a bidder is qualified. Qualification shall be assessed on a “pass or fail” basis, and merit points shall not be used. Such assessment shall be based entirely upon the bidder’s or prospective bidder’s capability and resources to effectively perform the contract, taking into account objective and measurable factors, including: (i) relevant general and specific experience, and satisfactory past performance and successful completion of similar contracts over a given period; (ii) financial position; and where relevant (iii) capability of construction and/or manufacturing facilities.
Prequalification procedures and documents acceptable to the Association shall be used for large, complex, and/or specialized works. The verification of the information upon which a bidder was prequalified, including current commitments, shall be carried out at the time of contract award, along with the bidder’s capability with respect to personnel and equipment.

In the procurement of goods and works where pre-qualification is not used, the qualification of the bidder who is recommended for award of contract shall be assessed by post-qualification, applying the qualification criteria stated in the bidding documents.

Cost Estimate

The detailed cost estimates shall be confidential and shall not be disclosed to prospective bidders. No bids shall be rejected on the basis of comparison with the cost estimates without the Association’s prior written concurrence.

Bid Submission and Bid Opening

Prospective bidders shall be given at least thirty (30) days from the date of publication of the invitation to bid or the date of availability of the bidding documents, whichever is later, to prepare and submit bids. Bids shall be opened in public, immediately after the deadline for submission of bids. Bids received after the deadline for bid submission shall be rejected and returned to bidders unopened. A copy of the bid’s opening minutes shall be promptly provided to all bidders who submitted bids, and to the Association with respect to contracts subject to the Association’s prior review.

Bid Evaluation

Evaluation of bids shall be made in strict adherence to the evaluation criteria specified in the bidding documents. Evaluation criteria other than price shall be quantified in monetary terms. Merit points shall not be used, and no minimum point or percentage value shall be assigned to the significance of price, in bid evaluation.

No domestic preference shall be granted in bid evaluation on the basis of bidder nationality, origin of goods or services, and/or preferential programs. Contracts shall be awarded to the qualified bidder whose bid has been determined: (i) to be substantially responsive to the bidding documents, and (ii) to offer the lowest-evaluated cost. No negotiations shall be permitted. A bidder shall not be required, as a condition for award, to undertake obligations not specified in the bidding documents or otherwise to modify the bid as originally submitted. A bidder shall not be eliminated from detailed evaluation on the basis of minor, non-substantial deviations.

Rejection of All Bids and Re-bidding

All bids (or the sole bid if only one bid is received) shall not be rejected, the procurement process shall not be cancelled, and new bids shall not be solicited without the Association’s prior written concurrence.

Bid Validity

The bid validity period required by the bidding documents shall be sufficient to account for any period that may be required for the approval and registration of the contract as
contemplated in the PPL. If justified by exceptional circumstances, an extension of bid validity may be requested in writing from all bidders before the original bid validity expiration date, provided that such extension shall cover only the minimum period required to complete the evaluation, award a contract, and/or complete the registration process; a corresponding extension of any bid guarantee also shall be required in such cases. A bidder may refuse the request to extend the bid validity without forfeiting its bid guarantee. No further extensions shall be requested without the prior written concurrence of the Association.

Guarantees

Guarantees shall be in the format included in the bidding documents. The bid security shall be valid for twenty-eight days (28) beyond the original validity period of the bid, or beyond any period of extension if requested. No advance payments shall be made to without a suitable advance payment guarantee.

Fraud and Corruption

The bidding document and contract as deemed acceptable by the Association shall include provisions stating the Bank’s policy to sanction firms or individuals, found to have engaged in fraud and corruption as defined in the Procurement Guidelines.

Inspection and Audit Rights

In accordance with the Procurement Guidelines, each bidding document and contract financed out of the proceeds of the Financing shall provide that bidders, suppliers and contractors, and their subcontractors, agents, personnel, consultants, service providers, or suppliers, shall permit the Association to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Association. Acts intended to materially impede the exercise of the Association’s inspection and audit rights provided for in the Procurement Guidelines constitute an obstructive practice as defined in the Guidelines.

Contract Modifications

With respect to contracts subject to the Association’s prior review, the Borrower shall obtain the Association’s no objection before agreeing to: (a) a material extension of the stipulated time for performance of a contract; (b) any substantial modification of the scope of services or other significant changes to the terms and conditions of the contract; (c) any variation order or amendment (except in cases of extreme urgency) which, singly or combined with all variation orders or amendments previously issued, increases the original contract amount by more than 15 percent; or (d) the proposed termination of the contract. A copy of all contract amendments shall be provided to the Association.