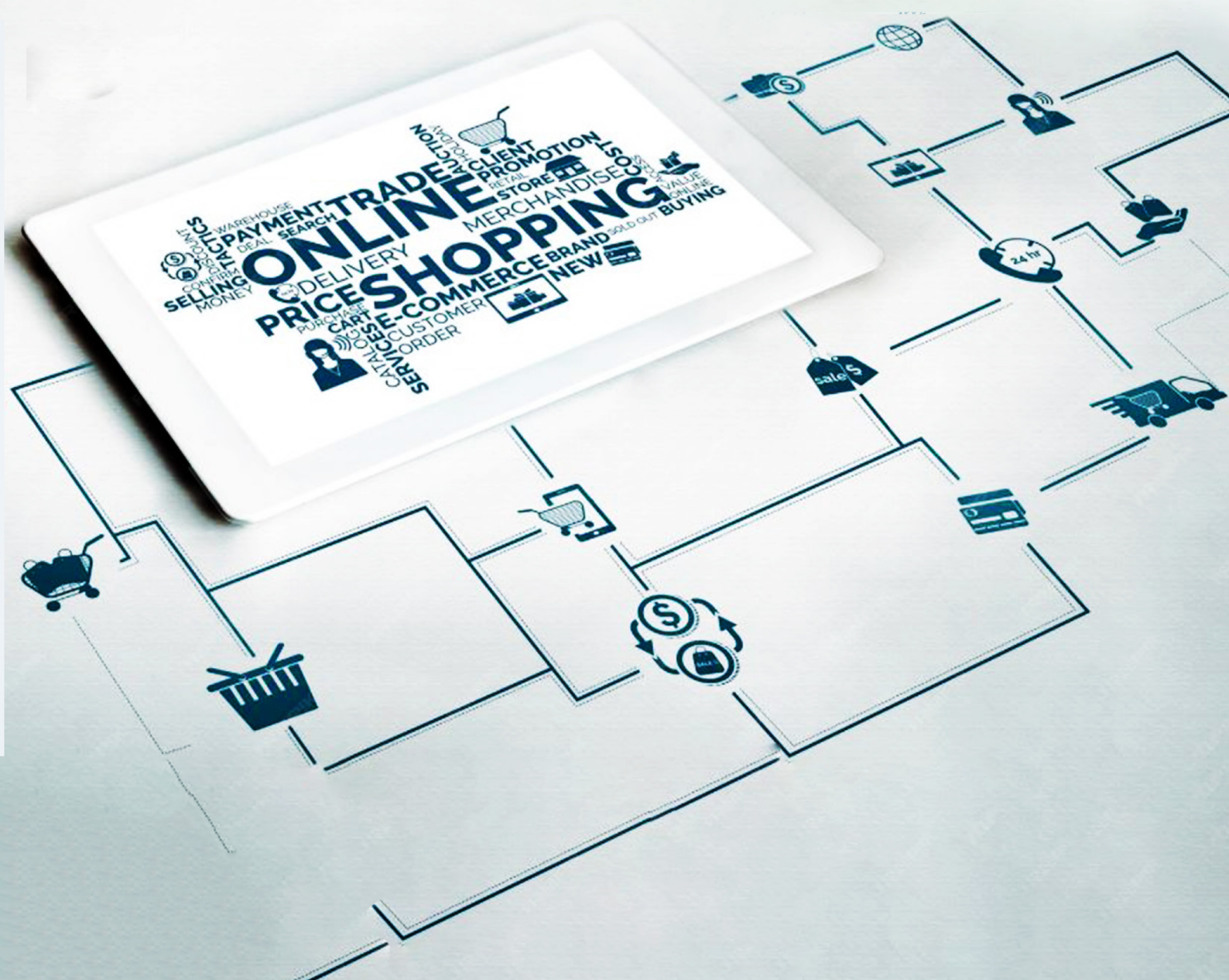




LEGAL GUIDE TO INVESTING IN KOSOVO



7. PROCUREMENT

Kosovo has developed comprehensive legislation and regulations in regard to public procurement, and ensures accessibility, transparency and fairness of the procurement process, in particular through its E-procurement system.

Besides “traditional” public procurement, where the services, works or goods are directly purchased by the Public Authority, Kosovo offers now a favorable legal and economic environment for the development of Public-Private Partnership (“PPP”). PPP tends to grant the whole implementation of the project to a single entity. By opening investment opportunities and mobilizing private investment, PPP appears in many ways as an economically efficient and sustainable solution.

7.1. PUBLIC PROCURMENT

Public procurement refers to the process by which public authorities, such as government or local authorities, purchase work, goods, or services from companies. In Kosovo, the entire public procurement procedure takes place online through the e-procurement system. The Republic of Kosovo started to apply this system in public procurement by mid-2016. Since January 1st, 2019, the full application of the e-procurement system of public procurement has begun.

E-procurement system implementation in Kosovo can be considered a success story and main procurement reform in recent years. The e-procurement system is fully operational and in use with major system modules, E-tendering, Centralized Procurements, Complaints administration module.

Economic operators may submit a tender, a request for participation, or other document required or that is permitted to be filed during the procurement activity, in Albanian, Serbian, or English language.

In Kosovo, Public procurement is regulated by the Law no.04/L-042 on Public Procurement in Republic of Kosovo, amended and supplemented by the Law no.04/L-237, Law no.05/L-068 and the Law no.05/L-092 (“Law on Public Procurement”). The Law on Public Procurement was adopted and amended in order to reform public procurement and ensure the compatibility of Kosovo regulations with EU Directives.

The Public Procurement Regulatory Commission Board, based on the responsibilities and authorizations provided by Article 87.2 (4) of Law no.04/L-042 on Public Procurement amended and supplemented by Law no.04/L-237, Law no.05/L-068 and the Law no.05/L-092, has formalized and proclaimed secondary acts:

- A01 Regulation No.001/2022 on Public Procurement, and
- A02 Guideline No. 001/2023 for Public Procurement.

The Law on Public Procurement aims to ensure the most efficient, cost-effective, transparent, and fair use of public funds, public resources, and any other funds and resources of contracting authorities in Kosovo. It also aims to ensure the integrity and accountability of public officials, civil servants, and other persons conducting or involved in procurement activities.

This Law applies to the procurement activities of contractual authorities (i.e. public authorities and bodies governed by public law) and work concessionaires.

7.1.1. General principles

Cost-Effectiveness and Efficiency: The contracting parties shall ensure that public funds and resources are used in a cost-effective and efficient manner. Public funds and resources made available for the purposes of a public contract shall be used only within the scope of such contract.

Equality of Treatment/Non-Discrimination and Transparency: A contracting authority shall treat economic operators equally and non-discriminatorily and shall act in a transparent way. In particular, a contracting authority shall not conduct any aspect of a procurement activity in a manner that reduces or eliminates competition among economic operators or that discriminates against or in favour of one or more economic operators. A contracting authority shall not require an economic operator to (or not to) employ or utilize any specific person or undertaking or to (or not to) supply or provide, products or services originating from a specific person, undertaking, or geographic area.

7.1.2. Central institutions

The Law on Public Procurement has established three central procurement institutions, namely:

- *The Public Procurement Regulatory Commission (PPRC):* The PPRC is an independent regulatory agency.

It is responsible for the overall development, operation, and supervision of the public procurement system in Kosovo. PPRC has the responsibility and authority to conduct monitoring of procurement and contract management activities; and issue opinions to contracting authorities regarding their decisions, actions, or omissions during procurement and contract management activities.

PPRC is also responsible for establishing and publishing detailed public procurement rules to ensure the proper implementation of the Law on Public Procurement; preparing procurement manuals, guidelines, standard forms, models and contract documents. PPRC shall provide technical assistance and advice to both contracting authorities and economic operators.

- *The Central Procurement Agency (“CPA”):* For reasons of professional expertise, cost-effectiveness, efficiency or other legitimate concerns, the Minister of Finance can designate the CPA as the responsible contracting authority for the conduct of procurement activities. In such a case the Ministry of Finance shall notify the concerned contracting authority or authorities of such determination, which shall no longer have any authority to conduct the concerned procurement. CPA shall prepare and submit to the Minister of Finance an annual report that reflects the public procurement activities led by the CPA.

- *The Procurement Review Body (“PRB”):* The PRB is an independent administrative review body. It is responsible for implementing the procurement review procedures.

The legislation on the right to legal remedy is broadly in line with the EU acquis. Appeals can be lodged through the e-procurement platform. The Procurement Review Body is a quasi-judicial body reviewing complaints from bidders.

PRB has the competence to enquire and review complaints from interested parties of violation of the law on Public Procurement; to conduct investigation or procurement review proceedings and to take any action necessary to verify arguments or claims made by the parties. The PRB has also powers of suspension of the process; suspension and termination of the procurement activity; cancellation

or revocation of the decision of the contracting authority, etc.

7.1.3 Procurement procedures

Advertisement Notices and Tender Dossier

Indicative notice: the contracting authority shall issue an indicative notice if, over a 12-month period, it has the intention of awarding one or more supplies, services or works contracts, for an estimated value of 500.000 euros.

Contract notice: the contracting authority shall issue a contract notice when it intends to conduct a procurement using open or restricted procedures, competitive negotiated procedures, and price quotation. The contracting authority shall state in the contract notice (and specify in full in the tender dossier): all selection criteria and time limits for receipt of participation or tenders (depending on the type of process), the documents or information to include for request of participation or tender, the contract award criteria(s).

Awards notice: for public contracts awarded using open, restricted, or negotiated procedures, or price quotation procedures, the contracting authority should prepare a contract award notice.

Indicative, contract, and award notices should be submitted immediately to PPRC, which should publish the notices, within two days from reception, on the PPRC's website and in the Public Procurement Register.

Tender Dossier: The contracting authority shall draw up a tender dossier providing all relevant information, including all material terms and conditions and in particular the applicable procurement procedure, the eligibility requirements or selection criteria, and the procedure governing complaints. If the concerned procurement activity requires the publication of a contract notice, the tender dossier shall contain a copy of such notice and such other relevant information that may be necessary to clarify and supplement the information contained in such notice.



The Award Criteria

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

Lowest price: the cheapest offer is awarded the contract. In the case of multiple service contracts or contracts for unit prices, prices may be weighted based on the importance of each category of service or any item.

Economically most advantageous tender: assessment of the economically most advantageous tender is based on a series of criteria, such as quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost-effectiveness, after-sale service, and technical assistance. Any element of the award criteria must be converted into points and then weighed according to the formula and weights specified in the Contract Notice and Tender Dossier.

7.1.4. Basic principles of procurement review

The procurement review proceeding shall be conducted and concluded in an expeditious, fair, and non-discriminatory manner in order to achieve a fair, lawful, and effective resolution of the subject matter involved. Neither the conduct of any review proceeding nor any decision by the PRB shall be done or made in any manner that discriminates in favour of or against any participant in the proceeding or any other person or undertaking. All interested parties shall have equal access to the procurement review proceedings and remedies.



7.1.5 Complaints in procurement procedures

A request for review may be submitted, free of charge, 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 violate the Law on Public Procurement or acts issued in its implementation within the Contracting Authority which conducted the procurement activity. Review requests may relate to contract notices, tender documents, or other announcements and decisions, in the course of performance of the concerned procurement activity.

A complaint to the PRB may be submitted only after a preliminary procedure for resolution of the dispute and submitted within ten days following a decision issued by the Contracting Authority in the preliminary dispute resolution procedure in accordance with Article 108/A of LPP.

The PRB shall issue its final written decision, together with a written statement of the factual and legal basis justifying such decision, and any order required to give effect to such decision. A PRB decision to re-evaluate the selection of tenderers or award the contract does not imply a change in the initial result.

If a complainant believes that a final decision or determination of the PRB is contrary to the facts or the present Law, the complainant may request the Commercial Court to review such decision. The request to the Basic Court must be filed within a time limit of thirty days from the publication of the PRB decision.

7.2. PUBLIC-PRIVATE PARTNERSHIPS

A Public-Private Partnership (“PPP”) is any contractual or institutional cooperation between one or more public authorities and one or more private partners whereby the private partner provides a service public or a public infrastructure.

Before 2009, PPPs were mostly used by municipalities for real estate projects and land concessions. To support Kosovo’s needs for infrastructure, the legal framework was further developed. The first major PPP project implanted in accordance with the 2009 Law on Public-Private Partnership and Concessions was the PPP for the operation and expansion of Pristina International Airport between the Republic of Kosovo and Limak Kosovo International Airport (JSC). PPPs are currently regulated by the Law No 04/L-045 on Public-Private Partnership (“Law on PPP”), which entered into force in December 2011 and replaced the 2009 law.

The Law on PPP, in accordance with UNICITRAL and EBRD legislative provisions, further harmonizes Kosovo’s PPP legal framework with EU directives. By implementing the condition for the introduction of private capital and expertise, the new law favors the implementation and expansion of infrastructure and public services on central and municipal levels.

7.2.1. Types of PPPs

Contractual PPPs

PPPs may be in the form of a concession or a public contract, which are governed by the law on PPP. Pursuant to the public contract, the private contractor provides a public service or public infrastructure on behalf of the public authority and receives regular payment for it. Concessions (works or service) are of the same type, but the private partner is compensated, in whole or in *part*, from the

exploitation of the object of the contract. The award of a PPP in the form of a public contract follows the rules and procedures established in the Law on Public Procurement (Cf. sections 7.1).

Institutional PPPs

Cooperation of public and private sectors within the form of a PPP may also be Institutional, i.e. within a distinct entity held jointly by the public and private partner.

Institutional PPPs may be established by municipalities by the acquisition by private partner(s) of shares owned by such Municipality in an existing publicly-owned enterprise. The purpose of such Institutional PPP must be the performance of the public service. When the institutional PPP's purpose is to implement a concession, the selection of the private partner falls under the Law on PPP. For implementation of other public contracts, the selection is governed by the Law on public procurement (cf. sections 7.1).

Institutional PPPs requiring the sale of a Kosovo national publicly-owned enterprise shall be subject to approval by the Government and Assembly of Kosovo.

7.2.2. Competent bodies

The Law on PPP establishes the **Public-Private Partnership Committee ("PPPC")** and the **Central PPP Department ("PPP Department")**.

The PPPC oversees and coordinates PPP projects. PPPC composition differs depending on the level of the PPC (local or central), but it includes, in any case, 5 permanent members: the Minister of Finance (chairman) and 4 members designated by the Government. PPPC provides leadership and recommendations to the Government regarding PPP policies. It issues implementing regulations and clarifications regarding PPP regulations and procedures. PPPC reviews and approves or disapproves Project proposals. It oversees and reviews the performance and execution of the PPP Projects, and reviews and approves proposed amendments to agreements. It maintains the PPP registry.

The PPP Department is a governmental department within the Ministry of Finance. It assists and advises the PPPC, the Minister of Finance and other public authorities, in particular regarding technical assistance, regulations and viability of projects. It issues standards and recommendations on practice and procedures related to PPP. It is responsible for the diffusion of information regarding PPP programs and projects. It coordinates activities relating to PPPs in all economic and social sectors. The PPP department may be involved at any stage of the PPP project.

7.2.3. PPP procedures

Identification and approval: Any public authority, the PPPC or the PPP Department may identify, propose and initiate a PPP. The Public authority is responsible for carrying out a project feasibility study of the PPP Project and shall submit it to PPPC when requesting approval. PPP projects shall be approved by PPPC prior to any tendering procedures.

Negotiated procedures

Pre-selection: The invitation to pre-selection shall be published and shall include in particular a description of the project and its essential elements, the main terms and conditions, the procedure for pre-selection, the criteria for pre-selection (professional, technical, economic and financial), the

proposed timeline for the tendering process, the incorporation requirements. Bidders shall have not less than 20 days from publication to submit their application. The public authority makes a decision and invites all pre-selected bidders to submit proposals.

Request for proposals: After payment of applicable fees, the public authority shall publish and provide to pre-selected bidders a request for proposals. In case some elements of the projects (project specification, performance, financial or contractual terms), cannot be described in the request for proposal, the public authority may use a two-staged procedure, which allows for revision of the request for proposals after discussions with the bidder. In any case, the Public Authority may review and revise the request for proposal and shall promptly communicate the changes to each candidate who received it.

Submission of proposals: Bidders shall submit their proposal, in written, signed and sealed, not less than 40 days from the receipt of the request for proposal.

Final negotiations: The public authority shall rank all proposals and invite the best bidder for final negotiation. If the negotiation is not conclusive, the public authority will invite for negotiation the next best bidder. The public authority shall submit the final agreement to PPPC for approval. PPPC may decline approval if the agreement differs significantly from the project approved earlier or if it does not meet the affordability and Value for money requirements.

Negotiation without negotiated procedures

If authorized by PPPC, the public authority may negotiate an agreement without negotiated procedures, if the project involves national security matters or if, due to unforeseen circumstances, the award of additional works or services is rendered necessary for the performance of the initial signed agreement.

Signature of the agreement

The Agreement shall be signed by the authorized representative of the private partner and the Public Authority. The signed agreement shall be published in the PPP Registry.