

UNMIK/REG/2007/20
6 June 2007

REGULATION NO. 2007/20

ON THE PROMULGATION
OF THE LAW AMENDING LAW NO. 2003/17 ON PUBLIC
PROCUREMENT IN KOSOVO
ADOPTED BY THE ASSEMBLY OF KOSOVO

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution (UNSCR) 1244 (1999) of 10 June 1999,

In conformity with Chapter 8 and sections 9.1.44 and 9.1.45 of the Constitutional Framework for Provisional Institutions of Self-Government in Kosovo (UNMIK Regulation No. 2001/9 of 15 May 2001),

Taking into account a communication from the President of the Assembly of Kosovo, dated 27 March 2007 concerning the Law No. 02/L-99 Amending Law No. 2003/17 on Public Procurement in Kosovo adopted by the Assembly of Kosovo on 8 February 2007,

Noting that the provisions of the Law, amending the Law on Public Procurement in Kosovo, shall be without prejudice to the authority of the Special Representative of the Secretary-General under UNSCR 1244 (1999) or his reserved powers and responsibilities under the Constitutional Framework for Provisional Institutions of Self-Government in Kosovo, and particularly under sections 8.1(q) and 8.1(r) of the Constitutional Framework for Provisional Institutions of Self-Government in Kosovo,

A. Hereby promulgates, effective as of the date of signature, subject to Part B below, the Law No. 02/L-99 Amending Law No. 2003/17 on Public Procurement in Kosovo, adopted by the Assembly of Kosovo attached to the present Regulation, and

B. Determines that:

(a) In the "Amendment to Section 14" at the end of the new Section 14.6 the words ",provided that such service contracts are not governed by other legislation specifically enacted for such contracts" shall be added;

(b) In the “Amendments to Section 18” a new sentence shall be added after the heading with the following wording. “Section 18.1. In item ‘b’, the number ‘250,000’ is changed to ‘350,000’.”;

(c) In the “Amendments to Section 21” in the first sentence of Section 21.2 the words “evidencing that such person has satisfactorily completed KIPA’s course of training on the present law and best procurement practices in the EU” shall be deleted. After the first sentence of Section 21.2 a new sentence shall be inserted which reads as follows: “A university degree may be substituted by a minimum of three years of substantial experience in the area of procurement.”;

(d) In the “Amendment to Section 23”

(i) the new Section 23.2 shall be reworded as follows. “KIPA shall issue a ‘procurement professional certificate’ only to persons who, on the basis of objective (and, whenever possible, anonymous) testing have satisfactorily demonstrated knowledge of procurement law and practice.”

(ii) the first sentence of the new Section 23.4 shall be reworded as follows. “KIPA shall immediately revoke the ‘procurement professional certificate’ of any Procurement Officer who fails objective testing.”;

(iii) a new Section 23.5 shall be added which reads as follows: “Testing and recommendation for the award and revocation of the ‘procurement professional certificate’ shall be subject to the review and endorsement of an independent assessment body established by KIPA whose members shall be professionally qualified in public procurement or a related field.”;

(iv) a new Section 23.6 shall be added which reads as follows: “The Chairperson of the assessment body shall be responsible for the conduct and monitoring of all assessments and for ensuring that the results of all examinations are properly and transparently carried out and assessed to best international standards. The Chairperson shall ensure that all deliberations of the assessment body are properly recorded, and be responsible for producing an examination report and pass results list. KIPA shall ensure that all such reports and lists are published on the PPRC website.”;

(e) In the “Amendment Adding a New Section 30A”

(i) the new Section 30A.5 shall be reworded as follows: “Notwithstanding the requirements established by Section 30A.4, if the contracting authority determines that compelling reasons such as the non-existence of or a severely limited competitive market-place, lead to the belief that the cancellation of the procurement activity and initiation of a new procurement activity

will not result in an increased number of responsive tenders or, where applicable, requests to participate, the contracting authority shall submit its determination with an explanation to the PPA and the PPA shall have the authority to review this determination within five (5) business days after receipt. Within this time period it shall direct the contracting authority to adhere to the requirement of Section 30A.4 of the present law if the explanation does not provide a convincing basis for not adhering to the requirement of Section 30A.4. However, the contracting authority shall adhere to the requirements of Section 30A.4 for procurements conducted pursuant to Section 35.”;

(ii) the new Section 30A.6 shall be reworded as follows. “A contracting authority shall have the right to request the PRB to review the decision of the PPA pursuant to Section 30A.5 of the present law. The PRB shall accord the highest priority to such request and shall have the authority to reverse the PPA’s decision if it determines that such decision is unreasonable.”;

(f) In the “Amendment to Section 33” in the new Section 33.1 and 33.1.b “supplies or works” shall be added after the word “services”;

(g) In the “Amendments to Section 34” at the end of Section 34.2.b (ii) the word “or” shall be added. A new paragraph shall be added with the following wording “(iii) if the concerned contracting authority is a public service operator, for the purchase of electricity to fill a supply gap occurring in an unforeseeable manner” shall be added;

(h) In the “Amendments to Section 49” in Section 49.1 in A. the words “shall make reference” shall be replaced by “shall state”;

(i) In the “Amendments to Section 56” in Section 56.1 the words “Sections 30-33” shall be replaced by “Sections 30 and 31”;

(j) In the “Amendment Adding a New Section 62A” at the end of the new Section 62A.3 the words “in conformity with instructions provided by the contracting authority” shall be added;

(k) In the “Amendments to Section 66” at the end of the new Section 66.4 a new sentence shall be inserted reading as follows: “Such registration shall not have a prejudicial effect on the foreign economic operator.”;

(l) A new section “Amendments to Section 69 and 70” shall be added. The section shall read as follows “The second sentence of Sections 69 and 70 respectively shall be amended as follows: “The contracting authority shall immediately submit to the PPRC all language versions of such notice.”;

(m) In the “Amendment Adding a New Section 87.A” Section 87A.2 shall be deleted and the remaining paragraphs shall be renumbered;

(n) In the “Amendment Adding a New Section 89A” in the new Section 89A.2 the date “30 June 2007” shall be replaced by “31 October 2007”. A new sentence shall be added at the end of the new Section 89A.2 with the following wording. “If there are compelling reasons requiring a delay beyond that date , the Presidency of the Assembly shall consider the matter and may grant an extension of up to two months.”;

(o) In the “Amendments to Section 91” at the end of Section 91.1 a new sentence shall be added with the following wording: “The Government shall obtain the agreement of the relevant supervisory board if the contracting authority is a Publicly Owned Enterprise.”;

(p) In the “Amendments to Title VII and Sections 94-98” at the end of the new Section 95.2 a sentence shall be added which reads as follows: “The Procurement Review Procedures pursuant to Title VIII shall apply *mutatis mutandis*, to a request from a contracting authority or an interested party for and to a review conducted by the PRB of any decision, action, measure, interpretation or ruling that has been taken, used, issued or promulgated by the PPA or the PPRC.”;

(q) In the “Amendments to Title VII and Sections 94-98”

(i) In the first sentence of the new Section 96.1 the word “persons” shall be replaced by “members”. In the new Section 96.4 after “the Assembly” the words “based on a decision made by an independent selection body established by the Assembly” shall be added. A new sentence with the following wording shall be added. “The independent selection body shall be comprised of three duly appointed judges designated by the Kosovo Judicial Council.”;

(ii) The wording of the new Section 96.5 shall be replaced with the following wording:

“96.5 Each person so appointed shall possess the following qualifications and meet the following criteria:

- (a) Be a habitual resident of Kosovo;
- (b) Be of high moral integrity;
- (c) Possess a law degree that is valid in accordance with Kosovo law;
- (d) Be a holder of the Kosovo Bar Examination certificate or presently be a member of the Bar;
- (e) Meet eligibility requirements for appointment as a judge;
- (f) Have a minimum of three (3) years of professional experience in the legal field;
- (g) Ability to perform impartially, conscientiously, diligently, decisively and responsibly the duties of the office for which he or she is being considered.”;

(iii) A new Section 96.6 shall be added with the following wording:

“96.6 The Assembly, within 30 days, shall consider and appoint the selected persons pursuant to Section 96.4. It may seek additional clarifications from the independent selection body regarding the selected persons. In such case the time limit for the appointments by the Assembly may be postponed for 10 (ten) days from the day the additional clarifications are received. If no action is taken by the Assembly to make the appointments within the time-frame prescribed in this section, the persons selected shall be deemed as appointed by the Assembly.”;

(r) In the “Amendments to Section 101” Section 101.2.B. shall be deleted and the remaining paragraphs shall be renumbered;

(s) In the “Amendment to Section 102” in the new Section 102.3 “Prime Minister” shall be replaced by the words “the Assembly based on a decision made by the independent selection body established by the Assembly”. At the end of the new Section 102.3 the words “and/or review experts” shall be deleted and a new sentence with the following wording shall be added: “Section 96.6 shall apply *mutatis mutandis*.” The new Section 102.4 shall be reworded as follows. “Every person appointed as a review panel member pursuant to Section 102.3 shall possess the qualifications and meet the criteria set out in Section 96.5.”;

(t) In the “Amendments to Section 117” the Amendment to Section 117.1 shall be deleted. The new Section 117.4 shall be reworded as follows: “Upon learning of such an offence or event the Ministry of Internal Affairs shall immediately conduct a preliminary investigation into the matter, and if there are sufficient grounds to conclude that such an offence may have occurred, the Ministry shall formally refer the matter to the competent law enforcement authority for further investigation in accordance with the applicable law and immediately take whatever other lawful measures the Ministry deems necessary and appropriate to remedy the situation.”.

These changes as set out in (a) to (t) above are reflected in the text attached to this Promulgating Regulation which shall constitute the final official text of the Law, as amended.

Signed on this 6th of June 2007.

Joachim Rücker
Special Representative of the Secretary-General