



Organization and Operation of the Public Procurement Regulatory Commission and the Review Body in Kosovo

What should
be improved?

Introduction

The Public Procurement Regulatory Commission (PPRC) and the Procurement Review Body (PRB) are two independent institutions, reporting to the Assembly of Kosovo, within the institutional framework of public procurement in Kosovo. PPRC and PRB are established with the Law on Public Procurement (hereafter LPP)¹, and have separate responsibilities in regulating the field of public procurement in Kosovo. PPRC is an independent regulatory body responsible for the development, operation and general supervision of the public procurement system in Kosovo, whereas PRB is an independent body for the review of economic operators' complaints in procurement activities of public institutions (or contracting authorities).

In the framework of development and supervision of the public procurement system, PPRC is responsible for drafting and monitoring the LPP. Within the framework of reviewing the complaints of economic operators against contracting authorities, PRB serves as the second instance body in the administrative appeal procedure, as first instance decisions are taken by the relevant contracting authorities. Both institutions operate through decision-making collegial bodies (boards), elected and appointed through procedures involving the Government and the Assembly. Both PPRC and PRB boards have five members each, appointed by the Assembly of Kosovo for a five-year term, without the right of reappointment for a second term.

This short paper seeks to address and offer solution alternatives for two issues: 1) the nomination and appointment procedures for board members, which include both the Government and the Assembly, and 2) the criteria for their nomination, including appointment in the Assembly. This paper is relevant for and related

¹ Official Gazette of the Republic of Kosovo, Law No. 04/L-042 on Public Procurement in the Republic of Kosovo: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772>

to the drafting process of the new law on public procurement by the Government, with the hope that the recommendations therein will be reflected in the new draft-law. The paper will only focus on the collegial bodies (boards) of PPRC and PRB, as decision-making bodies, and their nomination and appointment processes and (professional) criteria of eligibility for candidates for board member or chair.

ISSUE 1: Selection of PPRC and PRB members

The Law on Public Procurement doesn't clearly define the selection procedure of members (and chair) of the boards of PPRC and PRB. In addition, the law includes no reference to another piece of legislation with regards to the selection procedure. When the selection procedure is a matter of a basic law, it must be fully regulated in that law. In cases where the regulation of the procedure is a matter of another law, the basic law (in this case LPP) would only make reference to the procedure defined therein.

Neither option was chosen for the issue of selection of members for PPRC and PRB. According to Article 89, par. 2 of LPP, "the President and the other members of PPRC shall be nominated by the Government and appointed by the Assembly."² This Article has no other provisions regarding the method of nomination and selection of members and the chair, prior to the appointment by the Assembly. Also, this issue is not regulated in other provisions of the LPP. We thus have a situation where the nomination of board members and chairs by the Government is not regulated, including whether selection is made through an open competition, who publishes the announcement, does selection follow an evaluation of the CV by the Government, and is the approval for five persons sufficient for the final appointment in the Assembly. If selection is made through an open competition, will the candidates take a written and verbal test, in order to compile a shortlist of five candidates for approval by the Government.

The situation with the selection of PSO members is very similar. According to Article 100, par. 4 of LPP, "the President and members of the PRB shall be nominated by the Government and appointed by the Assembly based on a recommendation made by an independent selection body established by the Assembly. The independent selection body shall be comprised of three duly appointed judges designated by the Kosovo Judicial Council (KJC)".³ Furthermore, the Law defines the deadlines for the Assembly to appoint the candidates selected by the body, and what happens in case the Assembly fails to vote them. According to Article 3 of the Law amending the basic law, paragraphs 2 and 3, "The Government nominates in the Assembly at least two candidates for the vacant position of the PRB Chair, and at least two candidates for each vacant position of PRB members, at least ninety (90) days prior to the end of term of the current Chair and members. The Assembly appoints the PRB Chair and members individually, following a recommendation given by independent selection body. The independent selection body will interview, evaluate and categorize the candidates based on their scores. The Assembly shall appoint the highest scoring candidates as Chair and members for each vacant position in PRB. The independent selection body, according to paragraph 2 of this Article, shall be established by the Assembly and shall consist of three (3) judges appointed by the Kosovo Judicial Council"⁴.

It is clear that the description of the procedure for PRB is more detailed, compared to the PPRC procedure, albeit still leaving room for interpretation. For instance, how is their nomination by the Government done, through a competition process, or otherwise? Then, if a competition announcement is made, what are the procedures, is there a written test, a verbal test, an

² Ibid, Article 89.

³ Ibid, Article 100, paragraph 4.

⁴ Ibid, Article 100, paragraph 6.

evaluation of the CVs, are scores used to draft a shortlist, etc. Clearly there are many issues with the transparency of the process, and there is much room for interpretation. In addition, the appointment by the Assembly based on the recommendation of the independent selection body (established by the Assembly) which consists of three judges appointed by KJC is open for interpretation. This because the Assembly is not a selection institution of board members, even of selection is made by the body established by the Assembly, rather than the Assembly. According to the Constitution, the Assembly oversees the work of the Government and other public institutions that report to the Assembly in accordance with the Constitution and the law⁵. The oversight of other public institutions, in this case PPRC and PRB, which report to the Assembly is not meant in terms of the selection of their members, but rather in reporting of boards to the Assembly, through the relevant functional committee, as the Assembly has ultimately appointed them. Nomination and appointment are different processes, and while the Assembly may appoint them, it should not nominate them.

ISSUE 2:

Lack of Clear Nomination Criteria for PPRC and PRB Members

The lack of clear professional criteria for the Chair and members of the PPRC and PRB Boards is another issue which should be defined in the LPP. For PPRC, the LPP, in its Article 51, paragraph 4, provides that the “Government and the Assembly shall ensure that any person nominated for PPRC member will meet the following criteria: 4.1) to have a university degree, and 4.2) to have at least five (5) years of experience in the field of public finance and procurement”⁶.

With regards to the first criterion, the possession of a university degree alone, without defining the profile of education is insufficient, as a candidate with a degree in computer sciences has no relation with procurement and thus wouldn't meet this criterion. Further, five years of working experience in the field of finance and procurement is not a clearly defined criterion. This phrase was misinterpreted in the Assembly (in the functional committee) in the last nomination of two PPRC members. According to the discussions in the assembly meeting, on the day of selection of two PPRC members⁷, one member had no working experience in procurement, but only in public finance, as a lecturer of public finance in a private university. Although the committee had sought clarification by the legal directorate of the Assembly on this issue, the finding was that the candidate met the selection criteria. The Assembly has thus passed the candidate as compliant with the criteria, and the candidate was appointed by the Assembly, even though the public finance area is very broad and the candidate may have no experience in public procurement.

In terms of PRB, the criteria are more detailed than in the PPRC case. However, there is room for interpretation here too, as experience in public procurement is not well weighted. According to LPP, Article 3, par. 4.4, the candidate must have at least three (3) years of professional experience in one of the following fields: law, public administration, public finance, or procurement. Based on this, the candidate can be selected even without working experience in public procurement, as this criterion doesn't require that the candidate is required to have working experience in public procurement, as the link “or” was used.

⁵ Constitution of the Republic of Kosovo, Article 65, par. 9.

⁶ Official Gazette of the Republic of Kosovo, Law No. 05/L-068 on amending and supplementing the Law No. 04/L-042 on Public Procurement in the Republic of Kosovo, as amended by Law No. 04/L-237: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772>

⁷ Assembly of the Republic of Kosovo, Committee on Budget, Labor and Transfers, minutes from the meeting of March 23, 2022: <https://bit.ly/3EZ1svW>

Recommendations

The following recommendations are divided according to the two issues addressed above:

ISSUE 1: Nomination of PPRC and PRB Members

1. The new law on public procurement should expand the regulation under the current law (Articles 89 and 100) on the nomination and selection of members and chairs for the PPRC and the PRB. More specifically, the Government should make the nomination, and the Assembly should only make the appointment;
2. In the nomination process, the government should follow the model for the selection of candidates for senior management positions in the civil service. More specifically, nomination must be made through an open competition for board members and chairs, and it should be made through the “Human Resource Management Information System (HRMIS)⁸” which is managed by the Department for the Management of Public Officials (DMPO) in the Ministry of Internal Affairs;
3. HRMIS allows for electronic application of candidates, to be followed by a preliminary verification of candidates by the DMPO. The preliminary verification is not defined in the current LPP;
4. The competition must be announced at least six months prior to the end of term of current members, to allow for sufficient time for the selection of the most qualified candidates for members and chair of the PRB board;
5. HRMIS must notify candidates that they have been shortlisted and invite candidates for the written test using the same system. The score of candidates in all stages of the evaluation (preliminary evaluation, written test, and interview) should be entered in the system, and the system will automatically categorize the candidates based on the score collected in all stages of the evaluation;
6. To hold the test electronically, an additional 100 professional questions in the field of public procurement should be added in the group of general knowledge questions managed by the computer system. These questions will be selected through the computer system for the candidates undergoing a written test. The system, based on the score of the candidates, will generate a short list of candidates to be called for an interview;
7. The written test has a weight of 70 points (out of 100 total), 20 points for the evaluation of the CVs, and only 10 points for the interview;
8. To move to the stage of CV evaluation and verbal interview, candidates must reach the threshold of 50 points in the written test;

⁸ See the Human Resource Management Information System, in open or closed high-level management positions, including for independent agencies established by Kosovo Assembly: <https://konkursi.rks-gov.net/jobs?servant=1&functionalCategory=4&type=1>

9. The list of candidates with the highest score following the verbal interview will be electronically generated by HRMIS, and the names will be sent for approval to the Government;
10. The Assembly should not be involved in any nomination round, but rather only formally evaluate the candidates nominated by the Government and appoint them, or reject on objective grounds;
11. If the Assembly doesn't appoint its new board members in time, the outgoing members will automatically remain as acting members for a maximum period of six months.

ISSUE 2: Lack of Clear Nomination Criteria for PPRC and PRB Members

- LPP articles defining the professional qualification and working experience criteria must be amended in the new public procurement law, with new clear and specific criteria added on the members and the chair of the PPRC and PRB boards;
- Selection criteria on university qualifications of candidates for PPRC board members and chair must specify the type of education needed, rather than leaving it open and requiring only a "university degree". This is because a degree in construction or another similar field is not relevant to the position of PPRC member of chair of the board;
- Selection criteria on the working experience for candidates for PPRC board members and chair shouldn't be as broad as now with the current law "five (5) years of experience in the field of public finance and public procurement". There should be a specific criterion of working experience of five years in public procurement;
- Selection criteria on the working experience for candidates for PRB board members and chair shouldn't be as broad as now with the current law "three (5) years of experience in one of the following fields: law, public administration, public finance, or procurement". Here too, the criterion of three years of working experience should only apply to the field of public procurement.

