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Corruption risk assessment of the public procurement area in Kosovo

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* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	4
1. INTRODUCTION	5
2. INSTITUTIONAL BACKGROUND	7
3. POLICY ANALYSIS AND RECOMMENDATIONS	11
3.1. Setting the scene: Understanding corruption and anti-corruption in public procurement	11
3.2 Open and fair competition	13
3.2.1 <i>Problem definition</i>	13
3.2.2 <i>Policy Recommendation</i>	21
3.2.3 <i>Implementation</i>	21
3.3 Professionalisation, independence, and motivation of public procurement officials	23
3.3.1 <i>Problem definition</i>	23
3.3.2 <i>Policy Recommendation</i>	25
3.3.3 <i>Implementation</i>	25
3.4 Monitoring public procurement	26
3.4.1 <i>Problem definition</i>	26
3.4.2 <i>Policy Recommendation</i>	27
3.4.3 <i>Implementation</i>	28
3.5 Remedies system	31
3.5.1 <i>Problem definition</i>	31
3.5.2 <i>Policy Recommendation</i>	34
3.5.3 <i>Implementation</i>	34
3.6 Centralised procurement	35
3.6.1 <i>Problem definition</i>	35
3.6.2 <i>Policy Recommendation</i>	36
3.6.3 <i>Implementation</i>	36
4. BIBLIOGRAPHY	38
5. ANNEXES	40

Executive summary

This report focuses on public procurement which was identified in the previous assessment (PECK I) as a priority area due to the large amount of public funds involved and the high risk of corruption and inefficiency. While PECK I Project assessed *inter alia* the public procurement area in Kosovo and identified key problems in general, the present assessment focuses on a deeper understanding of corruption risks, provides specific recommendations and describes the practical steps of implementation.

The analysis underlying this report rests on a combination of desk research, semi-structured interviews, and a quantitative analysis of public procurement announcements (2009-2017[1st of March]). The authors reviewed a wide range of studies, articles and evaluation reports on public procurement and anti-corruption in Kosovo prepared by international organisations, Kosovar institutions, journalists and experts. While there is no reliable structured public procurement data available in Kosovo currently, a preliminary analysis was carried out using newly collected data which was gathered from the Public Procurement Regulatory Commission's official public procurement website.

Five areas have been identified for priority policy development where experts formulated policy recommendations as well as detailed guidance on policy implementation. These are:

- 1. Increase competitiveness and fairness of public procurement tenders by widening access to more companies and limiting the influence of political connections on bidder success.**
- 2. Invest in the professionalisation and motivation of public procurement officials while also ensuring their independence from politics.**
- 3. Strengthen the monitoring of the full tender cycle by government agencies as well as civil society organisations and make sure interventions are effective if red flags are raised.**
- 4. Improve the consistency and predictability of the public procurement remedies system by increasing its professionalisation and decreasing the political influence over it, with particular focus on the Procurement Review Body.**
- 5. Pursue the wider use of centralised public procurement for standardised goods and support framework agreements on the sectoral level where appropriate.**

These policy recommendations are expected to directly contribute to the control of corruption in public procurement in Kosovo. While anticorruption in public procurement typically will adversely affect currently favoured bidders and their beneficiaries, it is expected to contribute to public good throughout the country. Crucially, proposed anticorruption interventions concentrated on actions which not only fight corruption but increase bureaucratic efficiency and value for money, hence improvements are expected beyond corruption control.

1. Introduction

The present report focuses on public procurement which was identified in the PECK I Project¹ anti-corruption assessment report as a priority area due to the large amount of public funds involved and the high risk of corruption and inefficiency. While PECK I Project assessed *inter alia* the public procurement area in Kosovo and identified key problems in general, this report focuses on a deeper understanding of corruption risks and provides specific recommendations and describes the practical steps of implementation.

The analysis underlying this report rests on a combination of desk research, semi-structured interviews, and a quantitative analysis of public procurement announcements (2009-2017[1st of March]). The authors reviewed a wide range of studies, articles and evaluation reports on public procurement and anti-corruption in Kosovo prepared by international organisations, Kosovar institutions, journalists and experts. The results of the first phase of the PECK project had high priority in the literature used. Unfortunately, a thorough analysis of primary public procurement data was not (yet) possible due to the lack of a structured public procurement database. Still, a preliminary analysis was carried out on a newly collected database which was gathered from the Public Procurement Regulatory Commission's official public procurement website.

To gather detailed insights and rich qualitative evidence for the purpose of drafting this report, three missions were carried out between 7-11 November 2016, 5-9 December 2016, and 8-9 February 2017 during which the authors conducted semi-structured group interviews with the representatives of key institutions involved in public procurement. The participants came from a wide range of organisations from government institutions to NGOs and economic operators including the Public Procurement Regulatory Commission, the Procurement Review Body, the Kosovo Anti-corruption Agency, the Central Procurement Agency, the National Audit Office, several central procurement entities, public companies, and companies from various economic sectors. A full description of all three missions can be found in Annex A.

The purpose of the first – primarily fact-finding - mission was firstly to collect first-hand information on the daily operation of all the key organisations participating in public procurement. Namely, participants were asked about the scope of their duties, their organisation's human and financial resources, institutional structure, and their relationship to other organisations. Second, opinions and personal experiences were gathered on efficiency, transparency, and non-discrimination in public procurement - or the lack of them.

The second on-site mission focused directly on draft policy recommendations which were elaborated on the basis of the first mission and PECK I results, keeping in mind international standards of good public administration as well. The recommendations and the possible ways of implementation were introduced and discussed in group interviews.

The goal of the third mission was to discuss the first full draft of the report with all relevant stakeholders in detail so that any remaining factual error is corrected and

¹ www.coe.int/

feedback is received on the proposed policy solutions. This final report integrates the feedback received from participants during the third mission.

The strength of the above-mentioned approach resides in the combination of international standards on public administration and the understanding of local context and peculiarities. Thus, the purpose of this report is to contribute to a transparent and non-discriminative public procurement system in Kosovo, which provides the most value for the money of Kosovar citizens.

2. Institutional background

Corruption and public procurement in Kosovo

Corruption is perceived to be a serious and widespread problem in Kosovo by international organisations and civil society alike. In 2016, Kosovo was ranked 103rd from 176 countries on Transparency International's Corruption Perception Index ranking with 33 points out of 100 (note that scores under 50 indicate serious levels of corruption). The World Bank's Worldwide Governance Indicators show a similar picture: in 2015, Kosovo stood at the 36th percentile among 229 economies where 100 represents the highest and 0 the lowest level of control of corruption.

Since public procurement is especially prone to corruption due to the large amount of public funds involved, this field can be assumed to be concerned as well. Numerous reports of international and local organisations underpin this assumption. Among others, the Balkan Investigative Reporting Network analysed announcements of public tenders in 2014. In their report, several cases of suspected misuse are described (Balkan Investigative Reporting Network, 2014). According to the UNDP's Kosovo Mosaic 2015 report, citizens were satisfied with tenders and procurement the least from 26 public services considered. The Satisfaction Index (SI) dropped from -32 to -42 between 2012 and 2015 (UNDP, 2015).

The European Commission's yearly Progress Report also identifies public procurement as a field where improvement should be achieved by improving transparency, monitoring the implementation of tenders, strengthening the remedy system, addressing capacity limitations, and increasing the professionalism and accountability of public institutions, among others (European Commission, 2016).

International context

In the meanwhile, the prospect of integration into the European Union has motivated important developments in anti-corruption and public administration in the last years in Kosovo. The legal framework has been largely aligned with EU *acquis*, the Kosovo Anti-corruption Agency has been established, the role of central procurement and e-procurement has increased greatly. Besides, the Stabilisation and Association Agreement (SAA) between Kosovo and the European Union, which entered into force on 1 April 2016, put the country under further obligations. To meet these requirements, Kosovo is strongly encouraged to step up the pace of public administration reform. However, critics draw attention to the risk that the implementation of laws and policies often lags behind what is envisaged on paper. "Laws and anti-corruption policies, while good on paper, are selectively enforced and corruption in public office goes largely unsanctioned" (McDevitt, 2016).

Kosovo participates in numerous international programs concerning anti-corruption and public sector reform such as OECD's Sigma initiative which aims at improving the design and implementation of public administration reform. The World Bank supported the Public Sector Modernisation Project between 2010 and 2016. The goal of this project was among others to strengthen the performance of key budget organisations in budget formulation, budget execution, and public procurement. USAID assists Kosovo in strengthening municipal administrations to advance accountability, especially in the areas of financial management and the development of own-source revenue.



Legal framework

Due to the intensive legislative work in recent years, Kosovo's legislative framework is largely in line with the EU *acquis* (European Commission, 2016). With the Stabilisation and Association Agreement entering into force, the preferential treatment of domestic bidders, which was criticised regularly in EU Progress Reports, will be gradually eliminated within a period of five years (Council of the EU, 2015). The latest amendment of the Public Procurement Law No. 04/L-042² in March 2016 includes provisions regarding defence and sensitive security procurement but further alignment is needed. Meanwhile, frequent legislative amendments – three since 2011 - are reported to be difficult to follow for buyers, bidders and public procurement training programs as well (Canhasi, 2016).

Currently, the following procedures are available for buyers to conduct a tendering process:

- open procedure;
- restricted procedure;
- negotiated procedure with publication of contract notice;
- negotiated procedure without publication of contract notice;
- price quotation procedure;
- design contest;
- minimum value procedure.

Framework contracts are applicable as well whereby contracting authorities can choose from open, restricted or negotiated procedures in this case.

The Public Procurement Law identifies transparency as one of its main goals. Accordingly, the following documents of all tendering processes are made available in three languages on the website of the Public Procurement Regulatory Commission:

- Contract notice;
- Award notice;
- Cancellation notice;
- Indicative/preliminary notice;
- Notice on the result of design contest;
- Notice on the design competition;
- Requests for expression of interest;
- Prequalification awarded notice;
- Cancellation notice of the contract award;
- Notice for additional information or corrigendum; and
- Contract signing notice.

Other important documents such as contracts, bid evaluation reports and contract implementation reports are available only upon request for interested parties (PPL Article 10. 3.).

A functional system of remedies exists, although some aspects are found to be problematic by prior assessments (e.g. procedural fees or the prevalence of appeals against the decisions of the PRB) (OECD/Sigma, 2015).

² Law No. 04/L-042 on Public Procurement in Kosovo, amended and supplemented by law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092.



Institutional actors involved in public procurement:

Three main institutions are responsible for the overall operation of the public procurement system in Kosovo.

The Public Procurement Regulatory Commission (PPRC) has a central role due to its authorisation for drafting secondary legislation and monitoring contracting authorities. It is in charge of publishing the text of laws and public procurement notices – contract notices and award notices – on its website. In this manner, its activity influences fundamentally the practical realisation of transparency in public procurement.

PPRC is the main body providing legal and practical consultations on the implementation of the Public Procurement Law. Besides, it is also responsible for developing training modules and training public procurement officials in cooperation with the Kosovo Institute for Public Administration. It facilitates the development of Kosovo's e-procurement system too.

Its monitoring activity covers all phases of the tendering process - but its financial and human capacities limit their ability to conduct thorough monitoring of the performance of all contracting authorities and the implementation of contracts.

The Procurement Review Body (PRB) protects economic operators' and buyers' interests from breaches of the public procurement law. It has the authorisation and responsibility to review appeals from interested parties. The PRB was not operational formally until March 2016 when new members and the chairman of the PRB Board were appointed.

The body received criticism in recent years because of its alleged collusion with the judiciary, while there were also corruption allegations made against the head of PRB (European Commission, 2015b). Since July 2015, Kosovo has taken considerable steps to strengthen the integrity of the PRB. Amendments to the law on public procurement have introduced the automatic suspension of PRB's chairman and members in case of indictment filed by the prosecutor (PPL, 2016).

The Central Procurement Agency (CPA) is responsible for central and coordinated public purchases. It started operating in 2014 under the Ministry of Finance. In addition, CPA conducts procurement activities on behalf of authorities which lack the necessary capacities to carry out the procedures themselves. The Agency prepares the lists of products for joint procurement which must be approved by the government. However, the government often hesitates to approve joint procurement procedures (National Audit Office, 2015b) because of concerns regarding SME businesses which might not be able to bid on large value centralised procurement tenders.

Public procurement is monitored by additional organisations besides the Procurement Review Body. The National Audit Office (NAO) carries out annual audits of budget organisations in Kosovo. Besides, it has the authorisation to conduct further types of audits e.g. performance audit whose goal is to assess whether governmental programs are managed properly, efficiently and cost-effectively. NAO's reports are publicly available on the Office's website.

The Kosovo Anti-Corruption Agency which was established in 2007 plays a further important role in monitoring and curbing corruption in public procurement. It offers opinions on tendering processes and monitors and prevents cases of conflict of interest. However, the EC's Progress report and local experts draw attention to the fact that budgetary institutions often fail to take into consideration the opinions of the Kosovo Anti-Corruption Agency and the National Audit Office (European Commission, 2016). The National Audit Office identified numerous violations that contracting

authorities do in their procurement activities. These findings tend to repeat from year to year, since most of the recommendations given by the NAO are ignored (Canhasi, 2016).

The Kosovo Special Prosecutors Office (SPRK) has the authority to act next to the Basic Courts regarding serious criminal offenses such as war crimes, organised crime, corruption, money-laundering, terrorism. SPRK is composed of Kosovo and EULEX prosecutors.

Numerous non-governmental organisations made significant contribution to getting discovering the nature of the public procurement in Kosovo. The reports of the Kosovo Democratic Institute (Kosovo Democratic Institute, 2016), the Balkan Investigative Network (Balkan Investigative Reporting Network, 2014), the Riinvest Institute (Hashani et al., 2012; Riinvest Institute, 2016) describes important aspects of corruption and public procurement.

Contracting authorities in Kosovo include municipalities on the local level and ministries, independent institutions, public enterprises, the Office of the Prime Minister, the Assembly of Kosovo and the Office of the President on the central level. These institutions have very different levels of capacities for conducting public procurement tenders. The private sector in Kosovo is fairly weak and public sector is still the main source of investment. Under these conditions, public procurement is an especially important potential financial resource for companies.

3. Policy analysis and recommendations

3.1. Setting the scene: Understanding corruption and anti-corruption in public procurement

Our subsequent work on diagnosing corruption risks in Kosovo and proposing policy solutions rests on a solid and straightforward understanding of what corruption and anticorruption mean. Nevertheless, the term corruption has been used in the past to cover diverse phenomena in many contexts which differ in the prevailing norms of good conduct. Hence, many characterisations of corruption are normatively charged and context-dependent (Johnston, 1996). Probably the most common definition of corruption - "the misuse of public office for private gain" - (Rose-Ackerman, 1978) understands corruption within a bureaucratic context and associates corruption with bribery of public officials. The problem with this definition, on the one hand, is that Weberian bureaucracy and the underlying rational-legal order may not be present in many contexts at all; on the other hand, it is also inadequate to capture corruption in public positions with high degrees of discretion such as members of parliament (Warren, 2003) or public procurement decision makers.

Departing from such definitions, this report uses a corruption concept tightly matched to the domain of public procurement and building on the literature defining corruption in conjunction with open and impartial access to public resources, that is understanding corruption fundamentally as a problem of power distribution within society and constraints on exercising political power (Mungiu-Pippidi, 2006; North, Wallis, & Weingast, 2009; Rothstein & Teorell, 2008). In addition, our focus is predominantly on institutionalised and recurrent forms of corruption. Such corrupt exchanges are central to our approach not only because they are capable of inflicting long-lasting and substantial costs on societies, but also because in countries with high perceived levels of corruption such as Kosovo, they seem to capture the dominant form of corruption. Hence,

in public procurement, institutionalised grand corruption refers to the allocation and performance of public contracts by bending universalistic rules of open and fair access to government contracts in order to benefit a closed network while denying access to all others.

The goal of such corruption is to steer the contract to the favoured bidder without detection in an institutionalised and recurrent fashion (World Bank, 2009). This can be done in a number of ways, including avoiding competition (e.g., unjustified sole sourcing or direct contract awards), favouring a certain bidder (e.g. tailoring specifications to a particular company), and lax monitoring of contract implementation (Fazekas, Tóth, & King, 2016). Such corruption may involve bribery and transfers of large cash amounts as kickbacks, but it is more typically conducted through broker firms, subcontracts, offshore companies, bogus consultancy contracts, or employing relatives of politicians in bidding firms. By implication, not everything designated as corruption in this report represents illegal activity as defined by the law in a given country, even though they necessarily carry extra cost for public budgets and societies by violating essential principles of good governance and economic efficiency of public spending.

This understanding of corruption provides a particular focus to this report and also narrows down the set of effective anticorruption policies which we consider. First, corruption in public procurement is perpetrated by elite groups capable of effective collective action and flexible adaptation to changing circumstances (Fazekas & Tóth, 2016b). This implies that effective anticorruption policies take a holistic approach to



the policy area or geographic region they target in order to change every corner of the landscape rather than marginal changes in small areas. In public procurement, this means that there is little value in increasing corruption controls in only one part of the procurement process (e.g. tightening the rules of tender advertisement) without controlling corruption in the other parts of the process (e.g. also tightening oversight in contract implementation), because what a partial solution achieves is displacement of corruption rather than curbing it. Such a view of what effective anticorruption constitutes very much builds on historic studies of successful transitions to good governance most of which rested on a 'big-bang' approach (Mungiu-Pippidi, 2015; Rothstein, 2011).

Second, there is no one size fits all anticorruption strategy, instead any effective anticorruption approach should carefully understand the political and social environment it intends to change (Mungiu-Pippidi, 2015). Anticorruption is inherently political as it shifts the power balance in societies which some elites might oppose some might support.

Third, even large-scale and well-designed anticorruption policies take years to bear fruit, that is shifting the equilibrium of social allocation without sustained public support and effective mobilisation of losers success is unlikely (Rothstein, 2011). Changing laws on paper will not shift the corrupt equilibrium without a powerful coalition enforcing the new rules.

Fourth, it also follows from the definition and the conceptual tradition behind it that successful anticorruption does not merely mean the lack of corruption, rather it implies meritocracy and impersonal decision making and resource allocation in the public sphere (Rothstein & Teorell, 2008). Superior performance of clean institutions should accompany effective anticorruption underpinning popular support as well as long term development.

3.2 Open and fair competition

3.2.1 Problem definition

Open and fair competition plays a fundamental role in the theoretical framework outlined in the previous section. If the goal of corruption in public procurement is to steer the contract to the favoured bidder, open and fair competition - where the success of bidders is independent from personal relationships - is the very opposite of corruption.

This section explores the main ways of eliminating competition in government purchases, and the tools which can help maintaining open and fair competition. However, two qualifying remarks have to be made at the outset. First, the arguments in this section apply to competitive markets that is economic sectors characterised by a natural monopoly (e.g. where production requires rare expertise or extremely large fixed costs enabling only one company to operate) are outside our scope. In practical terms this means that our statements apply only for markets where several companies operate and more than one bid can be expected to be received in a tender. Second, open and fair competition can be improved substantially only with strategic approach and strong political will and commitment. Strategic, because tackling one corrupt practice with regulation may only displace corruption to other areas. Strong commitment, because any intervention is only as good as it is enforced in practice. Only real consequences can deter actors from corrupt and unlawful behaviour. Without these, particularistic ties may thrive in public procurement even if competition seems to be open according to simple proxy indicators.

Competition on public procurement markets in Kosovo

Prior analysis of public procurement data in Kosovo by national and international bodies such as OECD Sigma had to rely on a laborious and naturally error-prone manual data collection and aggregation exercise which was repeated annually. While it delivered valuable insights, it is suboptimal in the age of Big Data both from a cost and reliability perspective. Hence, in support of this policy report, we embarked on a small-scale automated data collection effort making use of all online contract award notices currently available on the PPRC tender announcement website³. The authors created a pilot public procurement database from online records not only to support the subsequent analysis, but also to demonstrate the practical uses of such a database for monitoring purposes. The database created shall be considered pilot in a sense that it only contains a subset of variables available online and that it was subject to only limited validity tests (e.g. verifying whether downloaded data is fully reflecting online content) unlike other European datasets built by the EU-funded DIGIWHIST project⁴ setting a high standard of validity. Nevertheless, the margin of error is considered to be small enough for drawing policy relevant conclusions. Further work could get this pilot dataset up to standard with other European public procurement datasets.

Contract award notices available on the tender bulleting board of PPRC were downloaded using a code written in Python. For contract award notices between 2009 and 2016, we collected 100% of the summary announcement data in HTML headings and 99% of the linked full announcement documents as long as they were in doc or

³ <https://krpp.rks-gov.net/>

⁴ digjwhist.eu

docx format⁵. While these rates are very high, indicating practically complete data collection from the PPRC website, the annual reports of PPRC publishes even higher contract award numbers (Table 1). One likely reason for the difference between our database and the data reported by PPRC is that the PPL does not oblige contracting authorities to publish small value contract award notices, data on which nevertheless might be included in PPRC annual reports.

Table 1: Number of contract award notices based on PPRC reports, search on PPRC website, and in the downloaded dataset, 2009-2017 (1st March 2017)

	Nr. of signed contracts according to PPRC Annual Reports ⁶	Nr. of contract award notices on PPRC website	Nr. of downloaded contract award notices (HTML and linked documents)
2009	14 820	4 957	4 859
2010	13 499	5 445	5 390
2011	12 310	5 846	5 776
2012	12 045	6 172	6 165
2013	12 551	6 919	6 905
2014	11 362	6 261	6 240
2015	10 895	6 343	6 323
2016	N/A	5 706	5 630
2017 (as of 1/3/2017)	N/A	311	254
Total		47 960	47 542

The following variables were retrieved from the downloaded notices:

- notice ID number;
- procedure type;
- procuring entity name;
- CPV code⁷;
- Winner name;
- date of notice publication;
- number of bidders;
- contract value;
- contract value category (large, medium, small, minimal);
- retendering.

The collected quantitative data allowed for statistical analysis of variables which reflect the level of openness and competition from different viewpoints such as number of

⁵ The baseline for percentages is the number of results in an empty-search for 'contract award notices' on the PPRC website.

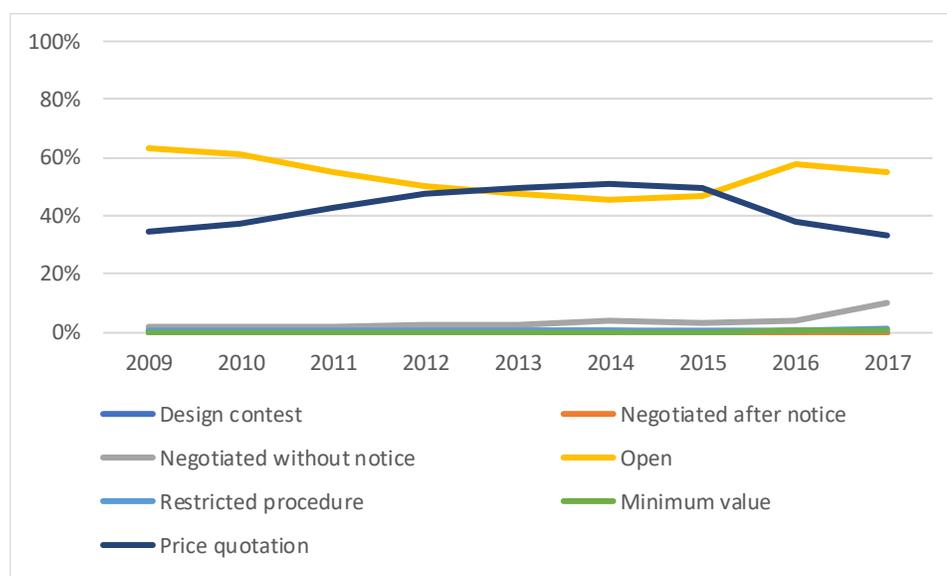
⁶ Including 256 addenda in 2009, 180 in 2010, 183 in 2011, 167 in 2012, 266 in 2013, 339 in 2014 and 305 in 2015.

⁷ CPV code refers to Common Procurement Vocabulary which establishes a single classification system for public procurement aimed at standardising the references used by contracting authorities and entities to describe procurement contracts.

bidders or procedure type used. Our analysis is also compared to headline figures published by national and international bodies in order to provide more comprehensive foundation for our main conclusions.

A key indication of the openness of public procurement markets, on a very generic level, is the use of open procedure type which should guarantee the broadest possible bidder participation. In Kosovo, the share of open procedures among all tenders is high (76% in terms of contract value in 2015 according to the government (PPRC, 2016)). However, this rate was 88% in 2013 (PPRC, 2014) which might indicate a negative trend. In the meantime, the share of negotiated procedures without prior publication increased from 6% to 16% between 2013 and 2015. While quantitatively different, our database also underpins these overall patterns and trends (Figure 1). For example, open procedures were used for over 50% of all contract awards in 2009-2017. Overall, open procedures and price quotations jointly represent the great majority of public procurement procedures, although the share of negotiated procedures without publication of contract notice has increased in recent years. The shares of further procedure types are under 1% in every year.

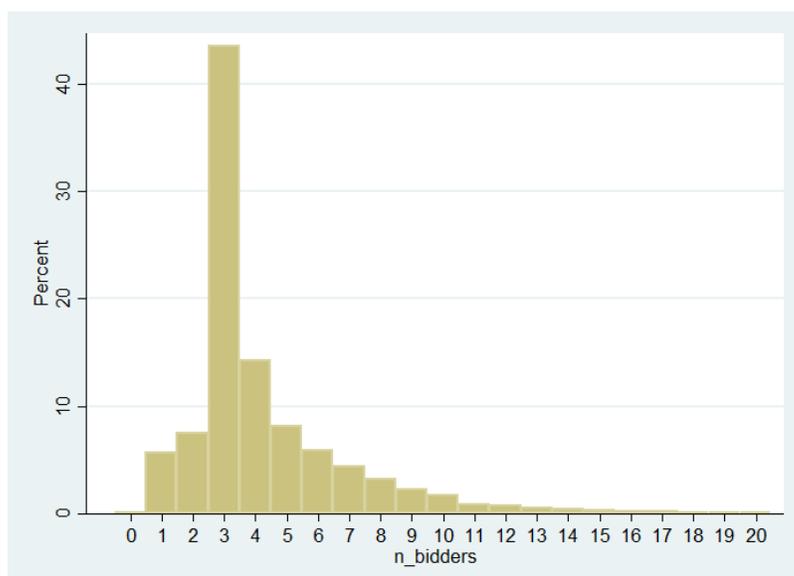
Figure 1: Share of contract award notices by procedure type and year (based on number of contract awards)



A further key hallmark of open competition, capturing bidding outcomes rather than procedural inputs such as procedure type, is the number of bidders, and single bidding in particular which is widely associated with heightened corruption risks on competitive markets (Fazekas & Kocsis, 2015). According to official reports, the number of bidders per tender was 6,1 in 2014 and 5,8 in 2015 both of which are very high in European comparisons and could indicate sufficient competition in public procurement markets (OECD/Sigma, 2015). However, other sources based on qualitative data suggest different results: influence of political connections on public procurement decisions is a main concern of civil society and media (Balkan Investigative Reporting Network, 2014) but also acknowledged by the European Union assessors (European Commission, 2015a). In addition, according to interview results, collusion between bidding firms is widespread in public procurement which results in higher prices for contracting authorities.

Hence, we investigated in detail the number of bidders by also looking at changes over time and variance according to procedure type used. According to our dataset the average number of bidders in 2014 and 2015 was 4.3, somewhat lower than figures reported by OECD-Sigma, while still being exceptionally high in European comparisons especially for small middle-income countries. A more detailed look reveals that most awarded contracts (almost 50%) have received 3 bids with only a fraction (less than 0.5%) receiving more than 20 bids (Figure 2). Hence, the primary explanation behind the high average bidder number in Kosovo is the lack of 1 and 2 bidder contracts and an exceptionally high share of 3 bidder contracts which indicate a formal or informal regulatory expectation of having at least 3 bidders⁸.

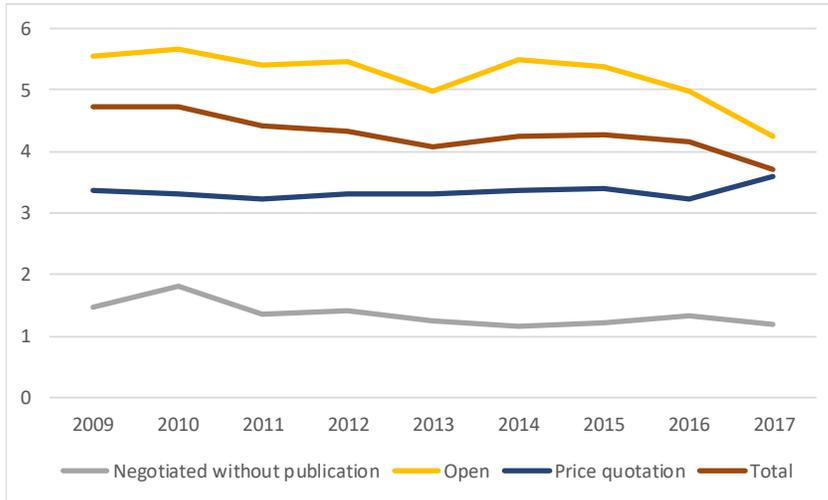
Figure 2: Distribution of contracts awarded according to the number of bids received, 2009-2017, N= 48,768



Looking at the average number of bidders by procedure type reveals an even more nuanced picture (Figure 3). As expected, open procedures and price quotations are characterised by an average bidder number above 3, while the average bidder number is between 1 and 2 for negotiated procedures without prior publication. Interestingly, the average bidder number of all procedures follows a downward trend throughout 2009-2017 with a marked drop in 2016-2017 (it should be noted that data for 2017 only covers the first quarter of the year).

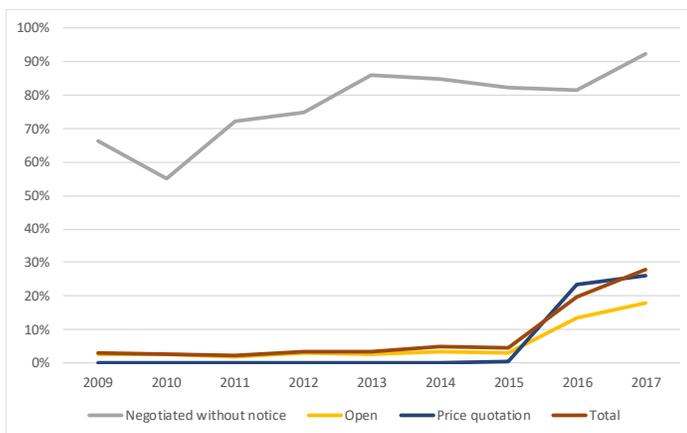
⁸ This regulatory expectation is hypothesised because in countries without such a 3 bidder rule the distribution of bidder numbers follows a different shape with 1 and 2 bidder contracts taking a lot higher share of all contracts.

Figure 3: Average number of bidders by procedure type and year, 2009-2017, N= 48,768



From a corruption risk perspective the incidence of single bidding is of particular importance. The share of single bidder contracts is exceptionally low in all procedure types in Kosovo other than the negotiated procedure without prior publication (Figure 4). The grand average share of single bidder contracts for the 2009-2017 period is 5.5% which is between the Swedish (4.6%) and Danish (6.4%) figures in the European ranking making it into the top 5 best performers⁹! In line with the average bidder number trends observed, the share of single bidder contracts jumps after 2015 (Figure 4). Single bidding rate is clearly the highest among negotiated procedures without prior publication (50-90% during the analysed period) but the rate has increased from 1-2% to 15-20% even in open procedures and price quotation procedures. The causes of this increase need further examination: changes of the legal framework and the market structure could contribute to these trends.

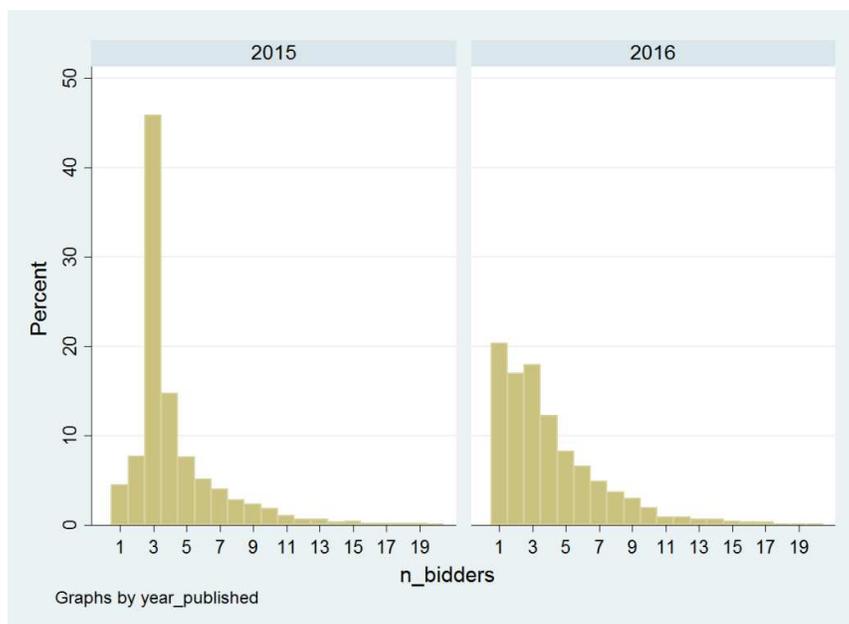
Figure 4: Share of contract award notices with only one bidder by procedure type and year, 2009-2017, N= 48,768



⁹ Using TED data for 2009-2014.

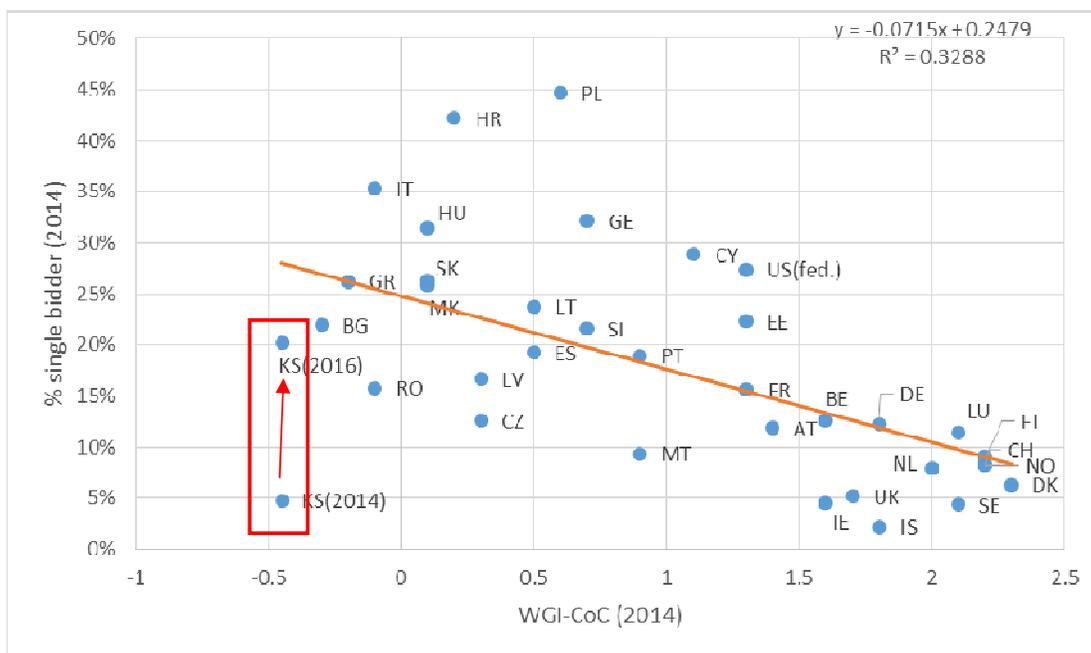
The distributional reasons for this substantial increase in single bidder share as well as the decrease in the average bidder number is clear: a drastic drop in 3 bidder contracts and a corresponding increase in single and double bidder tenders (Figure 5). This shift probably indicates a drop of regulatory expectation of at least 3 bidders.

Figure 5: Distribution of contracts awarded according to the number of bids received, 2015 & 2016, N₂₀₁₅=6323; N₂₀₁₆=5630



In order to fully understand the performance of Kosovar public procurement, it is best to put it in a European and global perspective (Figure 6). The single bidder rate in Kosovo of about 5% during the 2009-2015 period is clearly an outlier in European perspective putting the country on par with the highest integrity countries in Europe such as Sweden or the UK. While it is possible that Kosovo achieved such a high degree of corruption control, in light of qualitative evidence quoted above, it is more likely that either data quality issues or peculiar regulatory rules kept Kosovo's single bidder share low until 2015. The marked jump in single bidding since 2016 has put Kosovo closer to where it is expected to be based on widely held perceptions of corruption control while a further increase in single bidding towards the 25-35% band is expected (which is also supported by further single bidding increase in the first months of 2017). At any rate, a close monitoring of developments in 2017 and a more detailed analysis of the ongoing changes in bidder numbers are most certainly due. Crucially, the currently available online data allows for continuous monitoring of the public procurement performance and also for timely intervention if necessary, should Kosovo government decides to make a modest investment to set up a real-time monitoring system.

Figure 6: Scatterplot of selected European countries, the US federal government and Kosovo (2014 as well as 2016) by single bidder % and World Governance Indicators Control of Corruption, 2014 (Kosovo 2014 and 2016 highlighted)



Techniques for restricting open and fair competition

Based on corruption literature (Fazekas, Tóth, et al., 2016), open and fair competition can be restricted in several ways in every phase of the procurement process. In the following, the main practices will be listed and discussed in a Kosovo context. An objective and representative analysis of each of these practices would require a comprehensive database of public procurement tenders in a structured format which is not available at present.

Open competition can be eliminated completely or restricted significantly in the tender planning and advertising period by:

- *Applying non-open procedure types in an unjustified way.* A possible practice for this is splitting contracts so that the value of each part is below the threshold of the open procurement procedure. This practice is frequently repeated by central level institutions according to the National Audit Office (National Audit Office, 2015a). Although this practice not necessarily aims at corrupt rent extraction – institutions might use it to decrease administrative burden by avoiding a difficult procedure – it certainly weakens competition and transparency hence increasing the risk of corruption.
- *Announcing a very tight deadline for submitting bids which makes it impossible to participate without prior informal information.* Kosovar participants who were interviewed during the two on-site missions mentioned that in some cases contract notices are published by contracting authorities with so tight deadlines that bids cannot be prepared. However, the frequency and reasons of the phenomenon are not clear. A short deadline could be the indication of either weak planning or intended action to exclude bidders from the procedure.

- *Tailoring the specifications and requirements tightly to a favoured bidder.* This practice also appears in the Audit Report of the National Audit Office as a frequently repeated behaviour of municipalities (National Audit Office, 2015a).
- *Providing insider information to favoured bidders on the tender, the budget and competing bids.* According to interviews conducted during the on-site missions, contracting authorities publish in some cases poorly phrased contract notices from which even critically important and mandatory information is missing. It imposes significant transaction costs on bidders to get all the necessary information from officials. A favoured bidder who receives this information automatically does not have to spend time with collecting this and does not face the costs of uncertainty of the tendering terms.
- *Including subjective elements in the assessment criteria of large weight which can be used to justify an otherwise favouritistic decision.* This practice is not typical in Kosovo as contracts are awarded mostly according to the 'lowest price' criterion. Although authorities have the opportunity to use the 'most economically advantageous tender' criterion, 99.8% of the contracts were awarded by the lowest price criterion in 2015 (PPRC, 2016). Thus, bidders can win tenders mostly with very low prices which results in unrealistically cheap offers from bidders. This phenomena is confirmed by interviewees on the on-site missions and other sources as well (National Audit Office, 2015a; PPRC, 2016).

The contract can be steered to the favoured bidder in the decision phase by:

- *Keeping cancelling the procedure until only the favoured bidder remains.* Cancellation of tendering procedures is surprisingly frequent in Kosovo, although a positive trend can be observed in recent years. The rate of cancelled contract notices in 2015 decreased to just under 14% from 30% of the previous year (European Commission, 2016). The reason of frequent cancellations can be either weak planning or the intent to deter unwanted bidders. Both explanations were brought up by interviewees during the on-site missions. It is important to notice that cancellations – even if they are the result of weak planning – impose an administrative burden on economic operators. If companies find themselves preparing bids multiple times in vain, it may deter them from future bidding even if this was not the goal of the contracting authority.
- *Rejecting the bids of competitors without a valid reason.* This method goes mostly together with tailoring the requirements to the favoured bidder.

Favoured contractors can be unfairly treated in the contract implementation phase:

- *Contract modification.* Contract modification can take place due to a range of justifiable reasons but it can also be abused for corrupt purposes. Corrupt rent can be earned by
 - increasing prices;
 - extending deadline; and
 - diminishing quality of the product or service.

This technique can also harm competition because when the favoured bidder knows about the possibility of contract modification, it enables it to offer lower price or higher quality than its competitors. Our interviews with local practitioners repeatedly underlines that contract implementation is poorly monitored and contract modifications are frequent both of which suggest that this type of corruption risk is widespread in Kosovo.

There are a number of further corruption strategies which are typical of countries with similar political economy, institutional quality, and corruption risks to Kosovo; however, we haven't found solid evidence for their prevalence. For the sake of completeness, we list these risks which can nevertheless inform policy reform by highlighting potential, but yet unknown risks.

- *Call for tender is not published in official journal/website.* If contracting authorities do not make the call for tenders publicly available, only connected bidders will know about the tendering procedure. This corruption technique is strongly associated with using non-open procedure types but it can take place also separately.
- *High relative price of tender documentation.* Unrealistically high price can be used to deter potential bidders to limit competition, and award the contract to the favoured bidder.
- *Too short decision period.* The number of days passed between the submission deadline and the final decision in general is likely to indicate the efficiency of the decision making process given the size (and complexity) of the contract to be awarded. However, in the case of extremely short periods that is, a couple of days, the suspicion may arise that the decision was made in haste without serious consideration rather than extremely efficiently (Fazekas, Tóth, & King, 2013).
- *Single bidder contract.* The use of the techniques above could result in a case where only one – connected - supplier submits a bid on an otherwise competitive market.
- *High spending concentration.* When a contracting authority awards most of its contracts to a single supplier over a longer period, it may signal that there is an intimate relationship between the buyer and supplier. Such relationships, while can have a range of beneficial impacts, often open the way for corruption harming public budgets.

The signs of the above-mentioned practices are possible to measure in an objective way using a database which contains a wide range of data on public procurement procedures. In Kosovo, contract notices and contract award notices contain the most important information for calculating indicators like the number of bidders per tender, the market share of each company on the public procurement area, the difference between the estimated and final prices, and the length of the advertisement period. These notices are publicly accessible on the website of PPRC, but a comprehensive statistical analysis would require an aggregated, structured and quality-checked database – linked to company registry and government budget data, as far as possible. Such a database would allow for the real-time monitoring of the whole public procurement area.

3.2.2 Policy Recommendation

Increase competitiveness and fairness of public procurement tenders by widening access to more companies and limiting the influence of political connections on bidder success.

3.2.3 Implementation

Value for money instead of formalistic rules

A generally positive framework is provided as Kosovo's legal framework is largely in line with the *acquis* (European Commission, 2015a) and the Public Procurement Law identifies the efficient, transparent and fair use of public funds as its key goal.

However, the implementation should be further strengthened to improve the value for money in public procurement.

Public procurement officials should be encouraged more to concentrate on value for money instead of concentrating on the compliance with the law solely. The more frequent use of the 'economically most advantageous tender' criterion together with the careful screening of supply markets would deter companies from submitting bids with unrealistically low or high prices. Economic operators with realistic prices could enter the market which would increase the possibility of proper implementation as well. More emphasis should be put on outcomes both in terms of price and quality.

Better advertisement

Better advertisement of tendering procedures can decrease the transaction cost of bidding which allows more companies to participate. Consequently, it contributes to companies' wider access to the public procurement market. If all basic quantitative and qualitative parameters of the tenders are published clearly in the contract notice, and reasonable time is given to prepare bids, economic operators can make a well-founded decision about participating in the tendering process. The high quality of the tender documentation also gives a signal to potential bidders that the tender is not pre-arranged but the best offer will win. Real competition may help contracting authorities to find the bid which presents the best value for public money.

E-procurement

Full implementation of e-procurement should be carried out with capacity building both for bidders (especially SMEs) and buyers. The administrative burden should be decreased by the usage of e-procurement tools such as Single European Document¹⁰. In addition and crucially, the recently launched e-procurement system of Kosovo should be open for every stakeholder including citizens not just for registered bidders. The better quality and more detailed tendering information can only contribute to efficiency and accountability if it is freely and openly available to everybody who can make use of it to improve procurement outcomes and ensure adequate and timely degree of transparency in each phase of the public procurement cycle.

Independence and meritocracy

The independence and meritocracy of public procurement professionals and evaluation boards should be ensured to prevent undue political influence in public tenders. This should include at the minimum 1) raising awareness towards the various forms of corruption, 2) elaborating reliable and safe procedures supporting officials who are experiencing political or administrative pressures to deviate from merit-based decision making, 3) consider positive incentives for public procurement officials when their impartial management clearly results in better value for money (e.g. performance pay or relaxation of some bureaucratic curbs).

Monitoring the procurement market

A comprehensive database should be developed using the already available public procurement notices collected at the PPRC. Adequate data quality should be ensured. Such database would allow for real-time monitoring of corruption risks and the level of

¹⁰ European Single Procurement Document (ECPD) available at: <https://ec.europa.eu/tools/espdp/filter?lang=en>

competition on different product markets. This would create an opportunity for timely intervention of authorities if necessary. For more on monitoring see section 3.4.

3.3 Professionalisation, independence, and motivation of public procurement officials

3.3.1 Problem definition

Three main groups' daily work influences cardinally the way public procurement works in Kosovo: 1) public procurement managers in contracting authorities, 2) bidding companies' employees who are responsible for public procurement, and 3) the members of the key public procurement regulatory and monitoring bodies – PPRC, PRB and CPA – who are responsible for the overall functioning of the area. Their integrity and high quality work are the key factors behind an open, fair and efficient public procurement sector. However, reports and interview results reveal deficiencies in this regard.

Weak planning at contracting authorities

The capacity of public procurement managers - such as applying the Public Procurement Law (PPL) in more complex cases, experience with the procedural requirements, and understanding economic analysis - is insufficient for meeting stated goals of good public procurement (European Commission, 2015a; OECD SIGMA, 2015). Weak planning is one of the main reasons for the high rate of cancelled contract notices and the poorly drafted contracts which are exploited by suppliers in the implementation phase.

Interview results indicate that defining adequate tender specifications is a challenge in most institutions while it represents a crucial starting point for good supplier selection and contract implementation. Preparing a tender notice requires special expertise beyond the knowledge of procurement procedures, e.g. engineering or economic skills, but the relevant experts are not always available in the planning phase. Nevertheless, the ultimate responsibility of following through the tender from planning to contract signature falls on the procurement manager. Unfounded tender specifications carry a great risk in the implementation phase even if the contracting authority strives for the best. The lack of expertise in planning and conducting tendering procedures leads to wasting resources, lack of adequate planning of costs leads to frequent contract modifications. Statistics indicates only 1.4% in 2014, but interviews indicate much more widespread and unreported contract amendment practice such as using the 10% price increase buffer without modification notification.

While these capacity weaknesses and the resulting tendering problems are generally detrimental for value for money, the main concern here is that they can be exploited for corrupt purposes. Corruption is easy to hide as administrative error when such errors are widespread and go unpunished. According to interviews, imprecise specifications are sometimes used as a corrupt practice allowing favoured suppliers either to increase prices in the implementation phase or to deliver poor quality without consequences.

Uncertain implementation of the Public Procurement Law

Although the legislative background in place in Kosovo is in line with EU acquis according to most reports (European Commission, 2016; OECD/Sigma, 2015), practical application remains a challenge for contracting authorities. Procurement managers'

knowledge on the PPL and related secondary legislation is insufficient especially when it has to be applied in more complex tendering procedures.

There is an opportunity to ask for the PPRC's opinion in specific cases but interviews show that the answer is also difficult to interpret in many cases. Additionally, public procurement managers are concerned that the opinion of the PPRC and the PRB are not always in accordance with each other which leads to delay and uncertainty. Conducting the tendering procedure in line with the guidance of PPRC does not guarantee that the PRB will not sanction it by ordering re-tendering.

Due to uncertainties in the application of the law, managers tend to stick with the simplest procedures: the lowest price criterion is overly used in tendering procedures. In 2014, 99% of tenders were awarded to the bidder with the lowest price, while unrealistically low prices are perceived one of the most severe problems in the area of public procurement (OECD/Sigma, 2015). The economically most advantageous criterion could encourage officials to decide on the bid which offers the most value for money instead of the one with the probably unrealistically low price.

Scarce resources for trainings

The professional training of public procurement officials is conducted by the PPRC with the contribution of Kosovo Institute for Public Administration however, resources are scarce. Following the relatively frequent changes of the PPL, this is a challenge for the training system and the guidance provided to procurement officers and economic operators is not comprehensive (OECD/Sigma, 2015). The certification system and the capacity to manage public procurement still need to improve (European Commission, 2016). The better tender management skills of officials would decrease the need for ex ante check of notices – so also the workload of PPRC. According to interviews, besides training on public procurement procedural rules of, market-specific economic training and market analysis skills are particularly lacking throughout the public procurement system, but in particular for officials preparing the tendering documents at the beginning of public procurement processes.

With the introduction of the e-procurement system in progress, training of officers and economic operators becomes extremely important. However, this seems to be insufficient at present.

Low motivation and high fluctuation of officials

Public procurement officials' job is highly complex. It is under high public scrutiny with high risk in terms of consequences of wrongdoing. In addition, they face incoherent policies, discrepancies in their treatment and varying practices regulating the salaries for similar positions. As a result, interviews highlighted that many of them feel insecure and their motivation is low. High fluctuation is perceived in the workforce of the public procurement system which not only increases operating expenses but also sets back the accumulation of knowledge. It is difficult to focus on principles of good government and integrity when the retention of staff is a daily challenge.

Insufficient workforce at central authorities

The PPRC is responsible for monitoring of all contract notices which are sent to them by contracting authorities prior to publication. It is also authorised to monitor the implementation of contracts and the overall procurement activity of contracting authorities in *ad hoc* cases. However, both human resources and budgetary resources are insufficient for carrying out thorough systematic monitoring of all contracting authorities and the process of contract implementation as well.

Central procurement functions are perceived as a success story in recent years (OECD/Sigma, 2015) but the low number of employees of the Central Procurement Authority does not allow their activity to be broadened – even maintaining daily operation at the present level is a challenge according to interviews. At the same time, there are other reasons behind its limited activity: Centralised large-scale procurement is perceived to exclude small and medium enterprises from the public procurement market. These concerns will be discussed in later sections.

Accountability and integrity mechanisms

Training of procurement officials does not focus specifically on anti-corruption measures (PECK, 2015). Additionally, intense staff turnover in the public procurement system leaves limited chance for gradual acquirement of principles of good procurement, while interviews indicate that external attempts to influence officials during the tendering process are present to a considerable extent.

Public institutions in Kosovo are obliged to use internal audits to assure the proper functioning of risk management and internal control processes. On-site interviews indicate that the performance of these internal audit units varies greatly per organisation. In some - more central - institutions they provide substantive assessments, while in others procurement officers know hardly anything about their activities.

3.3.2 Policy Recommendation

Invest in the professionalisation and motivation of public procurement officials while also ensuring their independence from politics.

3.3.3 Implementation

Investment into training

Investment into training of public procurement officials is recommended to be continued in the public sector. It should be accompanied by training including computer literacy skills to bidders – especially regarding the newly introduced e-procurement system. The Public Procurement Regulatory Commission could help public officials by publishing sector specific market analyses and unit price lists and training public procurement officials in how to use these in their daily work.

Anti-corruption elements should be strengthened in the training of public procurement officials. This should include raising awareness both for specific corrupt practices and possible legal and procedural measures for preventing them; and highlighting the importance of striving for value for money as a key anticorruption tool.

Clarifying the implementation of the PPL

Detailed and clear implementation guidance should be provided to contracting authorities on the Public Procurement Law and related secondary legislation. It should be ensured that the opinion of central institutions responsible for the functioning of public procurement are in line with each other. The cooperation between these institutions should be improved. The speed of legislative change should be slowed in order to allow for proper implementation and learning to take place.

Furthermore, coordination between officials preparing documentations for the bidding phase, those who conduct the bid evaluation, and those who oversee contract implementation should be improved. While separation of duties according to

procurement phase creates clear set of responsibilities, it also discourages coordination according to interviews. Hence, without compromising a clear assignment of responsibilities and respecting specialisation, much more coordination among different public procurement officials should be encouraged.

Professional and merit-based decision making

It needs to be ensured that public procurement officials make their decisions based on professional considerations solely. This would involve at the minimum 1) the shielding of public procurement officials and their decisions from political influence, 2) ensure meritocratic appointment of public procurement officials independent of political influence, and 3) assessing the performance of public procurement officials based on the results of their tenders rather than narrowly focusing on procedural rules.

Attractiveness of public procurement profession

The attractiveness of being public procurement official should be substantively increased to mitigate the risks of high fluctuation which limits the accumulation of knowledge and continuous improvement. The salary of public procurement officials is recommended to be raised to reflect the potential savings their work can deliver to public budgets. Additionally, experimenting with increasing discretion coupled with a tighter performance monitoring may further increase these gains.

3.4 Monitoring public procurement

3.4.1 Problem definition

Importance of monitoring

Public procurement in Kosovo encompasses wide ranging goods and services involving thousands of actors each year. While legal rules are uniform, market realities and market structure are different underlining the complexity of the field. Due to such wide breath of activities of such a complexity, thorough monitoring of public procurement outcomes, including corruption risks, is indispensable.

Moreover, many traditional anti-crime tools such as leniency programmes are less efficient in the context of public procurement where colluding firms and public officials operate in a stable market environment with long-term fixed demand for goods and services (Tóth, Fazekas, Czibik, & Tóth, 2014). In such a situation, adequate monitoring using innovative quantitative methods can considerably strengthen the oversight framework.

Data underlying monitoring

Currently, data on public procurement potentially available for monitoring is in flux. The main system used operates as an electronic notice board, that is procedures conducted largely on paper (e.g. bids are submitted on paper) have a publicly accessible online imprint in the form of official call for tenders, contract award announcements, and corrections. A more complete electronic procurement system is in the implementation phase. It will allow for more extensive use of electronic tools generating a lot more data, in an ideal scenario also of higher quality.

Given the overlaps in information content between the two systems and the current infancy of the new electronic procurement system, the subsequent discussion mainly focuses on the old system. Crucially a lot of data is captured electronically which can be used in a high quality public procurement corruption risk monitoring system (for an

overview of key variables see Annex B). However, unfortunately the data is not structured in an easily accessible format, most of it is locked in thousands of word or pdf documents. This implies that while the data is collected and electronically available it cannot readily be used for corruption risk monitoring. A one-off data extraction effort has to be made for making the data analysable. As a result, currently, any quantitative figure characterising public procurement performance in Kosovo rests on a laborious and naturally error-prone manual process of extracting information from thousands of doc or pdf files.

Institutional monitoring capacity

While a database can be relatively quickly created to support monitoring activities, sufficient institutional capacity and willingness is crucial for actually conducting monitoring activities and acting on findings. Unfortunately, previous assessments as well as our interviews have confirmed that monitoring capacity is rather low in Kosovo leading to insufficient quality of monitoring activities (European Commission, 2015a; OECD/Sigma, 2015). In particular, monitoring is weak and legalistic rather than substantive with regards to:

- bidding processes (e.g. interview evidence on the inadequate checks on certificates);
- contract award decisions; and
- contract implementation (Balkan Investigative Reporting Network, 2014).

In addition, monitoring activities are not systematic, only occasional checks are performed, for example by PPRC (European Commission, 2015a).

Jurisdictional division of labour and coordination among different monitoring bodies is inadequate too (European Commission, 2015a). In particular, coordination of monitoring activities by PRB, PPRC, and ACA is insufficient; division of tasks is often unclear.

Usage of monitoring results

In any monitoring framework, eventual results depend on how monitoring and audit findings are used to correct public procurement procedures and alleviate institutional weaknesses. In this regard, Kosovo faces a number of challenges closely linked to institutional capacities and the political economy of the country.

According to interviews, when monitoring and audits find significant breaches of laws and regulations, consequences are typically minor such as no repercussions for a supplier delivering low quality. While a procedure for debarring firms and a public list of debarred suppliers exist, there was only one firm on that list at the time of writing the report (Procurement Review Body, 2016). A major worry among monitoring agents has been the difficulty of change even if one decides to act on uncovered evidence of wrongdoing. For example, if a supplier is politically connected the likelihood of any change in for example the quality of delivered works is very low even in the face of clear evidence of underperformance.

3.4.2 Policy Recommendation

Strengthen the monitoring of the full tender cycle by government agencies as well as civil society organisations and make sure interventions are effective if red flags are raised.

3.4.3 Implementation

Create a public procurement database

The introduction of the new electronic procurement platform and data system will bring about a unique opportunity to create a public procurement database serving government bodies as well as businesses and civil society. Hence, it is preeminent that the government of Kosovo creates an automatically updating and publicly available public procurement database as soon as the new electronic procurement system is fully functional and widely used. Public access to such a database should be ensured automatically and free of charge using an Automatic Programmable Interface (API) or a standard database output in csv format such as those in the EU's TED for example¹¹.

In order to improve international comparability and competitiveness of the tenders it should be considered also to provide an Open Contracting Data Standard (OCDS) output too¹².

Make sure that the new public procurement database is as encompassing as possible in order to prevent displacement of corruption from highly transparent and monitored parts of public procurement transactions to the less transparent and less tightly monitored ones. Crucially, by building on the electronic procurement reform, strengthen the integration of tendering data (e.g. contracts) and project implementation data (e.g. payments) and use the resulting integrated data system to improve control over financial performance (Canhasi, 2016).

Introduce an automatic red flagging framework

The government of Kosovo should also create a set of generic performance indicators as well as corruption risk indicators in order to continuously monitor public procurement results. These indicators should be also directly downloadable for citizens with the full database as discussed above. Indicators should be precisely defined and automatically calculated on a daily basis as new information is announced. Starting with a pilot project for one economic sector (for example construction) could deliver invaluable experience for implementing the framework throughout the whole economy. Furthermore, indicators of inter-bidder collusion could also be incorporated into the public procurement database using international good practice examples (Fazekas & Tóth, 2016a).

The list of corruption risk indicators should follow international best practice while also reflecting national forms and types of public procurement corruption (Dávid-Barrett & Fazekas, 2016; Fazekas, Cingolani, & Tóth, 2016; Fazekas, Tóth, et al., 2016). In order to assure a comprehensive system preventing displacement of corruption, it is recommended that indicators cover public procurement phases such as bid submission, bid assessment, and contract delivery as well as key characteristics of supplier companies. An indicative list of "red flags" is proposed in Table 2.

¹¹ <https://open-data.europa.eu/en/data/dataset/ted-csv>

¹² <http://standard.open-contracting.org/latest/en/>

Table 2: The proposed list of corruption risk indicators for Kosovo

Source	Indicator Name	Indicator Definition
Bid submission	Single bidder	0=more than one bid received 1=ONE bid received
	Call for tender not published in official journal	0=call for tender published in official journal 1=NO call for tenders published in official journal
	Procedure type	0 =open procedure 1=non-open procedure
	Length of eligibility criteria	number of characters of the eligibility criteria MINUS average number of characters of the given market's eligibility criteria
	Length of product description	number of characters of product description MINUS average number of characters in the given market
	Length of submission period	number of days between publication of call for tenders and submission deadline
	Relative price of tender documentation	price of tender documentation DIVIDED BY contract value
	Call for tenders modification	0=call for tenders NOT modified 1=call for tenders modified
Bid assessment	Exclusion of all but one bid	0=at least two bids NOT excluded 1=all but one bid excluded
	Weight of non-price evaluation criteria	share of NON-price related evaluation criteria within all criteria
	Annulled procedure re-launched subsequently	0=contract awarded in a NON-annulled procedure 1=contract awarded in procedure annulled, but re-launched
	Length of decision period	number of working days between submission deadline and announcing contract award
	Unit price	% deviation in the price of standardised unit compared to private market price or lowest public procurement price
	Buyer spending concentration	Share of largest supplier within buyers total spend (high values are risky)
Contract delivery	Contract modification	0=contract NOT modified during delivery 1=contract modified during delivery
	Contract lengthening	relative contract extension (days of extension/days of contract length)
	Contract value increase	relative contract price increase (change in contract value/original, contracted contract value)
Supplier	Extreme reliance on public procurement income	Share of public procurement-income within total company turnover in a

Source	Indicator Name	Indicator Definition
		period (high values are risky)
	Extremely high profitability	Profit margin compared to industry average (high values are risky)
	Political connections	0=company WITHOUT a political connection 1=company WITH a political connection (e.g. company is declaredly owned by a member of parliament)

Strengthen monitoring capacity and institutions

The basic institutional set-up for monitoring public procurement corruption is present, however, it needs to be considerably strengthened. In line with the recommendations set out in section 3.3, the government should invest in the capacity of its monitoring institutions, in particular training and professional motivation. This work should build on the existing monitoring bodies and capacities such as the two new divisions in the PPRC's Supervision and Monitoring Department) (OECD/Sigma, 2015). In addition, it should also unlock positive change by strengthening the independence of monitoring institutions from political influence both de facto and reflected in actors' perceptions (note that bidding companies' perceptions of independence and fairness of public procurement is a crucial determinant of bidding participation, hence perceptions have a real economic impact in public procurement).

In order to maximise monitoring effectiveness, monitoring tasks should be better divided among key monitoring institutions such as the PRB, PPRC, and ACA clarifying which one has jurisdiction over interpreting the law and checking implementation in different settings. Guidance and interpretation of the law provided by one organisation should automatically apply to the activities of the others in order to minimise legislative uncertainty.

Monitoring central purchasing activities is especially important due to their high value and the more complex set of actors. Interviews revealed that invoices in central procurement are often paid even if the supplier did not deliver properly calling for a tighter monitoring framework which leads to action (i.e. non-payment) if delivery is insufficient.

The enforceability of decisions based on monitoring results should be strengthened as well so that monitoring could have real consequences on non-compliant firms and contracting authorities. PRB should be authorised to put economic operators on the debarred firms' list not only in case of providing false information but also for other substantive reasons such as insufficient performance.

Even in countries with strong monitoring capacity, remedying corruption in public procurement is challenging (e.g. asset confiscation in corruption cases is often ineffective). Hence, it is imperative that scarce monitoring resources in Kosovo are concentrated on defining interventions early on in the public procurement process (e.g. auditing the contract award when the call for tenders displayed many red flags) as well as setting out institutional remedies for corruption risks on a systemic scale preventing corruption to arise at the first place.

Mainstream civil society monitoring

Given that many weaknesses of monitoring public procurement corruption in Kosovo come from the political economy of the country, it is imperative for successful reform

to better involve non-governmental organisations and the citizenry more broadly in monitoring corruption risks. Broadening the set of involved actors and breaking up power monopolies is an essential ingredient of successful anticorruption reform. Hence, the above suggested corruption red flagging data should be readily and freely available for any citizen.

Civil society use of public procurement data and societal interest in public procurement are often challenging due to the technical complexity of the field and the long time span between project start and results affecting citizens' lives (World Bank, 2016). Hence, the government should encourage civil society engagement with public procurement and corruption monitoring using a number of good practice tools. First, a civil society monitoring portal run by a civil society group should be facilitated (see for example the partnership arrangements underpinning Ukraine's ProZorro public procurement portal), if needed initial investment financially supported. Such a portal should lower informational barriers and act as a hub for citizen engagement with public procurement more broadly not only related to corruption. Existing experiences with such monitoring portals around Europe as well as in Kosovo should be built upon¹³. Second, the government should introduce a civil society monitoring mechanism similar to the social witness programme in Mexico¹⁴ whereby selected civil society organisations with sufficient expertise in public procurement are assigned to the most influential and largest public procurement tenders and given full access to documentation in order to assure full transparency, increase trust and curb corruption.

3.5 Remedies system

3.5.1 Problem definition

Importance of the remedies system

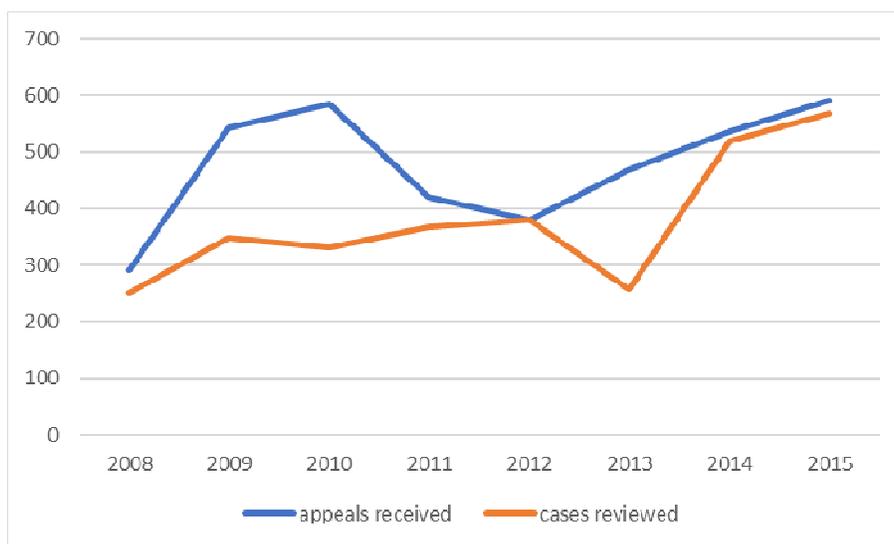
The proper functioning of the remedies system contributes greatly to the fair and open competition in public procurement as it protects economic operators' interest from violations of the law by contracting authorities and curbs contracting authorities' attempts to partially implement the law. Unlike other monitoring bodies, the authority responsible for this area – the PRB in Kosovo - acts only upon request. By implication, the outcomes of its activity strongly depend on the trust of economic operators and their willingness to report suspected wrongdoing. Nevertheless, their decisions directly influence companies' profitability and market opportunities.

The legal framework of remedies is in place in Kosovo while effective and consistent implementation was criticised by the European Commission in 2015 (European Commission, 2015a). Capacity problems were partly solved since then by appointing new members and a chairman in March 2016. Thus, the number of reviewed cases has been only slightly lower than the appeals submitted in recent years closing the gap between received and closed cases.

¹³ <http://e-prokurimi.org/>

¹⁴ www.opengovguide.com

Figure 7: Number of appeals received and cases reviewed by PRB, 2008-2015



Source: (Procurement Review Body, 2016)

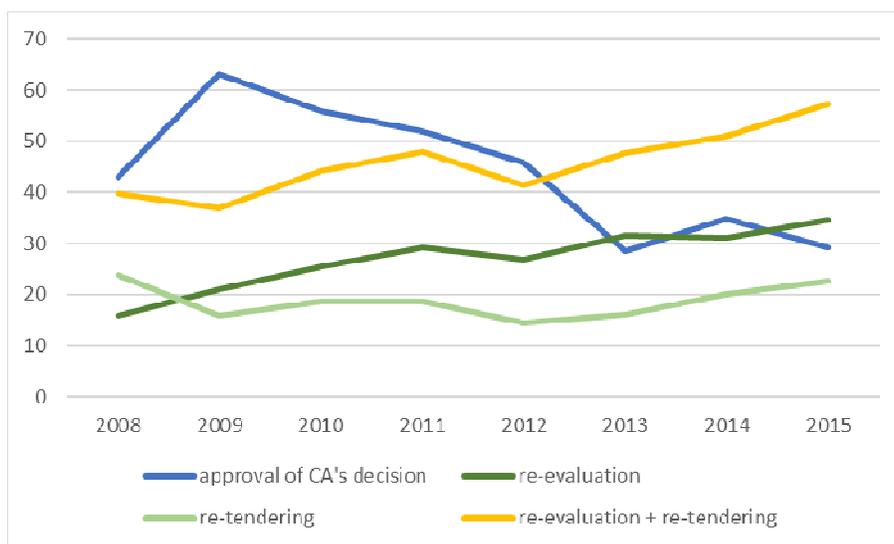
Independence and professionalism

The independence and integrity of PRB members was a significant concern of civil society and previous assessments alike (Canhasi, 2016; European Commission, 2015b). The new PPL amendments in 2016 increased formal expectations of integrity of the PRB chairman and board members by defining rules of suspension and removal from office in case of criminal offence. If an indictment is filed against the chairperson or member of PRB, he shall be suspended; and if he is found guilty, he shall be removed from office. These changes are welcome by international bodies (European Commission, 2015b), but considering how recent these interventions are, long-term effects are yet to be seen.

According to previous assessments, the quality of PRB's decisions in terms of the quality of legal reasoning can be substantially improved. The main goals of public procurement needs to be given due consideration instead of focusing mainly on formal errors (OECD/Sigma, 2015).

The rate of cases in which the PRB decided for the economic operator has been rising continuously. In 2015, 57% of complaints ended with re-evaluation or re-tendering of the procedure (Figure 8). This could indicate either a more effective protection of economic operators' interest against partial decisions or the PRB's decisions protecting the politically connected and powerful companies' interests. Deciding which interpretation is correct is only possible using information on companies' political connections and prior corrupt risks.

Figure 8: Share of different outcomes in cases reviewed by PRB. 2008-2015



Enforceability of PRB decisions

As provided by the Public Procurement Law the PRB shall impose a fine of not less than 5,000 EUR on any contracting authority which does not comply with an order of the PRB¹⁵ However, there are concerns regarding the effective implementation of PRB's decisions. During 2009-2013, fines in total value of 136,000 EUR were not paid to the PRB by 2015. According to PRB, the reason is that the Treasury – Ministry of Finance does not implement its decisions even though PRB decisions are final and enforceable (OECD/Sigma, 2015; Procurement Review Body, 2016).

Importantly, the list of debarred companies is very short: during 2015, PRB disqualified only one company from the Czech Republic (Procurement Review Body, 2016). The PRB is authorised to disqualify bidders from public procurement only if they provide false information or forge documents. This formal check is restrictive, broadening the list with further instances - such as insufficient performance - could be justified in order to increase the weight of PRB's decisions.

Coherent law interpretation and cooperation between bodies

Interview results point out that the legal interpretation of PPRC and PRB may be different in some cases. These incoherencies undermine stakeholders' trust in the system as they result in delays in the procedures which may lead to severe difficulties in the daily operation of contracting authorities and suppliers as well. Discrepancies between expert review assessments and actual decisions undermine stakeholders' trust in the system (OECD/Sigma, 2015).

Fees and penalties

The new amendments of the PPL - which entered into force in 2016 - introduced a two-instance procedure for filing complaints and the administrative fee was increased

¹⁵ Article 118, paragraph 3 of PPL

to the 1% of the value of the bid (or the estimated contract value in other cases) but not less than 100 EUR and not more than 5000 EUR. There are concerns that this intervention limits the access of SMEs to the review system (European Commission, 2016), although these concerns are not confirmed by interview results.

If an economic operator's complaint is upheld, the PRB reimburses the fee; and the damage caused by the contracting authority will be repaid but if the allegations are found unfounded, the PRB may impose a penalty on the complainant up to 5.000 EUR (PPL, 2016), although this practice is not widely used according to interviews.

3.5.2 Policy Recommendation

Improve the consistency and predictability of the public procurement remedies system by increasing its professionalisation and decreasing the political influence over it, with particular focus on the Procurement Review Body.

3.5.3 Implementation

Enforce decisions of the PRB

The decisions of the PRB can influence the functioning of the public procurement market only if they are enforced. Actual costs need to be imposed on non-compliant firms as well as public buyers in order to deter corruption and other forms of malgovernance (OECD/Sigma, 2015).

Predictability

The PPRC should provide a more co-ordinated and documented help-desk service, to avoid giving contradictory and superficial advice to contracting authorities and economic operators (OECD/Sigma, 2015). The cooperation between authorities needs to be improved in order to decrease administrative costs of companies and contracting authorities who try to meet conflicting requirements. A more predictable environment could increase trust towards the public procurement system increasing the number of high quality bidders hence improving value for money.

Professional decisions

It is recommended to strengthen substantive and economic capacities of the PRB to enable it to give due consideration to public procurement outcomes rather than legalistic, formal compliance with the law (OECD/Sigma, 2015). This requires expanding existing legal competences of PRB personnel with economic and market-specific professional knowledge which allow for understanding reasonable procurement costs as well as the quality of procurement outcomes in at least the major public procurement markets.

Building trust and popular support

Building popular support as well as international attention for high-profile corruption investigations is expected to support effective judicial action in these cases at least partially shielding the judiciary from political pressure. When key government and legislative positions are controlled by an unaccountable captor network, mobilising popular support and all those who lose out to low quality public services is essential in maintaining standards of impartial justice beyond mere legality of government action.

Fees

Further decrease of the administrative fee would encourage SMEs to file complaints, if they perceive irregularities in the tendering procedure.

3.6 Centralised procurement

3.6.1 Problem definition

Centralised procurement is increasingly popular among policy makers across the globe (OECD, 2015) due to its potential for saving large amounts of public funds by tackling low capacity as well as entrenched local corruption (Bandiera, Prat, & Valletti, 2009). However, careful planning and experience is needed to harness the gains at its best without causing unintended negative effects.

On the one hand, the main arguments in favour of centralised procurement are the following (OECD 2000, 2011a):

- Products and services can be purchased at a significantly lower price due to economies of scale and increased market power of the central purchasing body.
- The duplicated efforts of several individual contracting authorities are reduced.
- Centralised purchasing can be used as an instrument for the execution of policy goals in specific sectors such as promoting green procurement, innovation or good transparency provisions in public tenders.
- Discovering and curbing corrupt practices is easier in one central body than in the fragmented population of contracting bodies.

On the other hand, arguments against centralised procurement can also be raised.

- The central purchasing body may become a bottleneck itself, if it lacks human and financial capacity.
- The necessary standardisation of goods may result in a situation where the specific needs of authorities are not fully met.
- Centralised procurement may concentrate potential corrupt rents raising the possibility of agency capture.
- Centralised procurement may increase the risk of market concentration and development of monopolistic structures on the supply side.
- It may become harder for SMEs to access the public procurement market as suppliers.

In Kosovo, the Central Procurement Agency became fully operational in 2014, and according to interview results, its activity is considered successful as much as elsewhere in Europe (e.g. UK, Italy) although its use is not extensive enough. In 2016, the list of centrally procured items included 7 categories for the local level and 3 categories at the central level. The 3 awarded contracts totalled more than EUR 14 million (European Commission, 2016). This is only 3.5% of the total value of signed contracts in 2015 which amounted to 401.843.625 EUR¹⁶. CPA is also authorised to conduct separate procurement tenders for authorities which lack the necessary capacities to do it for themselves. Centralised procurement not only decrease the administrative burden on them but also cuts back the number of irregularities in the tendering procedures due to officials at CPA considered well-qualified. However, assessment reports point out that the capacities of CPA are limited and it is understaffed (European Commission, 2016; OECD/Sigma, 2015) which limits the scope

¹⁶ The total value of contracts signed in 2016 was not available at the time of writing this report.

of its activity and a potential broadening of the list of the centrally procured goods would further aggravate the problem.

Interview evidence also suggests that the relatively slow implementation of central procurement can be partly explained by the hesitation of the government. Concerns have been raised that the more extensive use of central procurement would limit the access of small and medium size enterprises' (SMEs) access to the public procurement market. This is considered as a crucial challenge as the private sector is still relatively weak in Kosovo with the government playing a central role on the market as a buyer and contributing to the development of the local economy.

This argument was raised in international organisations' reports too (OECD, 2000, 2011; PwC, 2014), but an overview of central procurement systems in Europe shows that SMEs in many countries are actually quite well represented among the suppliers of centralised procurement procedures. In Sweden and France, the rate of SMEs among the suppliers of the central purchasing body was 70% at the time of the preparation of the report (OECD, 2011). The corresponding rate in Finland was 40%.

However, these results assume an explicit political will for encouraging SMEs in central procurement. Government policy can require from central purchasing bodies to give opportunity to SMEs to participate by any of the following potential instruments:

- setting qualification criteria at an appropriate level with SMEs in mind;
- allowing subcontracting and joint bidding which allow SMEs to participate in contracts which were otherwise not in line with their capacities;
- divide contracts into lots e.g. by geographical area.

Helping SMEs to participate in centralised procurement is also in central purchasing body's interest because it helps to maintain a competitive, diversified market structure instead of facilitating the development of monopolistic structures (Nakabayashi, 2013).

3.6.2 Policy Recommendation

Pursue the wider use of centralised public procurement for standardised goods and support framework agreements on the sectoral level where appropriate.

3.6.3 Implementation

Broadening the scope of centralised procurement

It needs to be ensured that the list of items for central purchasing, which was adopted by the Government in February 2015 (OECD/Sigma, 2015), is put in use by contracting authorities. The list of products is recommended to be extended with new goods where contracting authorities' preferences are reasonably homogenous. This should be carried out based on the thorough analysis of authorities' needs and annual procurement volumes. The expansion of the jointly purchased goods' list should be accompanied by a significant increase of CPA's personnel and other resources in order to match additional tasks with additional organisational resources.

Ensuring integrity of CPA's activity

As the increasing value of centralised procurement may attract attempts to capture CPA by powerful interests, increasing the level of integrity measures is recommended too. Ensuring the proper monitoring and integrity of CPA is one of the most important

factors which are necessary to harvest gains of the extended use of centralised procurement – both in terms of saving public funds and mitigating corruption risks in the public procurement system. According to interviews, it is a widespread problem that suppliers tend not to deliver but their invoices are paid anyway. Hence, the payment system of central purchase needs to be more rigorous.

Increasing the capacities of Central Procurement Agency

The more extensive use of centralised procurement requires proper staffing of CPA both in terms of numbers and qualification. The personnel responsible for carrying out centralised procurement is recommended to involve employees with the following competences (OECD, 2011):

- Experienced and business-oriented senior management;
- Specialised product and market skills;
- Professional procurement and contracting staff;
- Qualified legal staff;
- IT and systems analysts;
- Financing and accounting skills.

The presumed savings from the wider use of centralised procurement can provide sufficient funds for investing in the capacities and staff at the CPA. Benchmark spending values could be set using prices from non-central procurement against which savings by centralised procurement can be evaluated.

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5. ANNEXES

Annex 1: Description of missions to Kosovo

Description of the first on-site mission

Goal: fact-finding, explorative mission

Date: 7-11 November 2016

List of participants of the group interviews

Public Procurement Regulatory Commission (PPRC) <ul style="list-style-type: none">- Board members- Regulatory Division- Monitoring Division- IT Division- Training Division
Procurement Review Body (PRB) <ul style="list-style-type: none">- PRB Members- Division for review of Appeals- Division for Budget and Finance Legal Unit
Central Procurement Agency (CPA) <ul style="list-style-type: none">- Director- Budget and Finance- Personnel- Directorate for specific procurements- Directorate for centralised procurements
Kosovo Anti-corruption Agency (KAA)
National Audit Office
Pristina Municipality <ul style="list-style-type: none">- Directorate of Capital Investment and Contract Management
Central Procurement entities <ul style="list-style-type: none">- Ministry of Internal Affairs- Ministry of Education, Science and Technology- Ministry of Public Administration Ministry of Environment and Spatial Planning- Ministry of Health- Ministry of Labour and Social Welfare- Kosovo Judicial Council- Kosovo Police- Kosovo Academy of Public Security- Privatisation Agency of Kosovo

- Kosovo Customs
- Tax Administration of Kosovo
- Radio Television of Kosovo
- University of Pristina

Public companies

- Post and Telecommunication of Kosovo
- Kosovo Energy Corporation
- KOSTT (Electricity Transmission, System and Market Operator)
- Kosovo Post
- Trainkos JS

Economic Operators

- Rrota
- ERAMED

Description of the second on-site mission

Date: 5-8 December 2016

Goal: introduction and discussion of recommendations and the possible ways of implementation of draft policy recommendations

List of participants of the group interviews

USAID
Local expert
Ferizaj Municipality
Gjilan Municipality
NGOs active in public procurement area <ul style="list-style-type: none">- Kosovo Democratic institute- FOL Movement- GAP Institute
Investigative journalists <ul style="list-style-type: none">- BIRN
Independent experts <ul style="list-style-type: none">- Professor of Economics at American University- Executive Director of BIP Institute
Managers of procurement activities <ul style="list-style-type: none">- Prime Minister Office- Ministry of Finance- Ministry of Internal Affairs- Ministry of Health- Ministry of Justice- Ministry of Agriculture and Rural Development
Special Prosecution Office
Former EULEX Prosecutor
Kosovo Anti-corruption Agency (KAA) - Division for Preventing corruption in Procurement

Description of the third on-site mission

Date: 8-9 February 2017

Goal: to discuss the first full draft of the report with all relevant stakeholders in detail

List of participants of the focus groups

Kosovo Anti-corruption Agency <ul style="list-style-type: none">- Division for Preventing corruption in Procurement
Public Procurement Regulatory Commission <ul style="list-style-type: none">- Monitoring Division- Regulatory Division
Procurement Review Body <ul style="list-style-type: none">- Division for Review and Appeals
Central Procurement Agency <ul style="list-style-type: none">- Special Procurement
Municipality of Pristina
Municipality of Ferizaj
Kosovo Energy Corporation
National Audit Office
Kosovo Democratic Institute
Ministry of Health
Ministry of Infrastructure
Municipality of Gjilan
Ministry of Internal Affairs

Annex 2: Variable availability in the Kosovar public procurement data system

Source announcement	Variable name
Contract award notice as well as call for tenders	ID number of tender
	Title of tender
	Short description
	Procedure type
	Are there previous publications?
	ID number of previous publications
	Place of implementation (ideally: NUTS code or postcode)
	Contracting authority's name
	Contracting authority's ID number
	Contracting authority's address (postcode, city)
	Contracting authority's main activity
	Contracting authority's type (ministry, national agency, regional or local authority etc.)
	Is it joint procurement?
	Is it awarded by Central Procurement Agency?
	Source of funding
	Type of procurement (goods, service, works)
	Estimated price
	Is divided to lots?
	Number of lots
	Length of contract (month/year) OR estimated date of completion
Is it a framework agreement?	
Is it a contract based on a framework agreement?	
CPV codes	
Award criteria (MEAT or LOWEST)	
If MEAT: name of criteria and weights	
Contract award notice	Date of publication of contract award notice
	date of contract signature
	ID number of contract award notice
	URL of contract award notice
	Winner's name
	Winner's address (postcode, country, city, NUTS code, address)
	Winner's ID number
	Is the winner a consortium?
	Number of bids received
	Number of valid bids
	Final contract value (per lot, if there is more than one)
Lowest bid	
Highest bid	
Is it subcontracted?	
Call for tenders	Date of publication of call for tenders
	URL of call for tenders
	Price of documentation
	ID number of call for tenders
	Deadline for submitting bids
Eligibility criteria (or the length of the text in characters)	
Cancellation notice	Date of cancellation notice (if any)
	Reason of cancellation
	ID number of cancellation notice
Corrigendum	Date of corrigendum (if any)
	Call for tender or contract award notice was modified?
	ID number of corrigendum