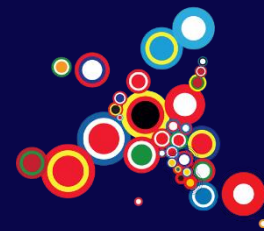




## INSTRUMENT FOR PRE-ACCESSION ASSISTANCE (IPA II) 2014-2020

### BOSNIA AND HERZEGOVINA

Strengthening Public Procurement  
System in Bosnia and Herzegovina  
Phase II – Developing the capacities  
of contracting authorities



#### **Action summary**

The Action will support the Public Procurement Agency of Bosnia and Herzegovina in strengthening the capacity of the civil service with a goal of further professionalisation of the public procurements system in Bosnia and Herzegovina.

The Action will support the upgrading and adoption of necessary secondary legislation and the increased quality of public procurement procedures in contracting authorities.

Overall, the Action will contribute to the development and implementation of a sound and efficient legal, institutional and operational foundation for the effective functioning of the public procurement system in Bosnia and Herzegovina, in accordance with EU standards and institutional models and practices.

<b>Action Identification</b>			
<b>Action Programme Title</b>	Country Action Programme on Bosnia and Herzegovina for the year 2016		
<b>Action Title</b>	<b>Strengthening Public Procurement System in Bosnia and Herzegovina Phase II – Developing the capacities of contracting authorities</b>		
<b>Action ID</b>	IPA 2016/039-653.1/Bosnia and Herzegovina/Public procurement		
<b>Sector Information</b>			
<b>IPA II Sector</b>	1. Democracy and governance		
<b>DAC Sector</b>	15111 – Central procurement		
<b>Budget</b>			
<b>Total cost</b>	EUR 2 000 000		
<b>EU contribution</b>	EUR 2 000 000		
<b>Budget line(s)</b>	22.020101		
<b>Management and Implementation</b>			
<b>Management mode</b>	Direct management		
<i>Direct management:</i> <b>EU Delegation</b>	EU Delegation to BiH		
<b>Location</b>			
<b>Zone benefiting from the action</b>	Bosnia and Herzegovina		
<b>Timeline</b>			
<b>Final date for concluding Financing Agreement(s) with IPA II beneficiary</b>	At the latest by 31 December 2017		
<b>Final date for concluding procurement and grant contracts</b>	3 years following the date of conclusion of the Financing Agreement, with the exception of cases listed under Article 189(2) of the Financial Regulation		
<b>Final date for operational implementation</b>	6 years following the conclusion of the Financing Agreement		
<b>Final date for implementing the Financing Agreement (date by which this programme should be de-committed and closed)</b>	12 years following the conclusion of the Financing Agreement		
<b>Policy objectives / Markers (DAC form)</b>			
<b>General policy objective</b>	<b>Not targeted</b>	<b>Significant objective</b>	<b>Main objective</b>
Participation development/good governance	<input type="checkbox"/>	<input type="checkbox"/>	x
Aid to environment	x	<input type="checkbox"/>	<input type="checkbox"/>
Gender equality (including Women In Development)	x	<input type="checkbox"/>	<input type="checkbox"/>
Trade Development	x	<input type="checkbox"/>	<input type="checkbox"/>
Reproductive, Maternal, New born and child health	x	<input type="checkbox"/>	<input type="checkbox"/>

<b>RIO Convention markers</b>	<b>Not targeted</b>	<b>Significant objective</b>	<b>Main objective</b>
Biological diversity	x	<input type="checkbox"/>	<input type="checkbox"/>
Combat desertification	x	<input type="checkbox"/>	<input type="checkbox"/>
Climate change mitigation	x	<input type="checkbox"/>	<input type="checkbox"/>
Climate change adaptation	x	<input type="checkbox"/>	<input type="checkbox"/>

# 1. RATIONALE

## PROBLEM AND STAKEHOLDER ANALYSIS

Public procurement represents one of the key components of the Public Administration Reform in Bosnia and Herzegovina (BiH).

Public procurement is an area which is generally exposed to corruption. At the same time it is very difficult to recognise it and to prove it in court proceeding. According to the available data of the Public Procurement Agency (PPA), no one was ever prosecuted, or convicted for offenses of corruption relating to public procurements. Based on the Transparency International Corruption Perception Index, published in January 2016, BiH takes the 76th place, out of 168 countries, with a score of 38 on the scale from 0 to 100, and it has deteriorated compared to last year, when its score was 39, and it keeps falling on the scale, starting with 2012 when its score was 42. It is not possible to calculate the economic costs of corruption in general, including those in public procurement, in a simple way, but the OECD estimates that corruption increases the price of public procurement contracts on average by 20% - 25%. In some cases losses constitute even more than 50% of the total contract value. However, real costs of corruption go far beyond the monetary amount. Corruption jeopardises competition, leads to bad decisions directing public funds into projects and procurement that do not satisfy the public interest, these are often of much poorer quality and potentially a risk to human health and life, environment and sustainability.

One of the main problems in public procurement system in BiH is the lack of well-trained staff in contracting authorities responsible for public procurements in BiH. The capacity of individual institutions directly or indirectly involved in processes of public procurement in BiH is quite low. Staff responsible for public procurements is not familiar with public procurement procedures that are in compliance with the *Law on Public Procurement (PPL)*. For most of them, public procurements are not their primary tasks. Therefore they are not able to work on public procurements in a qualitative and effective way that provides the most efficient use of public funds. Another issue is that staff employed in contracting authorities responsible for public procurements do not sufficiently understand their role in the system, nor the necessity of strict implementation of PPL and its *Implementing regulations*. Furthermore, contracting authorities do not properly apply PPL while preparing tender documentation. The analysis of the Procurement Review Body (PRB) indicates that large numbers of public procurements are being cancelled due to violation of the principles of public procurement given that tender documents are not been prepared on the basis of the PPL and implementing regulations. Often, tender documents are not of adequate quality and not in accordance with formal requirements. Monitoring and reporting on public procurement procedures and practices is still not well developed, therefore PPA already drafted a new Rulebook on monitoring on public procurement procedures. Rulebook on monitoring on public procurement was adopted on 31<sup>st</sup> of August of 2016.<sup>1</sup> It defines PPA's competence in monitoring process, procedures of the contracting authorities upon monitoring, actions upon the irregularities found, educational recommendations for contracting authorities, etc.

Audit reports have shown that the contracting authorities often carry out unplanned public procurements. Targeted training should help raise awareness of the necessity to plan procurement in advance. Implementation of contracts is not monitored by contracting authorities, frequently leading to a situation whereby because of "urgency" the least transparent and the least competitive procedure (Negotiated Procedure without Publication of Procurement Notice) is implemented. Also, in more than 70% of cases, price is the only award criteria and it cannot ensure the most efficient spending of public funds in accordance with "best value for money" principle. Staff employed in contracting authorities, responsible for public procurements, lack knowledge of good practices of countries in the region and the EU Member States, regarding the implementation and practical application of EU Directives.

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<sup>1</sup> "Official Gazzete of BiH", No. 72/16

The PPA prepared and sent for adoption a draft *Rulebook<sup>2</sup> on training of public procurement officers*, which has not yet been adopted, due to the absence of agreement on financial resources for implementation of the planned activities. The process of conducting training requires substantial financial resources, which are not available to PPA and other contract authorities in BiH. The global economic and financial crises has left a mark on the entity budgets and on budget of institutions of the BiH, and therefore governments are not in position to ensure needed financial resources for implementation of this Action, even though this is legal commitment of PPA. It is very important to ensure continuation of the training activities in public procurement area as it will contribute to a sound and effective public procurement system in BiH.

According to the Rulebook, training of public procurement officers (PPO) would be supervised by the PPA and would be delivered by the accredited trainers educating a core group of public procurement officers with skills and knowledge to cope with public procurements in BiH. Conducting the trainings on public procurement is not included in job description and represents additional activity for those 56 accredited trainers, so they should be paid for their services. Additionally, accredited trainers would not be hired as key-experts but as service providers for capacity building as they represent a pool of best resources for training on public procurements in BiH.

The Information system for publication and delivering reports on public procurements - *E-procurement system*, has 2221 registered contracting authorities since the beginning of application of E-procurement system (2014). It is estimated that they represent more than 95% of all existing contracting authorities in BiH. Also, value of awarded public procurement contracts in BiH in 2015 was 1.468.282.290,48 BAM and is reduced in relation to the previous years, due to the budgetary constraints caused by the economic crisis. Therefore the public resources need to be spent in the most efficient way, so this Action is one of the PPA highest priorities.

Estimations conducted within PPA have shown it is necessary to train approx. 2200 - 2500 staff employed in contracting authorities for acquiring the status of public procurement officers.

Since there is a lack of capacity, PPA is not able to regulate *Models of the standard bidding documentation*, in accordance with PPL. In total, nine *Models for standard bidding documentation* need to be prepared, one for each public procurement procedure. So far, the following models have been developed: Model for standard bidding documentation for open procedure is prepared and published; and three Models for producers are prepared but not published and they need to be updated in accordance with the PPL. Rest of the documentation (five new Models) should be prepared also in accordance with the PPL. *Models for standard bidding documentation* would increase the efficiency of contracting authorities on the bidding documentation in the tender preparation phase. Bidding documentation will be standardised for every single public procurement procedure and in compliance with PPL and its *Implementing Regulations*.

By 18 April 2016, EU Member States had to transpose the following three new directives into national law:

- Directive 2014/24/EU on public procurement;
- Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors;
- Directive 2014/23/EU on the award of concession contracts.

In terms of the institutional set up and legal framework, the new public procurement law came into force in December 2014. It is broadly in line with the EU legislation from 2004. The law ensures respect for the principles of the Treaty on the Functioning of the EU, such as value for money, free competition, transparency and equal treatment, but Bosnia and Herzegovina maintains a system of domestic preferences which will be gradually phased out. Most of the implementing legislation was adopted on time, except for some secondary legislation and decisions.

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<sup>2</sup> In order to develop a Rulebook that applies to PPOs and for the purpose of determining their position in the system, Public Procurement Agency prepared a questionnaire applying to all contracting authorities in BiH (from 26th of December 2014 to 9th of January 2015). The questionnaire is used as a source of information in order to identify the main problems and difficulties that are facing contracting authorities responsible for public procurements. The questionnaire showed that from 435 contract authorities who filled out a questioner, only 62 of them have a special department with primary jurisdiction of public procurements. Also, 120 of 435 contracting authorities have public procurement budget higher then BAM 1 000 000.

In its 2015 country report the Commission recommended Bosnia and Herzegovina to align its public procurement legislation with the 2014 Directives. It is envisaged that OECD/SIGMA will provide support in this process. In parallel, the PPA is considering developing, “*Comparative analysis of best practices in three EU Member States on application of new EU Directives on public procurements*” with presentation of best practices in at least three EU Member States. In this way, the Agency would like to ensure adequate transfer of knowledge to contracting authorities, economic operators (bidders, candidates, suppliers) and wider. In accordance with the Comparative analysis, PPA is also planning to develop a *Road Map for Implementation of the New EU Directives*. In addition, Comparative analysis would show in which direction should go the implementation of the new EU Directives.

## **OUTLINE OF IPA II ASSISTANCE**

Overall, the Action should achieve the principles of good governance and therefore the efficiency of public procurements in BiH. This Action Document represents the logical extension or second phase of the IPA 2012 Project under which one of the main components was the training of accredited trainers as a first phase of developing a Sustainable National Training System for Public Procurement (SNTSfPP). This second phase will include training on public procurements for employed staff in contracting authorities from all levels of government in BiH including public companies, schools, universities, etc. The aim of the training is to acquire knowledge, skills and abilities of staff employed in contracting authorities on public procurements at all levels of government in BiH including public companies, schools, universities, etc. in order to increase the efficient, effective and transparent implementation, monitoring and control of public procurement procedures in BiH. Enhancing the capacity of the contracting authorities will contribute to the strengthening of the public procurement system in BiH. Public procurement procedures will be more transparent, tender documentation would be prepared in accordance with PPL and its implementing regulations. Also, the issue of corruption will be tackled by raising awareness on most common areas and procedures prone to corruption. The Action should ensure further development of institutional training system within PPA and improved monitoring system in accordance with PPA’s legal competence.

Also, this Action will contribute to the strengthening the capacity of PPA to coordinate and oversee/plan necessary trainings and to improve monitoring and control of public procurement procedures in BiH.

The above should contribute to the development of a system in which only staffs with high personal qualities, integrity and professional expertise in public procurement are allowed to participate in high value public procurement in contracting authorities. Besides, contracting authorities will be obliged to involve a certified PPO in high value public procurements, thus contributing to an efficient system of public procurements at all levels of government in BiH.

The Action will also aim at elaboration of a procurement manuals or instructions that would provide guidance on operational matters; standardised templates and model documents, as well as development of supporting training materials (guidance, procedural handbooks, case studies, etc.). One set of manuals was prepared by SIGMA, and updated under IPA 2012, but it will be needed further upgrading in line with EU standards and procedures. The *Draft Rulebook on Training of Public Procurement Officers* should be updated in line with the new **Strategy for Development of Public Procurement 2016-2020 in BiH**, which will ensure a sustainable training programme.

One of the Action results will be Amendments on PPL and *Implementing Regulations* in view harmonising the legislation with the relevant EU Directives. It is also necessary to prepare Models of the standard bidding documentation, in accordance with PPL. Models for the standard bidding documentation will increase the efficiency of contracting authorities on matter of bidding documentation in the tender preparation phase.

As a final result of the Action, it is planned to develop the “*Comparative analysis of best practices in three EU Member States on application of new EU Directives on public procurements*” with presentation of best practices in at least three EU Member States, and *Road Map for Implementation of the New EU Directives*.

Implementation of this Action will contribute to strengthening the public procurement system in BiH through capacity building of contracting authorities, as well as capacity in PPA and upgrading and adoption of necessary secondary legislation. As a result, tender procedures will be more transparent, number of

violations of procedures will be reduced, implementation of the least competitive procedures will be reduced, contracting authorities will achieve the best value for money in their procurements and effective usage of public funds, etc. The position of PPO is also important regarding the introduction and the use of e-Procurement, which is the short term strategic goal of the overall PP development in BiH.

## **RELEVANCE WITH THE IPA II STRATEGY PAPER AND OTHER KEY REFERENCES**

**The Indicative Strategy Paper for BiH (ISP) for BiH 2014-2017** recalls that governance and public administration reform are key priorities of the Enlargement Strategy. The focus of IPA II assistance will be on the implementation of principles of good governance and improving the public sector management, in particular to strengthen economic management, public financial management, public service delivery and administration reform, as well as combat corruption.

The ISP presents as expected results of the IPA II support “*improved capacities for public financial management, including more efficient revenue administration and collection, budget preparation and execution, public debt management, public procurement, public internal financial control and external audit. Systematic follow-ups to external audits, prepared by independent audit institutions*”

In line with Article 74 of the **Stabilisation and Association Agreement (SAA)** it is noted *The Community and BiH consider the opening-up of the award of public contracts on the basis of non-discrimination and reciprocity, following in particular the WTO rules, to be a desirable objective. Companies of BiH, whether established in the Community or not, shall be granted access to contract award procedures in the Community pursuant to Community procurement rules under treatment no less favourable than that accorded to Community companies as from the entry into force of this Agreement. The Stabilisation and Association Council shall periodically examine the possibility for BiH to introduce access to contract award procedures in BiH for all Community companies. BiH shall report annually to the Stabilisation and Association Council on the measures they have taken to enhance transparency and to provide for effective judicial review of decisions taken in the area of public procurement.*

The **BiH 2015 Report** outlines that *Procurement is an area particularly vulnerable to corruption and more efforts are needed to prevent corruption during the procurement cycle. Good progress was achieved in the past year, especially through the entry into force of the new law on public procurement. However, the country is still at an early stage of harmonising with the acquis on public-private partnerships and concessions. In the coming year, BiH should in particular:*

- *adopt remaining secondary legislation;*
- *strengthen the monitoring role of the Public Procurement Agency and make the procurement process more transparent;*
- *establish a specialised procurement function within contracting authorities.*

*It is also noted that administration should be strengthened through trainings in order to provide for the monitoring of procurement procedures.*

Recommendations proposed for BiH under the **SIGMA 2015 Baseline – Measurement Report** are mainly oriented on short term (1-2 years) and medium-term (3-5 years) priorities. As a short-term priority it is recommended that PPA prepare and submit for adoption the remaining secondary legislation. Preparation of the Strategy on Public Procurement Development for the upcoming years with a detailed Action Plan and with allocation of responsibilities and funds for implementation, as well as strengthening the capacities of the PPA by increasing the number of officials involved in monitoring functions and ex post evaluation is foreseen as a short-term SIGMA recommendation for BiH in public procurements. Medium-term priority will be focused mainly on harmonisation of the PPP/concessions Law with the EU requirements, and increasing the level of co-ordination among the authorities concerned.

By the end of November 2016 SIGMA will finalise its action plan for Bosnia and Herzegovina covering the period January 2017 – June 2018. Among other measures, SIGMA will keep providing capacity building support and assisting the Public Procurement Agency to review and update the public procurement legislation (primary and secondary). Therefore it is of utmost importance that this Project, which contributes to the fulfilment of the above recommendations, closely coordinates with SIGMA.

The **Reform Agenda for BiH 2015-2018** includes public administration reform as one of the six areas of intervention and foresees strengthening of government capacities and increasing efficiency of public institutions at all levels of government, and is closely linked to economic governance. Reference to public procurement is made under one of the measures for the mentioned public administration reform area of intervention, with respect to the publication of decisions on complaints in Public Procurement procedures (as a legal obligation) which is recognised as central to ensuring transparency in procurement procedures.

The Action will contribute to addressing BiH Reform Agenda, BiH 2015 Report recommendations, and SIGMA 2015 Baseline – Measurement recommendations as regards the strengthening of capacities in public procurement through enhancing the system of the trainings for staff employed in contracting authorities, contributing to the efficient, effective and transparent implementation, monitoring and control of public procurement procedures at all levels of government in BiH, as well as adoption of secondary legislation regards the public procurement.

#### **LESSONS LEARNED AND LINK TO PREVIOUS FINANCIAL ASSISTANCE**

Project of technical assistance (2004-2006) has supported process of certification of trainers in public procurement area in BiH. 60 trainers were received certification in BiH. Another result was preparation and adoption of the Rulebook on the training of accredited trainers (Official Gazette of BiH – No 99/06 and 59/08). German Federal Enterprise for International Cooperation (GIZ) supported in 2013 process of recertification of those trainers who received certificates in period of 2004-2006. Total number of recertified trainers was 44.

The EC regional project Training of Trainers - Public Procurement Training for Western Balkans and Turkey finished in November 2012 with the aim of acquiring new trainers (25 new trainers received certification) in this area in order be able to share their knowledge to other participants in public procurement process. Training materials have been designed and used in future training by the accredited public procurement trainers.

The EC has supported process of the strengthening of Public Procurement system in BiH through an IPA 2012 Project. The project finished in February 2016. The project was focused on assistance for implementation of a new Public Procurement Law in the form of drafting secondary legislation, drafting manuals, guidelines and organising seminars on the new law. Another component of the previous Project was capacity building of legislative and judicial bodies involved in public procurements in BiH. Under this component new process of recertification was conducted for all certified trainers on public procurements in BiH. PPA currently has 56 accredited trainers. New Rulebook on training of accredited trainers (prepared under this Project) was adopted in 2015 (Official Gazette of BiH, No. 62/15). Recommendation from the Project ROM Report directs that DEU should consider granting further assistance (under IPA II) to consolidate the results from the current assistance and enhance the PP sector modernisation process within the wider public finance management reform underway.

The outcomes of the previous projects were in some cases not adequately used as there was no political willingness to adopt legislation or establish institutions in order to follow up on the technical preparations and expert work done under the projects. In order to avoid similar problems of unsynchronised political and technical actions, the proposed Action is designed to be effectively implemented regardless of the adoption of relevant documents. The proposed results under this Action are relevant for both the proper implementation of the existing law and of the new ones.

Within the framework of the *Strengthening Public Institutions program*, PPA, in cooperation with the (GIZ), developed in 2014 a completely new information system for the publication of notices in the public procurement procedures and delivery of report on implemented public procurement procedures (information system e-Procurement). An information system e-Procurement, in its first phase, involves the integration of three applications such as: Register of contracting authorities and tenderers, Wisppa system and Go-Procure system with all of their functionalities. In its second phase, e-Procurement system has been upgraded with new module: e-Tendering. In its third phase the system will be upgraded with e-Auctions module.



It is important to recognise that the IPA 2012 Project and GIZ Project were coordinated. There was no overlapping, but complementarity, between those two projects; the two projects had some joint activities and workshops.

Finally, lessons from the past experience can help to increase effectiveness and sustainability of EU assistance.

- Training organised for a larger number of different public administration organisations different than just the staff of one specific organisation should be coordinated with national training institutions (where they exist) and where possible, be carried out in cooperation with them.
- Development of new legislation and amendments to existing legislation should be carried out respecting all national procedures, especially those related to (fiscal/ regulatory) impact assessments, public consultations, inter-ministerial coordination. Fast-track adoption procedures should be avoided unless there are true emergencies. As a rule, prior to supporting the beneficiaries with drafting of legislation or amendments the projects should start by providing them with 'options analysis', regulatory impact assessments, and concept papers. All public stakeholders' consultations should enable participation of all relevant stakeholders.
- Whenever written procedural manuals, guidelines or handbooks are developed, these should be simple enough to be regularly updated and changed by the staff of the respective organisations without external support. Any guidelines or procedures developed cannot contradict with any legal provision of the country.

## 2. INTERVENTION LOGIC

### LOGICAL FRAMEWORK MATRIX

OVERALL OBJECTIVE	OBJECTIVELY VERIFIABLE INDICATORS (*)	SOURCES OF VERIFICATION	
To increase efficiency, effectiveness and transparency of Public Procurement System in BiH in accordance with EU standards.	Progress made towards meeting accession criteria in the area of public procurement	BiH 2015 Report;	
SPECIFIC OBJECTIVE	OBJECTIVELY VERIFIABLE INDICATORS (*)	SOURCES OF VERIFICATION	ASSUMPTIONS
Enhancing the capacities of public procurement staff at all levels of government.	% of the cancellation notices on public procurement procedures in relation to announced notices	BiH Reports; PPA's annual reports <a href="https://www.ejn.gov.ba/Announcement/Search">https://www.ejn.gov.ba/Announcement/Search</a>	Commitment of BiH authorities to work towards achieving project objectives. Key institutions willing to lead reforms and provide proper human resources and financial means, where needed, to support implementation of the Action.
RESULTS	OBJECTIVELY VERIFIABLE INDICATORS (*)	SOURCES OF VERIFICATION	ASSUMPTIONS
Result 1: Capacity of Public Procurement Officers at all levels in BiH, including public companies, schools, universities, in running procurement procedures according to EU standards enhanced, .	% of trained candidates having obtained the status of a public procurement officer after the completion of the training  Number of further enhanced manuals, guidance, handbooks and/or procedures in line with EU standards and practices  % of trained candidates having benefited of awareness raising sessions under General	PPA's annual reports Project reports; List of PPOs published on PPA website;	Sustainable national system of trainings for public procurement system at all levels of government in BiH  Absorption capacity for proper implementation of the Action activities  Sufficient number of Accredited trainers on

	training programme held by NGOs		disposal for training
Result 2: Plan for harmonisation with the new EU Directives on public procurements in BiH, with presentation of best practices in EU Member States developed	Comparative analysis of best practices in three EU Member States on application of new EU Directives on public procurement and Road Map on further harmonisation towards the new EU Directives developed and published	PPA's annual reports to BiH Council of Ministers;  Public Procurement Strategy 2016-2020  Official PPA's and PRB's website;  Project Report adopted at Steering Committee of the Project;	Sufficient number of staff employed in contracting authorities available for trainings  PPA and the Contractor will ensure the support and cooperation of civil society, donors and wider stakeholders
Result 3: Public Procurement Law, Implementing Regulation and relevant Acts and legal documents upgraded	Amendments to existing law and regulations prepared and accepted by the beneficiary  % of amendments to existing law and regulations implemented  Number of updated Models for standard bidding documentation  Number of prepared new Models for standard bidding documentation adopted by the Agency and published	Official PPA's and PRB's website;  Project Report adopted at Steering Committee of the Project;  PPA's annual report to BiH Council of Ministers;	

(\*) All indicators should be formulated as measurement, without specifying targets in the Logical Framework Matrix. The targets should be included in the performance measurement table in section 4. More detailed guidance on indicators is provided in Section 4 on performance measurement.

(\*\*) Relevant activities have to be included only in the following sub-section

## DESCRIPTION OF ACTIVITIES

### **Activities related to the Result 1: Trained public procurement officers at all levels of government of BiH including public companies, schools, universities, etc. will be as follows:**

1.1 Conducting of General training programme on several different topics (practical application of PPL and Implementing Regulations; Public Procurement Procedures; E-Procurement, case study; public procurement tools and techniques, etc.);

1.2 Upgrade of materials which will support the implementation of a General training programme (manuals and guidance on operational matters; standardised templates and models documents) and development of supporting training materials (guidance, procedural handbooks, case studies, etc.).

1.3 Raise awareness of public procurement staff in contracting authorities in order to prevent potential fraud, corruption and misappropriation.

Activity 1.1 will consist of capacity building events (trainings) on practical application of PPL and by-laws organised for employed staff in contracting authorities responsible for public procurements. Training will be focused on several different topics (*PPL* and Implementing Regulations; Public Procurement Procedures; E-Procurement, Case Study, etc.) but also with specific tailored trainings for staff in contracting authorities which are active in special fields of public procurement (defence and security, sectoral contracting authorities, contracting authorities working in health sector, contracting authorities with higher public procurement budget, etc.). Increased focus of training activities should be on efficient procurement tools and techniques (e.g. framework agreements, etc).

The General training programme is foreseen to cover 5 days (40 school hours) of intensive course which will include training of no more than 30 candidates for one educational event (cca 85 educational events for altogether 2200-2500 trainees from all levels of government in BiH including public companies, schools, universities, etc.). The final exam will be organised for candidates who attended 75% of classes in the training programme. For successful passing of written final exam, potential candidate will have to acquire 70% of maximum points. After completion of the final exam, successful potential candidate will gain the status of PPO. According to the draft of the Rulebook on training of PPOs, the next step will be registration of the PPO in PPA's Record of PPOs. Activity will also contribute to the strengthening the capacity of PPA to coordinate and oversee/plan necessary trainings and to improve monitoring and control of public procurement procedures in BiH.

Activity 1.2 will be related to drafting the manuals and guidance on operational matters; standardised templates and model documents, procedural handbooks, case studies which will serve as a supporting material for PPO trainings in the future. The activity will also result in upgrading of Rulebook which will serve as the basis for recertification and continuation of capacity building activities of the public procurement system in BiH. Any procedural manuals, guidelines or handbooks will be kept as simple as possible to be regularly updated and changed by the staff of the respective organisations without external support.

Activity 1.3 will be related to raising awareness of public procurement staff in contracting authorities in order to prevent potential fraud, corruption and misappropriation. This activity will be a part of the General training programme organised in consultations and cooperation with relevant competent Civil Society organisations active in fields of corruption prevention.

### **Activities related to the Result 2: Plan for harmonisation with the new EU Directives on public procurements in BiH, with presentation of best practices in EU Member States developed, will be as follows:**

2.1 Development of Comparative analysis of best practices in three EU Member States on application of new EU Directives on public procurements in BiH.

2.2 Development of a Road map for the implementation of new EU Directives in accordance with the requirements from a new Strategy for Public Procurement Development 2016-2020;

2.3 Study tour for PPL staff and PRB members to EU institutions, which are competent in Public procurement;

Activity 2.1 will be focused on development of a Comparative analysis of best practices in three EU Member States on application of new EU Directives on public procurements in BiH in accordance with SIGMA recommendations, with presentation of best practices in three EU Member States (Comparative analysis will serve as an initial document for facilitating further approximation in accordance with Directives). The Comparative analysis should be prepared and published, showing the best practices applied in EU Member States.

In accordance with the Comparative analysis, PPA is also planning to develop a Road map for implementation of the new EU Directives (Activity 2.2). A Road map should be prepared in addition to the new Strategy for Public Procurement Development 2016-2020. The Strategy envisages implementation of new EU Directives in order to further harmonise with EU Directives based on a *step by step* principle.

Activity 2.3 for PPA servants and PRB members will focus on specific topics (new EU Directives, EU best practices and verdicts of the International Court of Justice regarding public procurement). Training is planned to be organized in the form of a Study visit to EU member states institutions applying the new EU Directives. PPA members and PRB members will be direct beneficiaries, while staff employed in contracting authorities, economic operators and wider group of stakeholders will be indirect beneficiaries of the activity, through transfer of knowledge.

**Activities related to the Result 3: PPL, Implementing Regulation and relevant Acts and legal documents upgraded, will be as follows:**

- 3.1 Further update of Public Procurement Law and Implementing Regulations; and
- 3.2 Update of Models of standard bidding documentation.

The current PPL needs amendments for further implementation of new EU Directives on public procurement, so the Activity 3.1 will be focused on drafting the amendments. The amendments will be in accordance with comparative analysis of best practices in three EU Member States on application of new EU Directives on public procurements. This Comparative analysis of best practices in three EU Member States on application of new EU Directives on public procurements will help BiH authorities to use this document as basis for further harmonisation on “step by step” principal in accordance with strategic framework in public procurement in BiH. Once prepared and agreed, the amendments on PPL will be forwarded to the Council of Ministers for adoption. Activities may also include organizing public discussions on needed amendments. The project will facilitate early stage involvement of stakeholders – prior to legislative drafting, using relevant concept notes, options analyses and draft impact assessment papers to facilitate this process and to ensure ownership of changes. Therefore, the project will provide direct support to drafting new legislation while developing the capacities of beneficiaries and helping them to come up with relevant policy directions, rather than offering any solution or direction. In addition, the project will also pay attention to the feedback from public consultations.

Activity 3.2 will be focused on updating four existing Models and creating five new Models of bidding documentation. Models for standard bidding documentation will increase the efficiency of contracting authorities in bidding documentation preparation phase. Models for bidding documentation will be standardised for every single public procurement procedure and in compliance with PPL and Implementing Regulations.

**RISKS**

Assumptions:

- The Contractor implementing the Action will ensure financial resources for trainers (most of them are civil servants) as these trainers cannot be paid from domestic resources due to the lack of financial allocations for training of staff employed in contracting authorities. If accredited trainers are not paid by the Action that could jeopardise its implementation;

- PPA and the Contractor will ensure the support and cooperation of civil society, donors and wider stakeholders;
- Sufficient number of staff employed in contracting authorities available for trainings.

Risks:

Several risks are determined concerning the Action implementation:

- Availability of sufficient number of trainers for 85 trainings.
- Lack of capacity in the PPA to successfully support the implementation of measures envisaged under this Action

Mitigation measures:

- In order to mitigate the first risk, the PPA will make available to the Contractor a number of accredited trainers from the list of the trainers
- The latter risk can be mitigated through additional employment of capacity, which has been foreseen in the existing Plan of systematisation in the Agency.

## **CONDITIONS FOR IMPLEMENTATION**

The main conditions for the implementation of the Action are:

- Good coordination and cooperation between the PPA and PRB and accredited trainers;
- Good coordination and cooperation between the PPA and PRB and Contractor.

## **3. IMPLEMENTATION ARRANGEMENTS**

### **ROLES AND RESPONSIBILITIES**

The institutional stakeholders involved in the Action are defined as the main institutional setting relevant for the Action.

They include:

- **PPA,**
- **PRB and**
- **Contracting Authorities.**

The function of the PPA and PRB is to ensure the proper implementation of PPL in BiH. A detailed description of the functions performed by the Agency and PBR is given in the Annex II.

A Project Steering Committee will monitor the progress of Action implementation, facilitate the access to relevant institutions, ensure their timely and sufficient inputs when required provide advice and include main institutional stakeholders in accordance with common practice, under the chair of the EU Delegation to BiH. Rights and obligations of the Steering Committee members will be prescribed by the Rules of procedure with the final goal to enable fully commitment and ownership of BiH in this Action.

### **IMPLEMENTATION METHOD(S) AND TYPE(S) OF FINANCING**

As the management of EU funds still operates in a direct management mode in BiH, the EU Delegation will be responsible for the management of the contracts financed from the Action via EU procurement rules for external actions (i.e. external Consultant companies selected to implement the activities).

The Action will be implemented through one Service Contract.

## **4. PERFORMANCE MEASUREMENT**

### **METHODOLOGY FOR MONITORING (AND EVALUATION)**

The European Commission may carry out a mid-term, a final or an ex-post evaluation for this Action or its components via independent consultants, through a joint mission or via an implementing partner. In case a mid-term or final evaluation is not foreseen, the European Commission may, during implementation, decide to undertake such an evaluation for duly justified reasons either on its own decision or on the initiative of the partner. The evaluations will be carried out as prescribed by the DG NEAR guidelines for

evaluations. In addition, the Action might be subject to external monitoring in line with the European Commission rules and procedures set in the Financing Agreement.

## INDICATOR MEASUREMENT

Indicator	Baseline (value + year) (2)	Target 2020 (3)	Final Target (2020) (4)	Source of information
<b>CSP indicator</b> Progress made towards meeting accession criteria in the area of public procurement				BiH 2015 Report;
<b>Action outcome indicator 1</b> % of the cancellation notices on public procurement procedures in relation to announced notices	(2015) 9%	7%	7%	PPA's annual reports <a href="https://www.ejn.gov.ba/Announcement/Search">https://www.ejn.gov.ba/Announcement/Search</a> BiH Reports;
<b>Indicator 1:</b> % of trained candidates having obtained the status of a public procurement officer after the completion of the training	(2015) 0%	75 - 80%	75 - 80%	PPA's annual reports Project reports; List of PPOs published on PPA website;
<b>Indicator 2:</b> Number of further enhanced manuals, guidance, handbooks and/or procedures in line with EU standards and practices	(2015) 1	At least 2	At least 2	
<b>Indicator 3:</b> % of trained candidates having benefited of awareness raising sessions under General training programme held by NGOs	(2015) 0%	75%	75%	
<b>Indicator 4:</b> Comparative analysis of best practices in three EU Member States on application of new EU Directives on public procurement and Road Map on further harmonisation towards the new EU Directives developed and published	(2015) 0%	100%	100%	PPA's annual reports to BiH Council of Ministers; Project Report adopted at Steering Committee of the Project;
<b>Indicator 5.:</b> Amendments to existing law and regulations prepared and accepted by the beneficiary	(2015) 0	1 set of amendments prepared	1 set of amendments prepared	Official PPA's and PRB's website; Project Report adopted at Steering Committee of the Project;
<b>Indicator 5.1:</b> % of amendments to existing law and regulations implemented	(2015) 0%	60% of amendments implemented	60% of amendments implemented	PPA's annual report to BiH Council of Ministers;



<b>Indicator 6.:</b> Number of updated Models for standard bidding documentation	(2015) 4	4 Models updated	4 Models updated	Official Gazette BiH
<b>Indicator 6.1:</b> Number of prepared new Models for standard bidding documentation adopted by the Agency and published	(2015) 0	5 new Models adopted and published	5 new Models adopted and published	

(1) This is the related indicator as included in the ISP (for reference only)

(2) The agreed baseline year is 2010 (to be inserted in brackets in the top row). If for the chosen indicator, there are no available data for 2010, it is advisable to refer to the following years – 2011, 2012. The year of reference may not be the same either for all indicators selected due to a lack of data availability; in this case, the year should then be inserted in each cell in brackets. The baseline value may be "0" (i.e. no reference values are available as the Action represents a novelty for the beneficiary) but cannot be left empty or include references such as "N/A" or "will be determined later".

(3) The target year CANNOT be modified.

(4) This will be a useful reference to continue measuring the outcome of IPA II support beyond the 2014-2020 multi-annual financial period. If the Action is completed before 2020 (year for the performance reward), this value and that in the 2020 target column must be the same.

## 5. SECTOR APPROACH ASSESSMENT

The *PPL* from 2004 established PPA and PRB responsible for proper implementation of the Law, and defined the role and responsibilities of the whole institutional setting in areas of public procurements in BiH. The new *PPL* was adopted in 2014.

The Law is unique in being enacted at the level of BiH. All governments regulate their public procurement matters in compliance with this law; there is no separate procurement law at the level of the entities or Brcko District (BD BiH). The new *Strategy for Public Procurement Development 2016-2020* and its *Action Plan 2016-2017* has been adopted at the 77 Session of the Council of Ministers in BiH held on 13.10.2016.. The Strategy will contribute to strengthening the public procurement system in BiH and further harmonisation and compliance with EU standards in public procurement matters.

The general objectives of Strategy for the development of the public procurement system are:

- Developing the policy making and co-ordination functions within the public procurement systems by enhancing administrative capacity and establishing effective mechanisms for co-ordination and consultation;
- Further developing and aligning the legislative framework with the *acquis* (including the new EU directives) and EU good practices;
- Enhancing transparency and promoting anti-corruption measures;
- Strengthening the institutional capacity of key actors within the public procurement system;
- Strengthening competition among economic operators;
- Improving the operational capacity and the functionality of the public procurement system;
- Putting stronger focus on achieving *value for money* based on fair and open competition.

The public procurement system in BiH is linked with the IPA II Indicative Strategy Paper under the *Democracy and governance* sector and is included in the Governance Sector Planning Document (SPD).

The SPD Governance IPA 2015-2017 recognises the need for improvement of sector strategic framework, the very complex sector institutional setting, and a lack of proper performance assessment framework, programme-based budgeting and public finance reform programme. It further recognises that the public administration reform sector needs to be further strengthened and developed both for approximation to the EU as well as for the wellbeing of the citizens of BiH, and that adequate progress in this sector is of particular importance for the European integration process and development of necessary capacities of institutions and adoption of required regulations, procedures and standards in line with the EU membership requirements.

## 6. CROSS-CUTTING ISSUES

### GENDER MAINSTREAMING

This Action will be implemented in line with two key laws in BiH, such as:

- *The Law on Gender Equality*, and
- *The Law on the Prohibition of Discrimination*.

More precisely, the *Law on Gender Equality*<sup>3</sup> prohibits discrimination on the grounds of gender and sexual orientation. Equal representation of men and women is considered attained when one sex is represented with at least 40 per cent in bodies at all levels of authority in BiH (state, entity, cantonal and municipal levels).

Within the framework of the Action, the same proportion will be ensured as far as beneficiaries, targets and recipients of the activities will be concerned. When relevant, gender mainstreaming in the Action will be focused on:

- Equal opportunity for participation of women in public administration;

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<sup>3</sup> *The Law on Gender Equality in BiH* has been adopted in 2003 and amended in 2009, while a consolidated text was published in 2010.

- Non-discriminatory legal and policy frameworks.

BiH is also committed to implement its *Gender Action Plan 2013-2017* in order to realise gender equality in all areas of social life and work. One of its priority areas relates to work, employment and access to economic resources.

In cooperation with competent Civil Society organisations and experts from particular fields, the Action will be designed also to encompass particular areas; cross-cutting areas such as gender, vulnerable groups, etc.

### **EQUAL OPPORTUNITIES**

The principles of equal opportunities are duly taken into account throughout the project cycle and the Action will promote an environment that is conducive and enabling to gender equality ensuring equal participation of women and men in all project activities, as well as taking into account promotion and participation of people with disabilities.

In addition, the Action will address problems and practical needs specific to men and women in order to ensure capacities to deliver services in a gender-sensitive manner. Gender sensitive language will be maintained throughout the project cycle. It will be ensured that the project management will have adequate capacities to enhance women's participation in project activities and work towards gender equality objectives. In general, a gender perspective will be maintained ensuring that the results of the Action impact positively on gender equality as well.

### **MINORITIES AND VULNERABLE GROUPS**

Participation in project activities will be guaranteed on the basis of equal access regardless of racial or ethnic origin, religion or belief, disability, sex or sexual orientation.

The principles of non-discrimination will also be embedded in any amendment to the PPL and by-laws that the project promotes.

### **ENGAGEMENT WITH CIVIL SOCIETY (AND IF RELEVANT OTHER NON-STATE STAKEHOLDERS)**

Civil Society Organisations were consulted in the process of preparation of this Action (Centra za sigurnosne studije BiH, Transparency International, Analitika – Centar za društvena istraživanja, Centar za istraživačko novinarstvo).

When it comes to the implementation of this specific Action, all envisaged activities will be open to cooperation and setting of synergies with CSOs and other non-state stakeholders. In this way, the Action shall contribute to ensuring that the civil society gains more confidence in the fairness and integrity of the public procurements. Civil society organisations in BiH are engaged in the work of monitoring on different segments of public procurement (legal content and the implementation) and their monitoring reports will be used periodically to assess the progress and final outcomes of the Action.

Finally, the civil society as well as the private sector will be consulted on the preparation of new PP legislation and its amendment.

### **ENVIRONMENT AND CLIMATE CHANGE (AND IF RELEVANT DISASTER RESILIENCE)**

This Action will have limited environmental impact. It will not have implications on the environment, health and security as a consequence of the actions to be undertaken.

## **7. SUSTAINABILITY**

Developing and upgrading of a SNTSfPP implies two phases of which the first one was training of accredited trainers implemented under IPA 2012, and the second will be training for PPOs which should be conducted through this Action due to the lack of domestic financial resources in the Agency and other contracting authorities. Training will be the first instance in securing a core base of well-trained employed staff in contracting authorities, so it is necessary to start with the planned activities as soon as possible. Also, training of PPOs is key for strengthening the capacity of contracting authorities, and the basis for

prevention and insurance of anti-corruption activities as well as further development of public procurement system in BiH.

In order to create SNTSfPP, the Agency already has created a *Rulebook on the training of accredited trainers* that stipulates stricter requirements for accreditation, recertification and obligations of trainer regarding the Agency. Rulebook on the training of accredited trainers was adopted and published in *Official Gazette of BiH*, number 62/15. The Agency expects that the Rulebook on training of public procurement officers (which will be upgraded in line with the new Strategy and taking into account recommendations from the trainings that will be conducted by this Action) will be adopted in a form that guarantee continuation of further activities. In accordance with the existing draft Rulebook, person with a PPO status has to attend “programme of improvement” to maintain a PPO status. “Programme of improvement” is comprised of updating and improvement of knowledge in public procurement through courses (20 school classes) in frame of three years period after obtaining a PPO status. After the completion of this Action it is expected that PPOs will be proficient and able to transfer knowledge within their contracting authorities without external assistance.

The new Strategy will plan the budget for implementation of upgraded Rulebook which will ensure implementation of trainings every year.

In order to ensure continuation of the proposed Action, PPA has already drafted a new Rulebook on internal organisation with a new sector added with competence in training and education which includes further organisation and implementation of trainings of accredited trainers and public procurement officers in order to create SNTSfPP.

In accordance with the *Strategy for Public Procurements in BiH*, further professionalisation of trainings should be moved in direction of narrower, specialized areas such as civil engineering, medicine procurement, software development, defence and security sector etc. (long term strategic goal).

The Action will contribute to increasing of efficiency, effectiveness and transparency of Public Procurement System in BiH in accordance with EU standards which is in line with public administration reform as one of the six areas of intervention and foresees strengthening of government capacities and increasing efficiency of public institutions at all levels of government, and is closely linked to economic governance. The Action will provide the implementation of principles of good governance and improving the public sector management, in particular to strengthen economic management, public financial management, public service delivery and administration reform, as well as combat corruption.

## **8. COMMUNICATION AND VISIBILITY**

Communication and visibility will be given high importance during the implementation of the Action. The implementation of the communication activities shall be the responsibility of the beneficiary, and shall be funded from the amounts allocated to the Action. Integral part of each activity in the Action will be the definition of communication strategy and related visibility activities. These activities will be carried out in order to raise the profile of the activities, increase awareness among various target audiences and to ensure successful communication of information about the operations and results that will be accomplished.

All actions and tools will be fully aligned with the EU visibility guidelines *Communication and Visibility Manual for EU External Actions*.. Additional Visibility Guidelines developed by the Commission (DG NEAR) will have to be followed. Through the development of a communication strategy communication objectives will be set, enabling the successful identification of visibility activities (in order to pull existing resources and create maximum impact when directed to the target groups). Furthermore, in the communication strategy the beneficiary will identify target groups (as recipients of the information); identify key messages (to be transferred to targets in a way to motivate them to perceive information in desired manner) and set up the communication approach.

Visibility and communication actions shall demonstrate how the intervention contributes to the agreed programme objectives and the accession process. Actions shall be aimed at strengthening general public awareness and support of interventions financed and the objectives pursued. The actions shall aim at

highlighting to the relevant target audiences the added value and impact of the EU's interventions. Visibility actions should also promote transparency and accountability on the use of funds.

The following actions and tools should be carried out: definition of visual identity standards; preparation of written materials (factsheets, training compendia, manuals, etc.); production of branded material (panels, folders, promotional material); website; events (trainings, retreats, workshops, round tables, initial and closing events).

It is the responsibility of the beneficiary to keep the EU Delegation fully informed of the planning and implementation of the specific visibility and communication activities.

The beneficiary shall report on its visibility and communication actions in the report submitted to the IPA monitoring committee.

## **ANNEX I - Additional information on structures and institutions**

PPA is established as an independent administrative organisation, with legal personality. The function of the Agency is to ensure the proper implementation of this Law. Those functions comprise of:

- a) preparing and draft laws, draft amendments and addenda to the Law and accompanying implementing regulations, for the purpose of securing their effectiveness and purposefulness;
- b) promoting knowledge of contracting authorities and bidders about regulations on public procurements and their goals, procedures, and methods;
- c) publishing manuals and instruction, as well as to draft and update standard forms and models in compliance with provisions of this Law;
- d) providing technical assistance and deliver advisory opinions to contracting authorities and bidders in relation to regular application of this Law and implementing regulations;
- e) establishing the system of monitoring of procedures that are implemented by contracting authorities for procurement of supplies, services, and works with the aim of educating and eliminating irregularities noticed in individual public procurement procedures;
- f) collecting data, perform analysis and publish information in relation with public procurement procedures and awarded public procurement contracts;
- g) developing and establish electronic information systems in the area of public procurement in BiH;
- h) initiating, supporting, and creating preconditions for the development of practice of electronic procurements and communications in the field of public procurement;
- i) organizing and holding trainings for accredited trainers and public procurement officers, publish information regarding trainings, and prepare manuals and other accompanying materials for professional development in the field of public procurement in compliance with the implementing regulation adopted by the BiH Council of Ministers;
- j) monitoring the work of accredited trainers and keep records on accredited trainers in the field of public procurements and PPOs and drafting annual reports to BiH Council of Ministers.

The Agency has its seat in Sarajevo and two branch offices based in Banja Luka and Mostar.

The Agency has the Director and the Board consisting of:

- Ministry of Finance and Treasury BiH
- Ministry of Finance of Federation BiH
- Ministry of Finance of Republika Srpska (RS)
- Representative from Government of BD BiH

The Agency's Director has the status of a secretary with a special task. The Director of the Agency represent and act on behalf of the Agency, manage the Agency, organise and ensure legal and efficient performance of tasks in the competence of the Agency, adopt implementing regulations and other enactments ensuring legal and efficient performance of tasks, and are responsible for the work of the Agency. Board of the Agency is competent to consider issues in relation with public procurement functioning and improvement of the public procurement system, and provides prior consent to enactments regulating the public procurement system, which shall be adopted by the BiH Council of Ministers or the Director of the Agency. Observers in the Board of the Agency are the representatives of: Foreign Trade Chamber of BiH, Associations of Employers of BiH and entities, and the non-governmental sector, the Agency director, and the PRB Chairperson. BiH Council of Ministers appoints the members of the Board of the Agency for the period of five years. By majority of votes among them, the members of the Agency Board select the chairperson and deputy chairperson for the period of two years. The Board of the Agency convenes at least twice a year. All contracting authorities in BiH are under obligation to cooperate with the Agency and the Board of the Agency when performing their activities that originate from scope of competences determined by this Law and implementing regulations.

PRB is an independent, autonomous institution with a status of a legal person, with headquarters in Sarajevo. PRB have six members of whom two each from the ranks of each constituent people in BiH, one from the ranks of others, taking into account that at least two PRB members shall come from the ranks of peoples in BiH from RS, and four members shall come from the ranks of peoples from the Federation of BiH, and one from the ranks of others shall be selected from one or the other entity in alternation. Three members of the PRB among whom the chairperson is elected have to have university degree qualifications in law and have to have passed judicial

state examination. Remaining three members of the PRB are university degree experts in the areas of works construction, public procurement, transport, or strategic business management. PRB have two branch offices with headquarters in Banja Luka and Mostar. The branch offices have not the status of a legal person. Branch offices in Banja Luka and Mostar have five members each. PRB with headquarters in Sarajevo is competent to adopt decisions in review procedures for procurement values exceeding BAM 800,000.00, as well as for all procurements of institutions of BiH and institutions of BD BiH, and other contracting authorities of BiH and BD BiH. PRB branch offices in Banja Luka and Mostar are competent to adopt decisions in review procedures for procurement values below BAM 800,000.00. PRB decides on appeals in public procurement procedures. Members of the PRB are appointed by the Parliamentary Assembly of BiH. Term of office of the PRB members is five years with an option of one reappointment.

Contracting authority - Cantons, municipalities and other lower levels of government have no jurisdiction in public procurement and they are only considered as contracting authorities. All contracting authorities in Bosnia and Herzegovina are under obligation to cooperate with the Agency and the Board of the Agency when performing their activities that originate from scope of competences determined by Law and its Implementing Regulations.