

CODE OF BEHAVIOUR
AND
CODE OF ETHICS

of the

Ministry of Energy and Mining

LPTAP Project Steering Committee

LPTAP Project Office

This Code of Behaviour and Code of Ethics is intended to guide the representatives of the Ministry of Energy and Mining, the LPTAP Project Committee (PSC) and the LPTAP Project Office(PO) who participate, at whatever stage and at whatever level of input, directly or indirectly, in the business process that has an element of procurement activity. The monies may be provided from a variety of sources, such as funds from the Kosovo Consolidated Budget, or funds provided via Donor contributions or grants, or organisations. Additionally, it applies to individuals who are legally required to follow the Public Procurement Law and financial rules of Kosovo

Code of Behaviour

1. Business practise

In the modern business world and the worldwide market economy, the majority of companies conduct their business in an ethical manner. Business usually operates as a fair exchange between two parties and normally involves the provision of goods, services, and works in exchange for the payment of money.

However, some companies and individuals do not conduct their business in an ethical manner. The availability of money attracts those types of people who have a desire to acquire some of that money for themselves, or their business, and who are involved in corruption, bribery, or even threats to achieve their aims. People who are prepared to take these types of actions (suppliers or officials) are quite prepared to setup or sacrifice whoever they see as an obstacle to their intentions.

This paper is a Code of Behaviour and Code of Ethics is to guide to those members of the afore mentioned organisations who may become involved with suppliers and/or procurement activity.

2. Company practises

It is important to be aware of some underhand techniques used by unscrupulous operators to achieve their aims.

Highlighting some of the worst of practises, a company or individual may carry out:

- Carry miniature cameras, video recorders or voice recorders on the body or in a briefcase or a concealed object.
- Recording of telephone or mobile phone conversations.
- Quoting conversations taken out of context.
- Prepare a list of carefully crafted questions to respond too.
- Obtain a photograph after being setup to appear in company with an inappropriate person(s) in a bar, café, hotel bedroom, supplier representative(s), politicians, potential investors.
- Setting up what appears to be innocent meetings, social trips, event tickets, meals, presents etc. (Other examples are show in Section 3.8 of the Code of Ethics).

3. Correct behaviour

It is wise to be circumspect in all dealings with business organisations or their representatives.

- Prior to any formal interest in a project or procurement activity anyone may see who they like; though that may raise the question – why!

- As a project moves towards the start of its formal procedure or procurement process it is not wise for anyone officially connected with that process, to start having meetings with any companies or individuals.
- No matter how innocent a discussion may be, actually meeting with a company or individual(s) will present an opportunity for a certain parties of people, with mischievous or frivolous intent, to make inappropriate accusations. The principal of throw some mud and some will stick. If that company actually wins the contract, or if it was a close decision, or the award was won under questionable evaluation criteria, then those officials actually give a golden opportunity for political accusations and mischief to be made, which at the very least could delay or cancel the award process, or require a formal investigation.
- The general principal is that once the formal process is underway, don't see anyone.

Therefore, in order to protect the MEM, PSC and PO officials, any contact with an interested supplier or representative, formally or informally, should be:

- Avoided unless necessary.
- Report any approach by suppliers, individuals, or third parties to the head of the respective organisation or committee.
- Report the time, date and location, the name of the contact(s) and the topics of conversation.
- Do not give quotes or statements to any type of media.

Code of Ethics

Section 1 **Statement on Purchasing Policy**

1.1 It is the policy of the Ministry of Energy and Mining (MEM), the Project Steering Committee (PSC) and the Project Manager/Project Office (PM/PO) to promote and balance the objectives of protecting the integrity of the organisations and their officials, and the expenditure of monies under their care, by prescribing essential standards of ethical conduct, without creating unnecessary obstacles to providing an efficient and effective service.

1.2 Those persons who provide any input, in whatsoever form or contribution, in part or in full, and have been or will be, involved in the process of working with, or selecting supplier(s), directly or indirectly, for the provision of services, goods, equipment, projects, works, consultancy or other such requirements, will be obliged to conduct themselves by the principles of these codes.

Section 2 **Principles**

2.1 Expected behaviour

Where there is any element or suspicion of behaviour, which seems inappropriate or raises any ethical concerns, at any stage in the course of a procurement action, then any person(s) who observes or acquires knowledge of such a behaviour, is required to immediately report that concern to the head of the organisation concerned.

2.2 Level of authority

Each person will ensure that they will not use their authority or position, in any organisation, for personal gain, in whatsoever form.

2.3 Purchasing decisions

Purchasing decisions should be made on reasonable assessments of availability, suitability, quality, service, lowest cost or most economically cost, technical specifications, integrity and objectivity, free from any personal considerations or benefit.

2.4 Integrity

Each person will maintain an unimpeachable standard of integrity in their business supplier relationships and work activities, both inside and outside the organisations in which they are employed.

2.5 Highest standards

Will continually foster the highest possible standards of professional competence amongst those for whom they are responsible and with their associates. Additionally it is the duty of all participants who become directly or indirectly involved in procurement activities, to enhance their own knowledge, technically, legally and commercially so as continually improve the status and standing of the MEM, PSC and the PO.

2.6 Use of resources

It is incumbent upon all persons to optimise the use of all the resources for which they have been provided with, or are responsible to provide, so as to maximum the benefit of MEM, the PSC and PO.

2.7 Law of Kosovo

All persons will be expected to comply both with the letter and the spirit of the law(s) of Kosovo, inter-governmental agreements, International law(s) and Donor agreements.

Section 3 **Guidance**

3.1 Declaration of interest

Where there may be any personal interest, directly or indirectly, either through business, family or friends or through other associations, which may influence or might reasonably be seen by others to influence that persons judgement and impartiality, in any matter relevant to his or her duties, then that interest should be clearly declared to the Head of MEM, the Chairman of the PSC or the PM, before any action or further action is taken in the procurement process (see Conflicts of Interest – Section 4)

3.2 Gratuities and kickbacks

It is an offence to bribe or attempt to bribe any official or former official, directly or indirectly, in what so ever position or to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any procurement requirement or a contract or subcontract, or to any solicitation or proposal that may be pending or in process.

3.3 Confidentiality and accuracy of information

The confidentiality of information received in the course of duty should be respected and should not be used for personal gain. Also any information given in the course of participation should be true and fair and never designed to mislead participants or colleagues, in any part of the procurement process.

Handle all confidential information including trade secrets belonging to a supplier or employer with due diligence and care and not disclose such information to unauthorized personnel without express permission or authority.

3.4 Registered Suppliers

This clause applies to Suppliers who function and operate from within Kosovo territory. No individual or organisation is allowed to deal with or purchase from, to agree to or to sign, any contract, with any organisation, that is neither a registered Kosovo company and/or does not pay Kosovo taxes.

3.5 Fair Competition

Every effort should be made to create an equal and fair competition between Suppliers. The Suppliers should be confident that the Tender process and its evaluation are fair, strictly controlled and the process conducted openly and transparently. Avoid agreements or contracts that are protective and stifle competition.

3.6 Contractual Obligations

Contracts are legally binding agreements between the parties and therefore care needs to taken at all stages, within the contract process. No changes may be made by either party, without the express agreement in writing, of both parties. Additionally, special attention needs to be taken, where potential changes may cause cost increases to previously committed funds.

3.7 Business gifts

Business gifts, other than items of very small intrinsic value, such as end of year promotional pens, diaries or calendars, should not be accepted.

3.8 Hospitality

Very modest hospitality is an accepted courtesy of a business relationship. However, any hospitality accepted should not be significantly greater than the recipient's employer would be likely to provide in return.

The recipient should not allow him or herself to reach a position whereby he or she might be or might be deemed by others, to have been influenced in making a business decision, as a consequence of accepting such hospitality:

Factors to be considered if offered a gift or the offer of hospitality:

- a) Motive of the donor, i.e., whether the gift is a token of appreciation or a bribe.
- b) Value of the gift or the hospitality.
- c) Type of gift or the nature of the hospitality.
- d) Manner in which the offer is made, i.e. openly or surreptitiously.
- e) What strings, if any, are attached?
- f) What impression the gift or hospitality will make on superiors, colleagues, subordinates.
- g) Bear in mind the human propensity to always think the worst.
- h) What would be the employer's reaction, if the matter was brought to his attention?
- i) Whether the buyer can honestly be satisfied that the gift will not influence his/her objectivity in dealing with suppliers.

What is acceptable:

- j) Minor hospitality in the provision of courteous food, biscuits/cake, soft drinks etc.
- k) If the individual does not have transport, then at the end of visit, the organisation providing local transport to the nearest connecting transportation centre

What is not acceptable:

- l) Free tickets to sports meetings, theatre, art galleries, entertainment venues or similar.
- m) Soliciting or accepting money, loans, credits, or personal percentages and the acceptance of gifts, favours, or services from present or prospective suppliers that might influence procurement decisions.
- n) Paid weekends away, free travel or air flight tickets, holidays, accommodation in Hotels etc.
- o) A paid per diem, payment of any travel costs, either in or out of the country.
- p) Offers of employment for the individual, family, friends, associates.
- q) Assistance or gain, in what so ever form, to family, friends, or business associates.

All forms of gifts or hospitality should be strictly avoided.

3.9 Use of Assets

The practise of using assets, vehicles, equipment, services or taking advantage of official contracts of the organisation, for own or others use, should be discouraged. If there is a valid reason for allowing such an action, then the action may only be undertaken with the approval of the MEM, the PSC or PM. Should there be any consumables items used during the personal use, then the cost of the consumables used, must be paid for by the individual concerned.

4.0 Allocation of cost or expenses

All costs and expenses occurring, whether directly or indirectly, and associated either with hospitality or any part of the procurement process, a site or works inspection, an overnight stay in a hotel, airfares or transport costs, preparation of models or drawings, equipment preparation, testing or test parts, are to be paid solely by the MEM, the PSC or the PO or Government organisations or contracting authorities responsible for creating those costs and expenses.

Section 4 **Conflicts of interest**

4.1 Individuals shall at all times act in a manner which is consistent with their responsibilities to their position and shall exercise particular care that there is no detrimental effect to their position in the MEM, PSC or PO, which results from conflicts between their interests and those of the project.

4.2 For the purposes of this statement, an individual is considered to have a conflict of interest when the individual, or any of his family or associates.

- a) Has an existing or potential financial or other interest which impairs or might appear to impair the individual's independence of judgment in the discharge of responsibilities to the organisation, or
- b) May receive a material, financial or other benefit from knowledge of information which is of a confidential nature.
- c) The 'family' of an individual includes his or her spouse, parents, siblings, children and other relatives.

4.3 An 'associate' of an individual includes any person, trust, organisation, or enterprise, in or with which the individual or any member of his or her family

- a) Is a director, officer, employee, member, partner, or trustee, or
- b) Has a financial interest that enables him or her, acting alone or in conjunction with others, to exercise control or influence policy significantly, or
- c) Has any other material association.

4.4 If an individual believes that he or she may have a conflict of interest, the individual shall promptly and fully disclose the conflict to the head of MEM, the PSC or the PM. The person shall refrain from participating in any way in the matter to which the conflict relates, until the conflict question has been resolved.

4.4 For a period of two years after participation, members of the PSC, or their appointed representatives, are not allowed to be employed by suppliers who are engaged to work for the LPTAP.

Section 5 **Commitment to the highest ethical standards**

5.1 It is a serious breach of the trust to undermine the purchasing process by directing purchases to certain favoured vendors, or to tamper with the competitive bidding process, whether it's done for kickbacks, friendship or any other reason.

Misuse of purchasing power by an organisation or by an individual can carry civil and/or criminal penalties. Such action will also result in the inclusion of persons and organisations in the blacklist of the MEM and the PO.

5.2 Potential Suppliers for any purchase order or contract are required to certify that they will not attempt to influence or intimidate any employee(s), at any point in the procurement process. Contracts documents or terms will contain a clause stating that any effort to influence an employee, to violate the standards of this Code of Ethics, are grounds to void the contract. In addition such behaviour could lead to criminal or civil action being taken through the courts of law.

Section 6 **Relationships with Suppliers**

6.1 All qualified or pre-qualified Suppliers should be given equal opportunity to compete for business.

6.2 Representatives must discharge their duties impartially, so as to assure a fair and competitive procurement process by responsible Suppliers. Moreover, they should conduct themselves in such a manner as to foster public confidence in their personal integrity.

6.3 Efforts should be made to maintain positive and professional relations with all Suppliers. Business should be conducted in good faith and disputes resolved quickly and equitably.

6.4 Suppliers undertaking any business and at whatever stage, should also be held to standards promoting sound and ethical business practices as detailed in this Code of Ethics.

Section 7 **Developing the Supplier market place in Kosovo**

7.1 Provision of practical help and advice

- a) Advising Suppliers how to purchase more efficiently and economically, those items used by the organisation.
- b) This may be accompanied by providing details of annual consumptions levels and the type of products purchased.
- c) Assistance with finding other small competitive customers to prevent too great a reliance on a single large company and possible monopolistic practises.
- d) Providing feedback on why the supplier was unsuccessful in its bid and identifying possible areas where such competition could be improved.
- e) Providing advice and assistance with specifications, design and production.
- f) Provision of advice and help with regard to training and preparing tender documentation.

7.2 Purchasing policy

- a) Without contravening any rules on competition, or where applicable, the Public Procurement Law of Kosovo ensure that where possible, a proportion of orders are placed with local suppliers, thus assisting the prosperity of the communities in which a supplier is located.
- b) Assist with Supplier development.
- c) Measurement of supplier performance and the provision of constructive feedback.
- d) Keeping under constant scrutiny, all purchasing procedures and specific areas such as stock and inventory control arrangements, to discourage unnecessary procurement of supplies and excessive stockholdings.

7.3 Monitoring Supplier practices

- a) Dealing only with suppliers that have high ethical standards, and support local suppliers, while ensuring that they are business registered and pay business taxes to the Kosovo Tax Authorities.
- b) Ensuring that suppliers are aware and consider environmental or 'green' policy where and when this is appropriate.
- c) Encouraging suppliers to adopt a responsible attitude to various community groups.

7.5 Paying invoices on time

- a. Ensure all payments are promptly paid. Late payments may cause the company to experience serious cash flow problems.
- b. Ensuring that both the finance and purchasing sections are aware of these policies and that they adhere to them.
- c. Ensure that complaints are fully investigated and dealt with in a timely manner.

7.6 Clear definitions and social responsibility

- a) The preparation of an environmental policy statement and ensuring that everyone responsible for purchasing is familiar with it.
- b) Ensuring that factors such as the scope for waste minimisation and the potential for recycling opportunities are taken into consideration in purchasing decisions.
- c) Preparing purchasing guidelines which set out clear specifications, performance requirements, terms of reference for the procurement of all goods and services.
- d) Incorporating environmental performance requirements into purchasing specifications, especially in relation to :
 - Maximum energy efficiency.
 - Minimum dependence on production and use of toxic chemicals and other Pollutants.
 - Minimum dependence on non-renewable natural resources.
 - Maximum use of products based on recycled materials and minimum use of unnecessary packaging and other superfluous material.
- e) Ensuring that these guidelines are incorporated into the standard contract conditions for the purchasing of goods and services.

Section 8

Minority Business Enterprise

8.1 The MEM, PSC and PO will, where appropriate, consider that the minority communities, are given the opportunity to participate in purchase orders or potential tenders.

8.2 The minority business community does not expect special considerations, only equal access to the Market place.