



DEMOCRACYPLUS

SMALL MUNICIPALITIES, BIG PROBLEMS IN PUBLIC PROCUREMENT

Municipality: Graçanicë/Gracanica,
Mamushë/Mamusa, Shtërpcë/Strpce
and Novobërdë/Novobrdo



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List of abbreviations

TAK	→ Tax Administration of Kosovo
PRB	→ Procurement Review Body
ROGPP	→ Rules and Operational Guidelines for Public Procurement
PPRC	→ Public Procurement Regulatory Commission
EO	→ Economic Operator
CA	→ Contracting Authority
LPP	→ Law on Public Procurement
SC	→ Special Conditions
ISO	→ International Organization for Standardization
IMC	→ Independent Media Commission

Summary

This monitoring report of procurement activities includes 16 tenders in four municipalities: Graçanicë/Gracanica, Mamushë/Mamusa, Shtërpcë/Strpce and Novobërdë/Novobrdë. Four tenders were monitored in each municipality, from the initiation of the procurement activity to the implementation of the contract.

From this monitoring, D+ has identified a number of findings which are common to these four municipalities, as well as violations that are characteristic to specific municipalities. The following are some of the key findings:

- The tender dossier requires that winners submit, prior to the signing of the contract, a certificate from the court that the owner, director or manager have no criminal record in the last ten years, and that the winner of the economic operator was not bankrupt or insolvent. This requirement was considered fulfilled for all four municipalities even if the winner submits a certificate for only one of the two elements.
- **The Municipality of Graçanicë/Gracanica** has signed a contract valued at around three million Euros. However, this tender is not listed in the procurement plan for 2019, while the budget planned according to the Law on Budget 2020 is only 300 thousand Euros for three years (2020, 2021, 2022). For the same activity, the municipality made a number of mistakes, failing to appropriately calculate the tender security and the contract performance security.
- **The Municipality of Mamushë/Mamusa** has not requested disqualification from participating in future tenders of the company withdrawn prior to signing the contract. If a contract winner withdraws, there is always suspicion that the winner colluded with the second ranked company, to win the tender for a higher price. In another activity, the municipality requested ISO certificates that had nothing to do with the nature of the project and, as a result, only one company which had all certificates submitted a bid.
- **The Municipality of Shtërpcë/Strpce** awarded a contract to the company Linda JSC, the owner of which was convicted of a criminal offense, while his case was reported in the media and was cited in a decision of the Procurement Review Body. Through this action the municipality awarded a contract to a company which, according to the Public Procurement Law was not eligible to participate.
- In two tenders, the **Municipality of Novobërdë/Novobrdë** has recommended for contract award companies that have offered abusive and abnormally low prices. The use of a scoring procedure may cause uncertainty for bidders as they do not know in advance the quantities to be ordered, and there is a risk that an economic operator (EO) has inside information on quantities and may bid higher prices for the items with higher orders and lower prices for items with fewer orders.

Methodology

Four tenders in for municipalities were monitored for this report, as follows: Graçanicë/Gračanica, Mamushë/Mamusa, Shtërpcë/Strpce and Novobërdë/Novobrdë. This report is the first part of the monitoring of 32 tenders in these municipalities, the second report to be published by end 2020. The selected tenders are for 2018 and 2019. Since these are relatively small municipalities, they were often left outside the focus of non-governmental organizations in terms of procurement activity monitoring.

Prior to the selection of tenders, a brief analysis of at least 10 tenders was made for each municipality, analyzing the risks in certain areas, such as tenders for physical security, road construction and maintenance, vehicle service, installation and maintenance of public lighting. Other elements considered include prices of past contracts of the same contracting authority as well as contracts of other contracting authorities. The four-year experience of D+ in monitoring and analyzing procurement activities played a major role in the selection of tenders. Ultimately, taking into account all these elements, the selection was cut to four tenders for each municipality.

After the selection of tenders, the documents which the municipalities are obliged to publish were taken from the e-Procurement platform. These include: contract notice, contract award notice, tender dossier, contracting authority decision, price list, and contract. Other documents, such as tender opening minutes, tender evaluation report, invoices, commitments and purchase orders, technical acceptance reports and all bids were requested through requests for access to public documents. All required documents were made available to D+ by respective municipalities. The report analyzes all steps of the procurement process, from the initiation of the procurement activity, to the tender dossier criteria, bid evaluation, and selection of the winner.

Due to the situation created by the COVID-19 pandemic and since the municipalities have worked on reduced staff, D+ was not able to monitor the implementation of the contracts on the field. However, this is planned to be completed in the second report, if the situation with the pandemic improves.

Introduction

Public procurement in Kosovo has marked continued improvements every year, particularly now with the e-Procurement platform advancing and becoming mandatory for submission of bids and complaints. However, shortcomings are observed in areas where the human touch is still needed. The continued breaches of the law and regulations by procurement officials, and lenient sanctions issued, are causing a situation where the PPL objective of efficient procurement and economization is not being achieved. This implies a higher value for money result.

It is usually the companies that have participated in tenders that expose the violations, firstly through submitting complaints to the contracting authority, and then, if they are not satisfied with the decision, to the Procurement Review Body (PRB). However, if no violation is reported by the bidding companies, it is the NGOs that expose the legal violations and the mistakes made during the drafting of the criteria of the tender dossier.

The need to monitor the procurement activities of the Municipality of Graçanicë/Gračanica, Mamushë/Mamusa, Shtërpçë/Strpce and Novobërdë/Novobrdë emerged considering that they had little monitoring in the past. D+ research of the published reports for procurement activity monitoring during the last five years found that only the Municipality of Mamushë/Mamusa was ever included in such a report, while the other three municipalities have not.

“Democracy Plus” is committed, through continuous monitoring of procurement activities, to highlight violations of the law, and expose potential corruption and negligence of procurement officials. In addition, the findings and recommendations provide references for procurement officials to avoid violations of legal provisions in the future.



Municipality of Graçanicë/Gracanica

Four procurement activities were monitored in the municipality of Graçanicë/Gracanica, two of which were tenders for works, one for services, and one for supply.

For the tender on the installation and repair of public lighting, the municipality applied the framework contract procedure, instead of using the regular procedure. There was one request for review in this activity, while the municipality issued a flawed decision suspending the tender and failed publish the decision on the request for review on the e-Procurement platform.

Numerous errors and violations in the tender dossier were also observed in another procurement activity. The performance security was requested with a longer duration than the maximum allowed by law. The value of the tender security contract requested was higher than the maximum allowed by law. Special conditions were not and, most importantly, the tender valued at over four million Euro was not planned at all.

In the tender for the supply of construction material the municipality received a court certificate of the contract winner which did not meet all requirements of the tender dossier. The contract winner provided a certificate which only proves that the company was not bankrupt or insolvent¹, but not whether any of its directors or managers were convicted of a criminal offense in the past 10 years.

The municipality has not published any of the four contracts on the e-Procurement platform, despite its obligation to do so.

¹ The inability of a company to pay its debts on time.



Installation of public lighting and repair of existing lighting in the Municipality of Graçanicë/Gracanica

The Municipality of Graçanicë/Gracanica has twice published the tender for the installation of public lighting and the repair of the existing lighting. It canceled the first, as all offers contained abnormally low prices on some positions. Four companies participated in the second tender:

No.	Name of Economic Operator	Bid value in Euro
1.	M.V.R. Elektromontues & Dino SH.P.K.	108,381.50
2.	N.N.T. A.B.C.	111,025.50
3.	Termomontimi SH.P.K.	148,705.00
4.	BM Group SH.P.K.	135,999.00

TABLE 1. Bids of companies for the procurement activity "Installation of public lighting and repair of existing lighting in the Municipality of Graçanicë/Gracanica - Retender"

In the second tender, the initial winner was company ABC with a price of 111,025.50 Euro, MVR Elektromontues & Dino SH.PK was declared irresponsible, while two other companies were responsible, but had a higher price. M.V.R. Elektromontuese & Dino SH.PK failed to submit three notarized ISO certificates and failed to provide evidence for a cylinder of at least 7 tons.

MVR Elektromontues & Dino SH.P.K. consortium filed a complaint against this decision, but the municipality issued a decision to suspend this procurement activity, a decision that was highly vague, as it provides no reasoning on the suspension. The decision for suspension should contain, at least, the name of the economic operator who complained, and the reason for the suspension of the procurement activity. However, the municipality continued to err further, as the decision on the request for review was not published on the e-Procurement platform, as required according to the Rules for Filing Complaints².

Failure to publish the decision of the municipality means that other EOs have not been notified of this decision, which would be a major obstacle if they wanted to appeal against such decision. This is because EOs cannot appeal against a decision which does not officially exist, even though they have are able to obtain information through unofficial channels.

The municipality issued a new decision awarding the contract to the consortium MVR Elektromontues & Dino SH.P.K, which meant the request for review was approved. The municipality requested clarification from the consortium regarding ISO certificates, which were not notarized when the consortium applied in the tender. The EO produced the notarized certificates upon the request of the municipality. But, it is unclear whether the municipality should have allow this, as there was no material change in the bid and, since it was the lowest price, it can be considered a minor deviation in accordance with Article 59.4 of the Public Procurement Law³. Regarding the cylinder of a minimum of 7 tons, this was a mistake of the municipality, as it was already included in the list of equipment of the consortium member, Dino SH.P.K.

² F03 Rules for filing complaints-Version 2. PPRC. 2016
<https://bit.ly/3gJq4fw>

³ Law No. 04/l-042 on Public Procurement in the Republic of Kosovo. Official Gazette of the Republic of Kosovo. 2011.
<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772>

This procurement activity in the Procurement Plan for 2019 had an estimated value of 100,000 Euro. However, the municipality announced the tender with an estimated value of 200,000 Euro. This value is 100% higher than that of the procurement plan. Looking into the bids in the first tender, the lowest bid was around 94,000 Euro, while in the second tender around 110,000 Euro. This could be a signal that the municipality has not adequately the estimated value.

The procedure used for this tender was a framework contract for a period of 36 months. Framework contracts can only be used for repairs and maintenance⁴ and not for other categories of works. Only a small percentage of this tender envisages repairs, and mainly it relates to installations. In tenders for works, the amount of works that will be performed is usually known, while the framework contract allows for orders to be made as needs arise, and when they become continuous requirements, for example, a tender for water supply is a continuous request, as it involves a consumption product, and when stock runs out, new orders are made again. On the other hand, installations of public lighting and all preparatory works required are only performed once, and there is no need for new orders.

An unclear and unspecified criterion in the tender dossier is the requirement for two bucket trucks with different heights. The bucket trucks serve to elevate workers who, in terms of this tender, would install bulbs in lighting fixtures. If workers need to work in an elevation of 10 meters, but the bucket truck of the contract winner can only be raised 8 meters, works could not be completed. This is only an assumed situation of what could happen if the tender dossier requirements are not properly specified. The municipality should have recorded the height of the bucket trucks to avoid potential misunderstandings in the future.

The special conditions (SC) of the tender dossier were not requested for this tender publication. This is in contradiction with the Rules and the Operational Guide for Public Procurement (ROGPP)⁵, according to which these conditions must be prepared together with the tender dossier. Failure to specify them could lead to a situation where economic operators have an advantage if they know the conditions in advance. In these conditions, the guarantee for the products is specified, which affects the price that the economic operator will bid. Other elements specified in the SC include the deadline for the initiation of works, the contract manager and, most importantly, the dispute resolution mechanism.

Rehabilitation of river beds, embankments, bridges and local roads in the Municipality of Graçanicë/Graçanica

In this procurement activity, the Municipality of Graçanicë/Graçanica has put together several activities, which are usually procured separately by other contracting authorities. This does not mean that it made a mistake, but in order to develop small and medium enterprises, the municipality could have divided the tender into lots. The estimated value of this tender is 4,278,000 Euro. However, this activity was not found in the procurement plan 2019. Any procurement activity should be planned and included in the procurement plan. When such a high value is spent without planning, it is considered a serious violation. The 2020 Budget includes lists only one similar capital investment titled "Regulation of river beds", with an estimated value for three years (2020-2022) of 300,000 Euro⁶, namely significantly lower than the estimated value for this tender.

4 Article 56.2. Rules and Operational Guidelines for Public Procurement PPRC. 2019
[https://krpp.rks-gov.net/krpp/PageFiles/File/A01 2019/Rregullat dhe Udhezusi 10 04 2019 2.pdf](https://krpp.rks-gov.net/krpp/PageFiles/File/A01%202019/Rregullat%20dhe%20Udhezusi%2010%2004%202019%202.pdf)

5 Article 18.3. Rules and Operational Guidelines for Public Procurement PPRC. 2019
[https://krpp.rks-gov.net/krpp/PageFiles/File/A01 2019/Rregullat dhe Udhezusi 10 04 2019 2.pdf](https://krpp.rks-gov.net/krpp/PageFiles/File/A01%202019/Rregullat%20dhe%20Udhezusi%2010%2004%202019%202.pdf)

6 Law No. 07/L-001 on Budget Allocations for the Budget of the Republic of Kosovo for 2020.
<https://mf.rks-gov.net/desk/inc/media/23991BEA-4CD9-40B3-94D3-EA192C572464.pdf>

The winner of the contract was the company NNT ABC & Europa Partners SH.P.K with a price of 2,996,324 Euro, which was also the lowest price, whereas all other bidders were considered responsible.

No.	Name of Economic Operator	Bid value in Euro
1.	N.N.T. A.B.C. & Europa Partners SH.P.K.	2,996,324.00
2.	Dino SH.P.K.. & Victoria Invest International SH.P.K.	3,981,079.00
3.	Saba Belca & Graniti Com & SB Concstruction	3,493,265.00
4.	Alko Impex & 2T SH.P.K.	4,104,897.50
5.	Beni-Com SH.P.K.	3,864,609.00

TABLE 2. Bids for the procurement activity "Rehabilitation of river beds, embankments, bridges and local roads in the Municipality of Graçanicë/Gracanica"

The municipality had a number of violations in the tender dossier:

- Special Conditions were not requested for this procurement activity either. In addition to the SC being required according to the ROGPP, explanations of what happens if they are not required are presented above.
- The performance security was requested for 48 months, but it should have been requested for 37 months, as is the deadline for concluding the contract is 36 months. According to ROGPP⁷:
"30.6 The performance security shall remain valid for a period of thirty (30) days after the contract completion".
 In this case, the performance security was required for additional 11 months, which adds the costs to the economic operator who was awarded the contract, as the insurance policy will cost more.
- The required value of the tender security exceeded the legal limit. In the file, the tender security was requested at the value of 130,000 Euro, however based on ROGPP⁸, this amount should be between 1 to 3% of the estimated tender value:

THE ESTIMATED VALUE OF 4,278,000 EUROS * 0.03 (MAXIMUM 3%) = 128,340 EURO

7 Article 30.6. Rules and Operational Guidelines for Public Procurement PPRC. 2019
[https://krpp.rks-gov.net/krpp/PageFiles/File/A01 2019/Rregullat dhe Udhezusi 10 04 2019 2.pdf](https://krpp.rks-gov.net/krpp/PageFiles/File/A01%202019/Rregullat%20dhe%20Udhezusi%2010%2004%202019%202.pdf)

8 Article 29.4. Rules and Operational Guidelines for Public Procurement PPRC. 2019
[https://krpp.rks-gov.net/krpp/PageFiles/File/A01 2019/Rregullat dhe Udhezusi 10 04 2019 2.pdf](https://krpp.rks-gov.net/krpp/PageFiles/File/A01%202019/Rregullat%20dhe%20Udhezusi%2010%2004%202019%202.pdf)

An insurance policy must be purchased for the tender security and, as the required value was higher than provided by law, additional costs have been incurred for the five companies that have participated in this tender.

- A framework contract procedure was again used for this tender on works for a period of 36 months. As stated above, framework contracts can only be used for repairs and maintenance and not for other categories of works. This tender also includes a combination of works, some repairs and maintenance, and others new works.
- It was required that for lists of contracts completed in the requested or similar field for the past three years be no less than 4,000,000 Euro. The economic operator must have at least one reference in the amount of 2,000,000 Euro for the pavement of local roads. This requirement contradicts the PPL⁹, which requires that the request for references not be made with the number of contracts, but with the total value of contracts. According to this definition, the municipality should have requested references the total value of which equals two million Euro, rather than just one reference with such value. This request seriously limits competition.

Such errors and violations should not occur, as they are the most basic elements of a tender dossier. The municipality should ensure that future tenders avoid mistakes in the calculation of the performance security.



Supply with construction material for the needs of the Municipality of Graçanicë/Gračanica

The estimated value of the tender for the supply with construction materials was 350,000 Euro, however, this tender was again not listed in the procurement plan for 2019. The contract was awarded to company N.N.T. A.B.C with a price of 256,010 Euro, which was also the lowest price of all offers.

No.	Name of Economic Operator	Bid value in Euro
1.	BAU MARKET SH.P.K	313,749.00
2.	Gama Ing SH.P.K	285,000.00
3.	N.N.T. A.B.C.	256,010.00
4.	Kujtim Gërbeshi	299,385.00
5.	HIDRO PROJECT SH.P.K. & HIDRO BAU " SH.P.K	274,890.00
6.	Beni Construction SH.P.K.	315,990.00
7.	RAD D.O.O.	295,002.60
8.	Grand Bau SH.P.K. & ENGRUP SH.P.K.	287,430.00

TABLE 3.

Procurement of companies for the procurement activity "Supply with construction materials for the needs of the Municipality of Graçanicë/Gračanica"

⁹ Law No. 04/l-042 on Public Procurement in the Republic of Kosovo. Official Gazette of the Republic of Kosovo. 2011. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772>

Four bidders were eliminated for failing to meet the criteria of having references for similar supply of construction materials with a value of 350,000 Euro. Company Gama Ing complained to the Procurement Review Body on this issue, which decided partially in its favor¹⁰. The PRB considered that the references submitted by Gama Ing met the requirement, but did not approve the complaint against N.N.T. A.B.C. in relation to its references. The winner of the contract had submitted three references signed with RAD company (which was a participant in this tender) certified with contracts, references from RAD and proof of payment via bank.

This tender dossier had fewer mistakes compared to the tender for the rehabilitation of river beds, embankments, sidewalks and local roads. Tender security and performance security were requested in line with the law. However, a common mistake is that the SC was not requested in the tender dossier at the time the contract notice was published, the reply to the request for review by Gama Ing was not published on the e-Procurement platform, in order for all economic operators to be notified on the decision of the municipality.

Every tender dossier requires for the contracted economic operators to fulfill the requirements of suitability through the submission of a court certificate. These requirements are divided into three categories which are found in every tender dossier. In the first category, EOs must prove that it did not provide assistance in the drafting of the tender dossier and that there is no conflict of interest. In the second category, EOs are required to confirm that no director or manager has been found guilty by the court. The third category requires proof that the company is not in bankruptcy or insolvency. The request in the tender dossier is:

A document issued by the competent Court certifying that the economic operator meets the "Requirements of Conformity" - issued at least by the last quarter before the date of publication of the Contract Notice.

The EO awarded the contract, N.N.T. A.B.C. produced a certificate from the court stating that the company has not been bankrupt or insolvent in the past two years and that no bankruptcy or liquidation proceedings have been initiated against it.


Nuk është - shpallur i falimentuar ose insolvent gjatë dy viteve të kaluara, dhe ndaj të njëjtit
Nije proglashen pod stečaj ili nelikvidan u protekle dve godine, i protiv istog

nuk është - e iniciuar procedura e falimentimit përkatësisht e likuidimit
nije – pokrenut postupak stečaja odnosno raspuštanja /likvidacije/.

FIGURE 1. Section of the court's certificate for N.N.T. A.B.C.

This certificate does not fully cover the request of the municipality, namely the certificate does not indicate whether the company has had a director or manager convicted in the last 10 years for a criminal offense. The municipality should not have accepted this certificate as such, but rather should have requested the company a certificate covering all conformity requirements.

¹⁰ Decision 23/20. Procurement Review Body 2020.
<https://oshp.rks-gov.net/sq/ProcurementActivities/Download/44c3e1a8-974d-ea11-b589-005056ba09d5>



Physical security services for the nursing home and youth center

Physical security tenders generally face challenges as contracting authorities do not accurately calculate the costs as envisaged by the Labor Law¹¹, thus companies file complaints to the PRB, which also faces issues with these calculations¹². There were no such mistakes in the tender of the Municipality of Graçanicë/Graçanica. The municipality has accurately calculated the limit below which a bid has an abnormally low price. As a result, EO Commando was eliminated, after its offer was below the minimum threshold of only 11.75 Euro. The contract was awarded to OE Rosa Security, at a price of 59,909.76 Euro, while the other bids were as follows:

No.	Name of Economic Operator	Bid value in Euro
1.	Commando SH.P.K.	57,738.96
2.	Rosa Security SH.P.K.	59,909.76
3.	SFK SH.P.K.	62,069.00
4.	Besa Security	81,678.60
5.	K.S.AS - SECURITY SH.P.K.	68,694.84
6.	Luani SH.P.K.	64,797.84

TABLE 4

Bids of companies for the procurement activity "Physical security services for the nursing home and the youth center"

This tender also has a few mistakes that were made during the drafting of the tender dossier. The title of the tender is "Physical security services for the nursing home and the youth center", but the technical specification states that the company will provide physical security for the facility of the Municipal Assembly of Graçanicë/Graçanica. This could have been a technical error, however it could have caused confusion to the economic operators who have submitted bids, as according to the title of the tender the physical security will take place in two different locations, and based on the specification, only in the building of the Municipal Assembly.

The two elements that were repeated in the other three activities above were also seen in this tender, namely SC were not included in the tender dossier, while the activity was planned, but the value in the procurement plan for 2019 was at 17,366.88 Euro, while the estimated value of the tender is 70,000 Euro.

11 (Numerous) Problems in Public Procurement, page 17. Demokraci Plus. 2020.
<https://dplus.org/wp-content/uploads/2020/03/2020-03-problemet-e-shumta-ne-prokurim-publik-1.pdf>

12 The role of the Procurement Review Body in inefficiency in Public Procurement, page 38. Demokraci Plus. 2019.
<https://dplus.org/wp-content/uploads/2019/11/2019-06-Roli-i-OSHP-në-mosefikasitet-në-prokurim-publik.pdf>



Municipality of Mamushë/Mamusa

Four procurement activities were monitored in the municipality of Mamushë/Mamusa, of which three contracting of works and one for supply.

In the tender for the construction of the square, the municipality limited the competition with requests for ISO standards which were not relevant to the nature of the project to be implemented.

In another activity, the municipality has limited competition as it requested demonstration of technical and professional capacity through three contracts for similar works. The request, however, should not have been for the specified number of contracts, but rather only for the list of contracts for similar jobs.

In the tender for the supply of materials for the preparation of the XI Edition of the Tomato Festival, the EO recommended for contract failed to submit certificates from the court and the Tax Administration of Kosovo (TAK), thus the municipality awarded the contract to the second bidder. However, the municipality had not requested that the EO initially declared winner be disqualified from future tenders, as required by procurement rules. For the same tender, the municipality received catalogs which were written by the winning company itself, in order to match the required technical specifications.

In the tender for the renovation of the FMC, three references were requested for similar works completed by EOs, while a list of completed projects and their value should be sought. In this way, the municipality's request limited the competition.

The positive actions of the Municipality of Mamushë/Mamusa, unlike the Municipality of Graçanicë/Gračanica, are with SCs. In all four tenders, they were requested together with the tender dossier.



Construction of the square in the Municipality of Mamushë/Mamusa - Phase 1

In the tender for the construction of the square in the Municipality of Mamushë/Mamusa, the only consortium to submit a bid and be awarded the contract was NBT ING & Eko Group with a price of 199,120.71 Euros, while the estimated value of the tender was 202,700 Euro. The contract price was 98.23% of the estimated value.

Consortium member NBT ING submitted two documents which do not comply with the tender dossier requirements. The CA requirement was for EOs to have paid municipal taxes and property taxes, proven through a certificate which must not be older than 60 days from the date of issue until the date of submission of bids. The certificates issued for NBT ING are dated 17.06.2019, while the bid opening took place on 02.09.2019, namely 77 days later than the date of issue. The municipality should have requested these documents again prior to the signing of the contract, and only if NBT ING would prove it has no debts, then the contract could be signed. With this action, the municipality has breached the criteria it itself has set in the tender dossier.

The bill of quantities, in positions 1.3.5 to 1.3.9, requested “natural floor tiles and stones for outdoor spaces” with the following testing methods:

EN 12407, EN 13755, EN 1926, EN 14157, EN 12731, EN 12372, **EN 13161**, EN 14066, EN 1936, EN 14231

These standards have been required to be proven by the certificate of conformity, which the recommended consortium included in its bid. However, the EN 13161 standard is not included in this declaration and, as long as it is listed as a criterion by the municipality and it is explicitly requested that all standards are proven through conformity certificates, the bid of EO NBT ING & Eko Group is irresponsible.

The municipality has requested five ISO certificates, 9001, 14001, 27001, 50001 and OHSAS 18001. Of these, three are relevant for the project (9001, 14001 and OHSAS 18001), as they include the quality management system (9001), environmental management system (14001) and the occupational health and risk management system (OHSAS 18001). However, the other two, ISO 27001 and 50001, have nothing to do with the nature of the project in question. ISO 27001 deals with information security management and is used by organizations that manage financial information security, intellectual property and information coming from third parties¹³. Works expected to be realized in this project have nothing to do with these areas, thus the request for this ISO certificate was unreasonable. A similar situation is with ISO 50001, which covers energy management¹⁴. D+ has analyzed 50 tender dossiers of different contracting authorities for similar tenders and none requested ISO 27001 or 50001 certificates. These two ISOs are therefore not relevant to the nature of the project and are prohibited from being requested under the PPL.

In relation to the requests for ISO certificates, the municipality responded that these have been requested by the company that has drafted the projects. The project’s technical description for the construction of the square makes no mention of ISO certificate and nowhere in the text are there references to ISO 27001, which addresses information security management, or ISO 50001, which deals with energy management. Therefore, the reply of the municipality is less than convincing, and D+ believes that these two ISO certificates were not relevant to the nature of the project.

¹³ ISO/IEC 27001.
<https://www.iso.org/isoiec-27001-information-security.html>

¹⁴ ISO 50001
<https://www.iso.org/iso-50001-energy-management.html>

In addition, the Public Procurement Regulatory Commission (PPRC) has raised in a statement the concern that some contracting authorities are requesting ISO certificates that are not related to the nature of the projects¹⁵. As a result of these requests for irrelevant ISO certificates, not many companies have submitted bids. Usually, construction companies do not have ISO 27001 and 50001. This, with this action, the municipality has limited the competition to a great extent.

The municipality's positive action is that for stone works, it required EOs to submit a five-year guarantee, and Special Conditions were specified together with the tender dossier, unlike the Municipality of Gračanicě/Gracanica, which failed to specify them.

Construction of sanitary sewage and construction of field roads in Mamushě/Mamusa

Eight bidders took part in the tender for the construction of sanitary sewage and construction of field roads, and the contract was awarded to consortium N.N.P. Aurex & Lani-AL SH.P.K. with a price of 43,306.50 Euro. However, the lowest price bid was that of consortium Intact SH.P.K. & Ademaj Arch-Ing with 37,622.50 Euro. This consortium was eliminated as it did not have three references for similar works. The municipality had given it time to present the references, but the consortium had failed to comply.

No.	Name of Economic Operator	Bid value in Euro
1.	N.N.T. Veha	50,900.00
2.	AAB Construction SH.P.K. & Mirusha Company SH.P.K.	52,332.50
3.	N.N.P. Aurex & Lani-AL SH.P.K.	43,306.50
4.	Intact SH.P.K. & Ademaj Arch-Ing	37,622.50
5.	N.P.T. Bamirs	47,997.00
6.	Hysen Sopa B.I.	48,270.00
7.	Flori SH.P.K.	44,400.00
8.	N.N.SH. World Medium	57,767.50

TABLE 5. Bids of companies for the procurement activity "Construction of sanitary sewage and construction of field roads in Mamushě/Mamusa"

¹⁵ Notice 88/2019, PPRC. 2019.
<https://e-prokurimi.rks-gov.net/HOME/Documents/Notices/atb/398/001.jpg>

This tender dossier also has elements that limit competition. They include the request for bidders to submit three references for similar works, as the request should have been for bidders to present references in a certain value, i.e. not to be limited to the number of references, but rather their value. Competition in this case is damaged as there may be companies that have two references of very high value, which would be eliminated from the tender, while there may be companies with three references of low value, which would not be eliminated. For the contracting authority, the size of projects implemented by a company should be more important than their number.

The municipality did not agree with this finding and stated that the requirement for a minimum of three references is based on the law, and there would have been a limitation of competition only if a number of references and the value of projects would be requested simultaneously. This finding is inaccurate, as Article 69 of the PPL states that a list of realized contracts (evidenced through references) must be requested. There are Opinions on this issue issued by ACA¹⁶ and PRB¹⁷ which provide that it is important to meet a certain value (if required) and not limit the fulfillment of the request with the number of references. For more clarity, the requirements in the tender dossier should have been:

“A list of contracts proving that the EO has successfully completed contracts for similar work in the value of XXX in the last three years from the date of publication of the contract notice”

The municipality made a similar request to the tender on the construction of the square, therefore, the municipality's reasoning that this is not in line with the law does not stand. While the tender for the construction of the square was not limited to the number of references, but rather only a value was set, why would it not do the same in the tender for the construction of the sanitary sewage.

The Municipality of Mamushë/Mamusa should formulate the requests for references in such a way that references are requested without specifying their number, but rather only specifying their value or, if appropriate, not specify any value.



Supply of materials for the preparation of the XI Edition of the Tomato Festival

The tender for the supply of materials for the preparation of the XI Edition of the Tomato Festival was divided into two lots, while initially company Agrovin was selected for award for lot 2, with a price of 48,811 Euro. However, the company failed to submit the required documents prior to the signing of the contract: the court certificate, proving the company met the requirements of conformity, the certificate that it has no debts to TAK, the certificate that it has paid municipal taxes in the place where it is registered, and the certificate on the payment of property tax. The municipality gave the company five days to produce such documents and, after the company failed, it awarded the contract to the second bidder, Haxhijaha, with 51,630 Euro. Haxhijaha was also awarded lot 1 of the contract at a price of 2,249 Euro.

According to ROGPP¹⁸, if a bidder is selected as winner but fails to submit the required certificates, the CA must proceed with the second bidder. However the contracting authority (CA) must confiscate the tender security and initiate the procedure for the disqualification of the EO, as per Article 99.2. of PPL. Disqualification may take up to one year, during which time the EO has no right to participate in tenders. This decision is taken by the PRB, upon the request submitted

16 Anti-Corruption Agency. Opinion 2366/19. 2019.
https://www.akk-ks.org/assets/cms/uploads/files/Opinionet/2019/2366-19_opinion_dpkpp_K.Gjitanit.pdf

17 Procurement Review Body. Decision 404/19. 2019.
<http://arkivaoshp.rks-gov.net/repository/docs/vendimet/2019/404-19vendim.pdf>

18 Article 26.8, page 65. Rules and Operational Guidelines for Public Procurement PPRC. 2019
https://krpp.rks-gov.net/krpp/PageFiles/File/A01_2019/Rregullat_dhe_Udhezusi_10_04_2019_2.pdf

by the CA. For this tender, tender security was not requested, but the CA apparently did not make a request to the PRB for Agrovin to be disqualified. There is always the risk of secret agreements when winning companies withdraw or do not submit the required documents before signing the contract.

Lot 2 of the tender dossier requested three devices, including a tractor without a cabin. From the description of the technical specifications for the tractor, it seems to have been adjusted for the Tafe 42 DI model¹⁹ as the specifics of this tractor are the same as those required in the tender dossier. PPL prohibits the adaptation of technical specifications for a particular brand, except in certain cases where this is not possible, but the word “equivalent” must be added. In this case, the term “equivalent” was added, thus the municipality complied with the law²⁰.

For products in lot 2, proof through catalogs, brochures or photographs was requested. Product specifications that are in the catalog or brochure must match the specifications required in the tender dossier. However, both companies submitted self-designed catalogs, listing all the technical specifications required, so that they match when compared. Catalogs and brochures are created by the equipment manufacturer, as only the manufacturer knows the exact specifications of own equipment. Thus, the municipality should not have accepted such “catalogs” and should have sought the original catalog of the manufacturer, for the products Haxhijaha and Agrov bid. If catalogs created by bidders are accepted, there is a risk that the specifications in catalogs will be adapted to the requirements of the tender dossier²¹. The municipality’s reasoning is that the dossier allows for the submission of photos with technical specifications, whereas the company only made a description of such technical specifications required in the tender dossier. The tender dossier required that the oil tank capacity be 34 liters, and the same capacity was indicated in the bid by Haxhijaha company. However, the data from the manufacturer’s website indicate that the capacity of the model Tafe 42 DI is 47 liters. The issue is that Haxhijaha did not provide the manufacturer’s specifications, but only described the same specifications of the tender dossier. The problem here is not their incompatibility, as a larger capacity of the reservoir is better, but the potential that the municipality can be deceived by irresponsible bidders who write catalogs themselves.

19 Tafe 42 DI EU 2WD

<https://tafetractors.com/tractors/TAFE-42-DI-EU.php>

20 Law No. 04/l-042 on Public Procurement in the Republic of Kosovo. Official Gazette of the Republic of Kosovo. 2011.

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772>

21 Towards municipalities with open, accountable, and efficient public procurement, pg. 9. Demokrasi Plus. 2018.

<https://dplus.org/ep-content/uploads/2018/12/2018-12-03-Drejt-komunave-me-prokurim-të-hapur-llogaridhënës-dhe-efikas-ALB-Final-1.pdf>



Renovation of the FMC in Mamushë/Mamusa

Three bidders took part in the procurement activity for the renovation of the Family Medicine Center, and the contract was awarded to the consortium Intact SH.P.K & NBT-ING with a price of 15,945.87 Euro. The other two bidders were eliminated for failing to submit a declaration on the technical specification, which required in the tender dossier.

No.	Name of Economic Operator	Bid value in Euro
1.	Intact SH.P.K. & NBT-ING	15,945.87
2.	Limit L&B	17,618.35
3.	Hysen Sopa B.I. & Construmax	30,033.75

TABLE 6. Bids of companies for the procurement activity "Renovation of QMF in Mamushë/Mamusa"

The request in the tender dossier was for the bidders to submit at least three references for similar works, without specifying the total value of such references. This is wrong, as the request should have been for bidders to present references in a certain value, i.e. not to be limited to the number of references, but rather their value. Many opinions issued by the Anti-Corruption Agency are related to these types of requests of CAs. Opinions explicitly state that the number of contracts should not be requested, but rather a list of contracts covering the amount requested by the CA would suffice²².

Another finding is that three ISO certificates 9001, 14001 and OHSAS 18001 were requested but are not in line with the nature of the project. ISO 14001 and OHSAS 18001 are similar requirements, 14001 related to the environmental management system, while OHSAS 18001 is a standard related to the management of occupational health and risk systems in place. These two standards were also requested in the tender for the construction of the square, with NBT-ING being awarded as part of the consortium. The estimated value of the tender is only 20,000 Euro and it was not practice to require such certificates for these amounts. In fact, no ISO certificate was required in two other tenders of the Municipality of Mamushë/Mamusa related to renovations, initiated in 2019.

²² Opinion for the Municipality of Gjilan. Anti-Corruption Agency 2019.
https://www.akk-ks.org/assets/cms/uploads/files/Opinionet/2019/2366-19_opinion_dpkpp_K.Gjilanit.pdf



Municipality of Shtërpcë/Strpce

In the four monitored tenders, the municipality received court certificates of contract winners which did not meet all requirements of the tender dossier. The contract winner provided a certificate which only proves that the company was not bankrupt or insolvent, but not whether any of its directors or managers were convicted of a criminal offense in the past ten (10) years.

In the tender for the supply of wood and pellets, the initial winner, Orana & Acvilla, failed to submit the certificates prior to signing the contract. The municipality did not confiscate the tender security and did not request the PRB to disqualify the Orana & Acvilla consortium. There is always the risk of secret agreements when winning companies withdraw or do not submit the required documents before signing the contract. In this case the damage caused by the withdrawal of the first winner was around 12,000 Euro.

Competition was limited in the tender for the broadcasting of sessions and publications, as the tender dossier requested EOs to possess a broadcasting license for the Municipality of Shtërpcë/Strpce.

In the tender for the repair and regulation of existing infrastructure, the municipality awarded the contract to a company which has had its director convicted, despite the PPL stating that a company that has a director or manager with a criminal record during the past ten years shall not be eligible to participate in procurement activities. The winning company failed to cover the requirement for contracts realized in the amount of 1.8 million Euro during the past three years, and its bid was irresponsible even at this point.



Maintenance of local roads during the winter season in the territory of the Municipality of Shtërpce/Strpce

Two bidders participated in the tender for the maintenance of local roads during the winter season, Euro Infrastruktura company with a price of 22,400 Euro, which was awarded the contract, and Luboteni-A company with a price of 25,523 Euro, which submitted a responsible tender but at a higher price. The estimated value of the tender was 28,000 Euro and the deadline for completion of the contract was seven months.

The tender dossier requirements, unlike the Municipality of Mamushë/Mamusa were much lower. The request for references was adequate, namely requiring EOs to submit a list of contracts that cover a certain amount, which in this case was 20,000 Euro.

In the conformity criteria the municipality requested that the winning EO must submit a certificate from the Basic Court which proves the eligibility according to the requirements in Article 6.4 of the tender dossier. These requirements were based on Article 65 of PPL and are divided into three categories which are found in every tender dossier. In the first category, EOs must prove that it did not provide assistance in the drafting of the tender dossier and that there is no conflict of interest. In the second category, the EO is required to prove that no director or manager has been found guilty by the court of certain criminal offenses, while the third category requires proof that the company is not bankrupt or insolvent. Euro Infrastruktura submitted the certificate from the Basic Court in Prishtina - Department for Economic Affairs - that the EO has not been declared bankrupt or insolvent during the past two years and no bankruptcy procedure has been initiated against it. The certificate is issued under Article 65, paragraphs 4.1 and 4.2 of the PPL. However, the requirement was for certificates on all requests as per Article 65. For example, the requirement in paragraph 3.1 of this article states:

3. An economic operator shall not be eligible to participate in a procurement activity or in the performance of any public contract if such economic operator, or executive, manager or director thereof, in the past ten years;

3.1. Has been declared by a court of competent jurisdiction to have committed a criminal or civil offense involving corrupt practices, money laundering, bribery, kickbacks or activities described, or similar to those described, in paragraph 1 of Article 130 of this law under the laws or regulations applicable in Kosovo or any country, or under international treaties or conventions;

The certificate submitted by the EO does not prove that any of its executives, managers or directors over the past ten years have been found guilty for a criminal offense. The municipality should not have accepted this certificate and should have requested a certificate in line with all items in Article 65 of the PPL. A similar practice was pursued by the Municipalities of Gracanica and Mamusha, did receive such certificates.

This procurement activity as planned and resulted positive. Of the eight tenders analyzed above, this is the first where the value provided in the procurement plan corresponds to the estimated value in the tender dossier.

The contract was signed on October 4, 2019, but was only published on January 13, 2020, with a delay of about three months. In addition, the price list was published with the contract. In order for a contract to be considered published, it must include the contract, general conditions of the contract, special conditions, and the price list. The latter is the most important part, as it presents the prices of the company that was awarded the contract for the products/services required by contracting authorities.

Supply and logging of wood for heating needs in schools, and supply of pellets for heating in the municipal building

Four companies bid in the tender for the supply of wood and pellets. Initially, recommended for contract was consortium Orana & Acvilla, with a price of 142,884 Euro. According to the tender evaluation report, this consortium was recommended for award after having the lowest price, but failed to submit the required certificates prior to signing the contract (TAK certification, Court certification, and proof of payment of property tax). The municipality then awarded the contract to Berveniku company, with the price of 155,373.90 Euro, which is a higher price for around 12,000 Euro than the bid of Orana & Acvilla.

According to ROGPP²³, if a bidder is recommended for award but fails to submit the required certificates, the CA must proceed with the second bidder. However the contracting authority (CA) must confiscate the tender security and initiate the procedure for the disqualification of the EO, as per Article 99.2. of PPL. The municipality did not confiscate the tender security and did not request the PRB to disqualify the Orana & Acvilla consortium. There is always the risk of secret agreements when winning companies withdraw or do not submit the required documents before signing the contract. In this case the damage caused by the withdrawal of the first winner was around 12,000 Euro. This damage could have been mitigated if the municipality confiscated the tender security, which in this tender was 4,500 Euro.

The price contracted by the municipality is a market price, as the price of one cubic meter of wood is 38.59 Euro, and one ton of pellet 210 Euro. VAT is included, and considering the prices in the retail market, it could be ascertained that these are market prices. This was made possible through the estimated value of the tender, which is 155,400 Euro. The estimated price per one cubic meter of wood is 38.59 Euro, and for a ton of pellet 210 Euro. When the estimated value is higher than market prices, it allows for companies to bid high prices, as it happened in the Municipality of Kamenica²⁴.

The tender dossier has no requirements that would limit competition, but the municipality did require EOs to be licensed by the Kosovo Forest Agency. This is a common request in any tender for the supply of wood, ensuring the municipality that wood is illegally logged.

The municipality made a mistake with the request for tender validity. This tender is of a higher value, as the estimated value is over 125,000 Euro, and according to ROGPP the validity of the tender requested should be for 90 days²⁵ and the tender security for 120 days. The municipality requested a validity of 60 days, and a tender security of 90 days. This did not have a significant effect as the winner was chosen prior to the expiration of the bid validity. However, the requested should have been in line with ROGPP. SCs were not requested with the tender dossier, but they were included in the contract. The criteria in SC should be cited in the tender dossier, rather than after the contract is signed, as they apply to all bidders, not only the winner of the contract.

The description of wood specification is incomplete as there are no specifics regarding the type of wood and moisture level. The request of the municipality is very simple, supply of wood and logging. In the market there is a difference in the prices of wood (beech or oak), and this allowed the company to have discretion regarding the type of wood it will supply.

23 Article 26.8, page 65. Rules and Operational Guidelines for Public Procurement PPRC. 2019
https://krpp.rks-gov.net/krpp/PageFiles/File/A01_2019/Rregullat_dhe_Udhezusi_10_04_2019_2.pdf

24 (Numerous) Problems in Public Procurement, pages 6-7. Demokrasi Plus. 2020.
<https://dplus.org/wp-content/uploads/2020/03/2020-03-problemet-e-shumta-ne-prokurim-publik-1.pdf>

25 Article 31.2. Rules and Operational Guidelines for Public Procurement PPRC. 2019
https://krpp.rks-gov.net/krpp/PageFiles/File/A01_2019/Rregullat_dhe_Udhezusi_10_04_2019_2.pdf



Integral broadcasting of Municipal Assembly sessions in Shtërpce/Strpce and various publications, announcements and competitions on TV

Only one company, Herc International, submitted a bid in the tender for broadcasting of sessions, publications, announcements and various competitions, with a price of 27,900 Euro, only 100 Euro less than the estimated value of the tender, which was set at 28,000 Euro.

The criteria in the tender dossier included a request which could have limited competition. The municipality requested EOs to have licenses from the Independent Media Commission (IMC) for broadcast in the Municipality of Shtërpce/Strpce. This means that only TV channels with broadcasting license in the Municipality of Shtërpce/Strpce could bid. This limited competition, which contradicts the LPP, as the requirement should have been for EOs to hold licenses from the IMC, without references to the territory.

The coverage period described in the signed contract is from 25.04.2019 until 24.10.2019. However, the contract was signed on 17.07.2019. This may have been a technical error, but the municipality must ensure that the dates in contracts are correct, to ensure there are no future consequences. The contract also does not include the price list, which according to ROGPP is one of the integral elements of the contract and should be published. The price list is the main element of interest to stakeholders, as it includes prices bid by the winner of the contract, for each line item.

This procurement activity is listed in the procurement plan 2019, but the value provided in the plan is 30,000 Euro, while in the contract notice it is 28,000 Euro.



Rehabilitation and regulation of existing infrastructure in the municipality of Shtërpce/Strpce

Only one company, Linda SH.P.K, bid in the tender for the rehabilitation and regulation of the existing infrastructure, and was awarded the contract with a price of 1,098,199.95 Euro, while the estimated value of the tender was 1,621,847 Euro. According to reports²⁶ the owner of Linda SH.P.K had a criminal record and, according to Article 65 of PPL, was not eligible to participate in tenders. Article 65 paragraphs 3, and 3.1 states:

3. An economic operator shall not be eligible to participate in a procurement activity or in the performance of any public contract if such economic operator, or executive, manager or director thereof, in the past ten years;

3.1. Has been declared by a court of competent jurisdiction to have committed a criminal or civil offense involving corrupt practices, money laundering, bribery, kickbacks or activities described, or similar to those described, in paragraph 1 of Article 130 of this law under the laws or regulations applicable in Kosovo or any country, or under international treaties or conventions;

The owner of Linda SH.PK was convicted in 2013 and released in 2017. Paragraph 3 of Article 65 of PPL states that if an executive, manager or director has been convicted in the last ten years for a criminal offense, he/she shall not be eligible

²⁶ Gazeta Insajderi. Kosovo's El Chapo managed to benefit over 1 million Euro from public tenders. 2017. <https://insajderi.com/hulumtime/el-chapo-kosovar-qe-arriti-te-perfitoje-mbi-1-milion-euro-nga-tenderet-publike/>

to participate in procurement activities. As the tender in question was published in 2019, the period of the past 10 years includes the period from 2009 to 2019.

The fact that the owner of Linda SH.P.K was convicted of a criminal offense was also confirmed by the PRB in its decision 345/17²⁷.

But how did Linda SH.P.K win the contract? It only produced a certificate stating that the company has not been bankrupt or insolvent in the past two years and that no bankruptcy or liquidation proceedings have been initiated. Whereas the request in the tender dossier was for the winning EO to submit a certificate from the Basic Court which proves the eligibility according to the requirements in Article 6.4 of the tender dossier. These requirements were based on Article 65 of PPL and are divided into three categories which are found in every tender dossier. In the first category, EOs must prove that it did not provide assistance in the drafting of the tender dossier and that there is no conflict of interest. In the second category, the EO is required to prove that no director or manager has been found guilty by the court of certain criminal offenses, while the third category requires proof that the company is not bankrupt or insolvent. The municipality should not have accepted the certificate as it did not meet the requirements of the tender dossier.

In the meantime, Linda SH.P.K changed ownership, while the certificate from the court that an executive or manager was not convicted will have surely been issued only for the current manager. This should be regulated by the Public Procurement Regulatory Commission, so that companies with convicted owners are prevented from participating in procurement activities. Although PPL provides that companies with criminal records are not eligible to bid, it seems this provision is not being applied. Hence, PPRC must block access to such companies on the e-Procurement platform and ensure they cannot bid until the sentence period expires.

Linda SH.P.K submitted irresponsible tenders for other requirements of the tender dossier too. For references to similar works, a value of 1.8 million Euro was requested. Linda SH.P.K has submitted a list of projects with a value of 5,344,387.05 Euro. However, the two contracts cannot be accounted for as they have not been completed, while the request of the tender dossier was for completed contracts:

“A list of completed projects carried out in the last three years, at least one for all or more types for the execution of field works, water supply, sewerage, construction of roads with cobblestone, pavement of roads, and construction and maintenance of infrastructure, or similar, in total value for all areas of 1,800,000.00 Euro”.

The contract signed with the Municipality of Ferizaj for the project “Unification of the city - two-year project” was signed on 17.09.2018 with a value of 4,030,290.80 Euro, while Linda SH.P.K submitted the bid on 07.05.2019, in which period the project was still incomplete. Another contract, the amount of which should be accounted for to cover the required value, is that concluded with the Municipality of Shterpce/Strpce for the project “Rehabilitation and regulation of existing infrastructure in the territory of the municipality of Shterpce/Strpce” with procurement number 655-16-068-5-1-1 signed for a period of 36 months, at a price of 693,074.65 Euro. This contract was signed on 12.12.2016 and could not have been completed by 07.05.2019, when the bid was submitted. If these two values are removed from the total, the value of the completed contracts is 621,021.60 Euro. As the request was for 1.8 million Euro, the value of the completed contracts does not cover the request of the tender dossier. According to ROGPP, if the list of completed contracts does not meet the minimum requirements of the defined value, the tender must be rejected without requesting additional information²⁸.

27 Decision 345/17. Procurement Review Body 2017.
http://arkivaoshp.rks-gov.net/repository/docs/vendimet/2017/345-17vendim_1.PDF

28 Article 39.8. Rules and Operational Guidelines for Public Procurement PPRC. 2019
[https://krpp.rks-gov.net/krpp/PageFiles/File/A01 2019/Rregullat dhe Udhezusi 10 04 2019 2.pdf](https://krpp.rks-gov.net/krpp/PageFiles/File/A01%202019/Rregullat%20dhe%20Udhezusi%2010%2004%202019%202.pdf)

The tender dossier is not without shortcomings. The municipality did request the EO to submit at least one contracts for works in water-supply, sewage, construction of roads with cobblestones, pavement or roads, and reconstruction and maintenance of infrastructure. Hence, for all areas participating OEs would be required to submit at least one reference. D+ has not encountered such a wide requirement, where contracts are requested in five areas in at least 100 procurement activities monitored for four years, or in about 2,000 PRB decisions. This requirement has limited competition, and it may explain why only one company submitted a bid for a tender valued at over one million Euro.

Another mistake is that the municipality has shortened the deadline for submission of bids. Its reasoning is “due to budget delays, and the need to complete works in time.” This is not a valid or convincing reason, as the contract is for 36 months and works would be completed in time. On the other hand, the evaluation of a single bid took around 50 days, though should have been completed in 30 days²⁹. This is an indication that the reason for the shortening of the bid submission deadline is odd, and is an action that limits competition.

The tender security was requested for 180 days, but it should have been requested for 150 days, as the tender validity was requested for 120 days. According to ROGPP, the performance security requested should for 30 additional days from the tender validity³⁰.

As in the other contracts analyzed above, this contract does not include the price list, which according to ROGPP is one of the integral elements of the contract and should be published. The price list is the main element of interest to stakeholders, as it includes prices bid by the winner of the contract, for each line item.

29 Article 41.2. Rules and Operational Guidelines for Public Procurement PPRC. 2019
[https://krpp.rks-gov.net/krpp/PageFiles/File/A01 2019/Rregullat dhe Udhezusi 10 04 2019 2.pdf](https://krpp.rks-gov.net/krpp/PageFiles/File/A01%202019/Rregullat%20dhe%20Udhezusi%2010%2004%202019%202.pdf)

30 Article 29.6. Rules and Operational Guidelines for Public Procurement PPRC. 2019
[https://krpp.rks-gov.net/krpp/PageFiles/File/A01 2019/Rregullat dhe Udhezusi 10 04 2019 2.pdf](https://krpp.rks-gov.net/krpp/PageFiles/File/A01%202019/Rregullat%20dhe%20Udhezusi%2010%2004%202019%202.pdf)



Municipality of Novobërdë/Novo Brdo

Four procurement activities were monitored in the municipality of Novobërdë/Novo Brdo, two of which were tenders for works, one for services, and one for supply.

The municipality has potentially limited competition in the tender on road repairs and winter and summer maintenance, as the tender dossier included a requirement that EOs must have completed at least two similar projects in the last three years (2016, 2017 and 2018). However, the requirement should have been for the EO to submit a list of projects implemented in the last three years from the date of publication of the contract notice.

In the tender for construction and maintenance of public lighting, the municipality awarded the contract to an irresponsible EO, as it had submitted an expired booklet for the vehicle requested in the tender dossier. In addition, the winning EO bid an abnormally low price for the installation of lighting poles. The market price varies, and is close to 80 Euro per pole, while the EO bid a price of 1.80 Euro.

A scoring procedure was applied in the tender for the supply of construction materials, which could have caused uncertainties with EOs. They cannot know in advance the quantities to be ordered, and there is a risk that an economic operator has inside information on quantities and may bid higher prices for the items with higher orders and lower prices for items with fewer orders.

In another activity, painting of schools and healthcare facilities, the request for projects completed in the last three years was not adequately formulated, and was not accordance with the interpretation of the PPRC.



Rehabilitation of roads in the Municipality of Novobërdë/Novo Brdo - Summer and Winter Maintenance

Six companies bid in the summer and winter road maintenance tender. The estimated value of the tender was 60,000 Euro, and a scoring procedure was used, as the CA did not provide the exact amount of items. Firstly, the contract was awarded to consortium Ypsilon SH.P.K & Luboteni-A at a weighted price³¹ of 36.06 Euro. Dissatisfied with this decision, company El Bau filed a complaint to PRB, claiming that the winner and three other bidders have bid abnormally low prices. The PRB approved the complaint and ruled that the CA should evaluate bids in connection with the claim on abnormally low prices³². After re-evaluation, El Bau was awarded the contract with a price of 350.07 Euro. Only El Bau and Avag Group & Eing Com, with a price of 380.45 Euro, have bid prices similar to market prices, while the other four bidders have prices from eight to ten times lower.

No.	Name of Economic Operator	Bid value in Euro
1.	Ypsilon SH.P.K. & Luboteni-A	36.06
2.	Varna SH.P.K.	39.49
3.	Zuka Commerce	45.54
4.	L-Group & Rahovica Commerce	56.65
5.	El Bau	350.07
6.	Avag Group & Eing Com	380.45

TABLE 7. Bids of companies for the procurement activity "Rehabilitation of Roads in the Municipality of Novobërdë/Novo Brdo - Summer and Winter Maintenance"

In the first evaluation, the municipality declared all bidders as responsible. Looking at the large differences in prices, we could conclude that the evaluation committee failed to analyze all bidder prices to see if there were abnormally low prices. If it had done this, there would have likely been no complaints to the PRB, which in such tenders could cause problems, as maintenance depends on the season.

The tender dossier requires that the EOs have completed at least two similar projects in the last three years (2016, 2017 and 2018). The requirement should have been for the EO to submit a list of projects implemented in the last three years from the date of publication of the contract notice. This because the CA cannot limit the list of projects by number, but rather the value of the completed projects should be sought. In this case, the CA has not set a value. The request of the municipality could have potentially limited the competition, as an EO with only one reference but of higher value would be precluded from participating in the tender. On the other hand, another EO with two completed projects with relatively much lower value, could submit a bid.

³¹ The weighted price means that the items are grouped into certain categories and each is given a certain weight, totaling 100%. For example, if a bidder has given a price of 100 Euro for a batch of items that are weighted at 30%, then the weighted price would be 30 Euro (100 * 0.3). The weighted price only serves to select the winner, but the contract is signed with the prices per items as provided by the company.

³² Decision 483/19. Procurement Review Body 2019.
<http://arkivaoshp.rks-gov.net/repository/docs/vendimet/2019/483-19vend.pdf>

By December 24, 2019, an invoice of 51,000 Euro has been submitted. The municipality has only made orders from three positions of the bill of quantities, which has another 25 positions, spending 85% of the budget, while the contract expires in October 2020. Since the municipality applied a scoring procedure, it cannot add budget as the threshold of plus minus 30% for this type of contract does not apply. The municipality will have issues ensuring successful completion of the contract as it has only 9,000 Euro left, while many positions will likely not be ordered at all.

This procurement activity has been planned and has the same value as in the contract notice, namely 60,000 euros.

Construction and maintenance of public lighting in the Municipality of Novoběrdě/Novo Brdo 2019-2020

The Municipality of Novoběrdě/Novo Brdo has also used a scoring procedure for the tender on construction and maintenance of public lighting, in which seven companies submitted bids. The contract was awarded to Monti SH.P.K with a weighted price of 149.78 Euro, which was also the lowest price. Two other bidders were eliminated due to arithmetic errors of more than 2% of the bid, while four bidders were responsible, but had higher prices than the winner.

No.	Name of Economic Operator	Bid value in Euro
1.	Monting SH.P.K.	149.78
2.	Niti-N SH.P.K.	156.39
3.	Light and More SH.P.K.	160.00
4.	M.V.R. Elektromontues	182.90
5.	ETM Group SH.P.K.	201.63
6.	N.N.P. Toni	343.21
7.	Risa Mont	536.02

TABLE 8. Bids of companies for the procurement activity "Construction and maintenance of public lighting in the Municipality of Novoběrdě/Novo Brdo 2019-2020"

The bid of Monting SH.P.K had a number of issues, and it could be considered irresponsible. The requirement in the tender dossier was for bidders to have a bucket truck, which had to be proved with registration documentation, which have an expiration date. Monting SH.P.K submitted registration documentation which expired on 08.06.2019, while the bid was submitted on 14.06.2019.

Position 4 of the bill of rights requested the purchase, transportation and installation of galvanized lighting poles with a height of 7m. For this position, Monting bid 1.80 Euro, which is an abusive and abnormally low price, as the market price for lighting poles is around 80 Euro. An even higher price, at 96.97 Euro, is found on the reference list of prices

published by the PPRC in 2015³³. This means that the evaluation committee failed to look into the bidders' prices, and only judged whether they were responsible, based on administrative requirements. However, the price is the main element of a bid and they should be analyzed individually, to see if they correspond with market prices. Small deviations in terms of market average can be tolerated, but in this case the price offered by Monting SH.P.K was 98% lower than the market price.

Three invoices paid by the municipality amountd to 50,000 Euro, while the estimated value of the tender was 60,000 Euro. In these three invoices, position 4 was never been ordered, where "Monting SH.P.K bid a price of 1.80 Euro, whereas position 3 was ordered, which has to do with the supply of concrete pillars, for which the bid price was 88.50 Euro. There is suspicion that the EO knew in advance the type of poles the municipality will order, this offering a price of 1.80 Euro for galvanized poles and 88.50 for concrete poles. No EO bids too low a price in a position if it cannot cover the price with other positions. The scoring procedure also helped this, as it allowed the municipality to not issue quantities of items, and the municipality could have ordered one item, and not order another. Had the quantities been provided, the municipality could use the plus or minus 30% deviation per position, but at least 70% of the quantities for each item would have to be ordered.

The tender dossier requested that the bidders have completed at least three projects in the last three years (2016, 2017, 2018) in the construction or maintenance of public lighting, without specifying the total value of references. The municipality made three mistakes with this request. Firstly, the request should have been for the last three years from the date of publication of the contract notice. This would cover the period from May 2016 to May 2019. Secondly, the request for three references limits competition, and it should have been for bidders to present references in a certain value, i.e. not to be limited to the number of references, but rather their value. Many opinions of the Anti-Corruption Agency are related to these types of requests of CAs. Opinions explicitly state that the number of contracts should not be requested, but rather a list of contracts covering the amount requested by the CA would suffice³⁴. Thirdly, the municipality had to request a list of projects for similar areas, rather than be limited to the construction and maintenance of public lighting. These three errors are easily avoidable if the municipality reformulates the request based on PPL and ROGPP.



Supply with construction materials

Only one company, NTP Osmani, bid in the tender for the supply with constructin materials, and was awarded the contract with a price of 659.73 Euro, while the estimated value of the tender was 40.820 Euro. This is the third activity that D+ monitored in which a scoring procedure was used. This procedure is applied when the CA, for various reasons, does not know the quantity of items to be ordered. However, the CA should make efforts to determine an estimated quantity. The use of a scoring procedure may cause uncertainty for bidders as they do not know in advance the quantities to be ordered, and there is a risk that an economic operator (EO) has inside information on quantities and may bid higher prices for the items with higher orders and lower prices for items with fewer orders. This occurred in the tender on the construction and maintenance of public lighting, as provided above.

The tender dossier required two trucks of a minimum of 6 tons, while the registration documentation have a deadline. NTP Osmani submitted two registrations in the bid, but only the first page of the registration, which does not indicate the expiration date. This is an omission by the evaluation commission, because other pages should have been requested, in order to verify whether registration is valid. 26,040 Euro were committed, while the estimated value was 40,820 Euro, and once the winner was selected through scoring, the municipality will not be able to spend more than the funds it has committed.

33 PN1347. Reference list of average prices for construction works and construction materials. PPRC. 2015 <https://bit.ly/2LDWJEE>

34 Opinion for the Municipality of Gjilan. Anti-Corruption Agency 2019. https://www.akk-ks.org/assets/cms/uploads/files/Opinionet/2019/2366-19_opinion_dpkkp_K.Gjilanit.pdf



Painting schools and healthcare facilities in the Municipality of Novobërdë/Novo Brdo

The tender for the painting schools and healthcare facilities had the lowest estimated value of all tenders analyzed, with a value of 9,950 Euro. Eight EOs submitted bids, and the contract was awarded to L-Group with a price of 7,764 Euro, which was also the cheapest price. One company was eliminated as it did not complete the tender form properly, while other six were responsible but had a higher price.

No.	Name of Economic Operator	Bid value in Euro
1.	L-Group	7,764.38
2.	4ING	8,016.39
3.	Izmornik D.O.O.	8,192.01
4.	Lurn SH.P.K. & Rexha SH.P.K.	8,884.10
5.	NNP Ndërtimtari	9,308.00
6.	Osmani Holding & NNP Lavdimi	9,758.10
7.	Global Ing	9,925.86
8.	Ceni Group	10,899.50

TABLE 9.

Bids of companies for the procurement activity "Painting of Schools and Health-Care Facilities the Municipality of Nvoberde/Novo Brdo"

Due to the low value of the tender, the municipality did not have many criteria in the tender dossier. However, one of the criteria that was not properly requested was for the EO to submit at least one similar project completed within the last three years (2015, 2016, 2017). The requirement should have been for projects completed in the last three years from the date of publication of the contract notice, which was 05.11.2018. According to the interpretation of the PPRC³⁵ the three-year period should include the following year, i.e. the year in which the contract notice was published and in this case, the period 2015-2018. However, even if such a request had been made, the EO that was awarded the contract submitted references covering this period.

³⁵ Frequently Asked Questions No. 57, PPRC. 2017.
<https://e-prokurimi.rks-gov.net/Home/ClanakItemNeë.aspx?id=268>

Recommendations

For all municipalities:

- Municipalities should request from winning EOs a certificate from the Basic Court stating that its director or manager was not convicted of a criminal offense during the last ten years, in accordance with Article 65, paragraphs 3 and 3.1 of the PPL;
- One of the main requirements of the tender dossier is for the EO to prove that it has contracts completed in the last three years. This request should be for EOs to submit a list of completed projects which cover a certain amount, as required by the CA. Competition should not be limited with requests for a certain number of completed projects.



For the Municipality of Graçanicë/Graçanica:

- To ensure that the right procurement procedures is applied;
- The performance security be required in accordance with the law, i.e. a value of 10% of the contract price for a period of +30 days from the planned date of the completion of the contract;
- Tender security should be calculated at 1 to 3% of the estimated value or a minimum of 1,000 Euro;
- Special Conditions should be determined with the tender dossier, so that bidders are aware of all terms and conditions and prepare their bids based on such terms;
- All contracts must be published in the e-Procurement platform, including the price list, at a reasonable time after the contract is signed;
- Activities should be planned and published in the procurement plan.



For the Municipality of Mamushë/Mamusa:

- Make an evaluation of the performance of the bid evaluation commissions, as there are many errors, including the contract awards to consortia which failed to submit declarations on the establishment of the consortium;
- Avoid requests for ISO certificates that are not directly related to the nature of the project;
- The disqualification procedure should be initiated against EOs that fail to submit the required documents before the signing of the contract, in accordance with Article 26.8 of ROGPP;
- When catalogs and brochures are required as criteria, they should only be accepted if they are produced by the manufacturer, rather than designed by the bidder.



For the Municipality of ShtĚrpce/Strpce:

- Ensure that it will not award contracts to OEs who have had owners convicted in the past;
- The disqualification procedure should be initiated against EOs that fail to submit the required documents before the signing of the contract, in accordance with Article 26.8 of ROGPP;
- Only projects that have been completed should be accounted for in the list of projects submitted by EOs, not the ones under implementation;
- Competition should not be limited with requirements that are only suited to one or a few OEs



For the Municipality of Novoberde/Novo Brdo:

- Make an assessment of the performance of bid evaluation commissions as there is suspicion that bid prices are not analyzed, and two procurement activities included abnormally low prices;
- Bids should be evaluated according to the criteria set in the tender dossier;
- Price scoring procedure should only be used when the municipality does not know the quantities of items to be ordered;
- Requests for projects completed in the last three years should be formulated in such a way that it includes the last three years from the date of publication of the contract notice.



Norwegian Embassy

