

PUBLIC PROCUREMENT MONITORING REPORT

MUNICIPALITIES: GRAČANICĚ/GRAČANICA,
MAMUSHĚ/MAMUŠA, SHTĚRPCĚ/ŠTRPCE
AND NOVOBĚRDĚ/NOVO BRDO

2021



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Acronyms

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
VAT	Value Added Tax

Summary

This monitoring report of procurement activities includes 16 tenders in four municipalities: Graçanicë/Gračanica, Mamushë/Mamusa, Shtërpcë/Štrpce and Novobërdë/Novo Brdo. This is the second monitoring report covering four tenders monitored in each municipality, ranging from initiation of the procurement activity to the implementation of the contract.

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

- **Municipality of Graçanicë/Gračanica** has not adequately calculated the safety of the tender and implementation of the contract. The municipality paid an advance to the company, which was higher than the tender performance security, thus putting the municipality at risk, in case the contract would not have been implemented adequately. In addition, a framework contract was used for construction and reconstruction, while the Law allows this type of contract to be used for renovations and maintenance tenders for implementation of works.
- **Municipality of Mamushë/Mamuša**, has foreseen unnecessary requests for supply tenders, such as the dynamic plan and requests for reference for contracts that have already been completed. Per the interpretation of the PPRC, these should not be requested for tenders related to supply of products that are not manufactured by the economic operator itself. Amongst others, the municipality continues to accept catalogues written by the companies themselves, which cannot be deemed official catalogues by the manufacturer.

- **Municipality of Shtërpcë/Štrpce** through tender dossiers criteria, shortened deadlines to submit bids, it has adapted criteria to fit a single bidder, which ended up winning the contract. In another tender, the municipality did not verify the price quotations provided by the economic operator at all. In two other procurement activities, the municipality did not use the correct measuring unit and mixed an item with another item that uses a different measurement unit.
- **Municipality of Novobërdë/Novo Brdo** continues to use scoring procedure, which may create insecurity to bidders as they cannot 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 items with higher orders and lower prices for items with fewer orders. In another procurement activity, the municipality did not take into account the price of the previous contract when defining the estimated value.

Methodology

Four tenders in for municipalities were monitored for this report, as the following: Gračanicě/Gračanica, Mamushě/Mamusa, Shtěrpčě/Štrpce and Novoběrdě/Novo Brdo. This report is the second part of the monitoring of 32 tenders in these municipalities for 2020. Due to the situation created by the pandemic, D+ attempted to include in its research, at least one tender for supply with protective equipment.

Prior to the selection of tenders, a brief analysis of at least ten (10) tenders was made for each municipality, analysing 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. In order to make comparisons with the first report, similar contracts and contracts that showed similar problems in general were looked at, with the purpose of comparing whether the recommendations provided in the first report were taken into account. The four-year experience of D+ in monitoring and analysing 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 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 asked for through requests for access to public documents. All required documents were made available to D+ by respective municipalities. The report analyses 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 with reduced staff, D+ was not able to monitor the implementation of the contracts on the field.

Introduction

A few years have passed now since submission of bids is done through the E-Procurement platform, while improvements have been noted with each passing year. However, shortcomings are observed in areas where the human touch is still needed and information technology cannot eliminate these flaws. The continued breaches of the law and regulations by procurement officials, and lenient sanctions issued, are causing a situation where the LPP 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 non-governmental organisations that expose the legal violations and the mistakes made during the drafting of the criteria of the tender dossier and the evaluation of bids afterwards.

The need to monitor the procurement activities of the Municipality of Gračanicě/Gračanica, Mamushě/Mamusa, Shtěrpčě/Štrpce and Novoběrdě/Novo Brdo emerged due to the lack of monitoring public procurement in these municipalities. D+ has published a previous report on public procurement in these municipalities, while this is the second monitoring report. D+ separated its monitoring into two different reports with the purpose of comparing the findings and level of implementation of recommendations from the first report.

“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 Gračanicë/Gračanica

Four procurement activities were monitored in the municipality of Gračanicë/Gračanica, three were tenders for works and one for supplies. In the tender for reconstruction, rehabilitation and expansions of the drinking water and sanitary sewage networks, the municipality used a framework contract in the duration of 36 months, which may be used only when the work required involves renovation and maintenance, however this tender required new construction and reconstruction. The municipality made a mistake in its request for performance security of implementation of the contract, as it requested it for a longer period than foreseen by the law. Another mistake was noted in the bill of quantities, for items in which the measurement unit was written down as “presumptive” and quantity was “one”, whereas the description of this item implies that more than one quantity will be ordered. The municipality mixed in the bill of the quantities, what they knew they will order with what they did not know.

Municipality of Graçanicë/Gračanica

In another procurement activity, the municipality eliminated a company from competition, justifying it with the termination of a prior contract with the company due to lack of implementation. However, the Law on Public Procurement does not foresee a sanction for companies, which had their contracts terminated which would allow for their elimination in future competitions. Apart from this, the municipality’s requested to prove contracts included in the list, through references or minutes of final technical acceptance, however the company that was awarded the tender had not submitted such evidence that would prove completion and delivery of the contract.

In the tender for the regulation of the riverbed of Gracanka River in Graçanicë/Gračanica, the municipality made mistakes in the request for tender performance security and tender security. Another mistake made by the municipality was not requesting equipment for a Project like this at all, despite equipment being a necessity.

In the tender for the construction of the kindergarten in Graçanicë/Gračanica, the municipality made an advance payment to the winning company, with the amount being higher than the tender performance security. In this case, if the company fails to implement the contract, the municipality is not protected, as even if they would confiscate the tender security, it would still not cover the entire amount of the advance payment. To avoid similar cases in the future, the municipality must request advance security as well, in order to have a protection mechanism available, in case the contract is not implemented per the agreed terms. The municipality initiated this procurement activity, without including it in the Procurement Plan for 2020, at all. Further, the Project is not part of the budget for 2020, either.

Reconstruction, rehabilitation and expansion of the drinking water and sewage system

The tender for the reconstruction, rehabilitation and expansion of the drinking water and sewage system was announced in April 2020. The estimated value of the tender was EUR 1,100,000, using a framework contract procedure for a period of 36 months. Initially, the municipality had shortened the legal deadline of 40 days to only 15 days, justifying it with delays caused by the budget and the COVID-19 pandemic. However, this justification has no standing, considering that the municipality prolonged the deadline from 15 days to 26 days, only one day after announcing the tender.

14 economic operators submitted their bids for the tender, which was awarded to the consortium of companies N.N.T. A.B.C. & Europa Partners Sh.P.K in the amount of EUR 697,214. The Consortium had bid with the second lowest price. The company that had offered the lowest price was eliminated due to arithmetical errors exceeding 2%, which according to the Rules and Operational Guidelines for Public Procurement (ROGPP¹ is prohibited. Two other companies were eliminated due to not having submitted the tender security as per the requirement of the tender dossier, while 10 other companies had fulfilled all the criteria, but had offered a higher price than the winning company.

1 Article 41.8, Rules and Operational Guidelines for Public Procurement, PPRC, 2019. <https://dpl.us/rroopp>.

No.	Name of the Economic Operator	Bid Value in Euro
1.	Pevlaku Sh.P.K	1,186,926.60
2.	Alticom Sh.P.K & Benita Company Sh.P.K	863,750.00
3.	Berisha Company Sh.A	752,230.00
4.	N.N.T ABC & Europa Partners Sh.P.K	697,214.00
5.	Beni Construction Sh.P.K & N.P Konaku	702,530.00
6.	Stublla Sh.P.K	826,264.00
7.	BRT Sh.P.K & Joos & Krasniqi-Bazë Sh.P.K	730,030.00
8.	Liqeni VII Sh.A	857,245.00
9.	Company Murseli Sh.P.K& Lulzim Beqiraj B.I	881,223.81
10.	Asfalt Group Sh.P.K & K-Ing Sh.P.K	957,920.00
11.	Kushtrimi NM Sh.P.K & ATC Com Sh.P.K & Vizioni BD Sh.P.K	204,228.10
12.	NNPT Engineering & Gashi Ing Sh.P.K	825,125.50
13.	Alfa I	787,767.00
14.	Alko Impex Sh.P.K & 2T Sh.P.K	905,731.50

Table 1: Offers of the companies for the procurement activity “Reconstruction, rehabilitation and expansion of the drinking water and sewage system”

Overall, the criteria requested by the tender dossier are in line with the type of the contract, thus there are no requirements that would restrict competition. The value of annual turnover for the last three years and the value of contracts implemented in the last three years were lower than the maximum allowed by the Law, which could have impacted

the bigger number of bids received. However, some flaws in the criteria were identified, which could potentially create opportunities for companies with insufficient capacities to implement the contract to actually win the bid. In the scope of the technical specifications, few equipment were requires: excavators, dredges, etc. It was required for companies to

prove ownership of the equipment either through invoices or through the Unique Customs Document (UCD). However, neither document proves actual ownership of the equipment, but only ownership during a certain period of time in the past. The UCD on the other hand, shows only that the company imported the equipment, but it may not be its current owner. Considering that the municipality’s only interest is whether the company possesses the equipment at the moment of submitting the bid, neither of the requested documents proves this, thus leaving room for abuses.

Another mistake related to the criteria is the performance security. The duration of the contract is 36 months, while according to the Rules and Operational Guidelines for Public Procurement - ROGPP², performance security shall be required for an additional month, thus for a period of 37 months, however, the municipality requested performance security for a period of 48 months. Apart from being in violation of the law, this request incurs additional expenses, considering that the winner of the contract was forced to pay a more expensive security insurance, which would not have happened if the municipality had required only a 37 months period. Another mistake was the use of framework contract for a period of 36 months. According to the ROGPP³ framework contracts for work may be used only for reparations or maintenance, which would enable the municipality to continuously place orders depending on the need for reparations. However, for this tender, according to the title and bill of quantities, the matter is not reparation, but rather entirely new construction and reconstruction. For tenders for works to be conducted, usually the quantity of the work required is known, whereas framework contracts enable placement of order once they are needed. For example, a tender for supply with water is a continuous demand, considering that it’s a consumable good, which is consumed and out of stock, thus new orders are continuously placed. Meanwhile, works for constructing the drinking water system are done once, thus there is no need for new orders to be placed. The same mistake had been noted in the first report⁴, as well, which reflects on the municipality not

having taken into account the recommendations provided by Democracy Plus on this particular matter.

Special Conditions (SC) of the tender dossiers were not required at the moment of publication of the tender. This act is in violation of the ROGPP⁵, which stipulates that these conditions must be prepared together with the tender dossier. Lack of specification may lead to favouring some economic operations, which may know the conditions in advance. These conditions foresee guarantees for the products, which affects the prices proposed by the economic operator. Other elements specified in the SC are the timeline of initiation of work, contract manager, and most importantly the competent authority assigned in case of disagreements between the parties. Another flaw relates to the way the bill of quantities was created. In this particular case, the municipality used framework contract procedures, which allows for items and total amount of the contract to have a plus/minus 30% deviation. However, for some items, the municipality indicated the quantity as “presumptive” and determined the quantity to be “one”, however, the description of the item implies that it will be ordered a few times rather than just once. To illustrate this, item 1.6 required “*Damages and reparation of underground instalments in the path of the sewage system*”, with the quantity being one, and the measurement unit being presumptive. Per the description, it is understood that more than one damage may be encountered and it is implied that each damage must be repaired. However, per the provisions of the ROGPP⁶, the plus/minus 30% deviance applies for each item of the bill of quantities. Municipality may increase the quantity for 30%, making the quantity 1.3, however this would have no effect in implementation, considering that 1.3 reparations cannot be done, but only 1. Within one bill of quantity, the municipality put both the known and unknown quantities. In cases when the quantity is not known, than scoring per unit procedure is used. The manner in which the bill of quantities was designed, will present the municipality with difficulties in implementing the contract without violating the law, specifically for item that have 1 quantity.

2 Article 30.6, Rules and Operational Guidelines for Public Procurement, ROGPP, KRPP, 2019.
<https://dpl.us/rroopp>
3 Ibid, Article 56.2.
4 Small municipalities, Big Problems, Democracy Plus. 2020.
<https://dplus.org/ep-content/uploads/2020/07/2020-07-Komuna-te-vogla-probleme-te-medha-ne-prokurim-ALB.pdf>
5 Article 18.3, Rules and Operational Guidelines for Public Procurement, PPRC, 2019.
<https://dpl.us/rroopp>
6 Ibid, Article 56.10.

Supply with hygienic material – Relaunched

This procurement activity was relaunched, as the first time, the contract had been terminated due to the economic operator Olti & Kenza, as the latter had not delivered the goods within the set timeline. In the second tender, the winner was announced to be P.P. Olymp in the amount of EUR 9,775.29. Olti & Kenza had bid in the tender as well, however they were eliminated from the competition due to the first contract having been terminated. Despite the municipality having a

good intention to not allow a company, whose contract was terminated to bid, there is no legal basis to take such action. The Law on Public Procurement does not foresee sanctions for companies that had their contracts terminated, particularly sanctions related to eliminating them from bidding in future tenders.

The other company, A&B Market was justly eliminated, considering it did not submit references for implemented contracts in the value of EUR 10, 000.

No.	Name of the Economic Operator	Bid Value in Euro
1.	Olti & Kenza Sh.P.K.	9,036.40
2.	P.P. Olymp	9,775.29
3.	N.T.P. A&B Market	8,747.80

Table 2: Offers of the companies for procurement activity “Supply with hygienic material - relaunched”

As this is a small value procurement activity, the municipality did not have many criteria. The only criteria was for the winning company to have had previous similar contracts implemented in the last three years in the amount of EUR 10,000, and the five days deadline for goods to be delivered from the moment the order is placed. The winning company submitted the declaration committing they would deliver the supplies within five days, however in regards to the request for references of similar projects implemented in the last three years, the company only submitted a list with a contract in the amount of EUR 11,400. The municipality demanded for proof of the contracts in the list of references, which could be in the form of references or minutes/records from final acceptance of the completed work, however the company did not submit any evidence that would prove they implemented the said contract. The municipality should have requested explanations before signing the contract and give some time to the company to submit a reference for the contract, and

only upon receipt of such a document, the contract should have been signed. Through this action, the municipality had no sufficient guarantees that the company had completed similar contracts in the past. Thus, the municipality violated article 59 of the LPP, as it did not evaluate offers based on predefined criteria in the tender dossier and contract notice.

Names of products were mentioned in some parts of the specific technical criteria. For example, item 60 requires Active Baby diapers, which is a trademark. The PPL forbids adapting technical specifications to a specific trademark, apart from cases when there is no other option, however it should always add the word “equivalent to”, yet this was not added in this case either⁷.

7 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>

Regulating Graçanka riverbed in Graçanicë/ Gračanica

Same tender that included regulating the riverbed of the rivers was signed in 2020 as well. The winner of the contract in that tender was N.N.T A.B.C & Europa Partners Sh.P.K in

the amount of EUR 2,996,324. The tender titled “Regulating Gracanka riverbed in Graçanicë/Gračanica” was awarded to N.N.T A.B.C Company together With N.N.T. Bini Sh.P.K In The Amount Of EUR 127,892.50. Due to the first tender not having an executive project published, it is not clear whether this is the same tender.

No.	Name of the Economic Operator	Bid Value in Euro
1.	Eurofamis SH.A	142,375.90
2.	Vizioni BD Sh.P.K. & Kushtrimi NM Sh.P.K.	167,544.30
3.	Mirusha Company Sh.P.K.	193,026.78
4.	Sinani Ing Sh.P.K.	139,011.50
5.	N.N.T. ABC & N.N.T Bini Sh.P.K.	127,892.50
6.	Ridvan Elezi B.I.	149,388.56
7.	Arhiko.ING & Arbëri-NS Sh.P.K.	214,710.68
8.	Alfa I	141,722.40

Table 3: Offers of companies for procurement activity “Regulating Gracanka riverbed in Graçanicë/Gračanica Graçanicë”

The above table shows that the municipality awarded the contract to the cheapest bidder. None of the other companies were deemed irresponsible, as according to the municipality, they complied with all the criteria, however they did not win the tender only because of having bid with a more expensive price.

In the tender criteria, the municipality again made a mistake regarding the performance security. While the contract was foreseen to be completed within five months, tender performance security was requested for a period of 17 months. This is in violation of legal provisions and incurs additional

expenses for the company. If the municipality wanted to include the warranty period in the tender performance security, this is not the most adequate manner to do so. Warranty for the work conducted must be requested through the Special Conditions of the Contract.

Another mistake done by the municipality was in regards to the request for tender security. The requested value of the tender security exceeded the legal limit. In the dossier, tender security was requested at EUR 5,000, however, per the ROGPP⁸, the amount should fall between 1 to 3% of the estimated tender amount:

Estimated amount at
EUR 166,000 * 0.03 (max. 3%) = EUR 4,980

An insurance policy shall be paid for the tender, and considering the amount paid is higher than what the law envisages, additional expenses have been incurred by eight companies that participated in the bid. While the EUR 20 difference may be small, based on the findings of the previous report, this mistake occurred in the past as well and caused additional expenses for the bidders.

The municipality did not require equipment for implementation of the project at all. According to the ROGPP⁹, the contracting authority must declare in the tender dossier all the criteria and relevant information related to the procurement activity. The rehabilitation of the riverbed cannot be done without equipment. This is proven through pictures published in the official Facebook page of the municipality, with many equipment shown in the background. Through this, the municipality led the path for companies possessing no equipment to be able to bid. Depending on the number of equipment required for implementation of a project, this directly impacts the price, as equipment must either be bought or rented. Both have costs for the bidders, while the risk is for the company who had won the same contract in 2018 to obtain advantages. Problems may arise during implementation of the contract as well, as the company may state that they can use only a certain number of equipment.

“
IN THE TENDER CRITERIA, THE MUNICIPALITY AGAIN MADE A MISTAKE REGARDING THE PERFORMANCE SECURITY. WHILE THE CONTRACT WAS FORESEEN TO BE COMPLETED WITHIN FIVE MONTHS, TENDER PERFORMANCE SECURITY WAS REQUESTED FOR A PERIOD OF 17 MONTHS.

8 Article 29.4, Rules and Operational Guidelines for Public Procurement, PPRC, 2019.
<https://dpl.us/rroopp>
9 Ibid, Article 18.4.

Building the kindergarten in Gračanicë/
Gračanica - Phase I

In the tender for building the kindergarten, 13 companies submitted their bids, while the N.N.T ABC won the tender

with the cheapest price of EUR 275,470.29. All other offers were deemed unsuccessful due to higher prices when compared to the winner.

No.	Name of the Economic Operator	Bid Value in Euro
1.	Pro & Co Group SH.P.K & FlorinG Sh.P.K.	378,845.49
2.	Euro Project Sh.P.K	328,757.97
3.	N.N.T ABC	275,470.29
4.	H&B Consulting Sh.P.K	328,407.01
5.	Kompania Prishtina Sh.P.K	344,222.00
6.	Arhiko.ING	349,349.34
7.	Hysen Sopa B.I & Euro Group Sh.P.K	324,950.12
8.	Beni Construction Sh.P.K	322,536.60
9.	Mercom Company Sh.P.K	349,625.02
10.	AC ing Sh.P.K	292,755.86
11.	MEL Engineering Sh.P.K & Interling Constuction Sh.P.K	340,129.99
12.	Engrup Sh.P.K	302,432.47
13.	Alko Impex	388,516.90

Table 4: Offers of companies for procurement activity “Building the kindergarten in Gračanicë/Gračanica - Phase I”

Similar to the tender on regulating the riverbed, the municipality requested tender performance security for 17 months, in the amount of 10% of the contract value. However, the duration of the contract is for five months, whereas the performance security should have been requested for six months. The municipality shall request tender performance security in line with provisions of the LPP, for all future tenders.

Upon signature of the contract, the municipality made an advance payment of EUR 41,320.54 to the company or 15% of the total contract value, whereas the performance security was at EUR 27,547.10. Performance security is requested in order to provide the municipality with a defence mechanism in case the municipality does not implement the contract per the agreement and it can confiscate the entire amount. However, in this particular case, the advance payment is higher than the performance security amount. Through this, the municipality undertook a serious risk, and if the contract is not implemented accordingly, or if the performance security amount is confiscated, the municipality will still be at a loss. In order to avoid similar cases in the future, the municipality must request advance security as well, in order to have an additional defence mechanism, in case the contract is not implemented per the agreed terms.

The municipality initiated this procurement activity without having planned it in the Procurement Plan. Apart from this, the project was not included in 2020 budget¹⁰. Initiating a procurement activity without firstly securing the budget, is a major risk for the municipality, which may lead to lack of payments. The only official document mentioning this project is the Medium Term Expenditure Framework 2020-2022, however the budget is much smaller at EUR 150,000 while the contract signed by the municipality was at EUR 275,470.29.

“
IN THE TENDER FOR BUILDING THE KINDERGARTEN, 13 COMPANIES SUBMITTED THEIR BIDS, WHILE THE N.N.T ABC WON THE TENDER WITH THE CHEAPEST PRICE OF EUR 275,470.29. ALL OTHER OFFERS WERE DEEMED UNSUCCESSFUL DUE TO HIGHER PRICES WHEN COMPARED TO THE WINNER.

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



Municipality of Mamushë/Mamuša

Four procurement activities were monitored in the municipality of Mamushë/Mamuša, all falling under supply contracts. The tender for supplies with auto ambulances for the Medical Centre was annulled as no economic operator fulfilled the criteria. In the second tender, the municipality requested a dynamic plan, a request which is unnecessary, as their obligation was to deliver one single product. A catalogue was requested in the tender dossier, however the Evaluation Committee did not evaluate at all whether the catalogue was in line with the required specifics of the manufacturer in their official website and those delivered by the winner of the bid. Further, the catalogue was submitted in a language that is not official in Kosovo.

Municipality of Mamushë/Mamuša

In the tender for supply with a tanker, the municipality requested from the bidder to submit evidence that they have successfully completed three similar supply contracts in the last three years. According to the ROGPP¹¹ and interpretation by the PPRC¹² it is unnecessary and unprofessional to apply requests for contracts implemented in the last three years (requests based on Article 69 of the PPL), for supplies which are not manufactured by the bidder and are not of special importance.

In the tender dossier, municipality requested bidders to draft and submit a dynamic plan (delivery plan) for calendar days according to technical specifications. The winner of the contract, Agri Bau has not delivered a dynamic plan, but only a declaration of delivery committing to deliver the tanker within 30 days from placement of the order. The municipality had decided that in case the bidders do not fulfil this criteria, their offer will be rejected.

In the tender for supply with hygienic material, the municipality requested a dynamic plan, which is not necessary when ordering common supplies. Regardless, the winner of the contract did not deliver the dynamic plan, but only a delivery plan. Due to technical mistakes in the bill of quantities, with some products featuring twice in different items, the municipality changed the bill of quantities and deleted the products that were listed twice, however it did not change the estimated value of the tender to reflect the changes in quantity.

Positive actions of the municipality of Mamushë/Mamuša were noted in including Special Conditions, which were requested together with the tender dossiers. Further, all procurement activities are listed in the Procurement Plan for 2020.

Supply with auto ambulance for the Family Medical Centre in Mamushë/Mamuša

For this procurement activity, the municipality opened a tender twice. The first tender was annulled as both bids submitted were deemed irresponsible, considering they had not offered an auto ambulance per the announced technical specifications. In the second tender, two companies submitted their bids, while Mercon was announced the winner in the amount of EUR 38,340, while the price bid by the second company, Profitech, amounted to EUR 44,800, which exceeded the total budget planned by the municipality for the tender at EUR 40,000. The reasons for the annulment of the first tender had to do with technical specifics of the auto ambulance. One of the criteria required in the tender dossier was for the auto ambulance not to exceed expenses of 5.3 litres of fuel per 100 km, to have an engine with 135 horsepower (HP) and 2.3 ccm. In the second tender, the municipality corrected its request, requiring average expenses to be at a maximum 7.5 l / 100 km, whereas engine horsepower to be at 130 HP.

The tender dossier contains a requirement which is not adequate to the type of procurement activity. The municipality requested bidders to submit a delivery plan per day according to technical specifics. As the type of tender is a supply one and only auto ambulance will be delivered, it makes no sense to request a dynamic plan when the bidders already had a deadline stipulated in the tender dossier. The municipality requested delivery of the auto ambulance to be done within 40 days of placement of the order. In this instance, no dynamic plan shall be required as it is not necessary to have one. After analysing requirements of some other tenders in the municipality of Mamushë/Mamuša, it may be noted that this is a standard requirement, however the municipality shall consider removing it when procuring supplies. The municipality

justifies this with the dynamic plan (delivery timeline) being fulfilled through a simple delivery declaration. This is not correct considering that a dynamic plan per days, is different from a simple delivery declaration. In order to remove uncertainties, the municipality should clarify the request more or request the dynamic plan only for tenders for work, whereas delivery timeline may be requested for supply tenders.

The municipality requested the catalogue with technical specifications which should be in compliance with those requested in the tender dossier. Mercom Company submitted a catalogue in French language, while according to the LPP, documents must be submitted in one of the official languages (Albanian, Serbian or English languages) of Kosovo. In the tender dossier, the municipality emphasized that the catalogue must be submitted in one of the official languages. Apparently, the Evaluation Committee did not take into account this requirement as it accepted the catalogue without any remarks, despite it being in French. The Evaluation Committee did not assess whether the catalogue was in line with the required specifics. Through this, the Evaluation Committee did not assess the tender based on Article 59.4 of the PPL, which stipulates that tendered must be assessed based on tender dossier requirements as well as Article 13.4 that stipulates that documents must be submitted in Albanian, Serbian or English languages.

Mercom Company submitted another document named "Offer with technical specifications". The company listed all technical specifications in the document pertaining to auto ambulance Peugeot Boxer L4H2 2.2, which cannot be deemed an official catalogue, considering they were written by the company itself. For example, in the official catalogue there is no data on fuel used by the auto ambulance per 100km, however the written catalogue contains this data. In its catalogue, the company wrote that average expenses are 6.0 l / 100 km, however the official catalogue in the website of the manufacturer notes that expenses are 6.2 l / 100 km¹³. In this case, the request was supplemented, however as D+ noted in its previous report¹⁴, in case the municipality accepts catalogues written by companies



THE REASONS FOR THE ANNULMENT OF THE FIRST TENDER HAD TO DO WITH TECHNICAL SPECIFICS OF THE AUTO AMBULANCE. ONE OF THE CRITERIA REQUIRED IN THE TENDER DOSSIER WAS FOR THE AUTO AMBULANCE NOT TO EXCEED EXPENSES OF 5.3 LITRES OF FUEL PER 100 KM, TO HAVE AN ENGINE WITH 135 HORSEPOWER (HP) AND 2.3 CCM. IN THE SECOND TENDER, THE MUNICIPALITY CORRECTED ITS REQUEST, REQUIRING AVERAGE EXPENSES TO BE AT A MAXIMUM 7.5 L / 100 KM, WHEREAS ENGINE HORSEPOWER TO BE AT 130 HP.

themselves, there is a risk of inaccurate data presented. In this particular tender, as the manufacturers catalogue does not contain many data, the municipality should have requested additional clarifications, and demand from Mercom to prove that Peugeot Boxer L4H2 2.2 has all the technical specifications required. At the same time, the municipality should have requested clarification and request the catalogue to be submitted in one of the official languages. A good action undertaken by the municipality was placing the requests in the Special Conditions in the tender dossier at the moment of publication of the tender, instead of placing requests when the contract was signed, as it happened in the municipality of Gračanicë/Gračanica. Special Conditions of this tender are very detailed and contain clear criteria.

11 Article 26.8, page 65, Rules and Operational Guidelines for Public Procurement, PPRC, 2019. <https://dpl.us/rroopp>

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

13 Peugeot Boxer Brochure <https://media.peugeot.fr/file/99/2/peugeot-boxer-spec-sheet-january-2018-ëeb.pdf?lcv16=2PU91DHDP670A0C0>
14 Small Municipalities, Big Problems. Democracy Plus. 2020. <https://dplus.org/ëp-content/uploads/2020/07/2020-07-Komuna-te-vogla-probleme-te-medha-ne-prokurim-ALB.pdf>

Supply with tanker

The tender for supply with a tanker to sprinkle and wash the roads was published in May 2020 in the estimated amount of EUR 16,000. Two companies submitted their bids, while the contract was awarded to Agri Bau in the amount of EUR 15,300, while the other bidder was N.P.T Haxhijaha with an offer of EUR 100 higher than the winner or at EUR 15,400.

Despite the tender being for a simple supply, tender dossier criteria envisaged an unnecessary criteria that could potentially restrict competition. The municipality requested bidders to submit proof of three similar successfully completed contracts for supply in the last three years. Per the ROGPP¹⁵ and interpretation of the PPRC¹⁶ it is unnecessary and unprofessional to apply requests for contracts completed in the last three years (derived from Article 69 of the LPP) for supplies that cannot be manufactured by the bidder and are not of special importance. In this particular case, the water tanker is not of special importance and is not manufactured by any of the two bidders who took part in the tender. Despite both bidders having fulfilled this criteria, if three references would not have been required, then more competition could have been generated for the tender. This action of the municipality is based on the Law, however as emphasized by the PPRC and based on good practices that increase competition and ultimately reach a higher value for money:

“The PPRC has seen that many CA’s apply them (requests based on article 69 and/or 69 of the LPP), even in case when they do not present special importance or need for proof. (For example: for activities that aim to get supplies with goods which are not manufactured by the bidder). For these activities, application of criteria of Article 68 and/or 69 is not reasonable, in contrary it is unprofessional and may cause unnecessary issues.”



THE TENDER FOR SUPPLY WITH A TANKER TO SPRINKLE AND WASH THE ROADS WAS PUBLISHED IN MAY 2020 IN THE ESTIMATED AMOUNT OF EUR 16,000. TWO COMPANIES SUBMITTED THEIR BIDS, WHILE THE CONTRACT WAS AWARDED TO AGRI BAU IN THE AMOUNT OF EUR 15,300, WHILE THE OTHER BIDDER WAS N.P.T HAXHIJAH WITH AN OFFER OF EUR 100 HIGHER THAN THE WINNER OR AT EUR 15,400.

Another flaw of requests indicated in the tender dossiers is the requirement to submit proof on the tanker through pictures containing technical specifications in compliance with those requested in the tender dossier. Firstly, a picture does not prove anything when it comes to specifications, secondly, the manner of formulation of the requirement lead to both bidders submitting a picture with same verbatim description of the specifications. The municipality did not request catalogues, as due to the situation created by the COVID-19 pandemic, the PPRC ruled that requests for catalogues are prohibited. One of the requests was for the tanker to have a 10,000 litres capacity. Based on the pictures submitted by the Agri Bau, one says ten (10) ton while the other one said eight (8) ton. Pictures submitted by Haxhijaha are not clear

15 Ne 26.8, page 65, Rules and Operational Guidelines for Public Procurement. PPRC. 2019. <https://dpl.us/rroopp>
16 Frequently Asked Questions, no. 57. KRPP, 2017. <https://e-prokurimi.rks-gov.net/Home/ClanakItemNe.aspx?id=268>

as they are black and white. At the time of evaluating the offer, the Evaluation Committee, could not have known whether both bidders submitted their bids per the requested specifics. There is no proof that the municipality verified whether Agribau bid a tanker of ten (10) or eight (8) ton capacity.

In the tender dossier, the municipality requested bidders to draft and deliver a delivery plan per calendar days as per technical specifics. The municipality explicitly stated that bids would be rejected in case bidders did not comply with this criteria. The winner of the contract, Agri Bau did not submit a dynamic plan, but only a delivery statement stating they would deliver the tanker within 30 days of order placement. The document submitted by the municipality may be deemed as enough to fulfil the criteria as it is senseless to request a dynamic plan per calendar days when only one product is to be delivered. Dynamic plans per calendar days makes sense on types of tenders for roads for example, when Contracting Authority rightfully requires to be informed on the progress of implementation of work. The municipality avoided the set criteria as it accepted the delivery plan as equivalent to a dynamic plan, as it had requested initially. The dynamic plan and the delivery plan may sound similar at first glance, but they serve different purposes. Delivery plan is a simple statement, whereas the dynamic plan entails more details, including calendar days of how the implementation of works of the contract is progressing. In order to avoid making similar mistakes, the municipality shall consider not asking for dynamic plans when simple supplies with one product are tendered.

A good move made by the municipality was to include all requirements of Special Conditions in the tender dossier at the moment of publication of the tender, and not upon signature of the contract, as it occurred in the municipality of Gračanice/Gračanica. SP of the tender are sufficiently detailed and contain concise criteria.

Supply with medical consumables for the Family Medical Centre lab in Mamushë/Mamuša

The tender for supply with medical consumables had only two bidders, Konti SH.P.K in the amount of EUR 11,751 and Interlab SH.P.K in the amount of EUR 15,320.80. The tender was awarded to Konti company, whereas Interlab offer was unsuccessful due to the higher price offered. The type of contract is a framework one for the duration of 12 months. D+ monitoring concluded that no findings that would constitute a violation were noted in this tender. Further, the municipality used an open procedure despite many other contracting authorities having used the situation created by the pandemic to carry out procedures without publication of contract notice.

The procurement activity had been planned in advance and was included in the Procurement Plan 2020, while all payments were done in accordance with the Financial Regulation 01/2013. Special Conditions were specified together with the tender dossier while the contract was published in e-procurement, including the price list and financial section.

Supply with hygienic consumables

The tender for supply with hygienic consumables had four bidders. The contract was awarded to the cheapest price

offered, El Shpëtimi who bid with EUR 3,044.80. One other company had offered a higher price, while two other companies were eliminated from the competition.

No.	Name of the Economic Operator	Bid Value in Euro
1.	Dauti Komerc shpk & Dauti Komerc AD	3,759.56
2.	N.T El Shpëtimi	3,044.80
3.	Shaip Mustafa B.I	3,502.40
4.	N.T.SH. Gipa	3,868.30

Table 5: Offers by companies for procurement activity “Supply with hygienic consumables”

The company Shaip Mustafa B.I. and N.T.SH Gipa, was eliminated as a result of not submitting the dynamic plan. As it was mentioned for the previous tenders, the requirement for a dynamic plan for supplies is not necessary, so it is possible that it was a standard requirement for all tender dossiers announced by the municipality of Mamushë/Mamuša. Nevertheless, El Shpëtimi had not delivered a dynamic plan either, as they submitted only a delivery plan.

As part of the tender dossier, three references of similar work conducted during the last three years was requested. Considering that the estimated value of the tender was only EUR 4,800 euro, and bearing in mind that procurement of goods are quite common and may be found in majority of stores in Kosovo, as well as bearing in mind PPRC interpretation mentioned above, then this is an unnecessary requirement and is not in line with the nature of the contract. It is not the same to require three references for a small supply tender for common goods compared to a construction tender that requires specialised and extensive experience.

Due to technical errors in the bill of quantities, which had some products repeated twice in different items, the contracting authority had to change the bill of quantities twice and delete them from the bill of quantities. Despite some of the products being removed from the bill of quantities, the municipality did not calculate the estimated value once again. After the contract notice was published in the estimated value of EUR 4,800, the initial bill of quantities contained 39 items, whereas the corrected bill of quantities based on which the contract was signed, contained 33 items. In the original bill of quantities, the total quantity of all items was 5,227, whilst the final bill of quantities had 4,442 items. The municipality should have corrected the estimated value, as the latter remained the same despite the total of items changing. This could potentially have led to abuse as the offerors could have bid a higher price for the tender, as the uncorrected bill of quantities allowed room for such an abuse. Thus, whenever items are removed or added on the bill of quantities, this should be reflected in the estimated value as well, as the estimated value is calculated based on the number of items and quantities presented in the bill of quantities.



Municipality of Shtërpçë/Štrpce

Four tenders were monitored in the municipality of Shtërpçë/Štrpce, two related to work and two related to services. The tender for supply with hygienic material mentioned brands for some items, which is prohibited by the LPP, whilst for some articles the correct measurement unit was not used.

A similar activity was noted in the tender for road maintenance during summer season, with items used in the bill of quantities not having adequate unit measurements, whereas in one item two different services that use different measurement unit were combined with each other.

Municipality of Shtërpcë/Štrpce

In the tender for supply with protective measures against COVID-19, the Evaluation Committee did not verify the prices, while differences in VAT may be clearly seen. The municipality should have corrected the VAT first, and then sign the contract.

In the tender for the renovation of middle schools, major violations were identified. Through criteria set in the tender dossier and shortened deadlines to submit bids, the municipality adapted the criteria of the tender only to one bidder, who got awarded with the contract. These actions of the municipality lead to the latter not getting a higher value for the money spent.

The municipality of Štrpce did not comply with the recommendations of the previous report, as it continued not to publish the financial section of the contract and special

conditions, which were not specified in the tender dossier, but rather included only after the contract has been signed.

Supply with hygienic material for the needs of municipality of Shtërpcë/Štrpce, needs of schools and family medical centres

The tender for supply with hygienic material is a standard contract for a duration of one year, in the estimated value of EUR 13,410. Nine companies submitted their bids, while the winner was Beni Dona Plast, in the amount of EUR 8,166, which was the cheapest price offered compared to all other offers.

No.	Name of the Economic Operator	Bid Value in Euro
1.	Olti & Kenza	10,000.46
2.	Lanti Plast Sh.P.K	9,051.50
3.	Dauti Komerc & Dauti Komerc AD	12,154.95
4.	NTSH Tradita Tregtare	9,874.50
5.	Beni Dona Plast	8,166.00
6.	Teknika Sh.P.K	10,867.50
7.	NT El Shpëtimi	9,271.50
8.	Shaip Mustafa B.I	9,932.50
9.	PM Group Sh.P.K	8,601.00

Table 6: Offers of the companies for procurement activity “Supply with hygienic material for the needs of the municipality of Shtërpcë/Štrpce, schools and medical centres”

The municipality committed several violations in the process. The notice on the decision of the CA that was published in the e-procurement platform, did not include standard letters for the winning bidder, those who were unsuccessful and eliminated ones, as foreseen in Article 43.2 of the ROGPP¹⁷. Another violation was not publishing the financial section together with the contract. This was noted in the previous report as well, however, it seems the municipality took no actions to fix this mistake. Publication of the financial part or the price list is required per Article 22.3f of the ROGPP. Stakeholders are mostly interested in the price list as a key element, as it shows prices offered by the bidder for each item. Another violation identified was the lack of clear specification of Special Conditions in the tender dossier of the SC, at the moment of publication of the tender. This act is in violation of the ROGPP¹⁸, which stipulates that special conditions shall be set together with the tender dossier. Lack of specification of special conditions may lead to creation of advantages for economic operators who may have prior knowledge of the conditions. Special Conditions set the criteria for product warranties, which directly affect the price to be offered by the economic operator. Other elements specified in the SC are the timeline for initiation of works, contract manager and most importantly the competent authority in any cases of disagreements.

In the bill of quantities, the municipality mentioned names of brands, which is prohibited. The LPP prohibits adapting technical specifications to a certain brand, unless in specific cases when there is no other possibility, but even then, the word “equivalent to” must be added, which has been complied with by the municipality¹⁹. For some items, the municipality added the word “similar to” but not for some other items. For item 3, the municipality asked for liquid Vim, with “Vim” being the name of a brand in the market. Another mistake made by the municipality was using “piece/pack” unit for all items, due to the difference between a pack and a piece for some products being very big. For example a pack of toilet

paper may contain 10 pieces. In this regard, the municipality provided room for the winner of the tender to deliver only a piece or a pack, to their pleasure.

Maintenance of local roads during summer season and cleaning cemeteries

In the tender for maintenance of local roads during summer season and cleaning cemeteries, only bidder placed a bid and was awarded with a contract. The estimated value of the tender was at EUR 8,000 while Vera Sh.P.K was awarded a contract amounting to EUR 7,794. Due to the tender being a low value one, companies were not interested to bid, thus municipality applied no criteria. It didn’t require even previous completed contracts or equipment.

Still, there were issues identified in compiling the bill of quantities, which could have been prepared better, thus leaving no room for potential abuses. The first item for “mowing and moving the grass in the roads” was calculated at 500km. However, not every kilometre of the road has grass around which needs mowing and moving. The municipality should pay attention during implementation, as the company may bill the municipality for mowing and moving grass in a 30 km road, which may not be surrounded by grass in its entirety.

In the second item, it required “collection and removal of garbage in the roads, and collection of garbage in cemeteries, including plastic bags” for a quantity of 500 km. The issue with this item is mixing of two different services which should also be calculated in different units. While collection of garbage in the roads may be calculated with kilometres, collection of garbage in cemeteries cannot be calculated in kilometres but either in cubic meter or hectares, as noted by the municipality for item seven. Mixing two different services in one single item may lead to problems during execution of

17 Article 43.2 Rules and Operational Guidelines for Public Procurement, PPRC, 2019.

<https://dpl.us/rroopp>

18 Ibid, Article 18.3.

19 Ligji nr. 04/l-042 për Prokurimin Publik në Republikën e Kosovës. Gazeta Zyrtare e Republikës së Kosovës, 2011.

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

the contract. The question that must be asked is if the company collects garbage in the cemeteries, then how many kilometres will be billed to the municipality? And this question cannot be answered with this measurement unit, thus there is room for abuse.

Item six required “removal of trees in the road” in the quantity of 100 hours. For this item as well, the unit is wrong as it should have been per “piece” instead, so that it is clearly known how many trees will be removed. The unit per hour enables the company to work very slow in order to bill more hours and remove as fewer trees as possible within one hour. Using the “per piece” unit would protect the municipality and ensure that a certain number of trees will be removed. For comparison purpose, item seven that requires removing grass from cemeteries has hectare as a unit and not per hour.

Out of seven units, it may be seen that for three units, there are essential issues identified that do not provide the municipality with the possibility to obtain value for money. If the bill of quantity for 2019 is looked at for comparative purposes, items are described the same, but the quantity is much smaller. For example, item seven related to removal of grass from cemeteries, the quantity of the tender for 2019 was 52 hectares, while in 2020, it was 78 hectares. It is not likely that within a year the space of the cemeteries has expanded this significantly, which implies an issue in drafting the bill of quantities.

As the estimated value of the tender is low, the municipality had no way of using a framework contract and thus be able to deviate the quantity for a plus/minus 30%. It is very difficult to estimate a precise quantity in tenders for maintenance of roads, thus a framework contract is preferred more. The municipality shall look at opportunities to announce future similar tenders through framework contracts for a period of 24 or 36 months. In order to avoid problems with the bill of quantity, adequate units shall be used while best practices of other contracting authorities for similar tenders may also be taken into consideration.

Supply with protective equipment against COVID-19 for primary and secondary schools

Due to the emergence of the COVID-19 procedure, municipalities were forced to spend their budget in getting equipped with protective equipment. Such a tender was used to buy gloves and disinfectants for primary and secondary schools. As the municipality had not set many criteria, a considerable number of companies had submitted their bids (a total of 17 bids). The contract was awarded to Agani LTD with the lowest price of EUR 5,496. The municipality deemed the other offers as irresponsible considering they offered very high prices, however the municipality should have deemed them unsuccessful as they had fulfilled all the criteria of the tender dossier, and they did not offer higher prices than the indicative amount set by the municipality.

Agani LTD made a mistake when filling out the bill of quantities, as in item three for supply with single use masks they offered a price of EUR 20,000, which should have been EUR 1000 instead as the quantity was 10,000 pieces while the price was EUR 0.10 per piece. The mistake was fixed before signing the contract, as the price per unit was taken into account, nevertheless there was a mistake in the calculation, which cannot be deemed an arithmetical mistake.

The Evaluation Committee did not notice the mistakes in calculating VAT. However, the bill of quantities contained only three items, thus calculations could have easily been done.

- For item one – hand disinfectant, quantity was 800 litres, price without VAT was EUR 2.64, VAT was 18%, while price with VAT was EUR 3.12. However, a simple calculation shows that $2.64 * 1.18 = 3.115$. As the LPP does not allow rounding the number and according to the tender dossiers only two number after the decimal point, then the price for unit with VAT included should have been EUR 3.11. As the price varies for one cent (3.12 – 3.11), when it is multiplied with the quantity of 800 litres, then the difference is eight euros.

- For item two – single use masks for children, the given quantity was 20,000 pieces, the price without VAT was EUR 0.08, VAT was 18%, while the price with VAT included was EUR 0.10. However, a calculation shows that $0.08 * 1.18\% = 0.0944$ and since the number cannot be rounded or more than two numbers added after the decimal points, the amount is EUR 0.09. After the price is corrected, the difference is EUR 200.
- For item three – single use masks for adults, the given quantity was 10,000 pieces, the price without VAT was EUR 0.08, VAT was 18%, while the price with VAT included was EUR 0.10. However, a calculation shows that $0.08 * 1.18\% = 0.0944$ and since the number cannot be rounded or more than two numbers added after the decimal points, the amount is EUR 0.09. After the price is corrected, the difference is EUR 200.

Overall, due to the calculation of prices not having been verified, the difference was EUR 408, and since after the VAT norm was applied, the municipality had to correct the price without asking the company prior to doing so. Consequently, the municipality will have to pay EUR 408 more only because it did not verify the VAT norm. In order for such mistakes not to occur in the future, the municipality must create the bill of quantity in Excel and use formula based calculations. Excel makes it possible for such mistakes not to happen in calculations or because of the negligence of the members of Evaluation Committees, who did not calculate the prices at all.

Renovation of primary and secondary schools in the territory of the municipality of Shtërp-cë/Štrpce

The tender for the renovation of schools was announced on September 18, 2020, in the estimated value of EUR 267,272 within a deadline of three months to complete all the re-

quired works. Only one consortium of companies submitted a bid for this tender, namely Euro Infrastruktura & NSh Besa in the amount of EUR 264,125.90, and the contract was awarded to them. The value of the contract is 98.8% of the estimated value. Through the requirements placed in the tender dossier, the municipality openly created advantages for the said company to win the tender.

The tender dossier contains three requests that D+ has never seen in the past, despite over four and a half years of monitoring hundreds of tenders and analysing them in details. The first request was to deliver the certificate of conformity with PN-EN 62208:2011 standard. Firstly, this standard deals with low tension and assembling of control equipment, and when looking at the items of the bill of quantity and prices given, the total amounts of electric works was EUR 35,459 or 13.4% of the contract price. Secondly, PN-EN 62208:2011 is the standard of Poland²⁰, and according to the ROGPP²¹ it is prohibited to request standards of other countries, apart from Kosovo or European countries that apply European standards. Lastly, the municipality did not specify what product it was requesting certificate of conformity for, which is usually requested in order to prove whether a certain product was tested according to a specific standard.

The second request was to deliver certificate of calibration from the laboratory for energy and power meter (energy & PowerMeter). This request was unnecessary too, considering the bill of quantities did not mention assembling power meters anywhere. The third request was to submit a valid sustainability performance certificate CE (EN 40-5:2002), as well as to attach the certificate of product characteristic and a-tests of conformity. Similar to the second request, it did not specify which product it was requesting the sustainability certificate for. All three of these requests did not have to do with the nature of the contract, as it has been explained above that works related to electricity are only a small portion of the entire work requested.

20 PN Certificate.
<https://www.pkn.pl/en/services/certification/pn-certificate>
21 Neni 20.6, Rregullat dhe Udhëzuesi Operativ për Prokurim Publik, KRPP, 2019.
<https://dpl.us/rroopp>

When we add to these three requests elaborated above, the fact that the time for submission of offers was shortened in order to complete works before end of the fiscal year, then it becomes even more evident that the criteria were adapted to a single bidder. According to the tender notice, the project must be completed within 60 days, while the contract was signed on 21.10.2020. If regular deadlines for submission of offers were respected, then the signature of the contract would have been delayed for another 10 days, and the works could have been completed within the fiscal year as well, even though the tender could have been announced much sooner as well. Shortening the deadline from 20 to 10 days, did not provide for sufficient time for economic operators to obtain the required certificates, even if they wanted to bid in the tender.

During the phase of submission of offers, a company submitted questions related to the criteria. The municipality did not take this question into account at all, and did not publish it in the e-procurement platform, as it is obliged to do^{<?>}.

Even though the criteria were adapted for the Infrastruktura & NSh Besa Company, the documents submitted by the company did not comply with the tender dossier. The certificate of conformity 62208:2011 was requested to be issued in the name of the bidder or the authorisation of the company that possesses this certificate. NSh Besa submitted the conformity certificate of Incobex Sp. z.o.o. company, as well as an authorisation from Rade Koncar Kontaktori i Relei, which is authorised by Smelt Ing doo company, while the latter stated in a declaration that it is authorised by Incobex Sp. z.o.o. It is understood from the tender dossier that the certificate has to be in the name of the bidder or to have authorisation from a company that possesses the certificate. NSh Besa had no authorisation from Incobex Sp. z.o.o, thus they did not fulfil the criteria of the tender dossier. Authorisations cannot be transferred from three different companies, as NSh Besa did in this case. This may be proven by the ruling of the Procurement Review Body for this issue^{<?>}. Even if the transfer of authorisation would be allowed without prior explicit permis-

sion of the manufacturer, documents submitted by NSh Besa still cannot be considered as complying with the set criteria, as Smelt Ing doo did not submit an authorisation from Incobex Sp. z.o.o, but only a statement written by the company itself, which says that it is authorised by Incobex Sp. z.o.o.

The certificate of calibration from the energy and power meter laboratory was also requested. A copy of a certificate of calibration as issued by the lab in its original form or an authorisation issued by the company that possesses the certificate. This requirement was also not fulfilled, as the Consortium submitted a certificate from manufacturer Control Applications Ltd, but the latter issued an authorisation for Rade Koncar Kontaktori i Relei, which did not bid in the tender itself. According to this, the authorisation from Rade Koncar Kontaktori i Relei for the consortium is missing, however if one existed, it would still be unauthorised transfer of authorisation to another company. Another problem is that the certificate of calibration has been issued by the manufacturer to itself, whereas the practice requires testing be done by a third party, so that it is credible.

Considering that the municipality adapted the criteria to fit only one bidder, through the tender dossier criteria and the shortened deadline to submit the bids resulted in the value of the offer to be very close to the estimated value of the tender. If the criteria were not adapted to one bidder, then competition would have been higher and the value of the offer could have been lower. However, it seems that the interest of the municipality was not to safeguard taxpayers' money but rather to award an economic operator with a contract.

<?> Ibid, Article 25.
<?> Decision 256-261/18, Procurement Review Body, 2018.
<http://arkivaoshp.rks-gov.net/repository/docs/vendimet/2018/256-261-18vend.pdf>



Municipality of Novobërdë/Novo Brdo

Four tenders were reviewed for the municipality of Novo berdo, two related to works and two related to supplies. In the tender for paving the Stanishor – Strazh road with asphalt, the first bidder that was recommended to be awarded with a contract had not submitted the Tax Administration proof that it did not have any outstanding debts. The municipality went on to the second bidder, however there is no proof that it confiscated the tender performance security and it requested from the PRB to disqualify Dar Ing Sh.P.K & NNSh Co-Ing Company.

Municipality of Novobërdë/Novo Brdo

In the tender for supply with wood, during the initiation of the procurement procedure, the municipality did not take into account the value of the previous contract during the definition of the estimated value of the contract. As a result, the municipality signed a contract exceeding the initial estimated value. As the tender was published during the summer season, the municipality could have annulled the tender and then relaunch it, so that wood could be purchased with a cheaper price.

In the tender for supply with agriculture mechanisms, the municipality used the scoring procedure, even though they knew the exact quantities of the products required. Usage of this procedure when the quantities are known is prohibited. Using the scoring procedure may lead to uncertainties for the bidder as they cannot know the quantity that will be ordered in advance. Another risk is that one economic operator may have prior information on the quantity that will be ordered, thus offering much higher prices for bigger quantities and lower prices for smaller quantities. Based on D+ prior experience in monitoring public procurement, this has happened quite often.

On the other hand, for the tender for “Construction of public lightning in local roads”, the municipality took into account D+ recommendations from the first report, thus it did not repeat the usage of scoring procedure.



IN THE TENDER FOR SUPPLY WITH WOOD, DURING THE INITIATION OF THE PROCUREMENT PROCEDURE, THE MUNICIPALITY DID NOT TAKE INTO ACCOUNT THE VALUE OF THE PREVIOUS CONTRACT DURING THE DEFINITION OF THE ESTIMATED VALUE OF THE CONTRACT. AS A RESULT, THE MUNICIPALITY SIGNED A CONTRACT EXCEEDING THE INITIAL ESTIMATED VALUE. AS THE TENDER WAS PUBLISHED DURING THE SUMMER SEASON, THE MUNICIPALITY COULD HAVE ANNULLED THE TENDER AND THEN RELAUNCH IT, SO THAT WOOD COULD BE PURCHASED WITH A CHEAPER PRICE.

Paving the road Stanishor – Strazh with asphalt

In the tender for paving the road Stanishor – Strazh with asphalt, 12 companies had submitted their bids. The

estimated value of the tender was EUR 95,000. The contract was awarded to a group of economic operators composed of Dua Arch Sh.P.K & Pro&Co Group Sh.P.K in the amount of EUR 79,935.50.

No.	Name of the Economic Operator	Bid Value in Euro
1.	Dua Arch Sh.P.K & Pro&Co Group Sh.P.K	79,935.50
2.	Rahovica Commerce Sh.P.K	82,075.50
3.	Afrim Beka B.I & Bashkimi Mali Sh.P.K	82,857.00
4.	NNP Art Projekt & Gashi Ing Sh.P.K	84,582.70
5.	Quality Asphalt Sh.P.K & Mirusha Company Sh.P.K	85,925.50
6.	Eko Group Sh.P.K & Lirigzoni S Sh.P.K	87,102.00
7.	Globus Construcion-S Sh.P.K & Burimi-E	88,293.00
8.	Zuka Commerce Sh.P.K	89,593.00
9.	Rexha Sh.P.K	94,505.00
10.	Varna Sh.P.K	94,520.80
11.	Bejta Commerce SH.A	110,686.46
12.	Dar Ing Sh.P.K & NNSh Co-Ing	78,804.53

Table 7: Offers of the companies for the procurement activity “Paving the road Stanishor – Strazh with asphalt”

The cheapest price was offered by economic operator Dar Ing Sh.P.K & NNSh Co-Ing, which was initially announced as the winner, however it failed to submit the required documents of conformity. These documents include proof from the court and from Tax Administration showing the company has no

outstanding debts as well as proof of payment of property tax. The municipality gave a five day deadline to companies to submit the required documents, however they did not respond. Afterwards, the municipality moved on and awarded the contract to the second cheapest offer.

One of the most common acts of fixing tender is when the economic operator that was announced as the winner fails to submit the required documents before the signature of the contract. This then opens the path for the second cheapest offer to win the tender. According to the ROGPP^{<?>}, if a bidder was selected as the winner, but fails to submit the required documents, then the procedure should continue with the second bidder, however the contracting authority (CA) must confiscate the tender security and initiate the procedure of the disqualification of the EO per article 99.2 of the LPP. The disqualification may continue for up to one year, while during this period the EO cannot participate in any tenders. This decision is taken by the Procurement Review Body, after the CA submits a request. For this tender, security was set at EUR 1,000. The municipality should have confiscated this amount in accordance with the ROGPP, as well as to request from the PRB to disqualify Dar Ing Sh.P.K & NNSh Co-Ing companies. There is a risk of hidden deals when companies selected as winners withdraw or do not deliver required documents just prior to signature of the contract. As it is impossible for the contracting authority to reveal a hidden deal before the offers are submitted, then the only defence mechanism at municipality's disposal according to the law are the confiscation of the tender security and submission of the request to disqualify the economic operators.

An annex was signed for this contract the amount of EUR 7,992.40 which makes up for 10% of the value of the contract and is within the legal limit. However, the reasons behind entering into an annex contract are not very convincing. The tender should be designed in such a manner that no annex contracts are needed. An economic operator may be aware that an annex contract may be signed so they offer lower prices in the tender and aim to cover the difference through an annex contract. This is one of the risks facing contracting authorities, whenever they sign annex contracts.

Supply of wood for heating purposes

In the tender for wood supply, two companies submitted their offers, namely Aome Sh.P.K in the amount of EUR 30,750 and Wood Company Sh.P.K in the amount of EUR 25,237.50. The winner was announced to be Aome Sh.P.K, whereas Wood Company was eliminated from the competition as it did not deliver valid circulation licences for one of its vehicles. Even though the municipality provided the chance to the company to clarify the tender and submit a valid licence within five days, the company failed to do so.

The estimated value of the tender was EUR 26,000 while it may be seen from the prices of both bidders, that the contract was signed by exceeding the estimated budget. This is allowed by article 62 of the LPP, however, in order to save the budget of the municipality, the latter should have annulled the tender and relaunch it afterwards, for the following reasons:

- The tender was initiated in June 2020, at a time when wood is not needed. The municipality announced the tender at an appropriate time in order to get the best price possible.
- The notice on the decision of the contracting authority was published on August 6, 2020. Through this decision, the municipality could have annulled the tender due to Wood Company being eliminated from the competition and Aome Sh.P.K having exceeded the estimated value.
- The municipality could have relaunched the tender in August, immediately, which would have provided sufficient time to receive offers, evaluate them and sign the contract with the winner by the end of September.
- The municipality estimated to buy one cubic meter of wood together with logging at the amount of EUR 34.67 (26,000 was the estimated value/750 was the quantity required), whereas the contract signed by the municipality,

forces them to pay EUR 41 (EUR 40 for one cubic meter of wood and EUR 1 for logging).

- In the previous contract for 2019, the municipality had paid EUR 33.80 for wood and logging together.

If the municipality had taken all of the above into account, then it would have saved its budget, especially if the tender would have been annulled and then relaunched. With the same estimated amount, the municipality could have signed a contrite with approximately EUR 34, thus saving 7 euros per each cubic meter of wood (41 – 34) or EUR 5,250 (7 * 750).

During the initiation of the procurement procedure, the municipality did not take into account the value of the previous contract when defining the estimated value. While the value of the contract in 2019 was EUR 33.80 euro, it should not have estimated EUR 34.67 for the tender in 2020. It seems that the municipality did not take into account the price of the previous contract at all, when defining the estimated value for similar contracts by other contracting authorities. An accurate estimation of the estimated value of the tender is one of the first steps that need to be taken before publication of a tender. This is one of the steps that needs adequate attention, as an inflated estimation of the price of a product leads to the municipality paying much more than needed.

In the tender dossier, the municipality requested delivery of a dynamic plan. This request is unnecessary when taking into account that this is a framework contract that sees the contracting authority ordering wood once they need them. The request for delivery of wood was included in the special conditions, which stipulates that the company has 10 days to deliver the wood, from the moment of receiving the order. However, Aome Sh.P.K did not submit a dynamic plan, but only a statement committing to deliver the wood within 30 working days. The dynamic plan and delivery plan is not the same and having in mind that the given deadline by Aome Sh.P.K is longer than the request made in the SC, then it may be concluded that Aome Sh.P.K did not deliver the tender per the requirements

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IN THE TENDER FOR WOOD SUPPLY, TWO COMPANIES SUBMITTED THEIR OFFERS, NAMELY AOME SH.P.K IN THE AMOUNT OF EUR 30,750 AND WOOD COMPANY SH.P.K IN THE AMOUNT OF EUR 25,237.50. THE WINNER WAS ANNOUNCED TO BE AOME SH.P.K, WHEREAS WOOD COMPANY WAS ELIMINATED FROM THE COMPETITION AS IT DID NOT DELIVER VALID CIRCULATION LICENCES FOR ONE OF ITS VEHICLES.

of the tender dossier, thus its offer should have been declared irresponsible. This way, all uncertainties would have been avoided, while the tender dossiers should make a distinction between the dynamic plan and a delivery statement.

During the implementation of the contract, the municipality did not respect steps foreseen by the Financial Regulation 01/2013. The municipality received the supply and placed the order to the economic operators only afterward, while in fact it should have been the other way around, as first the order ought to be made and then the supply shall be received. According to the Financial Regulation 01/2013 on Public Funds Expenditure, Article 22 emphasized that first the request for purchase shall be made, then the order for payment, and the third step is receiving the goold, while the fourth step foresees invoicing. Payments can be done only after receiving the invoice^{<?>}. The municipality received the wood supply on September 18 and 19, 2020, while it issued the payment order

<?> Article 26.8, page 65, Rules and Operational Guidelines for Public Procurement, PPRC, 2019
<https://dpl.us/rroopp>

<?> Financial Regulation No. 01/2013/MF – Public Fund Expenditure, Official Gazette of the Republic of Kosovo.
<https://gzk.rks-gov.net/ActDetail.aspx?ActID=10203>

on September 30, 2020. The municipality cannot measure the deadline of receiving the wood supply after placing the order, which according to the contract shall be made within 10 days of placing the order.

Supply with agricultural mechanisms and multi-cultivators to subsidize farmers

Two companies submitted their bids for this procurement activity, namely Haxhijaha with a weighted price of EUR 2,098.90 and Agri Bau with a weighted price of EUR 3,033. The estimated value for the tender was EUR 70,000 while the procedure used was a weighted price^{<?>}. Using this procedure when the quantity is known in advance, is strictly prohibited. Using the scoring procedure presents uncertainties for the bidders as they do not know the quantities that will be ordered, while they can also present much higher prices for quantities that are expected to be ordered more, and lower prices for the smaller quantities that are expected to be ordered. As this is a supply tender, the contracting authority could have known the exact quantity of the products that will be ordered. Furthermore, the municipality could have used a framework contract, so they would be able to calculate the price per good with a 30% plus/minus deviance. Using the weighted price does not allow for this, thus there is room for abuse.

The municipality, and in this case the requesting unit within the municipality, made a mistake in drafting the bill of quantities. In two places in the Excel file, they wrote formulas that do not sum the total of all the items in the bill of quantities. For example, Category B contains three items, however in the box calculating the total for Category B, only two items can be calculated. A similar situation was in Category C which contains four items, however the inserted formula calculates items of Category A. Fortunately, both companies noticed these mistakes and corrected them. Mistakes in the

bill of quantities have a huge impact, as one error in the formula may mislead economic operators while the price may not comply with the given quantities. If the economic operators had not noticed this mistake, then the tender would have certainly been annulled, as mistakes in the bill of quantities cannot be corrected after acceptance of offers. If that would have been the case, the municipality would have wasted a lot of time, considering the tender would have to be relaunched. Positive actions of the municipality were noticed in the Special Conditions, which were specified in the tender dossier, and not only after the contract is signed. With this action, bidders knew since the beginning the required deadline of delivery of products and warranties.

Construction of public lightning in local roads of the municipality of Novobërdë/Novo Brdo

This procurement activity, was the second public lightning tender monitored in the municipality of Novobërdë/Novo Brdo. The first tender was analysed in the first monitoring report^{<?>}, which found that due to the municipality having used the procedure with price units, during the implementation of contract, products with higher prices offered were ordered more, whereas products with abnormally low prices were ordered at a much smaller scale. During meetings held between D+ and officials from the municipality, the latter committed not to repeat the mistakes found in the first tender. The municipality took into account the remarks from the first report, and it designed the bill of quantities with estimated quantities per each product.

The estimated value of the tender was EUR 55,000, while the contract was awarded to Anesi Company in the amount of EUR 32,156.75, which was the cheapest offer. One company was deemed irresponsible, whilst other companies had higher prices.

<?> A weighted price entails articles grouped into certain categories, while each category amount to a specific weight, which in total should be 100%. For example, if a bidder offered a price of EUR 100 for a batch of items, and its weight is 30%, then the weighted price would be EUR 30 (100 * 0.3). The weighted price serves only the purpose of selecting the winner, however the contract is done on the price per article basis, as offered by the company.
<?> Small municipalities. Big problems. Democracy Plus, 2020.
<https://dplus.org/ep-content/uploads/2020/07/2020-07-Komuna-te-vogla-probleme-te-medha-ne-prokurim-ALB.pdf>

No.	Name of the Economic Operator	Bid Value in Euro
1.	Anesi Sh.P.K	32,156.75
2.	Monting Sh.P.K	34,188.10
3.	NSHP Elektra	35,237.90
4.	Labinot M. Krasniqi B.l	35,950.40
5.	ERPoëer Sh.P.K	36,460.80
6.	NSh M.V.R. Elektromontues	36,728.00
7.	Multi Business Group Sh.P.K	37,267.20
8.	Dar Ing Sh.P.K & Cimi @ Electronic Sh.P.K	38,000.00
9.	BM Group Sh.P.K	40,150.50
10.	Termomontimi	40,837.40

Table 8: Offers of companies for procurement activity “Construction of public lightning in local roads of the municipality of Novo Berdo”

The municipality did not stipulate many criteria in the tender dossier. However, a criteria that was not requested adequately, was requiring EO’s to submit proof of completion of three similar projects in the last three years (2017, ‘18, ‘19). The request should have been for companies to submit evidence for projects implemented within three years since the date of the publication of the contract notice, which was on 07.10.2020. According to PPRC^{<?>} interpretation, the three year period should include the following year, meaning the year in which the contract notice was announced, which in this particular case should have been for the duration of 2018 – 2020.

Another mistake the municipality made was not dividing the tender into two different lots, as it divided the bill of quantities into lots, foreseeing each construction of a public lightning in a specific location, to be a special lot in itself. For each lot, the items are almost identical, however the prices given by winning company differ. For example, the item related to supply with and assembling of an electric pole, is foreseen to be EUR 100 per pole in ten lots, whereas in three lots it’s foreseen to be EUR 110. The municipality should have requested clarifications from the company on the differences in prices for a product with the same description.

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

Recommendations

For the Municipality of Gračanicě/Gračanica:

- 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;
- Bids should be evaluated based on the requirements of the tender dossiers;
- To ensure that the advance amount is not higher than the performance security and to require advance security as well;
- Companies whose contracts have been terminated, shall not be eliminated from bidding, as there is no legal basis for such a criteria;
- Activities should be planned and published in the procurement plan.

For the Municipality of Mamushě/Mamuša:

- Avoid requesting dynamic plans for supply contracts, especially for common products;
- Avoid requesting references for supply tenders, in case when required products are manufactured by the bidders;
- When catalogues 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 Shtěrpčě/Štrpce:

- Use correct measurement units in the bill of quantities;
- Evaluate bids in compliance with the terms and conditions of the tender dossier;
- Contracts must be published together with the financial part;
- Special Conditions should be determined with the tender dossier, and not after signature of the contract;
- Prices in the bill of quantities must be verified, including the VAT norms;
- Competition should not be limited with requirements that are only suited to one or a few OEs;
- Avoid requests for ISO certificates that apply standards of specific countries;

For the municipality of Novoběrdě/Novo Brdo:

- Bills of quantities should contain correct formulas in Excel, in order not to mislead economic operators;
- Evaluate bids in compliance with the terms and conditions of the tender dossier;
- Price scoring procedure should only be used when the municipality does not know the quantities of items to be ordered;
- The disqualification procedure should be initiated against EOs that fail to submit the required documents before signing of the contract, in accordance with Article 26.8 of ROGPP;
- 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;
- Payments must be made in accordance with Financial Regulation 01/2013.



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