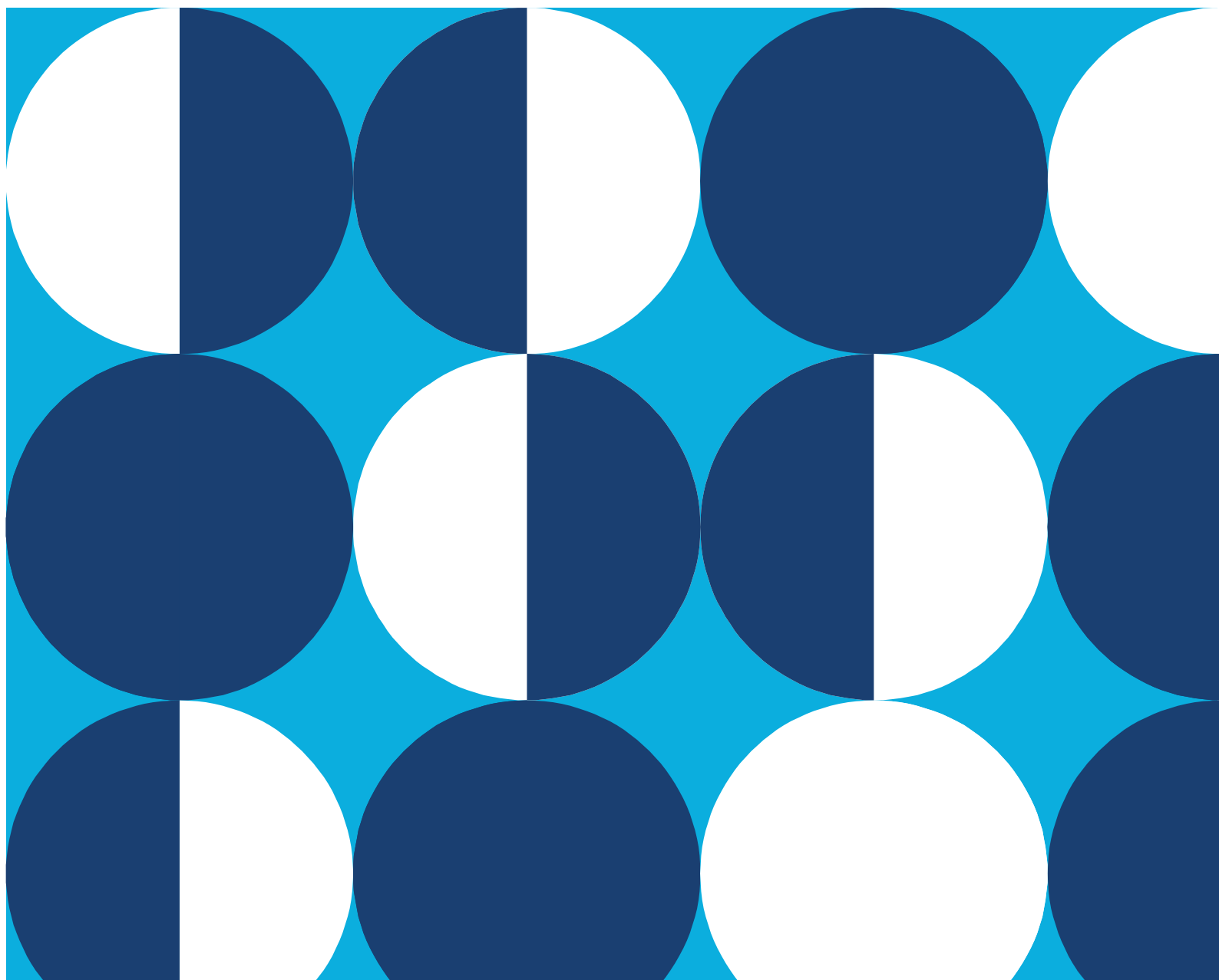




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# COVID-19 as an Excuse for Urgent Public Procurement Contracting

June, 2021



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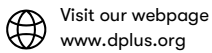


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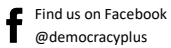
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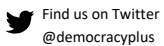


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# **COVID-19 as an Excuse for Urgent Public Procurement**

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# List of Acronyms

CA	Contracting Authority
EO	Economic Operator
HUCSK	Hospital and University Clinical Center of Kosovo
KAS	Kosovo Agency of Statistics
LPP	Law on Public Procurement
ROGPP	Rules and Operational Guidelines for Public Procurement
TAK	Tax Administration of Kosovo

# Introduction

The spring of 2020 brought the COVID-19 pandemic, marking the start of a new era and new challenges for Kosovo and its institutions in all directions. Suddenly there was a need for institutions to provide protective equipment and supplies to fight the pandemic and at the same time the need arose to help families in need with food packages, as a result of the almost total country-wide lockdown. The Law on Public Procurement (LPP) provides that in cases of extreme urgency, a contracting authority may use the negotiated procedure without publication of contract notice or, as it is broadly referred, the urgent procedure. Using such a procedure at the beginning of any emergency situation is quite appropriate, however the current pandemic has been stripped of the epithet of being a case of extreme urgency, by virtue of being an ongoing situation for more than a year. Nevertheless, institutions have continued to use the urgent procedure even in recent months when the response to the pandemic is not the same as in its initial stages.

While researching the prices of products purchased under negotiated contracts and comparing them to open procedures, Democracy Plus noted drastic price differences.

In addition, the application of the negotiated procedure without publication of contract notice fell short of meeting its purpose, as in most tenders there were no negotiations, rather the contract was signed for the same price as bid by the contractor, while there were only a handful of cases where prices were reduced after negotiations.

This Report examines several tenders related to the purchase of pandemic protection supplies, such as masks, test kits, and food packages.

# Summary

This Report examines ten tenders awarded to economic operators during the COVID-19 pandemic. The application of the negotiated procedure in concluding these contracts resulted in successive violations of public procurement legislation. Contracting authorities would invite a small number of operators to bid, which led to huge price inflation and in turn significant harm caused to both their budget and the competition.

Notwithstanding the urgency to conduct purchases or acquire services from economic operators, often such procedures were initiated inappropriately. One of the key reasons for using this procedure is to reduce the price through negotiation. However, the contracting authorities have failed to properly apply such procedures, as only some of them have asked economic operators to reconsider their bid price. On the other hand, even in cases where they engaged in negotiation, the achieved price reduction was slim.

Two municipalities, the Municipality of Vushtrri/Vučitrn and the Municipality of Rahovec/Orahovac concluded public contracts to conduct a municipal survey on the economic impact of the pandemic. The Municipality of Vushtrri/Vučitrn entered into a contract in the amount of EUR 140,000, which should not have been implemented as it was not signed by the Mayor. According to the LPP, large value contracts must be signed by the Mayor of the municipality. Though fully implemented, the contract is unlawful. On the other hand, the Municipality of Rahovec/Orahovac contracted a similar survey, albeit with less requirements, for EUR 12,500, but along the way and leading up to the implementation of the contract there were irregularities.

The Hospital and University Clinical Service of Kosovo (HUCSK) exceeded the limit of +30% of the framework contract and continued to make payments to the economic operator, while the law provides that the contract shall be automatically terminated if this limit is exceeded. Furthermore, the HUCSK paid prices that were not provided in the contract.

The Municipality of Prizren/Prizren concluded a contract of a slightly different nature, paying EUR 20,378.60 to raise awareness among the citizens of Prizren/Prizren on COVID-19 preventative measures. The municipality paid for some products, which were readily available by the Government of Kosovo.

An economic operator was invited to bid three times in a row and subsequently was awarded a contract by the Municipality of Drenas/Gllogovac. The same economic operator had removed an item on one of the tenders, causing the total price to decrease and ultimately got the award. Although this fact was not recorded anywhere, nevertheless this contract as such is unlawful.

The Municipality of Gjakovë/Đakovica issued an invitation to bid to a consultancy company, while the other company in the consortium did not have a license for medicinal products, which was required in the tender dossier.

The Municipality of Prishtinë/Priština divided a tender into five equal lots, however it sent an invitation to tender to only six companies, which were eligible for one single lot. Consequently, the municipality concluded a more expensive contract, by EUR 23,660 in total.



## Municipality of Vushtrri/Vučitrn – COVID-19 Pandemic Impact Survey

Of all the municipalities in Kosovo, only Vushtrri/Vučitrn attempted to conduct a thorough survey to research the impact of the COVID-19 pandemic. Since the survey was conducted during the period September-December 2020 and it is not known how long the pandemic will last, certainly the municipality would need a survey at the end of the pandemic to establish its final impact.

For this purpose, the municipality signed a contract for EUR 140,000. The contract was signed with M Holding, invited to negotiate along with two other companies, but these last two have offered higher prices making M Holding the winner of the tender. Unlike many other institutions, the invitation to bid for three bidders is a positive action, however for the sake of greater competition, the municipality should have expanded the list to invite other companies that specialize in such research services. Notwithstanding that the tender was related to the pandemic, this survey should not have been subject to negotiated procedure because the survey was not a matter of urgency, in contrast to the supply of masks and other products for protection against SARS-CoV-2 (COVID-19).

No.	Bidder	Price
1	ISD L.L.C	163,450
2	International Management College Globus	163,600
3	M Holding L.L.C.	148,751.79

TABLE 1 – Prices submitted by the economic operators invited to negotiate

Although the municipality issued invitations to bid to three companies, only M Holding was invited to negotiate. The Evaluation Commission found the bid by Globus College to be non-responsive and the bid by ISD to be unsuccessful. Since ISD had met the required criteria, it should have been invited to negotiate, without prejudice as to whether it would have lowered its bid. However, during negotiations the price was reduced from EUR 148,751.79 to EUR 140,000. Additionally, the municipality had required to have the contract end on 12/20/2020, where the company responded that all works will be completed on 11/20/2020, i.e., one month ahead of time.

Ultimately, the contract was signed with November 30, 2020, as date of completion for all services. However, the contract was completed on December 22, 2020, on which day M Holding submitted its “Assessment of Socio-Economic Impact of COVID-19 Pandemic” in the Municipality of Vushtrri/Vučitrn report. Therefore, contract completion was delayed by 22 days. From the documents received from the municipality, D+ did not note any application of penalty for the delay. According to Article 13 of the General Conditions of the contract, the municipality may deduct 0.25% per day of the contract value up to a maximum of 10% of the total contract value. In the past, D+ had observed the Municipality of Vushtrri/Vučitrn specifically applying this option in another contract. If it would have done so in this contract as well, it could have paid EUR 7,700 less to M Holding:

$$22 \text{ days} * 0.25 = 5.5\%$$

$$140,000 * 5.5\% = \text{EUR } 7,700$$

According to Articles 19 and 26 of LPP, service contracts with a value greater than EUR 125,000 must also be signed by the Chief Administrative Officer (CAO), which for municipalities means the Mayor. However, the contract with M Holding was signed only by

the Responsible Procurement Officer. Article 26.2 of LPP<sup>1</sup> expressly states that contracts not signed by the CAO shall be unenforceable. This means that the municipality implemented a legally unenforceable contract.

**Për Autoritetin Kontraktues:**

<b>Emri:</b>	Hyda Dallku
<b>Pozita:</b>	Zyrtar përgjegjës për prokurim
<b>Nënshkrimi:</b>	
<b>Data:</b>	07.09.2020
<b>Vula:</b>	

**Për Kontraktuesin: " M Holding "sh.p.k.**

<b>Emri:</b>	 Muhamet Spahiu
<b>Pozita:</b>	Përfaqësues i Kryesit të Shërbimeve " M Holding "sh.p.k.
<b>Nënshkrimi:</b>	
<b>Data:</b>	07.09.2020
<b>Vula:</b>	

Figure 1: Lack of signature by the Mayor of Vushtri/Vučitrn in the contract with M Holding

In terms of contract implementation, M Holding planned to conduct the survey in three stages:

- Stage 1 – drafting a plan for the identification of economic operators, households, and informal and seasonal employees in the municipality and their categorization into specific groups for direct support
- Stage 2 – identification of harm caused as a result of the COVID-19 pandemic to economic operators, households, and informal and seasonal employees in the municipality, and finally
- Stage 3 – operationalization of the Local Action Group (LAG) in the Municipality of Vushtri/Vučitrn and drafting 10 project proposals.

Initially upon signing the contract, the company was required to submit the work methodology and Action Plan. Said methodology would provide for the sampling of households and business by field surveyors. It should be noted that it is not known how many surveyors were deployed, as the advertisement published by the company to recruit surveyors did not specify how many they are looking to hire for the research in question. The sample was selected randomly, whereby 458 households and 184 businesses were selected by the company.

In Stage 1 of the project, at a cost of EUR 47,200, M Holding had three meetings with three departments, held in November and December, but according to the Action Plan these were

<sup>1</sup> Law on Public Procurement. 2011.  
<https://e-prokurimi.rks-gov.net/HOME/Documents/Legislation/Ligjet/shq/LPP%20i%20konsoliduar.doc>

scheduled to be held by September 25, 2020. In addition, the company in question hosted a roundtable discussion with businesses in the Municipality of Vushtrri/Vučitrn. The report issued after this joint meeting makes no note of the number of businesses that attended, only the purpose of the roundtable and the recommendations issued.

The payment for Stage 2 was similar to that for Stage 1, at EUR 46,000. At this stage, the contractor provided a description of the socio-economic situation of the population of Vushtrri/Vučitrn, using KAS and the municipality as datapoints. At this stage, the respondents' answers to every question posed to households and businesses were also listed.

Additionally, the Municipal Economic Recovery Plan introduced a four-year moratorium banning municipal budget expenditures related to paving local roads. However, this restriction was disregarded. This municipality, 3 months after receiving the report, on March 29, 2021, published a contract notice specifically for pavement works, divided into three lots, designated as "Construction of 4th Tier Gravel Road in the Village of Skoqne", "Asphalting the Road in the Village of Taraxhë-Bruznik" and "Asphalting the Road in the Village of Samadrexhë-Dumnicë". The estimated value of this tender reaches approximately EUR 200,000. There is another tender for the construction of Galip Badivuku Road, with a tender value of approximately EUR 43,000. The first tender involves co-financing with the Ministry of Regional Development, while the second is covered by municipal funding only. Both cases involve municipal budget spending, while the Municipal Assembly approved by vote the proposal that there should be no asphalting of local roads in the upcoming four-year period. The municipality has also published other tenders that are co-financed. It seems that the four-year moratorium is unlikely to be enforced, so the seriousness of the municipality to implement the recommendations made in the pandemic impact assessment report is questionable.

For Stage 3, M Holding was paid EUR 46,190 by the municipality. At this stage, the winning company had the obligation to operationalize the Local Action Group (LAG) of this municipality and draft 10 project proposals.

Under section 4.4 of the activity plan, M Holding has listed the selection of the LAG management body, which will represent the interests of various public groups, but this has not been done and does not appear in the report; rather, it only lists some forms for the board election process, board election voting statement, participants list, etc.

In addition, section 4.5 states that the rural population will be informed about LAG activities through the [Vicianarural.com](http://vicianarural.com) website, however it is not functional. The website is up, but merely as a template, containing no information<sup>2</sup>. However, although these two activities have not been completed, the company has been paid and the delivery report states that all activities have been completed.

Further, M Holding has stated that it will hold capacity building meetings for the development of project proposals, however you would be hard pressed to find any record of how many trainings were held, where and how they were delivered, how many persons attended, etc.

In conclusion, although the municipality extended an invitation to bid to three companies, the lacking contract signature by the Mayor renders the contract unenforceable according to the LPP. Further, the payment for some activities that were not completed by M Holding is an indicator of improper contract management.

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<sup>2</sup> Viciana Rural is accessed on: <http://vicianarural.com/> (Accessed on 20 April 2020).

## Municipality of Rahovec/Orahovac– Assessment of Damages Caused by the Pandemic

For similar purposes, the Municipality of Rahovec/Orahovac signed a contract for an assessment of damages caused during the pandemic that emerged because of the coronavirus disease (COVID-19). This municipality, in June 2020, decided to conduct a damage assessment survey. Hence, at a time when it was not yet known how long the pandemic would last, as evidenced by the fact that we are still dealing with it, this contracting authority invited a single consortium to negotiate for the performance of such service. To conduct this procurement activity, the Municipality applied Article 35.2.1 (iii) of LPP, which provides for extreme urgency. It allows contracting authorities to sign a contract, even if there are complaints. The municipality sent the invitation to bid to two companies, Integra Consulting and the Institute for Entrepreneurship and Small Business (IESB), bidding as a consortium with EUR 12,500, however after negotiations the price was reduced by EUR 200 to EUR 12,300. The invitation to negotiate and the achieved reduction in price are positive actions on behalf of the municipality, considering that many contracting authorities have not invited economic operators to negotiate at all.

Yet, there are some major problems in this tender. Firstly, by inviting only one economic operator (in this case a group of operators), the municipality harmed the competition. The LPP prohibits harming competition even when conducting negotiated procedures without publication of contract notice. In justifying the negotiated procedure, the municipality noted the reason that the winning consortium is well versed with the area of Rahovec/Orahovac, as both comprising operators hail from this municipality. The contracting authority listed several other reasons, such as urgency to conduct such a survey, the fact that the invited consortium is conducting other similar surveys, etc., but such reasons do not justify the violation of competition and failure to apply open procedures.

Another reason listed is that the report will be used to deliver damage assessments to the Government of Kosovo at the time of budget review. However, the Government of Kosovo approved the revision of the 2020 Kosovo Budget on June 17, 2020<sup>3</sup>, while the municipality entered into a contract with the consortium on June 25, 2020 and the “Damage Assessment Report” was submitted to the municipality on July 24, 2020. This demonstrates that the reasoning used by the municipality is moot and none of the recommendations that emerged from the report could be included in the revised budget.

The second problem is the prior determination by the municipality that companies should bid as a consortium. This suggests that the companies knew in advance that this contracting authority would conduct such a survey and consequently invited them to bid as a consortium. However, according to LPP, the establishment of consortia is up to the free will of companies and cannot be imposed by the municipality. Through this action the municipality violated Article 71 of LPP.

Another violation by the municipality is the appointment of a Contract Manager. According to the Rules and Operational Guidelines for Public Procurement (ROGPP), the Contract Manager must be appointed immediately after signing the contract. The Manager shall then prepare a Contract Management Plan, which is also signed by the Economic Operator. However, the decision to appoint the Contract Manager was signed by the Mayor on

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<sup>3</sup> Decision No. 01/06 of the Government of Kosovo.

<https://kryeministri-ks.net/wp-content/uploads/2020/06/Vendimet-e-Mbledhjes-s%C3%AB-6-t%C3%AB-t%C3%AB-Qeveris%C3%AB.pdf>

September 2, 2020. And yet, the Contract Manager approved the Damage Assessment Report on July 24, 2020, which means that the Contract Manager acted without being appointed by the Mayor.

Another violation is with the final acceptance situation report being drafted by the economic operator. This document should have been drafted by the Contract Manager, according to Article 61 of ROGPP, as the contracting authority placed the order for the service and not the other way around. It is unacceptable for the economic operator to draw up an acceptance report and for the contracting authority to merely sign it.

The 24-page report submitted to the municipality by the consortium, provided information based on the selected sample of businesses and households, where 104 businesses and 63 households were subject to study<sup>4</sup>, with surveying being conducted online, but also through face-to-face meetings.

It should be noted that the analysis of damages caused does not show how they reached the results in relation to loss assessment. As it were, the Integra & IESB report provided for total economic losses, business losses, unpaid employment, taxes and fees and other losses, but failed to provide any tabular representation of the pre-pandemic situation and more specifically how such losses were calculated.

The household interview section is not elaborated in any part of the report, except in two or three instances where it is mentioned together with the agriculture and farming sector. These two sectors are not synonymous with households, and even in this part the work was not done properly.

In a 24-page report, 11 and a half pages comprise the introduction, purpose of study and methodology, while the rest, 12 and a half pages provide the results.

Considering the above, the municipality has not been able to accurately determine incurred damages; moreover, the pandemic is still ongoing and the damages account only for the period March 2020 - July 2020.

The municipality should ensure to not repeat such mistakes in future procurement activities and avoid using negotiated procedures without publication of contract notice for the sake of boosting competition and improving chances of getting lower prices.

## **Municipality of Prizren/Prizren – COVID-19 Community Outreach in the Municipality of Prizren/Prizren**

Unlike the municipalities of Vushtrri/Vučitrn and Rahovec/Orahovac, the Municipality of Prizren/Prizren decided to engage with its citizens on measures against COVID-19. Notwithstanding the ongoing guidance provided by the Ministry of Health and the National Institute of Public Health of Kosovo, two months into the pandemic, in May 2020, this municipality decided to conduct a tender through negotiated procedure, inviting three economic operators (EO) to submit bids. However, only two EOs submitted bids.

The invitations were extended to CONS ENG, Office 1 Kosova and Selmans Network. In the case of all three companies, their primary business activity is neither infographic design nor video production nor website development. CONS ENG engages primarily in computer related trade, Office 1 Kosova deals with office supplies, while Selmans Network provides

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<sup>4</sup> The sampling was random.

facility cleaning services, although under secondary activities it does list the production of advertisements. Nevertheless, Selmans Network did not submit a bid, rather only Office 1 Kosova with a price of EUR 21,918.50 and CONS ENG with a price of EUR 20,378.60, with the latter getting the award.

The municipality invited both companies to negotiate, however, as neither budged on price, the contract was signed as bid in the amount of EUR 20,378.60.

According to the contract, CONS ENG agreed to deliver several infographics, videos with animations, manuals on measures introduced by the Government, one TV ad, and hire some interns to engage in community outreach on measures against COVID-19.

No	Type of Service	Unit	Quantity	Price per Unit	Total
1	Production of infographic with voice over and animation, production of materials on prevention and fight against COVID-19 (in three languages – Albanian, Turkish, Serbian/Bosnian).	5*3	15	€ 50	€ 750
2	Production of infographic with voice over and animation (in three languages – Albanian, Turkish, Serbian/Bosnian).	5*3	15	€ 100	€ 1,500
3	Production and compilation of infographic for press and Facebook posts (in three languages – Albanian, Turkish, Serbian/Bosnian).	5*3	15	€ 50	€ 750
4	Design of infographic for press and Facebook posts (in three languages – Albanian, Turkish, Serbian/Bosnian).	5*3	15	€ 20	€ 300
5	Website design and development in three languages and content organization and maintenance for six (6) months.	1	1	€ 1,250	€ 1,250
6	Translation of website materials into two languages, organization, and maintenance.	1	2	€ 500	€ 1,000
7	Production and compilation of manuals of 12-20 pages on measures for the prevention and fight against COVID-19 (in three languages – Albanian, Turkish, Serbian/Bosnian).	1*3	3	€ 200	€ 600
8	Design of manuals of 12-20 pages on measures against COVID-19 (in three languages – Albanian, Turkish, Serbian/Bosnian).	1*3	3	€ 150	€ 450
9	Design of signage for businesses (in three languages – Albanian, Turkish, Serbian/Bosnian).	Variety	20	€ 40	€ 800
10	Awareness-raising TV ad.	1*3	3	€ 370	€ 1,110



11	Provision of psychological services by interns, by phone. Six (6) interns must be hired for two months. This payment is made to volunteers reporting to the Municipality of Prizren/Prizren, for subsistence and service expenses.	Person (6*2)	12	€ 100	€ 1,200
12	Provision of services and community outreach by interns, by fielding phone calls and other online services (remotely). Operationalization of Local Operations Center.	Person (7*3)	21	€ 360	€ 7,560

TABLE 2 – Contract Pricing

The contract, signed in May, does not specify where these items will be published and what is the distribution plan for such awareness-raising materials. However, all these materials were published on the resulting covidpz.com developed website.

Items No. 5 and No. 6 require the design of a website for COVID-19 prevention purposes and its translation into two other languages<sup>5</sup>. The municipality paid EUR 1,250 for this service, while the market price is around EUR 500-700. This money spent by the municipality was pretty much to no effect from the beginning, as the website has not been updated at all. The most recent piece of news was published in April 2020. While pandemic containment measures have changed several times since then, the website has not been updated to reflect these changes.

On the other hand, on three items only one product was delivered:

- Item No. 7 – Production and compilation of manuals of 12-20 pages on measures for the prevention and fight against COVID-19 (in three languages – Albanian, Turkish, Serbian/Bosnian)
- Item No. 8 – Design of manuals of 12-20 pages on measures against COVID-19 (in three languages – Albanian, Turkish, Serbian/Bosnian), and
- Item No.9 – Design of signage for businesses (in three languages – Albanian, Turkish, Serbian/Bosnian)

Namely, on these three items that were paid at EUR 1,850, only one manual<sup>6</sup> on streamlining procedures related to measures introduced by the Government through the Emergency Fiscal Package was delivered. However, all these instructions, on each measure individually, were already provided by the Government of Kosovo<sup>7</sup>. For example, on Measure No. 7<sup>8</sup> related to the additional payment of EUR 100 for the months of March and April 2020, the instructions are like those provided by the implementer of this contract. Namely, it is stated

<sup>5</sup> Information on COVID-19. Municipality of Prizren. Available at: <https://covidpz.com/>

<sup>6</sup> Emergency Fiscal Package. Municipality of Prizren. Available at: [https://covidpz.com/wp-content/uploads/2020/04/PFE\\_PZ-compressed.pdf](https://covidpz.com/wp-content/uploads/2020/04/PFE_PZ-compressed.pdf)

<sup>7</sup> Economic measures during the COVID-19 pandemic period. Ministry of Finance and Transfers. Available at: <https://mf.rks-gov.net/Page.aspx?id=1,170>

<sup>8</sup> Measure 7 of the Emergency Fiscal Package. Ministry of Finance and Transfers. Available at: <https://mf.rks-gov.net/desk/inc/media/57234F05-BFA3-4DFF-85B0-129DDC575AE9.pdf>

who benefits what and how to apply. Similarly, CONS ENG did the same thing, with slight modifications and different sequencing of sentences already provided by the Government.

The municipality could have instead used all the material prepared by the Government of Kosovo and did not need to replicate the materials causing undue harm of EUR 1,850 to its budget. This suggests that there was no prior market research to see if the municipality can acquire readily available materials from other institutions.

Item No. 10 requires the production of an awareness-raising advertisement. D+ asked the municipality for information on broadcasts of the TV ad, which was delivered only in Albanian, however the municipality failed to respond.

The above indicates that this contract was marred with several problems starting from the decision to extend the invitation to negotiate to companies whose primary activity does not involve the production of such materials, ordering several products (some being readily available by the Government of Kosovo) that fell short of achieving the desired effect, to the inadequate execution of the ordered products.

## Municipality of Gjakovë/Đakovica – Acquisition of COVID-19 Protection Supplies

One of the contracts that the Municipality of Gjakovë/Đakovica concluded during the ongoing pandemic was for the Acquisition of Anti-COVID-19 Supplies, costing this institution EUR 175,702.80. The municipality had divided the same tender into two lots according to the demands of the departments requesting these materials, namely Lot 1 for the Department of Education, while Lot 2 was for the Department of Administration.

The Municipality used the negotiated procedure without publication of contract notice, even though the contract was concluded in November 2020. At that time, the pandemic could no longer be considered a matter of urgency and the municipality should have applied open procedures to boost competition. The municipality invited only two companies to submit bids: Made-Kos which is a pharmaceutical company and Alb Consulting & Genius Kosova which is a consortium. While Genius Kosova is involved in the sale of medicinal products, Alb Consulting conducts its business in the information technology sector. The Alb Consulting & Genius Kosova consortium was announced winner on both lots, with a price of EUR 82,946.50 for Lot 1 and EUR 91,892.35 for Lot 2.

Before an EO is declared as winner, the EO is required to submit proof of not being delinquent in the payment of taxes. The consortium submitted two certificates, one for Alb Consulting and one for Fresh-Co L.L.C., not a bidder in this tender. The certificate should have been submitted for Genius Kosova, but apparently the evaluation commission failed to check this at all. Therefore, the non-submission of this certificate on behalf of Genius Kosova renders the consortium bid non-responsive.

One of the requirements in the tender dossier was that the EO must possess a license as wholesale distributor of medicinal products, issued by the Kosovo Medicines Agency (AKPPM). One member of the consortium, Genius Kosova, submitted a license for wholesale of medical equipment, while the requirement was for medicinal products. The other bidder in this tender, Made-Kos, submitted a license that includes both medicinal products and medical equipment. This is corroborated by the list of licensed companies available on the AKPPM website, whereby Genius Kosova is licensed only for trading in medical equipment



and not medicinal products<sup>9</sup>, while this tender was for medicinal products and not medical equipment. Failure to meet this requirement renders this consortium non-responsive and the municipality should not have signed this contract.

Another mistake by the municipality is that in the tender dossier and Bill of Quantities for Lot 2, in addition to the quantities, it published the price estimate for each product. Thereby the municipality showed its hand to the companies in terms of prices it expected for each product. For Lot 1, the municipality estimated that the contract cost would be EUR 83,490.50, while the bid from Alb Consulting & Genius Kosova was EUR 82,946.50, i.e., a difference of EUR 544 only. For Lot 2, the municipality estimated that the contract cost would be EUR 92,212.35, while the consortium bid was EUR 91,892.35, with a difference of EUR 320. The publication of pricing estimates is an error on behalf of the municipality, since according to the ROGPP it is the responsibility of the EO to complete the price list.

Further, it seems the municipality failed to check the requested items when unbundling the award into lots. Consequently, the same product is listed on both lots and this allowed the winning consortium to bid different prices for the same product.

E.g., both lots include simple masks, which are designated differently between the two lots. When the supply was delivered, the winning consortium delivered the same mask for both lots, while the municipality paid different prices. The Department of Education requested a three-layer mask, for which the consortium bid EUR 0.20, while for Lot 2, where the Requesting Unit is the Department of Administration, the bid was EUR 0.35 per mask designated in the Bill of Quantities as surgical mask, but which is the same mask as that in Lot 1. D+ has received evidence from the Contract Manager, where based on photos it is proven that the same product was delivered for both lots. On the other hand, the market price in this period, during November, precisely for tenders with negotiated procedure was EUR 0.13 per mask, while for open procedure tenders, the price was even cheaper, where a mask was purchased for EUR 0.10 only. Hence, the municipality paid two (2) to three (3) times more than the market price, while if it would have applied open procedures likely there would have been more bidders and lower prices. However, although the procedure applicable in case of extreme urgency was used, Article 50.4 of the ROGPP expressly states that the contracted price must not be higher than the concerned market price. In this case, the municipality, in addition to violating the law, caused damage to its budget amounting to EUR 22,026.12.

Description	Quantity	Price	Total (Euro)	Market Price	Total (Euro)
<b>Lot 1 – Surgical Mask</b>	86421 Masks	0.35	30,247.35	0.13	11,234.73
<b>Lot 2 – 3-Layer Mask</b>	43050 Masks	0.20	8,610	0.13	5,596.50
			<b>38,857.35</b>		<b>16,831.23</b>

**TABLE 3 – Price comparison between the contract of Municipality of Gjakovë/Đakovica and other contracts**

Note: For Lot 2 quantity is converted from a package containing 50 masks, to one mask, for ease of comparison to Lot 1.

<sup>9</sup> Licensed Equipment Warehouses. Kosovo Medicines Agency. Accessed on: <https://akppmadmin.com/Medias/Depot%20me%20pajisje%20medicinale%2003.08.2020.pdf>

Through this contract, the municipality purchased sanitizer in 500 ml units at a much higher price than other authorities during this period. In December, when the contract was signed, the price for sanitizer in 500 ml units in negotiated procedures was approximately EUR four (4), while in open procedure tenders, the average price was EUR 1.80, whereas the municipality bought it at EUR five (5), demonstrating that the municipality paid more than the market price and caused damage to its own budget. The application of urgent procurement procedures allows the municipality to negotiate the bid price, but it failed to do so.

In conclusion, with the signing of this contract, the Municipality of Gjakovë/Đakovica committed several violations: it used urgent procurement procedures at a time when the pandemic can no longer be considered an urgent matter, awarded the contract to a company that does not have a license to trade in medicinal products and did not ensure that the contracted price is not higher than the concerned market price.

## HUCSK – COVID-19 Funeral Services

For the first time ever, the Hospital and University Clinical Service of Kosovo was compelled to issue a tender announcement for funeral services, due to the pandemic emergency. The first such contract was concluded by this institution in August 2020, through the negotiated procedure. Three economic operators had responded to the HUCSK’s invitation to bid, namely Kosova Limo, V-SH Loti and NTP Ngushëllimi, with the latter bidding the cheapest price of EUR 210,001. The contracting authority invited all three companies to negotiate, however only Kosova Limo, attended and did not agree to lower the price<sup>10</sup>. On a positive note, the HUCSK did invite three companies to submit a bid, at a time when most contracting authorities were inviting one company only.

The HUCSK failed to properly prepare the Bill of Quantities, namely it mixed up the item where it provided the indicative quantity and the item where the given quantity is 1 km. The Bill of Quantities with the prices submitted by NTP Ngushëllimi is presented below:

No.	Description	Units of Measurement	Quantity	Price per Unit	Total Price
1	Preparation of the deceased for burial (COVID-19 and similar diseases)	Case	500	€ 50	€ 25,000
2	Preparation of the deceased for burial (hemorrhagic fever and similar diseases)	Case	500	€ 50	€ 25,000
3	Hermetically Sealed Metal Casket	Each	500	€ 150	€ 75,000
4	Wooden Casket	Each	500	€ 170	€ 85,000

<sup>10</sup> Negotiation Record, August 7, 2020.

5	Price per kilometer for the transportation of the deceased (corpse) from the place where the corpse is located or hospital to the designated destination throughout Kosovo.	Km	1	€ 1	€ 1
<b>Grand Total with VAT:</b>					<b>€ 210,001</b>

TABLE 4 – Pricing in contract concluded through negotiated procedure.

Notably, the HUCSK failed to determine the quantity under price per kilometer. This is understandable as it is impossible to know how many kilometers of transportation will be required. For this very reason, the contracting authority should have used the score-based procedure, where in the Bill of Quantities the quantity for each item would be 1 and each item would be weighed based on the percentages assigned by the HUCSK.

This contract initially concluded for a 12-month term as a framework contract was unlawfully extended by the HUCSK. It provided for orders beyond the limits allowed by the LPP, which prohibits exceeding the total contract value by more than 30%<sup>11</sup>. From the invoices and payments that D+ obtained through requests for access to public documents, the economic operator Ngushëllimi was paid EUR 399,116.60, which exceeds the 30% ceiling of the indicative value of the contract. In this case, the HUCSK was entitled to place orders up to the amount of EUR 273,001.30. Both LPP<sup>12</sup> and ROGPP require the contracting authority, in this case HUCSK, to terminate the contract automatically<sup>13</sup>. However, in this case, no such thing has been done. With this overrun, the HUCSK spent EUR 126,115.30 more than allowed by the +30% rule.

In four invoices, NTP Ngushëllimi billed EUR 370 to HUCSK for the item preparation of the corpse with wrapping materials and casket. However, there are not any items in the contract at such price. If we were to assume that the company merged items (1 and 4), the price would be EUR 220, matching the amount billed by the company in four other invoices. Apparently, the HUCSK failed to check this and consequently there was a significant contract cost overrun. Accordingly, 612 times the service which was billed at EUR 370 was ordered and 621 times the one with EUR 220 price.

By paying EUR 370 instead of EUR 220, HUCSK incurred budget losses of EUR 91,780:

$$370 * 612 = \text{EUR } 226,420$$

$$220 * 612 = \text{EUR } 134,640$$

$$226,420 - 134,640 = \text{EUR } 91,780$$

It is understandable why the HUCSK needed this service, but the price of EUR 370 cannot be justified, which in itself exceeds the contract price (370 \* 612). The HUCSK should have terminated the contract at the moment when it noted that the allowed deviation of 30% could be exceeded and should have proceeded to conclude a new contract. If the score-based

<sup>11</sup> If purchase orders exceed **total indicative amount** or **total indicative value** of the public framework contract (including + thirty percent (30%)), regardless of the original end date of the Public Framework Contract, the contract shall be terminated automatically.

<sup>12</sup> Article 38 of LPP.

<sup>13</sup> Rules and Operational Guideline for Public Procurement. Article 56.

<https://dpl.us/rroopp>

procedure were used, then the criterion of +30% would not be applicable and the HUCSK could spend as much as it had estimated.

In early December 2020, the HUCSK published a new tender for the same service, using the open procedure. The contract was concluded on March 5, 2021 with the economic operator Funerali L.L.C. at a price of EUR 133,761. Namely, similar to the first contract, the company contracted by the HUCSK was required to prepare the deceased (from COVID-19 and similar diseases) for burial in wooden caskets, as well as the transfer bodies from the place where the corpse is located to the designated destination.

No .	Description	Units of Measurement	Quantity	Price per Unit	Total Price
1	Preparation of the deceased for burial in wooden casket (COVID-19 and similar diseases)	Case	700	€ 190	€ 133,000
2	Preparation of the deceased for burial in wooden casket (hemorrhagic fever and similar diseases)	Case	4	€ 190	€ 760
3	Price per kilometer for the transportation of the deceased (corpse) from the place where the corpse is located or hospital to the designated destination throughout Kosovo.	Km	1	€ 1	€ 1
<b>Grand Total with VAT:</b>					<b>€ 133,761</b>

TABLE 5 – Pricing in contract concluded through open procedure.

From the Bill of Quantities, it can be noted that the price contracted in open procedure (EUR 190) is lower than that in negotiated procedure (EUR 220). This very evidence proves that where there is open competition, the contracted price is more likely to be lower. The difference of EUR 30 when calculated as a total, if we consider the amount required in the contract concluded through open procedure, is:

$$30 * 700 = \text{EUR } 21,000$$

As in the previous contract, the HUCSK combined two types of contract into one, the framework contract procedure and score-based procedure, while in fact the price was not scored. For example, according to the concluded contract, the price must not exceed +30% for any line item according to the ROGPP, but it can be noted that line item No.3 for transportation has been exceeded several times. Since in this line item the given quantity is 1km, then exceeding it by 30% would bring the quantity to 1.3km, which is insufficient to execute the contract. As a result of overrunning this line item by more than 1.3km, the contract must be terminated automatically.

## Municipality of Drenas/Gllogovac – Acquisition of Emergency Packages for Families in Need – (611-20-1015-1-2-5)

Considering the difficult situation brought on by the pandemic, especially for families in need, the Municipality of Drenas/Gllogovac initiated a procurement activity through negotiated procedure without publication of contract aiming to provide relief to such families. The application of this procedure was encouraged by the Public Procurement Regulatory Commission (PPRC), due to the challenging pandemic situation. The ROGPP<sup>14</sup> provide that in such negotiated procedures, economic operators are invited to tender by the contracting authority and the former may submit their bids for the specific tender.

For this procurement activity, the estimated amount was EUR 30,000. The Municipality extended an invitation to tender to five EOs, while only three submitted bids (Hajdini Comerc, ATC L.L.C. and Jora Center). This tender was awarded to ATC L.L.C., having bid EUR 30,000. The Municipality conducted this procedure by bypassing the e-Procurement platform, therefore the record of the opening of bids lists only the bid submitted by ATC L.L.C. The municipality should have shared the invitation to bid and the tender dossier together with the Bill of Quantities with all five companies it had invited and then have their bids come through e-Procurement.

The municipality used the price per unit procedure, where the unit is comprised of a package of 18 different products. Hajdini Comerc submitted a bid at EUR 59 per package with 19 food and hygienic items, while the CA informed the operator that the bid is too expensive and other operators have bid at lower prices. Jora Center bid EUR 43.99 per package, which is below the estimate, however, even on this bid the CA concluded that they have cheaper tenders. This bid was cheaper since one product was listed at EUR 0, because according to them they do not carry that product. However according to the ROGPP,<sup>15</sup> bids with a price of EUR 0 must be rejected. The other bid was submitted by ATC L.L.C., with a price of EUR 54.25 per package.

Bidding EO	Price per package before negotiation (in Euro)	Price per package after negotiation (in Euro)	Total (in EUR)
<b>ATC L.L.C.</b>	54.25	50	30,000
<b>Jora Center L.L.C.</b>	43.99*	/	26,394
<b>Hajdini Commerc</b>	59	/	35,400

TABLE 6 – Prices before and after negotiation.

The CA conducted negotiations only with ATC L.L.C., subsequently agreeing on price reduction. Initially, the bid per package was EUR 54.25 or in total value of EUR 32,550, after negotiation it was settled at EUR 50 per package or in total value of EUR 30,000.

However, if the bid by the operator in question is closely examined, we can see that some item prices have been reduced and one item has been eliminated entirely, i.e., one item no longer appears in the Bill of Quantities. This amendment is not reflected on the record of

<sup>14</sup> Rules and Operational Guideline for Public Procurement. Article 52.

<https://dpl.us/rroopp>

<sup>15</sup> Rules and Operational Guideline for Public Procurement. Article 41.15.

<https://dpl.us/rroopp>

negotiations that the municipality conducted with ATC L.L.C. Herein arises the problem with the way the municipality acted. So, the municipality received bids from two other companies bypassing e-Procurement and denying them the opportunity to bid officially. Further, the municipality rejected the bid of Hajdini Comerc –where the Bill of Quantities listed 19 items– on grounds of being expensive and proceeded to conduct negotiations only with ATC L.L.C. –where the contract lists 18 items per package.

The removed item is the second most expensive item in the Bill of Quantities as tendered and its value made a difference and determined the awardee. Namely, the item designated Tea 1kg was bid at EUR 5 by Hajdini Comerc, at EUR 5.9 by Jora Center and EUR 4.49 by ATC L.L.C. The prices that ATC L.L.C. dropped are for item No.5 where the amount decreased from EUR 2.8 to EUR 2.5, the shampoo item per 500ml container from EUR 0.9 to EUR 0.7, item No.15 Red Pepper 100gr) from EUR 0.42 to EUR 0.4 and item No.19 (Canned Meat 200gr) from EUR 11 to EUR 10.86. In total this discount is only EUR 0.66. The price of EUR 50 per package was achieved by removing the item Tea 1kg, priced at EUR 4.49, from the Bill of Quantities. This suggests that the price was actually reduced by EUR 0.66 only and not by EUR 5.15. The EO did not reduce its product pricing, rather changed the Bill of Quantities by eliminating an item entirely, which allowed the EO to be cheaper and receive the award. Since the alteration of the Bill of Quantities has no legal basis, in this case the CA failed to conduct the negotiated procedure in accordance with the law.

Item	Price before negotiation	Price after negotiation
Detergent 3kg	2.80	2.50
Shampoo 500ml	0.90	0.70
Red Pepper 100gr	0.42	0.40
Flour Type-400	11	10.86
Tea 1kg	4.49	00.0*

\* Item removed from Bill of Quantities.

TABLE 7 – Prices before and after negotiation for some products.

In this case, the CA made inequitable treatment to the other EOs, because if they were invited to negotiate and knew that the item designated Tea 1kg would be removed from the Bill of Quantities, then their bid would have been cheaper. The municipality arbitrarily decided that the other bids are more expensive, without giving them the opportunity to negotiate the price.

Additionally, D+ examined two other similar tenders of the same municipality, which are presented below.

## Municipality of Drenas/Gllogovac – Acquisition of Emergency Packages for Families in Need – (611-20-1015-1-2-5)

This contract was concluded in mid-April 2020, immediately after the first contract in March, and once again the procurement was conducted through negotiated procedure.

For this procurement activity, the Municipality of Drenas/Gllogovac invited *Elkos L.L.C.*, *N.T.P. Hajdini*, *Viva Fresh Store*, *Demaku B.I.*, *Shqipdoni L.L.C.*, and *ATC L.L.C.* to submit their bids. In contrast to the first tender, the municipality issued its invitation to bid through e-Procurement and all received bids are listed on the record of the opening of bids.

Only three economic operators submitted bids under this tender, with the award going to *ATC L.L.C.* at a price of EUR 85,000.

Bidding EO	Price per package before negotiation (in Euro)	Price per package after negotiation (in Euro)	Total (in EUR)
<b>ATC L.L.C.</b>	42.65	42.50	85,000
<b>Demaku B.I</b>	42.99	/	85,980
<b>Hajdini Commerc</b>	43.75	/	87,500

TABLE 8 – Prices before and after negotiation.

While in the first tender the municipality initially provided 19 items per package and then one item was removed, in the second tender it provided 18 items per package and requested in total 2,000 packages. The package included: oil, flour, salt, milk, pasta, beans, rice, spices, meat, hand soap, dish soap and household cleaning supplies.

Two economic operators submitted bids with total price for 2,000 packages, while one EO bid with price per package. The EO *Demaku* submitted a bid priced at EUR 42.99. *Hajdini Comerc* bid a price of EUR 87,500, which provides for a price of EUR 43.75 per package. Whereas, *ATC* bid EUR 85,000, which provides for a price of EUR 42.50 per package.

Initially, for this activity *ATC* had bid EUR 42.65 per package. Based on the record of negotiations, which is publicly available on e-procurement, the municipality and the company in question managed to agree to reduce the price to EUR 42.50 per package. In total, from this negotiation, the contracting authority managed to save EUR 300 from the budget. However, the municipality again extended inequitable treatment to the other EOs, as it failed to invite them to negotiate. Since prices per package are approximate, the municipality should have negotiated with all EOs that had submitted bids.

In December 2020, the Municipality of Drenas/Gllogovac entered into another contract subject to negotiated procedure with the same economic operator, for the same tender. Since the contract was concluded in December, this contracting authority should have used the open procedure to boost competition, as in this period the pandemic situation can no longer be considered a case of extreme urgency. This time, the municipality extended an invitation to tender to *ATC L.L.C.* only. This action discriminated against all other economic operators, preventing them from participating in this activity.

While in the first two tenders the municipality did not apply any criteria, in this tender it required the EO to submit references for supplies of similar nature in the last three years, with the amount of EUR 50,000.

*ATC L.L.C.* bid EUR 43.38 per package. Being the sole operator participating in this tender, it was invited to negotiate, leading to a reduction in price to EUR 42 per package. The estimated value for this contract was EUR 91,155, while the total contract price bid by *ATC L.L.C.* was EUR 89,040.

## Municipality of Istog/Istok – Acquisition of Food and Hygiene Packages for Families in Need

The Municipality of Istog/Istok also used the negotiated procedure without publication of contract notice. The procedure for this tender was initiated in April 2020, with an estimated



value of EUR 50,000. Three economic operators were invited to bid, submitting different prices per package.

Namely, *Banana L.L.C.* bid EUR 26 per package, *NT Deni* bid EUR 23.60, and *N.T.Sh Jaffa* bid EUR 24.47 per package. Subject to negotiation was the optimal cheapest price, transportation of packages to designated sites, and the storage and warehousing of packages. However, the criteria for storage and warehousing are not listed in the tender dossier.

All three companies were invited to negotiate, which is the proper course of action by the municipality, in contrast to *Drenas/Gllogovac*.

Bidding EO	Price before negotiation (in EUR)	Price after negotiation (in EUR)
<b><i>Banana L.L.C.</i></b>	26	25
<b><i>Deni L.L.C.</i></b>	23.60	25
<b><i>Jaffa L.L.C.</i></b>	24.47	26.47* <sup>16</sup>

TABLE 9 – Prices before and after negotiation.

The awardee, *Banana L.L.C.*, initially had bid EUR 26 per package, while in negotiation it agreed to reduce the price to EUR 25, for a bid total of EUR 48,205; according to the calculations of the municipality, it was the only company below the estimated value and most responsive for this procurement activity, which led to the award.

The EO *Deni* had bid EUR 23.60 per unit, but during the negotiation process adjusted the bid upwards to EUR 25, citing as reason that on item No.10 (laundry detergent) the initial bid erroneously reflected the price per one kilogram instead of three. The price was subsequently amended from EUR 1.10 per kg to EUR 2.50 for the whole bag of detergent. The EO *Banana* also amended its bid in the course of negotiations. This company reduced its price bid on the item designated Flour Type-400. This item was initially priced at EUR 11.50 per bag of 25kg of flour, after negotiation the price was reduced to EUR 10.50, and total price per package was reduced to EUR 25.

*N.T.Sh Jaffa* was invited to negotiate but did not show any interest in reducing the price, and even after negotiations the price remained at EUR 26.47. However, the record of the opening of bids reflects that the price bid by EO *Jaffa* is EUR 24.47. This is same price as in the first bid it submitted. The increase in price by EUR 2 per package was made in the second bid submitted by EO *Jaffa*. Apparently, this EO realized it had made the same mistake in detergent pricing as EO *Deni*. The price of this item went up from EUR 1 to EUR 3, causing the price per package to rise from EUR 24.47 to EUR 26.47. However, this change in price was not recorded anywhere. Responding to inquiries from D+, the municipality represented that EO *Jaffa* had not been willing to reduce the price. However, the very existence of two Bills of Quantities suggests that the price was adjusted upwards. Yet, this increase is not recorded anywhere and according to the Notice of Decision by the Contracting Authority, the price remained EUR 24.47 and in the standard letter to unsuccessful tenderer, it is stated that *Jaffa's* bid is EUR 24.47, which is lower than that of *Banana L.L.C.* at EUR 25.

<sup>16</sup> The EO *Jaffa* has a different Bill of Quantities bid at EUR 24.47, however this is not reflected on the record of negotiations, yet it is presented as a bid in the notification of decision by the CA, which is available on e-Procurement.



The Municipality committed several mistakes during this procurement activity. Initially, it used the wrong document for the tender dossier. Namely, it used the tender dossier for works, instead of supplies. The dossier does not state that the agreement will be concluded through a framework contract, yet the signed contract states that it is a framework contract. This type of contract allows the municipality to place orders up to plus/minus 30% of the given quantities. The municipality provided approximate quantities in the Bill of Quantities, while in the contract it included provisions for situations where the quantities are not known and the price per unit or weighted price is used. Therefore, although the municipality exceeded the total contract amount by EUR 1,791.49, this is in line with the LPP.

Another mistake was submitting package-based pricing, despite providing approximate quantities for each item. Bids should have been submitted at total price, multiplying quantity by unit price. In executing the contract, the distribution of items was not by package, rather by family categorization into three groups. The municipality approached the distribution based on household size. Small-size packages were intended for households comprised of 1-3 members, medium-size packages for households of 4-6 members, and large-size packages for households comprised of 7+ member. For each category, the price was determined according to contract prices.

In conclusion, this tender combined several procurement procedures into one. This can cause problems in the future, therefore it must be ensured that proper procedure is used, whether it is a state of emergency or not.

## **Municipality of Prishtinë/Priština – Acquisition of Emergency (Food and Hygiene) Packages for Families in Need due to COVID-19 Pandemic**

The procedure for this tender was initiated in December 2020 and the estimated value was EUR 250,000. The negotiated procedure was used in this activity as well, though the open procedure should have been used, considering that in December 2020 the pandemic could no longer be considered a case of extreme urgency. Nevertheless, the municipality divided the tender into five (5) lots, designating the amount of EUR 50,000 for each lot. The Bill of Quantities for each lot included the same products, namely food items and COVID-19 protection supplies.

However, the Municipality of Prishtinë/Priština invited six (6) economic operators to this procurement activity. From the following invited companies, *Viva Fly L.L.C.*, *Albi Shopping L.L.C.*, *Meridian Express*, *New Line L.L.C.*, *Prex L.L.C.* and *New Vision L.L.C.*, only four submitted their bids. In the tender dossier, the municipality determined that EOs can bid on all lots but may only win one lot. This is allowed according to the ROGPP<sup>17</sup>, but the municipality made a mistake in inviting six companies for a single lot award. At first glance, it seems that the municipality invited enough EOs to ensure competition, however it is evident that there was no opportunity for competition, even though the invited EOs did not know how many EOs were invited to bid. Another mistake was to divide the tender into lots, where the items for each lot are the same. This criterion could be justified where there are lots comprised of different items, which cannot be offered by just one company. For example, food items could be divided into one lot, and protection supplies in the other lot.

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<sup>17</sup> Rules and Operational Guideline for Public Procurement. Article 19.  
<https://dpl.us/rroopp>

As noted above, upon invitation, only four EOs submitted their bids. All operators bid on all four lots, as follows: *Viva Fly* at EUR 46,970, *Albi Shopping* at EUR 39,970, *New Vision & DPT Genc* at EUR 49,350, and *New Line* at EUR 48,850.

Since this was a negotiated procedure, the operators were invited to negotiate, where some of them agreed to price adjustments. *Viva Fly* dropped its price by EUR 500 or EUR 0.50 per package. The group of economic operators *New Vision & D.P.T Genc* reduced their bid by EUR 500 or EUR 0.5 per package and *New Line* dropped its price by EUR 600 or EUR 0.60 per package. *Albi Shopping* did not negotiate, sticking to its bid at EUR 39,970. During negotiations, the Municipality of Prishtinë/Priština managed to save EUR 1,600 from its budget.

Economic Operator	Estimated price per lot (in Euro)	Winning bid price (in EUR)	Price after negotiation (in EUR)	Discounted Amount (in EUR)
<b>Viva Fly L.L.C. – Lot 1</b>	50,000	46,970	46,470	500
<b>Albi Shopping L.L.C. – Lot 2</b>	50,000	39,970	39,970	/
<b>Albi Shopping L.L.C. – Lot 3</b>	50,000	39,970	39,970	/
<b>G.O New Vision L.L.C. &amp; DPT Genc – Lot 4</b>	50,000	49,350	48,850	500
<b>New Line L.L.C. – Lot 5</b>	50,000	48,850	48,250	600

TABLE 10 – Prices before and after negotiation and discounted amount.

Having only four companies bid on the five separate lots, compelled the contracting authority to award two lots to the same economic operator; the ROGPP<sup>18</sup> provides for the situation where an economic operator may be awarded more lots than the maximum number of lots intended for a single economic operator. The municipality awarded Lot 1 to *Viva Fly L.L.C.* in the amount of EUR 46,470. On Lot 2 and Lot 3, the contract was concluded with *Albi Shopping L.L.C.* in the amount of EUR 39,970 per lot. Lot 4 was awarded to the group of economic operators *New Vision & DPT Genc* in the amount of EUR 48,850 and Lot 5 was awarded to *New Line L.L.C.* in the amount of EUR 48,250.

Since the procurement activity was divided into lots, in the absence of other competitors, the contracting authority had no other choice but to award two lots to the economic operator with the lowest bid. While the municipality knew that it could not accept more than six bids, then it should not have limited the number of lots to be awarded to a single EO. Thereby the municipality caused damage to its own budget, as it should not have limited the number of lots and in turn, it would have been able to conclude cheaper contracts.

Since the economic operators knew in advance that the five lots would be awarded to different companies, they seized the opportunity to float prices, where even after negotiating

<sup>18</sup> Rules and Operational Guideline for Public Procurement, Article 19. <https://dpl.us/ruopp>

there were significant differences in bids. In this case, if the municipality had not opted to divide the procurement into heterogeneous lots, then the bids would have come at similar prices, and certainly there would not have been such a significant difference in prices.

Lot	Contract Price	Price if number of lots was not limited
1	46,470	39,970
2	39,970	39,970
3	39,970	39,970
4	48,850	39,970
5	48,250	39,970
<b>Total</b>	<b>EUR 223,510,00</b>	<b>EUR 199,850,00</b>

TABLE 11 – Current contract prices and prices if the number of lots was not limited.

The total on all five lots is EUR 223,510. However, if the Municipality of Prishtinë/Priština had not divided the tender into lots or had not set the criteria that one lot may be awarded to only one economic operator, it would have saved much more than the amount that was discounted in negotiation. The municipality could have been able to save if it had not divided the procurement activity into heterogeneous lots, i.e., where the contracting authority awards all lots to the single cheapest tenderer. This would make it impossible for competing companies to set high prices and to have such significant differences between bidders on the same item and the same quantity. With the use of the option to not limit the number of lots awarded to a single EO, then all lots would be awarded to the cheapest tenderer, bidding a total of EUR 39,970. The total contract amount would be EUR 199,850, or EUR 23,660 cheaper than the current contract. Because of the application of an inappropriate procedure for this procurement activity, the Municipality of Prishtinë/Priština caused damages to its own budget to the tune of EUR 23,660.

## Municipality of Viti/Vitina - Acquisition of COVID-19 Protection Supplies. Masks and Sanitizer

In December 2020, the Municipality of Viti/Vitina concluded a supply contract with Krasniqi L.L.C., for the acquisition of COVID-19 protection supplies, namely masks and sanitizer. The estimated value of this procurement activity was EUR 56,000, while the contract signed with the EO was EUR 55,963.20 or only EUR 37 less than the estimated value.

Disregarding the fact that this tender could have been performed by many other economic operators, the Municipality of Viti/Vitina invited only one company to this procurement activity, thereby harming competitiveness between operators and missing out on the opportunity to receive different and quite likely cheaper bids. Considering that the contract was concluded in December 2020, the application of this procedure cannot be justified as the COVID-19 pandemic is no longer a case of extreme urgency.

However, it seems that in this procedure, apart from the fact that only one company was invited to tender, there were not any negotiations. On this matter, D+ contacted the

responsible person from the contracting authority to inquire about the record of negotiations, however he stated that they do not have such a document.

If the municipality in question had conducted negotiations it could have affected a reduction in price, drawing from the prices in other contracts that were concluded in the same period.

D+ examined similar contracts concluded during this period to compare the prices bid by the EO *Krasniqi L.L.C.* In the contract concluded through open procedure between the Kosovo Judicial Council (KJC) and the EO *Teknika L.L.C.* with procurement number 328-20-7292-1-2-1, at the end of November, there are notable differences in the prices of the same items even though both contracts were concluded in almost the same period. The contract between KJC and *Teknika L.L.C.* includes the same items as the contract concluded by the Municipality of Viti/Vitina. In the contract of the KJC, for the item designated as *Hand Sanitizer 500 ml*, the price is EUR 1.70, while the Municipality of Viti/Vitina paid EUR 2.57 for the same item. This shows that prices on contracts resulting from open procedure are always lower. D+ examined several contracts for the period November-December 2020 and found that for the item designated as *Hand Sanitizer 500 ml*, in open procedure procurements the average price was EUR 1.87, while in negotiated procedure procurements it was EUR 3.94.

If the Municipality of Viti/Vitina had applied the open procedure, it would have certainly concluded the contract at a much lower price, considering all the data disclosed by D+ and where evidence has been provided that prices of items in open procedure procurements are two or three times cheaper.

# Recommendations:

## General:

- CAs should avoid the application of negotiated procedure without publication of contract notice in cases where there is no urgency, because it will limit the competition which is one of the main principles of public procurement. Without competition there is a high possibility that the prices will be higher. The CAs should have this in mind when they decide to use the negotiated procedure;
- CAs should invite as many EOs as is viable, even if applying the negotiated procedure without publication of contract notice. This ensures that at the minimum there will be competition in negotiated procedure even. Inviting only one company to bid is against the principles of public procurement;
- CAs should invite all EOs that have met the criteria in the negotiation stage in order to negotiate among other things, the price. There is a high possibility that the companies will lower the price when they know that multiple bidders are invited to negotiate;
- CAs should ensure to not pay more than market price for products. CAs should compare all prices offered by bidder with the market prices;
- Multiple groups of EOs should not be invited to negotiate together. Invitations to tender should be sent to EOs separately, as the decision to bid as a consortium is not up to the CA, rather the EOs themselves;

## Specific:

- HUCSK should ensure that it does not exceed the value of framework contract by over 30%;
- Municipality of Prishtina should ensure that in cases of division into lots, the number of invited EOs is larger than that of lots or apply the open procedure;
- Municipality of Vushtrri should ensure that large value contracts are signed by the Mayor, so that they are enforceable.



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