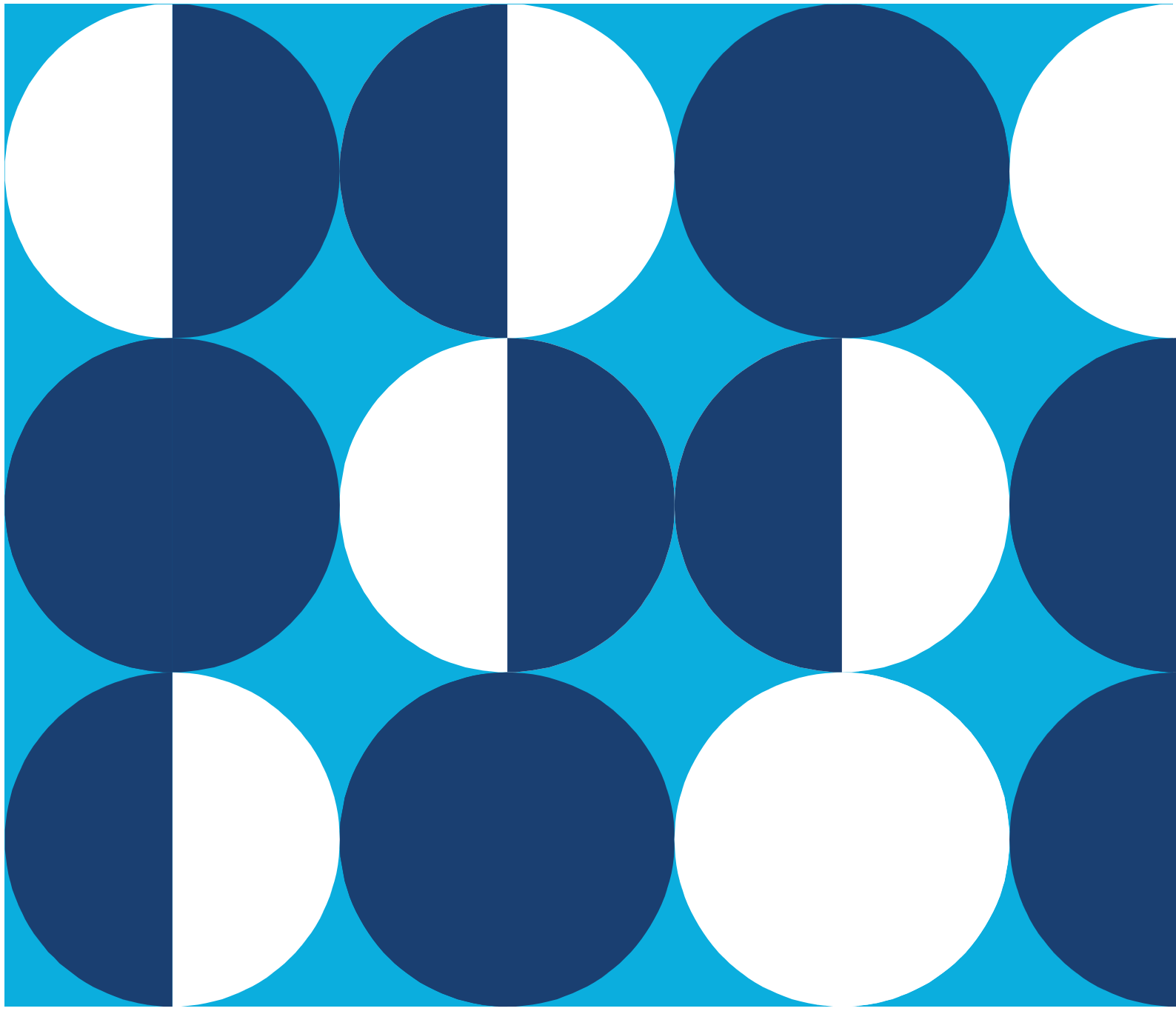




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Disqualified Companies Bid and Win Tenders



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July 2021

This report was prepared by Democracy Plus (D+) and supported by USAID through Transparent, Effective and Accountable Municipalities (USAID TEAM) activity in Kosovo. Author's view expressed in this report does not necessarily reflect the views of the United States Agency for International Development (USAID) or the United States Government.

According to Article 99.2 of the Law on Public Procurement, companies may be disqualified (or blacklisted) from participation in public procurement for up to 12 months. The reasons for the disqualification of a company are false statements and/or forgery of documents. The Procurement Review Body (PRB) shall decide on disqualification upon request submitted by a contracting authority. The PRB publishes on its website all disqualification related decisions, including cases where the request of the contracting authority has been rejected.

The Public Procurement Regulatory Commission (PPRC), in addition to not taking any measures through the e-Procurement platform to prevent such economic operators from participation in procurement activities, issued a controversial interpretation on this matter in October 2020. According to the PPRC, even if an economic operator has been caught falsifying documents and/or cheating in public procurement, it should be allowed to get new contracts if the procurement activity started before the date of its inclusion on the Blacklist. This PPRC interpretation is in breach of the Rules of Procedure of the PRB which explicitly provide: “if the disqualification is approved at the request of the contracting authority, then the disqualified economic operator may not participate in any procurement activity that includes current and future procurement activities. Disqualification is valid from the moment of issuing the decision regarding the disqualification, until the time period determined in the decision of the review panel. For the purposes of this provision the procurement activity includes, *inter alia*, the signing of a public contract with the contracting authority.”¹

This opinion has allowed many contracts to be concluded with companies that have been debarred, as the contracting authorities have acted in accordance with this opinion. The PPRC, in addition to not doing anything for three years (since D+ proved that debarred companies are getting awards) to prevent such companies from bidding, now with its opinion has provided more room for debarred companies to win contracts. Contracting authorities will lack certainty during contract implementation, as they are compelled to enter into contracts with debarred companies.

Democracy Plus, using open source information from the [e-Procurement](#) platform, found that from January 1, 2019, seven companies have bid in 22 tenders while disqualified. In 13 of the 22 tenders, the contracting authorities have concluded contracts with these companies. In two other tenders, the contracting authority eliminated the company that submitted its bid precisely because of its disqualification by the PRB.

The following part of this brief highlights cases of contracts concluded with disqualified companies, or companies on the Blacklist.

- 1) Municipality of Vushtrri signed a contract worth EUR 25,000 with *Interlab LLC* on March 11, 2021. *Interlab* was disqualified effective February 1, 2021, through January 31, 2022. This contract was concluded after the opinion issued by the PPRC and apparently the municipality acted pursuant to this opinion. However, even if *Interlab* would have been eliminated on grounds of disqualification, the municipality would not have been wrong.
- 2) Ministry of Infrastructure concluded an annex contract in the amount of EUR 149,785.99 with *R & Rukolli LLC* on May 5, 2021, while the company was disqualified effective December 9, 2020, through June 8, 2021.

¹ Regulation No. 01/2020 of the Work of Public Procurement Review Body of Kosovo. Article 32.2 – Accessed on July 15, 2021

<https://oshp.rks-gov.net/en/Pages/Details?id=6>

- 3) Municipality of Peja concluded a contract in the amount of EUR 256,872.50 with *Arfa Group LLC* on December 17, 2019, while the company was placed on the Blacklist effective November 19, 2019, through May 18, 2020.
- 4) Another contract concluded with *Arfa Group LLC* as part of a consortium was signed by Municipality of Rahovec in the amount of over EUR 1.7 million. The contract was signed on December 20, 2019, about a month after *Arfa Group* was disqualified. According to Article 71 of the Law on Public Procurement if one of the members of the consortium is non-responsive, then the whole consortium is considered non-responsive.
- 5) There were nine contracts with a total value of EUR 137,384.06 awarded to *ITC Vlora* after it was disqualified. *ITC Vlora* was introduced to the Blacklist effective September 3, 2020, through March 2, 2021. Although for all nine contracts, bids were submitted before *ITC Vlora* was disqualified, according to the Rules of Procedure of the PRB², the economic operator cannot sign a contract if it is disqualified.

Table provided below lists all bids and contracts awarded while the companies were debarred.

Economic Operator	Start of Disq. DD-MM-YY	End of Disq. DD-MM-YY	Contracting Authority	Date of Bid DD-MM-YY	Date of Contract DD-MM-YY
AS Tech SH.P.K	15-02-21	14-08-21	Municipality of Vushtrri	27-04-21	
AS Tech SH.P.K	15-02-21	14-08-21	Municipality of Shtime	12-05-21	
AS Tech SH.P.K	15-02-21	14-08-21	Kosovo Customs	15-04-21	
AS Tech SH.P.K	15-02-21	14-08-21	Ministry of Foreign Affairs	21-04-21	
AS Tech SH.P.K	15-02-21	14-08-21	Kosovo Customs	12-04-21	
AS Tech SH.P.K	15-02-21	14-08-21	Municipality of Shtime	26-05-21	
AS Tech SH.P.K	15-02-21	14-08-21	KRM Pastërtia	11-05-21	
Basri Sopjani B.I	15-02-21	14-08-21	Qendra Multifunkionale Sh.A	16-02-21	
Interlab SH.P.K.	01-02-21	31-01-22	Municipality of Vushtrri	14-12-20	11-03-21
R & Rukolli	09-12-20	08-06-21	Ministry of Infrastructure	20-04-21	05-05-21
Sallahu SH.P.K	03-07-19	03-01-20	Iber Lepenci Sh.A	26-12-19	
Arfa Group SH.P.K.	19-11-19	18-05-20	Municipality of Peja	12-11-19	17-12-19
Arfa Group SH.P.K.	19-11-19	18-05-20	Municipality of Rahovec	21-08-19	20-12-19
N.T.P. Vlora	03-09-20	02-03-21	Kosovo Customs	20-08-20	19-10-20
N.T.P. Vlora	03-09-20	02-03-21	Municipality of Skenderaj	13-07-20	29-09-20
N.T.P. Vlora	03-09-20	02-03-21	Municipality of Suhareka	17-07-20	23-09-20
N.T.P. Vlora	03-09-20	02-03-21	Kosovo Landfill Management Company	02-09-20	23-09-20
N.T.P. Vlora	03-09-20	02-03-21	Mental Health Center Prizren	26-08-20	21-09-20
N.T.P. Vlora	03-09-20	02-03-21	Ministry of Environment and Spatial Planning	20-08-20	14-09-20
N.T.P. Vlora	03-09-20	02-03-21	Haxhi Zeka University	06-08-20	08-09-20
N.T.P. Vlora	03-09-20	02-03-21	KRM Pastrimi	22-07-20	07-09-20
N.T.P. Vlora	03-09-20	02-03-21	General Hospital - Peja	30-07-20	07-09-20

Table 1 – Companies that have bid and/or won tenders while debarred

² Procurement Review Body. Rules of Procedure. Article 32. 2020.
<https://oshp.rks-gov.net/en/Pages/Details?id=6>

Kosovo Customs as a contracting authority eliminated *As Tech LLC* in two of its tenders on grounds of disqualification by the PRB. However, it failed to do the same with *ITC Vlora*, concluding a contract even though the company was disqualified at that time.

But how come disqualified companies bid and win contracts? The reason is because most contracting authorities do not consider the Blacklist, as published on the PRB website, when evaluating bids. Another reason is that there is no mechanism that deters such companies from bidding. This can be implemented in e-Procurement by disabling the option to submit bids during the disqualification period. The Law on Public Procurement does not provide any other punishment for the above-mentioned companies after violating the PRB decision on their disqualification.

The lack of punitive mechanisms for companies that submit bids and win contracts while disqualified affects the credibility of the procurement system in Kosovo. This may encourage other companies to attempt to get tenders when they see that there are no consequences for bidding while disqualified. From 2019 to date, 20 companies have been disqualified, while seven of them (or 35%) have submitted bids while on the Blacklist.

The lack of punitive mechanisms has allowed companies on the Blacklist to file complaints to the PRB. *Interlab LLC* on April 26, 2021, submitted a complaint to the PRB against a contract award decision by the Ministry of Health. The tender in question was for the supply of lab materials for SARS-COV-2 testing. After the mandate of the PRB Board expired on March 31, 2021, complaints cannot be reviewed. This means that a very important tender has been blocked because of a complaint filed by a company that is on the Blacklist, thereby unlikely to get the award.

Considering this growing phenomenon, the PPRC as the administrator of the e-Procurement platform should disable disqualified companies from participating in procurement activities. This can be done by denying access to the e-Procurement account to companies that are on the Blacklist. Access to the account would be allowed automatically upon expiration of disqualification period. This action shall ensure that disqualified companies cannot get contracts. Contracting authorities will, on the other hand, have it easier to evaluate bids. Finally, confidence in public procurement in Kosovo will grow, as fraudulent companies cannot get public contracts.



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