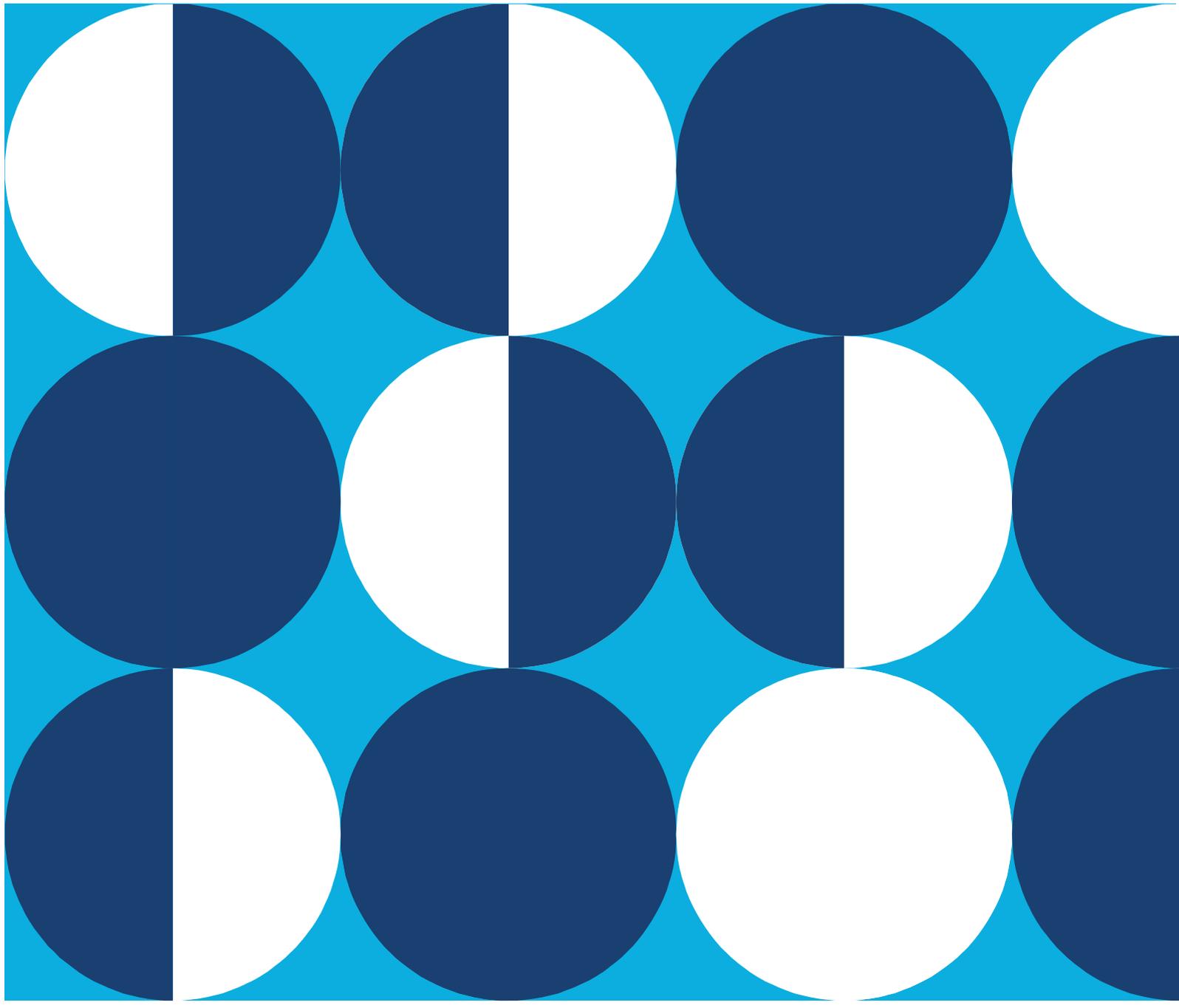




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ISO Certification Bid Rigging



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The Municipality of Gjakova on August 27, 2020, published the tender for the construction of kindergartens with an estimated value of EUR 197,578.32. The Bill of Quantities provided for the refurbishment of a kindergarten in Qabrat, the refurbishment and construction of a kindergarten in Novosellë and the construction of an annex to an existing kindergarten. Although the open procedure was used, only one company submitted its bid, getting the award. The awardee company was *Korben* with a price of EUR 150,311.70.

The tender dossier was downloaded by 54 economic operators (EOs). To date, D+ has not encountered any case with such a large number of interested EOs and only one submitting a bid.

The reason only one company bid for a tender was that although the type of works to be performed is quite common, the company was required to be ISO 3834 certified. This certification addresses quality requirements for fusion welding of metallic materials¹. By running searches in e-Procurement for such works, D+ did not note any requirements for this ISO certification in other tenders.

In the Bill of Quantities, there are few positions where welding is required. Why exactly did the municipality require this certification? Additionally, the tender provides for electrical works, however there are no EO certification requirements attached. Such a requirement by the municipality is not relevant to the nature of works to be performed. It is strange that the municipality has not required any welder and on the other hand requires that the EO be certified for welding.

According to ISO 3834, the certified parties must produce the welded parts themselves, such as metal roof sheets.

Prior to the publication of the tender, the Department of Education as the Requesting Unit, in two requests sent to the Procurement Office for the announcement of the tender, have not mention whatsoever of the requirement for ISO 3834 and 39001. It is not known how these two certifications became part of the tender dossier. In principle, such requirements are made by the Requesting Unit, as the Procurement Office cannot know what type of certification should be required.

Another restrictive requirement is in terms of professional staff such as engineers, surveyors, etc. The Municipality required the economic operator to have employees and provide proof in the form of Payroll by the Tax Administration of Kosovo (TAK). It was not allowed for the EOs to bid with professional staff under special service agreements. When the requirement that professional staff be employed by the company is coupled with the requirement for proof to be submitted in the form of payroll at TAK, then this makes it impossible to meet the requirement, even if employees were allowed to be under special service agreements. Most special service agreements are usually signed in the last days before the submission of bids. It would be impossible for an EO to provide any proof of the employee being on payroll for TAK purposes, while not having been paid for any month at all. In examining hundreds of contracts in the past five years, D+ has not encountered the requirement that professional staff must be employed by the economic operator submitting the bid and that this must be supported with evidence of being on the payroll for TAK purposes.

¹ ISO 3834-1:2005. International Organization for Standardization.
<https://www.iso.org/obp/ui/#iso:std:iso:3834:-1:ed-2:v1:en>

dhe të ketë staf profesional për kryerjen e projektit ku të gjithë duhet të jenë në listën e ATK-së. a.) një inxhiniera të diplomuar apo master të ndërtimtarisë - drejtimi konstruktiv me pesë vite përvojë pune pas diplomimit, b.) një inxhinier i diplomuar apo master i ndërtimtarisë drejtimi hidroteknik me pesë vite përvojë pune

Figure 4: Requirement in the tender dossier that all professional staff must be on payroll for TAK purposes

However, the company *NNSH Korben* failed to meet this requirement regarding two positions for professional staff. *Korben* has submitted its contract with the surveying engineer, Bujar Morina, who does not appear on the payroll. On the other requirement, for a surveying technician, *Korben* did not submit any documents at all. In its staff list, it is noted that the surveying engineer is Getoar Pozhegu, who is on the payroll, but it did not submit his CV, employment contract, and diploma.

Failure to meet these requirements renders *Korben's* bid unresponsive. The Municipality of Gjakova should not have signed the contract in this case as two staff related requirements were not met.

Another violation is the appointment of a Contract Manager before the contract was signed. The Contract Manager was appointed on 28 September 2020, while the contract was signed on 29 September 2020. Section 61.4 of the Rules and Operational Guidelines for Public Procurement states that the contract manager shall be appointed after a contract has been signed. Another problem is that the appointment of the Contract Manager was conducted prior to the expiration of the legal deadline for complaints. According to the Law on Public Procurement, companies can request a review up to five days after the Notice of Contracting Authority Decision. This decision was published on September 22, 2020. The deadline started running on September 23, since the day of notice counts as day “zero”. As the last day was on Sunday, September 27, the deadline was extended to Monday, September 28, because according to the LPP if the last date of the time limit falls on an official holiday or weekend, the time limit shall be extended to include the first working day thereafter. In this case, the municipality erred as it did not adhere to the deadline for complaints. Although only one company bid in the tender, the possibility of complaints still exists.

The Municipality of Gjakova should relax the criteria in the tender dossier to give more opportunities to other companies to bid. The mere fact that 54 EOs downloaded the tender dossier, is an indicator that they could have been interested in bidding but were foiled by the requirements of the tender dossier, especially the ISO 3834 requirement which is irrelevant for this procurement activity. The municipality should keep in mind that competition is one of the principles of public procurement, leading to lower prices for the contracting authority. The municipality should also evaluate bids based on its own requirements, in accordance with Article 59 of the LPP, which states that the evaluation of offers should be conducted based on the criteria set in the tender dossier.



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