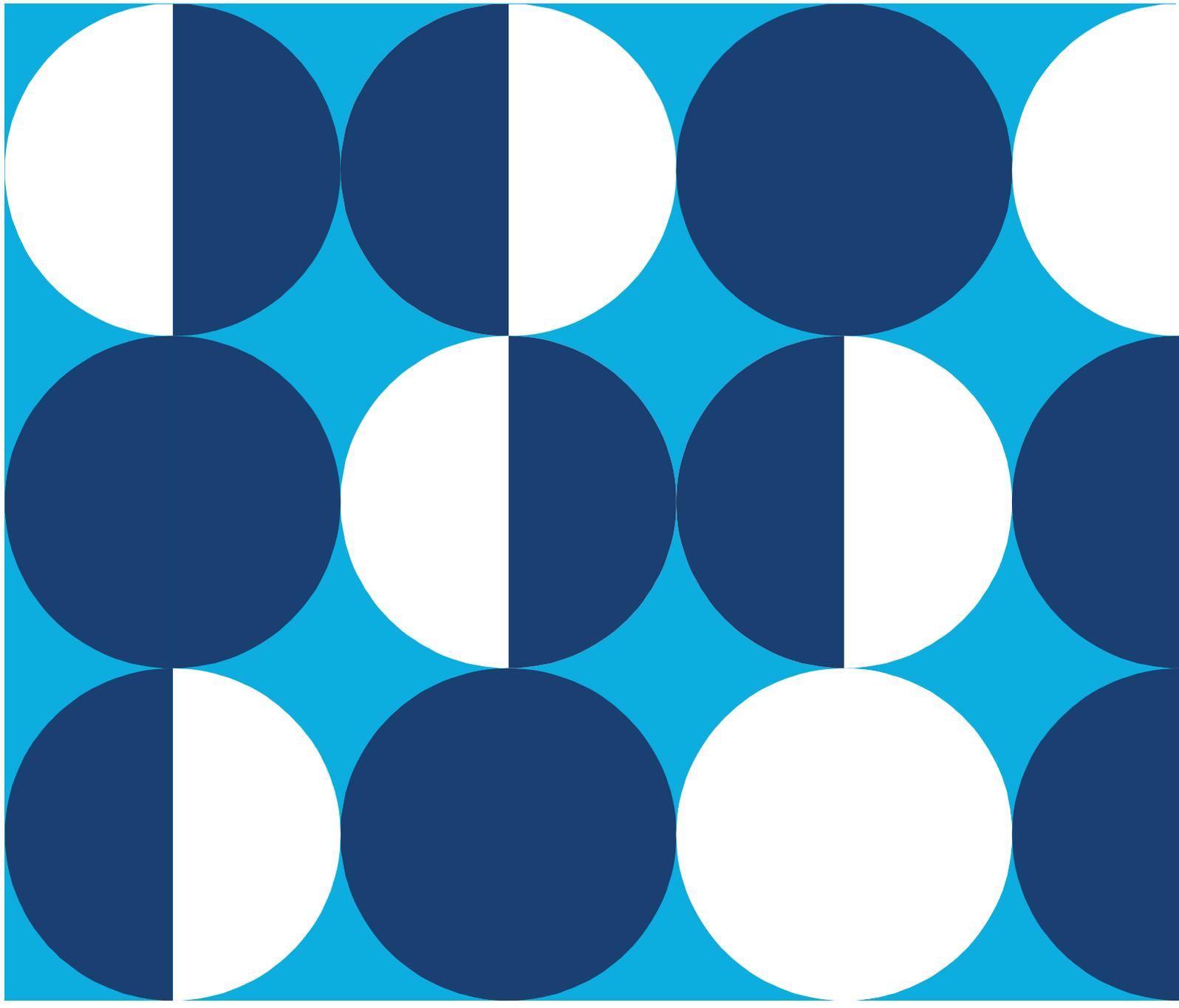




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Shortened Deadlines, An Opportunity to Restrict Competition



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On November 30, 2020, the Municipality of Skenderaj published a call to tender for the supply of healthcare equipment (a mammography machine, an X-ray machine, and a panoramic radiography machine) for the Main Family Medicine Center (MFMC) for an estimated value of EUR 120,000. Although the open procedure was applied, only one company, *KosovaMed Healthcare*, bid in this tender, with a price of EUR 119,880 or only EUR 120 less than the estimated tender value. The tender dossier was downloaded by twenty-one (21) companies dealing in medical equipment and yet none of them bid.

No.	Description	Price
1	Mammography Machine	53,950
2	X-ray Machine	38,750
3	Panoramic Radiography Machine	18,300
		EUR 119,800

Table 1: Product prices according to the contract between *KosovaMed Healthcare* and the Municipality of Skenderaj

The reason only one economic operator (EO) submitted a bid, can be explained by the short deadlines provided to submit a bid, as well as for the delivery of products and certain omissions in the tender dossier requirements. The CA requested a mammography machine, an X-ray machine, and a panoramic radiography machine, all being medical equipment. The technical specifications required for such products are quite detailed, however D+ did not notice any company trademark mentioned at all, except for the computer, which based on the provided designations was required to be manufactured by *Intel*. The Law on Public Procurement allows, if it is not possible to develop a sufficiently precise and intelligible description of the product, to note trademarks provided, however, that any such reference shall be accompanied by the words “or equivalent.” In this case, the words “or equivalent” are not noted in the technical specification.

Although the technical specifications are quite detailed, the tender dossier has shortcomings. First, the Municipality of Skenderaj did not require the EOs to possess a license for dealing in medical equipment from the Kosovo Medicines Agency (AKPPM). Although *KosovaMed Healthcare* did submit this license, the Municipality was exposed to the risk of having unlicensed companies bid in this tender. According to the Law on Medicinal Products and Medical Devices, before a medical device can be placed on the market, the Kosovo Medicines Agency must certify it.¹

Another shortcoming that could have restricted competition is the equipment delivery deadline. The Municipality set the requirement for the equipment to be supplied in five calendar days. This deadline is extremely short and unreasonable, considering that calendar days include Saturday and Sunday, which are off days. For example, in April 2020, during the state of emergency in the fight against the Covid-19 pandemic, the Ministry of Health provided a deadline of five business days. However, no company has complained about this requirement during the bid submission stage. However, this does not mean that they agreed to this requirement.

Furthermore, the Municipality of Skenderaj also shortened the deadline for submission of bids. The deadline was shortened from 20 days to 9 days. The Law on Public Procurement says that for medium value contracts (EUR 10,000 to 125,000) the deadline can be shortened

¹ Article 25. Law on Medicinal Products and Medical Devices. Official Gazette of the Republic of Kosovo. 2014
<https://gzk.rks-gov.net/ActDetail.aspx?ActID=9437>

from 20 days to 10 days. However, the Municipality acted unlawfully in further shortening the deadline because:

“Due to the situation created with COVID-19, considering the required efficient management of the situation and the lack of such equipment at the MFMC, there is a need for these devices.”

The reasoning of the Municipality for shortening the deadline for bidding is moot, as these devices have nothing to do with the fight against COVID-19. D+ has found that contracting authorities, during 2020, in the name of fighting the pandemic, have committed numerous violations in procurement procedures, where the most significant are the application of negotiated procedure without publication of a contract notice and shortened deadlines for bidding. Shortening time limits for bid submission is allowed by law, however using COVID-19 as an excuse to shorten the deadline is prohibited. The Municipality could have initiated the procedure earlier and provide enough time to all EOs to submit a bid.

Another not well thought out requirement is the one to train technical and medical staff to use the equipment. The Municipality of Skenderaj has not specified at all the hours of training required, leaving this up to *KosovaMed Healthcare* alone. The number of hours and persons to be trained should have been included in the Bill of Quantities. Consequently, it is up to *KosovaMed Healthcare* to determine the number of persons to be trained and the number of training hours to be provided.

KosovaMed Healthcare offered the *Genoray MX-600* model for a mammography machine. The tender dossier requires a catalog for each product. In its bid, the EO submitted a one-page catalog, where not all the specifications of the device are listed. The technical specifications require the mammography screening machine to have a “Range of mAs exceeding the upper limit of 635 mAs with broad focus,” yet the mammography machine offered by *KosovaMed Healthcare*, *Genoray MX-600*, supports a range of up to 600 mAs². Therefore, the requirement has not been met. The Evaluation Committee appears to have failed to compare the required specifications against the offered equipment. This comparison could not have been conducted through the catalog submitted by *KosovaMed Healthcare*. In this case, it should have sought clarifications from the EO or visit the manufacturer’s website to compare technical specifications.

For the X-ray machine, *KosovaMed Healthcare* offered the *FujiFilm FDR Smart F* model. The technical specifications of the equipment match those required in the tender dossier.

As for the panoramic radiography machine, *KosovaMed Healthcare* offered the *NewTom GO* model. However, the provided brochure does not indicate the technical specifications of the product. In this case, even though *NewTom GO* meets all the required specifications, the Evaluation Committee could not have established this based on the brochure submitted by the awardee.

During contract implementation, the Municipality did not comply with the steps required under Financial Rule 01/2013. The Municipality accepted the goods and then put in the purchase order to the economic operator, while the opposite should have happened, first the order is made through Purchase Orders and then the goods are accepted. According to the Financial Rule 01/2013 on Public Funds Expenditure, Article 22, first step is the request for purchase, next Purchase Order, third step is report of acceptance of goods, and fourth step

² Product Data of Mammography MX-600
<https://www.mcmedical.com.co/wp-content/uploads/2018/03/mx600.pdf>

is receipt of invoice. Payment is processed upon receipt of invoice³. The Municipality received the supply on December 23, 2020, while it issued the Purchase Order on May 6, 2021. The tender dossier requires the EO to deliver the supply five days upon receiving the Purchase Order. The Municipality was unable to measure the running time limits, as the supply was delivered before the Purchase Order was issued. This is already a common occurrence in many procurement activities, where the Purchase Order is issued after the supply has been delivered.

Although the technical specifications for the equipment do not seem to have been tailored for certain bidders, the shortened deadline for submission of bids and the brief time to deliver the equipment may have compelled other economic operators not to bid. The Municipality of Skenderaj failed to take all necessary actions to enhance competition. Nevertheless, the contract prices appear to be in line with the market price and the prices listed in the same contracts by other contracting authorities.

³ Financial Rule No. 01/2013/MF – Public Funds Expenditure, Official Gazette of the Republic of Kosovo.
<https://gzk.rks-gov.net/ActDetail.aspx?ActID=10203>



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