

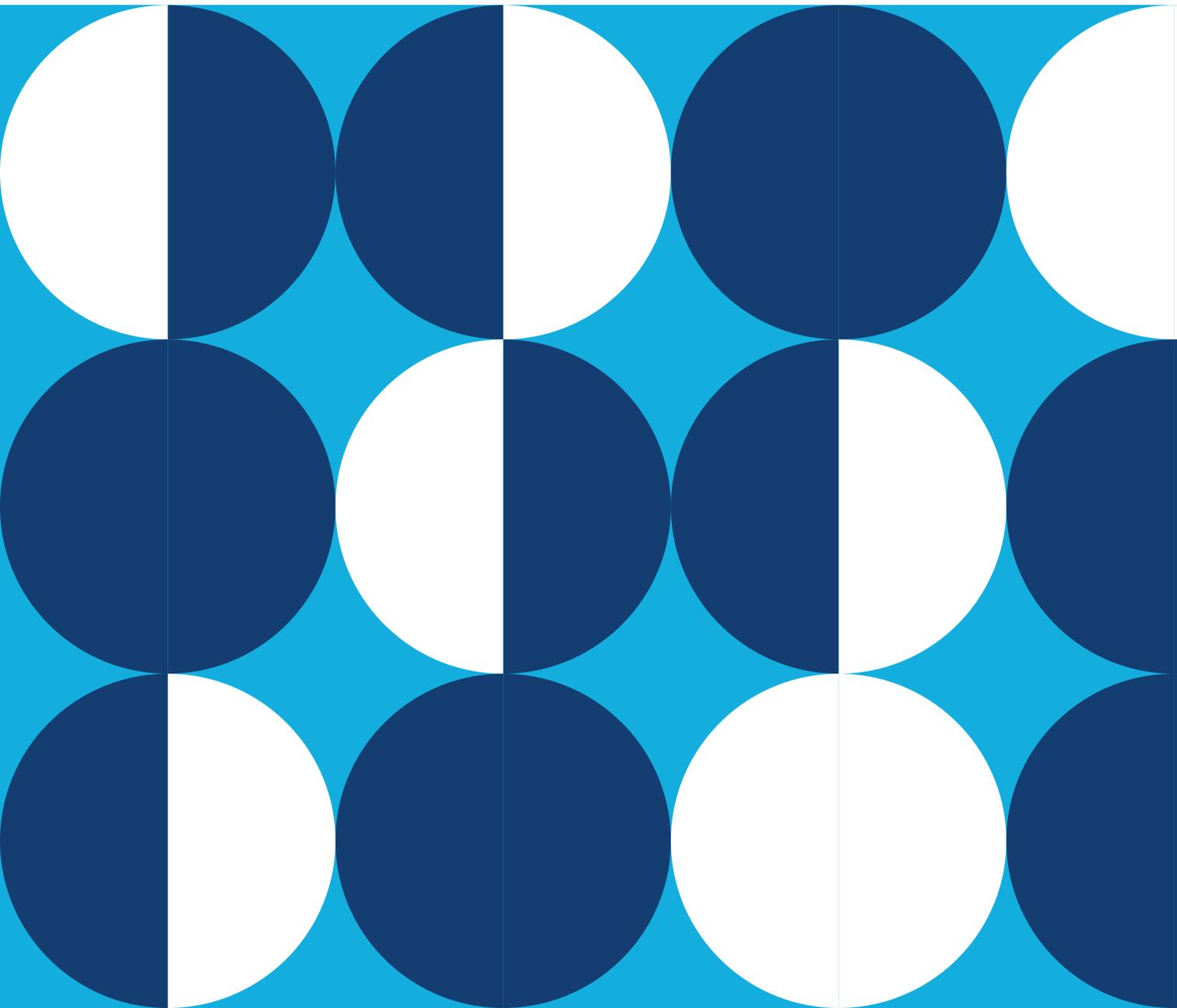


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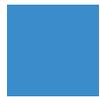
# Monitoring of Public Procurement in Four Municipalities: Gjakova, Gjilan, Podujeva, and South Mitrovica

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December 2021







**RULE OF LAW**

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# List of Abbreviations and Acronyms

<b>ACA</b> →	Anti-Corruption Agency
<b>CA</b> →	Contracting Authority
<b>EO</b> →	Economic Operator
<b>GEO</b> →	Group of Economic Operators
<b>KAS</b> →	Kosovo Agency of Statistics
<b>KBRA</b> →	Kosovo Business Registration Agency
<b>LPP</b> →	Law on Public Procurement
<b>PPRC</b> →	Public Procurement Regulatory Commission
<b>PRB</b> →	Procurement Review Body
<b>ROGPP</b> →	Rules and Operational Guidelines for Public Procurement
<b>TAK</b> →	Tax Administration of Kosovo
<b>TD</b> →	Tender Dossier

# Summary of Findings

## General comments for the municipalities covered by this report:

- The respective municipalities have applied negotiated public procurement procedures in violation of the Law on Public Procurement (LPP).
- In the application of the negotiated procedure, respective municipalities tended to invite a small number of economic operators thereby restricting competition.
- In some cases, respective municipalities proceeded to award contracts to economic operators whose bids had been found unresponsive. At the same time, these municipalities failed to reject bids by economic operators who submitted invalid documents.
- There have been shortcomings in managing contract implementation, resulting in delays in the completion of projects of common interest.
- In most cases, respective municipalities have not practiced sanctions against unresponsive economic operators in the implementation of contracts.
- In some cases, respective municipalities required ISO certificates issued by a specific state and often times require certificates that are out of scope, contrary to the rule set out in the LPP.

## Specific:

### Municipality of Gjakova:

- In the tender “Rehabilitation and construction of roads with concrete pavers”, the municipality failed to confiscate the tender security of the group of winning economic operators. This consortium failed to bring the documents required for submission upon being declared the winner.
- The municipality included a technical requirement in the tender dossier contrary to the LPP, requiring a standard applicable by a specific state. This provided for restricted competition and discrimination against other economic operators.
- In the “Supply of computers and laptops” tender, the municipality was negligent in drafting technical requirements and as a result of errors, contract implementation failed. The municipality required that the supply be made under a specific manufacturer’s brand, which is not allowed as it restricts competition.
- In the “Construction of the Gusha riverbed in the village of Batusha” tender, the municipality did not make any payment, despite the fact that the contract was concluded in 2020 and the works were planned to be completed within 30 days from the day of contract execution.
- In the “Rehabilitation – construction of asphalt roads” tender, there were no requirements by the municipality in relation to the financial standing of the economic operator. Because of the high value contract, the failure to introduce certain requirements affects the manner of contract implementation.

## Municipality of Gjilan:

- The “Summer maintenance of roads in the Municipality of Gjilan” tender provided for a term of one year only and not for 36 months, which is the duration of the framework contract and may mislead the economic operators bidding for this tender.
- In the “Construction of the Green Market” tender, the municipality unlawfully initiated a negotiated procedure for concluding a second contract. The mismanagement of the first contract for the construction of this market, resulted in the award of a second contract for the same works.

## Municipality of Podujeva:

- In the “Renovation of the city library” tender, as a result of mismanagement, the project was not completed as stipulated in the contract, with extensive delays in works.
- In the “Supply with anti-covid material - hand sanitizer” tender, the municipality failed to determine properly the quantity to be supplied, which may lead to problems during contract implementation.
- In the “Repair of asphalt roads” tender, the municipality entered into a contract with an economic operator who, in the Bill of Quantities, under one position submitted an abnormally low price, for which the municipality failed to request additional clarifications.
- In the “Supply and installation of greenhouses for farmers” tender, the municipality failed to punish the economic operator who violated the deadline for contract completion.

## Municipality of South Mitrovica:

- In the “Supply and installation of tunnel type greenhouses” tender, during contract implementation, the municipality made a payment a few days before the start of contract implementation, assuming the risk of financial harm should the supply not be delivered properly. Also, in the requirements for technical and professional capabilities, the municipality determined the number of completed contracts, instead of determining only the value of completed contracts.
- In the “Construction of infrastructure in the New Neighborhood in the village of Frashër” tender, the municipality exceeded the estimated value of EUR 36,000, which indicates lack of timely procurement planning. Also, an economic operator was eliminated as it bid abnormally low prices, but the municipality failed to request any additional clarifications as required by the LPP.
- In the “Maintenance and servicing of municipal and other municipal institution vehicles” tender, during the initiation of procurement activity, the municipality mixed up the criterion of the cheapest price with the criterion of the most economically advantageous tender.
- In the “Supply of schools and other municipal institutions with fuel/burning wood” tender, the municipality shortened the deadline for submission of bids without publication of prior notice in violation of the LPP. Additionally, on the same procurement activity, the municipality accepted unfinished contracts as references, contrary to the LPP.



# Municipality of Gjakova

## 1. Construction and rehabilitation of roads with concrete pavers

The Municipality of Gjakova, in April 2020, announced<sup>1</sup> a call to tender for the repair of roads with concrete pavers, with a budget of EUR 700,000.00. Six economic operators (EOs) participated in this tender, with the award of EUR 626,653.15 going to NTP Fidani-L. However, as can be seen from the below table, the bid submitted by NTP Fidani-L was one of the most expensive, second in terms of the highest price.

**Table 1** – Bids by Economic Operators

No.	Bidder	EUR Price:
1	Udha Sh.P.K & Fidani Beton Sh.P.K.	575,474.55
2	Stublla Sh.P.K.	649,099.20
3	Seticommerce Sh.P.K & Construmax Sh.P.K.	568,336.43
4	Ramë Haklaj B.I.	600,000.00
5	NTP Fidani-L	626,653.15
6	Liqeni VII	622,138.10

However, the Municipality of Gjakova initially announced consortium Udha Sh.P.K. & Fidani Beton Sh.P.K. as winner. According to the Tender Dossier examined by D+, before signing the contract, the two members of the consortium were required to submit the following documents:

<sup>1</sup> E-Procurement Platform, Contract Signing Notice: <https://bit.ly/3DSW1fr>

- Certificate from the Tax Administration of Kosovo (TAK), proving that the EO is not in arrears of tax payments until the last quarter before the tender application
- Certificate from the competent court that the EO is not subject to any bankruptcy or insolvency proceedings
- Certificate from the municipality that the EO has no outstanding property tax obligations; and
- Tender security in original form.

These documents were required by the municipality on July 1, 2020, giving the consortium five days to submit them. The consortium did not submit any documents, resulting in elimination. According to the Rules and Operational Guideline for Public Procurement (ROGPP)<sup>2</sup>, if one bidder is declared winner, but fails to submit the required certificates, the CA shall proceed with the second-ranked tenderer. In addition to this action, the CA (in this case, the municipality) must also confiscate the tender security and initiate the procedure to disqualify the EO according to Article 99.2 of the Law on Public Procurement (LPP). The disqualification can last up to one year, during which time the EO is not eligible to participate in tenders and win public contracts. This decision is taken by the Procurement Review Body (PRB), upon request submitted by the CA. In this case, the Municipality of Gjakova as the CA addressed a request to the PRB that the consortium Udha Sh.P.K. and Fidani Beton Sh.P.K. be disqualified.

The Municipality of Gjakova proceeded with the second responsive bidder, NPT Fidani-L, having bid EUR 51,178.60 more (total bid: 626,653.15). On the other hand, all other bids were found unresponsive, on grounds of non-compliance with the applicable criteria.

However, according to D+ research, NPT Fidani-L and the consortium member initially declared winner, Fidani Beton Sh.P.K., have many elements in common. Both companies share:

- Same address given to the Kosovo Business Registration Agency (KBRA)
- Same manager, who has signed on behalf of the staff as required in the Tender Dossier
- Same phone number, and
- Website of Fidani Beton Sh.P.K., provided on Facebook directs you to the page of the second winner: [www.fidanyl.com](http://www.fidanyl.com)

All this information indicates that it is the same company. Ergo, the municipality has allowed the tender to be rigged and to pay over EUR 50,000.00 more than it would have paid if a contract had been signed with the initial awardee. In cases where EOs are declared winners and withdraw from signing the contract, the only remedy for the municipality is the confiscation of tender security, as well as the request for inclusion in the Blacklist. In this case, the tender security was EUR 20,000.00, an amount that was not confiscated.

As mentioned above, other companies were found unresponsive. This happened after the other four bidders failed to submit their ISO DS CEN TR 15128 2015, which is a standard for the rehabilitation of drain and sewer systems. This requirement was added through a 'Corrigendum', 10 days after the Tender Dossier was published<sup>3</sup>. However, the violation committed by the Municipality of Gjakova goes even further. The ISO DS CEN TR 15128 2015 standard has been retired, i.e., it is not applicable as of February 15, 2016<sup>4</sup>. The Tender Dossier states that this standard is from 2015, but in reality, this standard is from 2005. Another finding is that this standard is attached to the state of Denmark and according to the LPP, the CA is not allowed to require any standard of a spe-

2 Rules and Operational Guideline for Public Procurement, Article 26.8, page 65: <https://bit.ly/3mt8W1N>

3 Document acquired by D+ upon request for access to public documents.

4 See Dansk Standard indicating designation \*Withdrawn\* <https://bit.ly/3mgkNjH>

cific state: “A contracting authority shall formulate a technical specification by reference to (i) a Kosovo standard implementing a European standard, (ii) a European standard, (iii) a European technical approval, (iv) a common technical specification, (v) an international standard or (vi) any other technical reference system produced by European standardization bodies”<sup>5</sup>.

Both companies (the initial winner who was then disqualified, as well as the company declared the winner the second time – NTP Fidani-L) are certified according to this standard by an international company,<sup>6</sup> but the link<sup>7</sup> certifying the validity of the certificate, does not work. Accordingly, there is a suspicion that Fidani Beton Sh.P.K. and NTP Fidani-L are not certified according to this standard.

The municipality has also committed violations in the evaluation of the bid by Fidani-L. The Tender Dossier requires the bidder to have evidence of completion of similar projects worth EUR 1 million in the last three years. Fidani-L listed four completed contracts, worth over EUR 1.35 million, however, one of the attached references is for an unfinished contract. According to the interpretation by the Public Procurement Regulatory Commission (PPRC), the contract must be completed and not being a contract in progress<sup>8</sup>.

Another violation of criteria set by the municipality is related to vehicle registration. The municipality required three trucks with valid registration. In this regard, Fidani-L offered five trucks, where upon examining all tender documents, it turns out that all trucks are with expired registration. It should be added that in the period when the COVID-19 pandemic started in Kosovo, it was allowed to circulate only with the motor vehicle insurance policy, but as of May 18, 2020<sup>9</sup> registration centers have reopened. Fidani-L's bid was submitted on June 12, 2020, which means that the circulation decision with the insurance policy alone was no longer valid. Therefore, Fidani-L fell short of meeting this requirement and should have been eliminated.

Another identified problem is the issue of works to be performed under the contract. More than half of the contract is foreseen to be spent for payment of only the first position in the Bill of Quantities, namely for *surveying and geodetic verification of contours of road route, sidewalks, and squares*<sup>10</sup>.

For this service, the municipality will pay EUR 372,960.00 or EUR 18.50 per square meter. Only the initially announced winning consortium, Udha Sh.P.K. & Fidani Beton Sh.P.K., has a close enough price of EUR 16.50 per square meter. The price differs drastically with other bidders, Stublla Sh.P.K. bidding EUR 0.20 for this service, Seticommerce Sh.P.K. & Construmax Sh.P.K. at EUR 0.15, while Liqeni VII bid even cheaper, at EUR 0.02 only.

Under this contract, an Annex Contract was signed<sup>11</sup> with Fidani-L in the amount of EUR 31,930.13, where for the same position of ‘Surveying and geodetic verification of contours of road route, sidewalks, and squares’ it provides for an additional EUR 28,039.53. By contract completion, the municipality will pay over EUR 400,000.00 for geodetic surveying alone, while the market price for this service is EUR 1 per square meter<sup>12</sup>. This bid should have been rejected pursuant to section 4.2c of Guideline,<sup>13</sup> which states the contracted price shall not be higher than the concerned market price.

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5 Law No. 04/L-042 on Public Procurement, Article 24 paragraph 8: <https://bit.ly/3rY4OKU>

6 The international company is designated as: EAS International: <http://www.eas-intl.com/>

7 The link in question which is not valid or does not work: <https://bit.ly/320kumt>

8 Interpretation by the PPRC: <https://bit.ly/3shrCoX>

9 Epoka e re <https://bit.ly/3pmjG3V>

10 The price must also include the complete geodetic surveying of contours of road route, sidewalks, and squares, which must be submitted to the supervisory body electronically upon completion of works.

11 Annex Contract is available at: <https://bit.ly/3E9hllY>

12 Audit Report for the Municipality of Gjakova, 2020, p.11 <https://bit.ly/3J41wMe>

13 Rules and Operational Guideline for Public Procurement <https://bit.ly/3mt8W1N>

During contract implementation, the municipality acted in violation of the LPP again. Based on invoices acquired by D+, the municipality paid EUR 624,648.85, where EUR 501,210.91 were paid for road surveying alone, according to the base contract. After adding EUR 28,039.53 of the Annex Contract, the total for this position will be EUR 529,250.44. This is a gross violation of the law, as this is not a framework contract, and the municipality was not allowed to exceed the value for each service. Considering the high price for surveying and geodetic verification alone, it appears the municipality has paid very little to lay the pavers. In fact, the pavers could have been laid even without this service, as many other CAs have done. With this action, the municipality has caused harm of about EUR 530,000.00 to its own budget. The contract should have been terminated at the moment the value of the contract for this service was spent, where as a result of exceeding the set value many low-priced positions remained unordered at all.

In conclusion, the Municipality of Gjakova, in addition to tailoring the criteria to certain companies by requiring an ISO certificate for a standard which is not in effect, ultimately allowed the tender to be rigged in favor of the most expensive EO. The Municipality has not attempted at all to mitigate budget impact, as it failed to confiscate the tender security and request that Udha Sh.P.K. and Fidani Beton Sh.P.K. be blacklisted.

## 2. Supply with computers and laptops

Another examined contract is the one for the supply of computers and laptops for schools. The Municipality of Gjakova divided this tender into three lots, namely one lot for computers, one for projectors, and one for TVs. Estimated value of this tender was EUR 110,555.00. Seven companies bid for supply of TVs, while the award went to Panamic ICT with a price of EUR 21,375.00. In relation to this lot, there were complaints filed with the PRB from two other companies. Both companies were eliminated by the municipality because they offered TV sets bigger than required. However, the first complaining company, Mediatech & Print, in its complaint claimed<sup>14</sup> that the TV offered by Panamic ICT is by a very poor brand and cannot be found at all by running a search online. Although the tender has been referred back for re-evaluation twice, the municipality again awarded the contract to Panamic ICT<sup>15</sup>.

However, the Municipality of Gjakova, on August 3, 2021, terminated the contract with Panamic ICT on grounds that the TVs were not delivered according to the required technical specifications. Although the municipality gave the company the opportunity three times to deliver the products as required, it failed to do so. This failure of delivery came as a result of certain mistakes and negligence by the CA in relation to the bid by Panamic ICT.

Panamic ICT offered the Ecolux EC55T2 model. The first mistake is that the municipality did not require a catalog for this lot (rather for Lot 1 only, where laptops are involved). However, Panamic ICT offered what appears to be a self-produced “catalog”, as it does not feature any manufacturer logo or professional design, compared to catalogs submitted by other bidders. Therefore, the discrepancy in technical specifications could have been noted from the get-go. The municipality required smart TV devices, while the model offered by Panamic ICT is not “smart”. During contract implementation, the company attempted to “trick” the municipality by offering a TV with an Android Box as an equivalent set. Then, according to the submitted catalog, it states that the TV resolution is Full HD (1,920×1,080), while the municipality had required 4K (3,840× 2,160). The municipality had also required that the TVs have ‘Bluetooth’, which is not supported in the Ecolux model.<sup>16</sup> If these elements were properly noted by the bid evaluation committee, it would have not led to the eventual termination of contract and the schools would not be left without TVs, at the time when the school year had already begun.

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<sup>14</sup> Complaint of EO Mediatech & Print: <https://bit.ly/3yZtunJ>

<sup>15</sup> Contract was executed on March 18, 2021.

<sup>16</sup> See features of the Ecolux model: <https://bit.ly/3sfk6ep>

The contract for the supply of projectors was also awarded to Panamic ICT at EUR 3,050.00, but the bid submitted by Panamic ICT is EUR 3,986.00. This may be a technical error in the contract; however the municipality must ensure that there are no such errors as there may be problems in making payments.

Further, specific product names are listed in the technical specifications, which is not allowed by the procurement legislation. The name of the product may be noted only in those cases where the reference is accompanied by “or equivalent”. The municipality required the EH-TW650 projector model, which is made by Epson. As a result, only the companies that bid with this type of projector were able to meet the technical specifications. Referring to the product name without adding “or equivalent” raises suspicions of bid rigging.

For the supply of laptops contract, the CA announced the award in favor of Kibernetika Sh.P.K. with a price of EUR 80,615.00. Initially, the award went to EO Aritech, with a price of EUR 78,922.00, however they did not respond to the invitation to sign the contract. Same as with the projector technical specifications, again in this case, the municipality drafted the computer specifications specifically referring to Intel manufactured products without adding the “or equivalent” phrase. There are other companies in the computer market that manufacture processors that have speeds equivalent to those by Intel.

The deadline for delivery of products according to the Tender Dossier was 30 days. However, based on the invoices, it is observed that some products, at the time of tender examination, were not delivered, even though the contract was signed in December 2020.

### 3. Emergency disinfection of all public facilities and spaces

The tender for emergency disinfection of all public facilities and spaces was conducted through an open procedure, with bids submitted by three EOs. The estimated value for this tender was EUR 60,000.00, while this public framework contract for a period of 12 months was awarded to Truly Nolen Sh.P.K. with a price of EUR 51,337.50. The Haki Bytyci B.I. & Safet Osmani B.I. consortium had bid a cheaper price, at EUR 28,257.50 but were eliminated for failing to submit evidence of five certified workers for the use of chemical preparations.

**Table 2 – Bids by Economic Operators**

Economic Operator	Price
Truly Nolen Sh.P.K.	EUR 51,337.50
Haki Bytyci B.I. & Safet Osmani B.I.	EUR 28,257.20
Oni shpk & Fatos Lashi Egjan	EUR 53,180.00

Due to the sensitive nature of the service, the Municipality of Gjakova introduced a series of requirements to the operator. Among them, the municipality required the EO to be licensed under OHSAS 18001:2008<sup>17</sup>. This standard is a British standard, which is no longer used and has been replaced by the ISO 45001 standard<sup>18</sup>,

<sup>17</sup> OHSAS 18001 Standard: <https://bit.ly/3J6NHgb>

<sup>18</sup> ISO 45001 Standard: <https://bit.ly/3Ep8Gr6>

as of 2018. Despite the fact that this standard is no longer applicable, the municipality is still in violation of the LPP, which requires the use of European standards and not of any specific country<sup>19</sup>. Namely, setting technical specifications referring to any specific product, particular process, trademark, patent, specific origin, or manufacturer, is prohibited.

According to examples from other municipalities, it is observed that the average price for the performance of such services has declined in 2021, e.g., the Municipality of Pristina, in June 2021, acquired this type of service for an average price of EUR 0.08, while the Municipality of Suhareka in the same period acquired such services for an average price of EUR 0.03, while the Central Procurement Agency (CPA) in July 2021 contracted at EUR 0.12. In addition to these municipalities, the Municipality of Istog, at the same period, acquired such services at an average price of EUR 0.05. This is a clear indication that market prices are cheaper than those contracted between the CA and the winning EO.

Also, in the relevant Bill of Quantities we see that disinfection services are required in different facilities, such as disinfection of the Main Family Medicine Center (MFMC), Family Medicine Center (FMC), Family Medicine Ambulatory Facility (FMA), all municipal facilities, residential building entrances, and homes with recorded cases of infection. For the first position, we have approximately 35 treatments where the highest price for disinfection of one square meter is set, while the third position where there are the least treatments, features the lowest price set for disinfection per square meter.

**Table 3** – Bill of Quantities with prices for disinfection

No.	Description	Unit of measure	Quantity	Estimated treatments	Unit price with VAT	Total price with VAT
1	MFMC, FMC, FMA	m2	1,330	35	0.25 Euro	11,637.00 Euro
2	All municipal facilities	m2	3,500	31	0.20 Euro	21,700.00 Euro
3	Entrances of collective buildings and houses	m2	20,000	5	0.18 Euro	18,000.00 Euro
<b>Total with VAT</b>						<b>51,337.50 Euro</b>

The number for approximate treatments, as an element which was an indicator for setting the highest and lowest price, was set by the municipality itself. However, since the square meter is the same for residential building entrances and for municipal facilities and FMCs, then the same price per square meter should have been set in all three positions.

Based on the invoices submitted by the EO, so far EUR 16,777.32 have been spent out of the total of EUR 51,337.50. Out of EUR 16,777.32 spent, EUR 5,963.00 went for disinfection of municipal facilities and EUR 10,814.32 for the MFMC, FMCs, and FMAs. While there are no expenditures recorded for the third position, residential building entrances and homes with recorded cases of infection.

<sup>19</sup> Law No. 04/L-042 on Public Procurement, Article 8.

## 4. Rehabilitation - construction of asphalt roads

In February of this year, the Municipality of Gjakova initiated a procurement activity for the rehabilitation - construction of asphalt roads, with an expected cost of works of EUR 834,946.

The Municipality of Gjakova, applying the negotiated procedure, invited three companies to submit their bids. Of the three EOs, only two of them were responsive, while the award went to ARFA GROUP Sh.P.K., on March 17, 2021, having submitted the lowest bid in the amount of EUR 838,998.44.

**Table 4 – Bids by EOs invited by the Municipality of Gjakova for the tender Rehabilitation – construction of asphalt roads**

No.	Economic Operator	Bid
1	VIA Sh.P.K.	EUR 847,933.44
2	BERISHA COM Sh.P.K.	EUR 839,692.57
3	ARFA GROUP Sh.P.K.	EUR 838,998.86

The Municipality of Gjakova applied the negotiated procedure, arguing that local roads were in poor condition. According to the assessment of the Traffic Section,<sup>20</sup> the main roads were also in poor condition.

The CA referred to Article 35 of the LPP, which allows the possibility of such contracting, without applying standard procurement procedures, in cases where it is strictly necessary for reasons of extreme urgency brought about by objectively verifiable events that were not reasonably foreseeable by the CA. The reasoning of the municipality for the application of the negotiated procedure does not stand, as the damage of roads by inclement weather and salt used for de-icing during the winter season, does not represent an urgent need<sup>21</sup>, since it is easily verifiable.

Furthermore, the Municipality of Gjakova had planned for this procurement in the Final Procurement Forecast for Fiscal Year 2021<sup>22</sup>, forecasting EUR 800 thousand. Therefore, the Municipality of Gjakova has infringed the rights of other EOs by not applying the open procedure.

The application of the negotiated procedure was not sufficiently justified by the Municipality of Gjakova and it should have ensured the broadest possible participation of interested EOs<sup>23</sup>, to ensure competition.

The Municipality of Gjakova failed to include any requirement related to the economic and financial standing<sup>24</sup> of the EO, and while this is at the discretion of the CA, considering that it is a high value tender it would be preferable to specify the minimum turnover<sup>25</sup>, to enable a more accurate assessment of the financial and economic stability of bidders.

20 Request for Emergency Action dated February 2, 2021, from the Local Roads Section and the Traffic Section for the Mayor of Gjakova, Mr. Ardian Gjini.

21 Law on Public Procurement, Article 35, item 2.1.

22 [Final Procurement Forecast of the Municipality of Gjakova for 2021](#)

23 Ibid.

24 Tender Dossier Procurement No. 632-21-396-5-1-5, item 8.1

25 Law on Public Procurement, Article 68.

## 5. Maintenance of Public Lighting Line

The Department of Public Services in the Municipality of Gjakova, on March 31, 2020, had requested from the Procurement Office to announce the tender for 'Maintenance of public lighting line' with an estimated value of EUR 200,000.00 over two years. For this tender, the Municipality of Gjakova concluded a contract with Labinot M. Krasniqi B.I., which took effect on July 2, 2020, and ends on July 2, 2022. Since it involves a framework contract, the contract is concluded for a total indicative value of EUR 122,826.00, with an applicable allowed deviation of +/-30% from the total indicative value. According to the LPP, if the allowed deviation is exceeded, then the contract is terminated by default even in cases where the total indicative value is exceeded by any single item or position. This EO was also the cheapest operator that bid on this tender.

**Table 5** – EOs and total value of their bids for this tender

No.	Name of Economic Operator	Total bids value
1	"BM GROUP" SH.P.K.	123,835.50 Euro
2	Labinot M. Krasniqi B.I	122,826.00 Euro
3	GEO SELMANS NETWORK SH.P.K. ; N.T PROTON	196,772.50 Euro
4	Multi Business Group SH.P.K. JUSUF GËRVALLA	193,957.00 Euro
5	N.M.I.Q MONTKOMERCE SH.P.K.	159,381.00 Euro
6	GEO N.T.SH EING; Metush Hajdari B.I	145,240.00 Euro

Usually where public lighting construction is involved, the Bill of Quantities is designed with more positions related to construction, such as excavation, placement of grounding rods, placement of ribbed pipes, digging and cutting concrete or asphalt, placement of observation lanes, etc. While, in terms of maintenance, the Bill of Quantities includes more positions with services that enable maintenance, such as replacement of old box units with new ones, replacement of wooden poles with concrete ones, cleaning and painting electrical poles, repairing damaged poles, replacement of light bulbs, replacement of equipment that affects conductivity of electricity, etc.

In this case, the Municipality of Gjakova mixed up the type of contract, where though we are dealing with a contract for service provision, i.e. maintenance, many positions in the Bill of Quantities require performance of works, such as excavation and placement of grounding rods. Since the contract involves maintenance, this means that the work will be performed on an existing lighting line and no expansion is required, therefore such a position should not be introduced.

In one of the positions, that most closely resembles construction activities, the municipality placed a series of activities, for which it set the price at EUR 1.

**Table 6** – Bill of Quantities, Position 1

No.	Description	Unit of measure	Quantity	Unit price with VAT	Total price with VAT
1	Opening of the trench (0.8 × 0.4) m with associated activities. - Ordering and placement of fine sand with a depth of 10 cm under and 10 cm above the cable - Ordering and installation of ribbed pipes TIP PE 070 - 100mm - Order and placement of the Fe Zn 25×4 mm earthing strip protector, placed all the way up to the pole - For earthing of poles, earthing strip L = 1.5m, connected through longitudinal earthing, with adequate cross bonding - Order and placement of coarse sand for excavated sections only - Order and placement of the observation strip with a width of 30 cm along the whole route, 20 cm below the quota for the examination of the power cable - Order and placement of the “GALL” protector, noticeable above the cable - Soil compaction	m	2,000	1.00	2,000.00

The introduction of such positions, which are likely not going to be ordered much, as they already exist, may affect the evaluation of bids. Knowing this fact, the EO bid a low price on this position, thereby reducing the total value of the bid and got the award. And this is what happened actually, out of EUR 70,486.15 spent in 2020 and 2021, only EUR 81 were spent on this position. This tender is scheduled to end in July 2022, where according to the Bill of Quantities there are still 1,919 such excavations remaining.

## 6. Construction of the Gusha riverbed in the village of Batusha

The Municipality of Gjakova, in September 2020, initiated the tender procedure for the construction of the Gusha riverbed in the village of Batushë. This procurement activity was canceled, only to have the same call to tender re-announced immediately in October 2020.

The estimated value was set at EUR 9,937.20 and four EOs submitted bids on this tender.

**Table 7** – Economic Operators that bid in this tender

Economic Operator	Bid
EO N.P.N. Vizion-Plus	EUR 8,897.18
EO N.T.Sh.T Viktory Com	EUR 17,978.74
GEO TIMEPROJECT Sh.P.K. & Art – Konstruksion Sh.P.K.	EUR 9,713.55
EO N.N.P. Vetoni	EUR 8,640.45

The Municipality of Gjakova, on November 3, 2020, awarded the contract to GEO TIMEPROJECT Sh.P.K. & Art - Konstruksion Sh.P.K., as a responsive offer, however in terms of price only third cheapest. The other two cheaper EOs were eliminated, because according to the municipality, they failed to meet the requirements for technical work equipment. This contract is scheduled to be completed within 30 days.

Other EOs were eliminated for non-compliance with technical and professional requirements, but the awardee also has some deficiencies in meeting such requirements. The Tender Dossier required the operator to have five (5) employees, one (1) civil engineer, and one (1) surveyor. For the workers, the EO had to provide employment contracts or special service agreements, noting the project in question. The group of EOs submitted contracts, CVs, and diplomas only for the civil engineer and surveyor, while for the latter the diploma was not notarized. The municipality had also required that the EO bring a list of work equipment, such as: one (1) rotating excavator of 10t+, two (2) tipper trucks of 10t+, and one (1) roller compactor of at least 4t. For such vehicles, the EO had to prove ownership or leasing and bring the vehicle registration booklet or Customs Import Declaration (CID). According to the list provided by the GEO, the two (2) trucks are registered, but the GEO presented a valid vehicle registration for one of them only, while for the other there is no vehicle registration document submitted. For the four (4) ton roller compactor, the GEO brought the CID, while for the excavator failed to bring any document.

These elements render the GEO unresponsive, and their bid should have been rejected as unresponsive.

As noted above, the tender is scheduled to be completed within 30 days from the date of contract execution, which was November 3, 2020. However, the Municipality of Gjakova is yet to make any payment even in 2021, which means that although a year has passed since the signing of the contract, the work has not started. In these cases, there are two options, either termination of contract by the municipality or termination of contract by the EO. This is provided in the contract that the Municipality of Gjakova has concluded with the GEO, however there is no information if it happened. According to article 11 of the contract “the Contracting Authority may, after giving seven days of to the operator, terminate the contract if the operator: a) operator fails to fulfill its obligations under the contract; b) fails to execute the contract under the set deadline”. Moreover, according to article 12 of the same contract, “the Economic Operator may, after giving 14-day notice to the Contracting Authority (CA), terminate the contract if the CA a) fails to pay the Economic Operator the amount due within the period specified in the contract”<sup>26</sup>.

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<sup>26</sup> The contract signed between the Contracting Authority and the Economic Operator, Articles 11 and 12 which has been provided to D+ as part of the tender dossier.



# Municipality of South Mitrovica

## 7. Supply and installation of tunnel type greenhouses

The Municipality of South Mitrovica initiated the procedure for this tender with an estimated value of EUR 27,315.00 in March 2020. Only two companies submitted bids in this call to tender. Agrobora and N.P.T. Eurosera & Berisha Construction Sh.P.K. The award went to N.P.T. Agrobora with the cheapest price of EUR 23,945.00, while GEO Eurosera & Berisha Construction had bid the highest price, namely EUR 24,950.00. After the base contract, an Annex Contract was signed ordering an additional five (5) greenhouses at EUR 2,394.50, which accounts for 10% of base contract value.

The drafting of criteria in the Tender Dossier was not in accordance with the LPP, which if done properly could have reduced the number of bids. The Municipality required that the work experience for such supplies be proven through three references and three contracts but did not specify any value. The requirement should have been drafted to ensure that the bidder shall provide references to a certain value, i.e., not limit the number of references, rather set a threshold value. The competition in this case can be harmed quite easily, as there may be companies that have one or two high value references, which would be eliminated from this tender precisely because of this condition. On the other hand, a company may have three low value references, which would meet the condition and not be eliminated. For the CA, the value of completed projects should prevail over the number of contracts. Some Opinions of the Anti-Corruption Agency (ACA) relate to this type of requirement by the CAs, stating that the number of contracts should not be required, as it is sufficient to submit a list of contracts covering the amount required by the CA<sup>27</sup>.

Tender security is required to be valid for 90 days, while N.P.T. Agrobora provided tender security for 60 days only. The bid by N.P.T. Agrobora should have been rejected on grounds of this violation. This issue was claimed by the second bidder, however this EO failed to submit its complaint through the e-Procurement platform and the municipality was correct to reject it.

Regarding contract implementation, it was observed that some payments were made before the supply was completed and the handover report was submitted. According to the contract, the supply started on May 11,

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<sup>27</sup> Anti-Corruption Agency, Opinion in relation to the Municipality of Gjilan, October 2019: <https://bit.ly/3e31WnN>

2020, and ended on July 15, 2020. However, on May 7, a few days before the supply started, the municipality made a payment of EUR 10,000.00. The Special Terms and Conditions of the contract do not provide for any advance payment to the EO, while Section 26 of the General Terms and Conditions of the contract states that payments shall be made after the reports are approved and signed by the Contract Manager. So, the municipality paid EUR 10,000.00 before the implementation of the contract started, consequently assuming the risk of loss for the municipality in case contract implementation would not start for various reasons. In addition, the municipality could not have known that the supply would be completed properly, and the greenhouses would be installed according to the technical specifications.

Further, there is another violation involving the Annex Contract, which was concluded on December 16, 2020, in the amount of EUR 2,394.50. Payments under this annex contract were made before the contract was concluded, on October 23 and 28, 2020 respectively.

## 8. Construction of infrastructure in the New Neighborhood in the village of Frashër

The tender for the construction of infrastructure in the New Neighborhood in Frashër was published on May 12, 2020, with an estimated value of EUR 450,000.00. This project was forecast with shared financing between the Municipality of South Mitrovica and funds allocated to the municipality through the Municipal Performance Grant (MPG) from the central level. The contract was awarded to Urban O.P., with a price of EUR 486,186.68, which is higher than the estimated value by about EUR 36,000. While procurement legislation allows the CA to sign the contract<sup>28</sup> even in cases where the budget is exceeded, on the other hand, this indicates improper planning, especially when three out of four bids have exceeded the budget.

**Table 8** – Bids by Economic Operators

Economic Operator	EUR Price:
Urban O.P.	486,186.68
N.P.Sh. Bageri	346,722.18
N.N.P. Hysnia	488,158.82
Termomontimi shpk & N.T.Sh. Dina	594,578.17

Kompania N.P.Sh. Bageri bid the lowest price, but this company was eliminated by the Municipality of South Mitrovica because of abnormally low tender. This elimination came about based on the formula calculations for abnormally low tenders. However, the municipality violated the LPP at the moment it failed to request clarification on the bid prices. The rules for abnormally low tenders specify that the EO shall not be eliminated without seeking such clarification. Therefore, the company may be eliminated only where the CA is not satisfied by the clarification provided by the company.

<sup>28</sup> In case of exceeding the forecast value, the CA must take measures to secure additional funds.

On the other hand, the documents submitted by the winning company Urban O.P. have some shortcomings. The Tender Dossier required that the EO be certified under ISO 9606 related to welding, but Urban OP failed to submit such a certificate. Accordingly, this is a case where the municipality should have rejected the bid due to non-compliance with one of the conditions set out in the TD.

Another unmet requirement is that for a graduated electrical engineer, with a major on construction engineering. Urban O.P. submitted documents for a graduated engineer, with a major in industrial power engineering. Because of this, the bid should have been rejected as the EO provided an engineer with a different specialty from the one required. According to the LPP<sup>29</sup>, bids must be evaluated based on the requirements of the Tender Dossier.

The same thing happened with the requirement for a graduated architectural engineer, with a major in hydro-technical engineering. The EO submitted documents for an engineer of another specialty, that of architecture. Another element is that Urban O.P. failed to submit any references of previous work for this engineer. The requirement was for the engineer to have eight years of work experience. Additionally, it was required for the EO to have 25 employees and have this supported with proof in the form of payroll by the Tax Administration of Kosovo (TAK). While Urban O.P. did submit such a document, it lists 23 employees only. Further, the EO submitted another list of 30 employees, but the list was generated by the company itself. As the requirement was for 25 employees with proof in the form of Payroll by TAK, then Urban OP has not met this requirement either.

In addition, the requirement for two welders certified under ISO 9606 and EN 13067 was not met as well. Urban OP provided two welders, but neither in possession of both certificates. The first is certified under EN 13067, while the second under ISO 9606. All these shortcomings in the bid submitted by Urban OP indicate that the evaluation committee failed to conduct a proper evaluation. In this regard, in awarding this contract, the Municipality of South Mitrovica committed a slew of legal violations.

## 9. Emergency disinfection of certain school facilities

The Municipality of South Mitrovica, at the end of November 2020, announced a tender through negotiated procedure without publication of a contract notice, due to COVID-19. The call to tender was for emergency disinfection of certain school facilities, after some teachers had contracted the virus. At the time the tender was opened, the pandemic had long been present, so the argument of infected teachers is not a strong one, as there had been enough time to plan the initiation of procurement through open procedure. The estimated value for this tender was EUR 3,300.00, with bidding by only two EOs, DDD Preventiva and N.Sh. Preventiva (Shaqir Brahimi B.I.). The latter, N.Sh. Preventiva was declared to be the responsive EO with the cheapest price of EUR 3,242.50.

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<sup>29</sup> Law No. 04/L-042 on Public Procurement, Article 59.

**Table 9 – Bid Opening Record**

No.	Bidder	Tender code	Lots	e-tender	Price	Price (including VAT)	Amendments
1	O Spec. of the Service of DD “Preventiva”	Ddd	EMERGENCY disinfection of several school facilities due to the infection of staff and students with Covid 19	YES	3,122.41	3,372.20	NO
2	Shaqir Brahimi B.I	Since_2010	EMERGENCY disinfection of several school facilities due to the infection of staff and students with Covid 19	YES	2,747.88	3,242.50	NO

However, since the procedure was negotiated, the municipality should have invited both companies to negotiate, to attempt to get a lower price<sup>30</sup>, which was not done. Based on the calculations according to the Tender Dossier, it should be noted that the Municipality of South Mitrovica paid EUR 0.25 for disinfection of one square meter, which is significantly cheaper than at the beginning of the pandemic when this service was paid at EUR 0.33.

In the Tender Dossier, the only requirement for technical and professional capability is to provide proof of contract for the same services in the last three years, without noting the value of the contract at all. In addition, required evidence is in the form of a list of completed contracts, but the LPP provides that in addition to principal deliveries, the CA should require relevant references<sup>31</sup>.

One of the documents under eligibility requirements, is the court certificate, which proves that the EO has not been declared bankrupt in the last two years and is not subject to bankruptcy or liquidation proceedings. The certificate in question cannot be older than three months, yet N.Sh. Preventiva provided such certificate issued in February 2020, i.e., 10 months old, which is not allowed.

<sup>30</sup> Article 35.3. 3. The conduct of a negotiated procedure without publication of a contract notice shall not in any way relieve a contracting authority of its obligation (i) to play an active role in determining the terms of the contract, with special reference to prices, delivery deadlines, quantities, technical characteristics and guarantees, (ii) to ensure that the contracted price is not higher than the concerned market price, and (iii) to carefully assess the quality of the concerned product, service or works.

<sup>31</sup> LPP, Article 69 – Technical and/or Professional Capability.

## Maintenance and servicing of municipal and other municipal institution vehicles

One of the categories of tenders, where there are most discrepancies between contract prices and market prices are those of vehicle maintenance. Since it is virtually impossible to guess the quantity of motor vehicle parts that need to be maintained, the price scoring procedure is applied for concluding such contracts. Price scoring is a procedure used in public procurement in cases where the CA “does not know” the quantity of items to be ordered, and for this reason, the quantity of each item in the price list is set at “1”. Usually, during contract implementation, orders are made contingent on the needs that arise. The price list is divided into several categories, and each is given a certain weight in the total of 100%. Price scoring only serves to evaluate bids, while the contract is implemented according to price per unit.

For purposes of such services, the Municipality of South Mitrovica entered into a contract with Univerzal-Comerc with a scored price of EUR 7,848.45 and an unscored price of EUR 37,413.00, while the set budget was EUR 150,000.00. This is a framework contract, and its term is 36 months. Another company, Valoni-I, participated in the tender with a scored price of EUR 104,877.00, where there is a very large discrepancy in the scored prices of the two bidders.

As in the tenders noted above, also in this tender there are some problems related to the defined criteria and the criterion for contract award. The Tender Dossier required that the EO prove its experience in this field, with a contract and three references. Usually, contracts and references are considered together because the contract alone does not prove that the work has been completed. In this case, the requirement for a contract and three references is not reasonable because the requirement should have been to submit a list of contracts completed in the past three years and to attach references or handover reports as evidence.

The criterion for contract award was the lowest scored price, but the municipality also applied elements of the most economically advantageous tender. While the price list was completed according to the percentages by category, the municipality added two other criteria, the warranty—weighted at five points, and the distance of the shop from the municipal building—weighted at 15 points. The municipality divided the criterion into five categories, attaching monetary value to three categories, while setting points for the remaining two. In this case, the municipality mixed up the criteria and compared the prices of two participating EOs. This is prohibited according to the Rules and Operational Guideline for Public Procurement, namely Article 28.15 of ROGPP, which states that *“It is strictly forbidden to compare the prices of bids which are different from each other and convert the calculated value into scores then weight the scores as, in that way, the highest weighted score will not necessarily result in the lowest price”*<sup>32</sup>.

Accordingly, the lowest scored price may be used only where there is a category in which the price can be set, and not add the warranty and the distance of the shop, where the price cannot be set. As shown below, the biggest violation was committed in comparing the prices of two EOs in the first three categories.

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32 Rules and Operational Guideline for Public Procurement, Article 28.5: <https://bit.ly/3qscbYu>

**Table 10** – Description of criteria, weight, and evaluation method of one of EOs

No.	Description of the criteria	Weight	Method of evaluation
1	One hour of effective servicing work (position no. 1)	Effective working hour is calculated based on effective work for the replacement of parts	15 points $36:90 \times 15 = 6$ points
2	Servicing price under position no. (2-21)	Servicing parts subject to regular replacement and servicing (supply and assembly)	55 points $10,373:23,400 \times 55 = 24$ points
3	Price for spare parts, supply and assembly under no. (22-129)	Other spare parts, which are rarely replaced (supply and assembly)	10 points $27,040:81,450 \times 10 = 3.31$ points
4	Warranty for assembled parts - written declaration.	Warranty for assembled parts (years) - min 1 year. Written declaration	5 points 0 points no warranty
5	Distance to the service facility in kilometers - min 5 km 15	The distance from the city is calculated due to the costs to the service facility (both for transportation costs and for quick interventions).	15 points Less than 5 km = 15 points

100 points TOTAL SCORE = 48.31 points

Under the first category, per one hour of work Univerzal Comerc bid EUR 36, in which case it was scored by the municipality with a maximum of 15 points. However, for the bid submitted by DPT Valoni-I, the price was weighed based on the price of Univerzal Comerc and received only six points.

Mixing up two different criteria could have led to such a situation, i.e., company A having more points than company B, but company B having a lower scored price. This could happen if the bids were approximate in price, but the cheaper company would get much fewer points on the warranty and the distance of the maintenance shop.

## 11. Supply with hygienic-sanitary materials for the municipality, schools and other municipal institutions

In November 2020, the Municipality of South Mitrovica initiated a tender for the supply of hygienic material for the municipality, schools, and other municipal institutions. For this tender the municipality reserved a budget of 120,000.00 Euro, for the entire duration of the contract of three years. Seven companies submitted bids in this tender procedure, and company N.T.Sh. Genci was awarded the contract, at 78.25 Euro per unit. This economic operator submitted a bid with quantity 1 for the 86 listed items, whereas the contracting authority has set the quantity for each product separately in the mandatory technical specifications. This change resulted in the economic operator having the lowest bid, to the disadvantage of other bidders, as they submitted a total price for the requested quantity, rather than prices per unit, as did the winner.

The section on professional capacities required economic operators to submit evidence of contracts implemented in the last three years with a minimum value of 180,000.00 Euro. To fulfill this requirement, the Municipality of South Mitrovica required the submission of an original copy of a list signed by the company. Information on the amount, time, place, and procurement number were also requested to be included in the list. To this end, the winner of the tender process was N.T.Sh. Genci failed to submit a list of contracts, but rather only the contracts, which do meet the required amount, but do not comply with the request of the municipality for the submission of a list.

Prices bid by EO Genci, for several items listed in the table below, were abnormally low prices. As we have stated for other tenders, pursuant to PPL<sup>33</sup>, the Contracting Authority must request clarification why the economic operator has bid with such prices. If the Contracting Authority decides, even after receiving information, that the tender is abnormally low and that the contract cannot be implemented with such prices, the bid may be rejected.

**Table 11** - Items with abnormally low prices in the financial offer of EO GENCI

No.	Item	Price	No.	Item	Price
1.	Deodorant spray	0.05 Eur	15.	Reflector (high illumination) 500 watts (led)	0.05 Eur
2.	Mop sponges	0.05 Eur	16.	Snow shovel with (metal) handle	0.05 Eur
3.	Work robes	0.05 Eur	17.	Waste grabs with handle	0.05 Eur
4.	Rubber boots	0.05 Eur	18.	Vacuum rubber	0.05 Eur
5.	Strong floor brush 50 cm	0.05 Eur	19.	Wheels for carts	0.05 Eur
6.	Asepol for disinfection 1 liter	0.10 Eur	20.	PVC broom	0.10 Eur
7.	Wheeled waste cart 120 l	0.15 Eur	21.	PVC plate (1/50)	0.05 Eur
8.	Steel wire dish scrub	0.05 Eur	22.	PVC forks (1/100)	0.50 Eur
9.	Air wick (or equivalent) dispenser	0.05 Eur	23.	PVC spoon (1/100)	0.05 Eur
10.	Large 1.5-watt battery 1/2 AA	0.01 Eur	24.	PVC shovel	0.50 Eur
11.	Large 1.5-watt battery 1/2 AAA	0.01 Eur	25.	Large duct tape	0.05 Eur
12.	Door lock (standard size)	0.05 Eur	26.	Large duct tape	0.05 Eur
13.	Door hinges (15 cm 1/4)	0.25 Eur	27.	Rubber boots (nr.42-46)	0.05 Eur
14.	Light with sensor	0.05 Eur			

33 Law No. 04/L-042 on Public Procurement, Article 61.

According to this table, the winning EO will supply the CA with most of these items costing only 0.05 Euro, a price which jeopardizes the implementation of the contract.

## 12. Supply of schools and other municipal institutions with firewood.

Another tender initiated by South Mitrovica Municipality in August 2020 was the supply of firewood for schools and other municipal institutions. Only one GEO, Vëllezërit Kaçandolli & NTP Haxha submitted a bid for this procurement activity. The estimated value of this tender was 230 thousand Euros, whereas the signed contract<sup>34</sup> was for 50 Euros less, namely 229,950.00 Euro. This consortium bid a price of 43.80 Euros per m<sup>3</sup> of firewood, including chopping, splitting and transportation of wood, excluding stockpiling in the storage, which should be done by the requester. The indicative value that can be ordered over three years, as it is a framework contract, is 5250 m<sup>3</sup>.

**Table 12** - The bill of quantities of the contract for the supply of firewood

No.	Type of Item	Unit of measure	Quantity	Unit price without VAT	VAT	Unit price with VAT	Total
1	Supply of firewood to schools and other institutions. Note: The supply price includes: Transportation, logging and chopping by the beneficiary/signatory of the contract, whereas storage and stacking must be carried out by the requesting unit	m3	5,250	37.12	6.68	43.80	229,950.00
<b>TOTAL WITH VAT:</b>				<b>37.12</b>	<b>6.68</b>	<b>43.80</b>	<b>229,950.00</b>

The CA had shortened the deadline for the submission of bids from 40 to 15 days, with the justification that MESTI failed to provide the information whether school with continue regularly or from home, and that the decision was taken at the last moment. However, the procurement legislation envisages a set of rules for shortening the deadline. According to ROGPP, deadline can be shortened or cut only if the prior notice in question has all necessary information specified, and if the notice has been published no less than 40 days and no more than 12 months prior to the publication of the Contract Notice in question<sup>35</sup>.

In the technical and professional capability requirements, the CA requested evidence of successful completion of similar supplies in the value of minimum 345,000.00 Euro for the past three years, which is related to the period preceding the date of the publication of the contract notice, with the lead bidder required to fulfill 60% (207,000.00 Euro) of this requirement. Analysis of the bid of the winner, the only bid submitted, show that the consortium does not meet this requirement.

<sup>34</sup> The contract was signed on 05.10.2020.

<sup>35</sup> Article 6.5 of the CPCPK.

One of the references submitted<sup>36</sup> from EO Vëllezërit Kaçandolli, issued by the same municipality, amounts to 336,095.85 Euro, an amount over 78% of the indicative value of the basic contract, with a total value of 188,160.00 Euros. According to the reference, the amount of 336,095.85 was achieved using -30%, however accounting for the contracted amount of 188,160.00 Euros and the additional value paid of 147,934.85 Euros, it goes over not +30% but rather 78%. According to the PPL, if purchase orders exceed the total indicative quantity, or the total indicative value of the public framework contract, including +30%, regardless of the original expiration date of the public framework contract, the contract will be automatically terminated<sup>37</sup>. According to this provision, the Municipality of South Mitrovica had unlawfully extended this contract of the EO, which it submitted as a reference.

The other reference<sup>38</sup> submitted by the other member of the consortium, EO N.T.P. Haxha, cannot be accepted according to the LPP<sup>39</sup>. This completion date of this contract concluded with the Municipality of Skenderaj in the total amount of 327,362.00 Euro is 31.07.2021, a contract that was not completed at the time of the submission of the bid. Therefore, according to the evidence provided, the consortium Vëllezërit Kaçandolli & Haxha, did not meet the requirement of submission of completed works in the amount of 345,000.00 euros, and its bid should have been declared irresponsible.

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36 The reference was issued by the Directorate of Education, Municipality of South Mitrovica to EO Vëllezërit Kaçandolli, dated: 09.09.2020.

37 Article 38.2. of PPL.

38 Reference issued by the Directorate of Education, Municipality of Skenderaj for EO N.T.P. Haxha, dated: 02.09.2020.

39 Article 69 of LPP.



# Municipality of Gjilan

## 13. Top-up with disinfectants and maintenance

The Municipality of Gjilan, on June 9, 2020, announced a tender procedure for the top-up of disinfectants and maintenance. This procedure was conducted through negotiation, with 2,400.00 Euro estimated. The economic operator “Every Day VM” was the only company invited to this procurement activity, and was awarded a contract in the same amount, namely 2,400.00 Euro.

Initiating a negotiated procedure does not imply the right of the contracting authority to invite only one economic operator. As this is not the only company in the trade and distribution of disinfectants, the municipality was required to invite more companies, due to the fair competition and the opportunity to bid in public tenders.

Nevertheless, the prices offered by the company Every Day VM are much lower than market prices, which procurement legislation recognizes as abnormally low prices. According to the tender analysis, Annex 1 of the mandatory technical specifications requires top-up for the disinfection tunnel, and one liter of disinfectant was bid 0.25 Euro by this operator, a very low price compared to those in the market. One of the D+ research reports on pandemic-related emergency contracts<sup>40</sup> also compared prices of one (1) liter disinfectants. According to this comparison, contracts concluded through negotiation had a price per disinfectant for the period July-December 2020 of 7.74 Euro, whereas in open procedure contracts such disinfectants were purchased for 2.94 Euro. This comparison highlights the high prices associated through negotiation. However, the price of 0.25 Euro offered by Every Day VM is much lower and, consecutively, exceptional.

Another element in this tender is the delay in publishing the notice for the signing of the contract in e-Procurement. According to the Public Procurement Law<sup>41</sup>, the contracting authority must prepare this notice within two days after signing the contract. However, the Municipality of Gjilan published this notice after 10 days, respectively on July 16, 2020, while the contract was signed on July 6, 2020.

In addition, the offer of company Every Day VM had an irregularly submitted Declaration Under Oath. The Law stipulates that this document must be signed by authorized persons of the Economic Operator, which was not

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<sup>40</sup> Democracy Plus, Emergency Contracts and Reducing Competition in Public Procurement, June 2021: <https://bit.ly/3yUm1X0>

<sup>41</sup> Law No. 04/L-042 on Public Procurement, Article 41 A.

the case here. The Declaration Under Oath was signed by another person, who is not listed as neither the owner nor an authorized person of the company in question in the Kosovo Business Registration Agency (KBRA). For the Statement to be accepted as a valid document, an authorization by the Director of EO should have been submitted. The PPRC considers that the signature “for” on “behalf of” the representative of the economic operator, by a person who does not have authorization, cannot be acceptable<sup>42</sup>.

Other irregularities were also noticed in the provided invoices, which were executed after the contract was completed. Namely, the contract was signed in July 2020, with a duration of three months, while a payment in the amount of 556 euros was made in April 2021, about six months after the completion of the contract and outside the estimated value. Regardless of the fact that this was a framework contract, and the exceedance of the value is allowed up to 30%, this was not done within the validity of the contract.

## 14. Supply with masks and disinfectant materials

Through a negotiated procedure, the Municipality of Gjilan initiated another tender for the supply of masks and disinfectants. This tender was opened about one month after the first infections with COVID-19, on April 17, 2020. The estimated value for this contract was 9,900.00 Euro and the contract with the only invited company by the municipality, Liridona Q Selmani, was concluded with the same price. As seen, similarly to the previous procedure, only one economic operator was invited to bid in this tender. Inviting only one economic operator, particularly one which operates in neither supplying masks nor disinfectant materials, is an action that harms competition. In addition, the Municipality of Gjilan inviting an operator of which the supply of masks and disinfectant material is neither the primary nor the secondary activity, can lead to a poor and uncontrolled quality of products.

The bill of quantities prepared by the Municipality of Gjilan lists only two products, single-use masks and disinfectants. However, it doesn't specify the quantities for disinfectants. Failure to specify the quantity leaves room for mismanagement of the contract, as the contract manager will be able to know what disinfectants to accept from the economic operator.

**Table 13** - The price offered by EO Liridona Q Selmani

No.	Description of positions	Unit Measure	Quantity	Price	Amount in euro
1	Disposable medicinal masks	Pieces	10,000	0.79	7,900.00
2	Disinfectant	Pieces	1,000	2	2,000.00
<b>Total</b>					<b>9,900.00</b>

<sup>42</sup> Frequently asked questions of PPRC (Question 40) - How to proceed when documents of the tender dossier, including statements under oath and other documents, are signed on behalf of the bidder (economic operator) by an unauthorized person?

## 15. Supply with IT equipment for the Directorate of Education

Another tender of the Municipality of Gjilan is that of the supply with IT Equipment to the Directorate of Education of the Municipality of Gjilan. The first stage of this procurement activity was developed by CPA. According to the Public Procurement Law<sup>43</sup>, this institution has three responsibilities: 1) to conduct joint procurements for contracting authorities, b) at the request of contracting authorities to carry out procurement activities on their behalf and c) at the request of contracting authorities to assist in carrying out procurement activities. In this case, CPA conducted a joint procurement activity, where it has selected the operators which met the requirements and which, as a result, must be invited by relevant contracting authorities to bid for the mini-tenders, also known as ancillary contracts<sup>44</sup>. According to this rule, the contracting authority should invite only operators that are parties to the framework contract signed by the CPA. The estimated value for the tender initiated by the Municipality of Gjilan was 107,000.00 Euro. Consortium Iliri-Kosova Sh.P.K. & Comtrade Computers O.K. was awarded the contract, of six economic operators that submitted their bids, with the lowest price of 127,740.00 Euro. However, the price of the winning bid was 20,000.00 Euro above the estimated value, which, according to PPRC, when the contracting authority exceeds the estimated value, it must present a convincing justification.

**Table 14** - Prices offered by Ilir-Kosova Sh.P.K. & Comtrade Computers O.K.

No.	Description	Minimum technical specification	Quantity	Price	Value
1	PC	Brand Name PC - Model I - Computer case according to the data listed in Annex No. 1 - Mandatory Technical Specifications	127	420.00	53,340.00
2	PC Monitor	Brand Name Monitor - Model I - Monitor according to the data listed in Annex No. 1 - Mandatory Technical Specifications	54	100.00	5,400.00
3	Laptop	Laptop - Model 1 - According to the data listed in Annex No. 1 - Mandatory Technical Specifications	92	750.00	69,000.00
<b>Total</b>					<b>127,740.00</b>

During the analysis of this tender, several irregularities were identified in the bid of the winning consortium. The Declaration Under Oath is an administrative requirement indicating eligibility of the economic operator to participate in the procurement activity<sup>45</sup>. In this activity, consortium Ilir-Kosova Sh.P.K. & Comtrade Computers O.K submitted two Declarations under Oath for the two consortium members.

The Declaration of the first member, Ilir - Kosova, includes the name of a representative and the seal of the company. However, this signature differs from the signature the same representative placed in the contract, which raises suspicions that the same person has not have signed the same Declaration.

<sup>43</sup> Law No. 04/L-042 on Public Procurement, Article 95.

<sup>44</sup> Rules and Operational Guideline for Public Procurement, Article 56, par. 39

<sup>45</sup> Law No. 04/L-042 on Public Procurement, Article 65.

**Table 15** - Signature of the Director of ILIR - KOSOVA in the Declaration Under Oath

Economic operator identification	
EO Name	Ilir Kosova sh.p.k
Full address:	Fuad Pashe Dibra 23
Represented by:	
Name	Albert Fazlija
Position	GM
Signature	Signature
Date	15.02.2021
Seal	

**Table 16** - Signature of the Director of ILIR - KOSOVA in the contract

Name	Albert Fazlija
Position:	Director
Signature:	Signature
Date:	17.03.2021
Seal:	Seal

Another issue with the consortium's bid is the lack of a declaration signed by its two members, confirming their participation in the group and that they do not participate in any other bidding group in the same procurement procedure<sup>46</sup>.

## 16. Summer road maintenance in the Municipality of Gjilan

In February 2021, the Municipality of Gjilan initiated a tender for summer road maintenance. Five economic operators submitted their bids for this tender, and the winner was EL-BAU Sh.P.K. This was an open procurement procedure, and five economic operators submitted their bids.

<sup>46</sup> Law No. 04/L-042 on Public Procurement, Article 71.2.

**Table 17** - Opening minutes

No.	Bidder	Tender code	Parts	E-tender	Price	Price (including VAT)	Modification/change
1	COMPANY“BEJTA COMMERCE”SH.A., Quarry “GLLAMË” P.N, 60000, GJILAN	4/2021	Summer road maintenance in the Municipality of Gjilan	YES	107.25	126.55	NO
2	“TALI” SH.P.K, E Bujanovcit, 60000, Gjilan	02/2021	Summer road maintenance in the Municipality of Gjilan	YES	89.60	105.73	NO
3	EL-BAU SH.P.K., LIMOS STANECI P.N., GJILAN	05.03.2021	Summer road maintenance in the Municipality of Gjilan	YES	126.36	149.101	NO
4	Group of Economic Operators AVAG GROUP SH.P.K: EING COM SH.P.K: Fazli Grajqevci, No. 24/1 1000 Pristina	Gjilan SUMMER MAINTENANCE	Summer road maintenance in the Municipality of Gjilan	YES	10.76	12.70	NO
5	Group of operators	01/2021	Maintenance	YES	83.88	98.98	NO

The contract concluded with the economic operator EL-BAU was signed as a framework contract for a period of three years. The total value of this contract is 1,560,000.00 Euro, with 520 thousand Euro estimated per each year. The contract notice, in fact, estimates a contract value of 520,000.00 Euro, which was not reflected in the contract signed with the economic operator EL-BAU.

The requirements of the Tender Dossier indicate that the leading company must have one year of experience, which the operator EL-BAU had met. However, it is important to note that the requirement for the experience of other engineers was higher, up to five years. Thus, despite the fact that this requirement was met by the winning operator, it wouldn't have been the case had the municipality required more years of working experience, as it did for other engineers.

The technical and professional requirements listed the equipment that must be submitted in the bid. One equipment submitted by the operator EL-BAU failed to meet the requirements of the municipality, namely for the double-door tipper truck with crane. In addition to exceeding the permissible weight by 2-3 tons (its weight was 5,422 tons), this vehicle was not registered at the time of the submission of the bid. The last day of validity of the vehicle's registration was May 2, 2020, around seven months prior to the opening of the tender. Thus, this vehicle was not eligible for inclusion in the bid.

## 17. Supply with clothes for the workers of the Municipality of Gjilan

In June 2020, the Municipality of Gjilan, initiated a tender procedure with an estimated value of 30,695.00 Euro for the purchase of clothing for the employees of the Municipality of Gjilan. This tender was divided into two lots, lot 1 for clothes for workers, and lot 2 for the supply of uniforms to the staff of the Directorate of Cadaster, Geodesy and Property. Three economic operators submitted their bids in both lots in this procurement activity. After the evaluation of bids, the announced winner was Meti Commerce Sh.P.K., for both lots, with a total value of 24,619 Euro.

**Table 18** - Opening minutes

No.	Bidder	Tender code	Parts	E-tender	Price	Price (including VAT)	Modification/change
1	Meti Commerce SH.PK Agim Rashiti 5, 60000, Gjilan	118148	Supply with clothes for the workers of the Municipality of Gjilan Judgment LOT 1	YES	18,356.66	21,660.00	NO
2	Meti Commerce SH.PK Agim Rashiti 5, 60000, Gjilan	118148	Supply with uniforms for the staff of the directorate of Cadaster, Geodesy and Property.	YES	2,507.66	2,959.00	NO
3	“Sankos” Sh.p.k rr. “Vëllëzërit Çaka” pa, 71000, Kaçanik	Sankos line	Supply with clothes for the workers of the Municipality of Gjilan Judgment LOT 1	YES	21,830.51	25,760.00	NO
4	“Sankos” Sh.p.k rr. “Vëllëzërit Çaka” pa, 71000, Kaçanik	Sankos line	Supply with uniforms for the staff of the directorate of Cadaster, Geodesy and Property.	YES	3,699.15	4,365.00	NO
5	“RIMI-ALTEX” SH.P.K., D.E KOMBIIT, 70000, FERIZAJ	29.06.2020	Supply with clothes for the workers of the Municipality of Gjilan Judgment LOT 1	YES	20,372.57	24,040.00	NO
6	“RIMI-ALTEX” SH.P.K., D.E KOMBIIT, 70000, FERIZAJ	29.06.2020	Supply with uniforms for the staff of the directorate of Cadaster, Geodesy and Property.	YES	3,855.00	4,549.00	NO

The only requirement that the Municipality of Gjilan listed as technical and professional capabilities was the delivery of sealed samples in the packages, delivery which companies have made on the day of bid opening. In addition, the municipality indicated a validity period of 120 days for the tender. However, for medium value tenders, the validity of the tender can be requested for 60 days plus an addition 30 days, i.e. a total of 90 days<sup>47</sup>, rather than as assigned by the municipality.

## 18. Construction of the Green Market in the Municipality of Gjilan

The Municipality of Gjilan, in April 2021, signed a contract in the amount of 509,177.24 Euro for the construction of the Green Market. The tender in question was conducted through a negotiated procedure, and economic operator Ceni Company was announced as the winner. The same EO was part of the consortium that had won the tender in the first time, for the same work. This was the second tender for the same work announced by the Municipality of Gjilan. The use of the negotiated procedure was done in violation of the Public Procurement Law<sup>48</sup>, as due to the nature of the works and the value of the contract, this tender procedure should have been public. The Municipality of Gjilan could have opted for a negotiated procedure if it did not exceed 10% of the value of the first contract, which was given for the construction of the Green Market to the same company (though in consortium with EL-BAU), namely in a value of 871,173.42 Euro. In other words, the municipality could have entered into a negotiated contract for additional works, provided that the amount of 87,117.34 Euro is not exceeded. However, as this process included a value of 509,177.24 Euro, the amount exceeds by 58% the value of the first contract<sup>49</sup>. It is worth mentioning that the municipality did not initiate this tender as additional works, in order for the tender to be seen as only a tender with negotiated procedure.

The Tender Dossier included no requirement for the economic and financial situation, nor any technical and professional requirements, which are always requested for tenders of this nature and of this weight. In this case, the municipality invited three economic operators, not setting any condition under which they would support their bid. Despite this, only Ceni Company submitted a bid. This company, as stated above, is one of the implementers of the first contract for the construction of the same market. In addition, in case of an open procedure, the deadline to bid would be 40 days. However, in this case, a deadline of five (5) days was used.

The Municipality sent a notice to Public Procurement Regulatory Commission (PPRC) for the development of a negotiated procedure, with the justification that several positions had been moved from the bill of quantities, as they are physically and technically related to the sections performed with the first contract, which is why it is impossible to put it into operation. According to the Municipality of Gjilan, there should be no additional delays, as the initial project is put at risk and, as a result, farmers, traders and citizens will be affected.

The analysis to the tender, and the bill of quantities in particular, the justification of the municipality is not adequate, as many positions and categories were ordered for the second time, sometimes even doubling and tripling the quantity and price. The repetitive works which are also found both in the first and the second contracts are related to plastering works, leveling works, flooring and wall coating works, as well as roof works. Below are examples of how, in many cases, square meters have been increased tenfold, which indicates a poor planning and mismanagement by the Municipality of Gjilan.

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<sup>47</sup> Article 31.2 of the ROGPP.

<sup>48</sup> Law on Public Procurement, Article 35.

<sup>49</sup> Article 35 2.4 of the Law on Public Procurement

**Table 19** - Bill of quantities for 'plastering works' - first contract

PLASTERING WORKS					
Pos. 6	Description of Position	Unit	Quantity	Price per unit in Euro	Total price with all taxes applied in Euro
6.1	Supply with material and plastering of interior walls for the administration, with prefabricated plastering material with a thickness of 2.0cm, in two layers. The first layer - continuous mortar, The second layer of smoothing, to ready for painting.	m <sup>2</sup>	224.1	8.00	1,792.08 Euro
6.2	Supply with material and plastering of ceilings with prefabricated plastering material with a thickness of 2.0cm, in two layers, for the administration section. The first layer - continuous mortar, The second layer of smoothing, to ready for painting.	m <sup>2</sup>	190.8	8.00	1,526.04 Euro
6.3	Supply with material and plastering of walls of toilets and kitchens with a layer of cement mortar, to prepare the surface for ceramic tiles attachment.	m <sup>2</sup>	308.1	5.00	1,540.5 Euro
6.4	Supply with material and works in ceilings of toilets, with gypsum tiles t = 12 mm and processing with smoothing mass until final processing and preparation for painting.	m <sup>2</sup>	25.8	12.00	309.06 Euro
<b>TOTAL: PLASTERING WORKS</b>					<b>5,163.30 Euro</b>

**Table 20** - Bill of quantities for 'plastering works' - second contract

PLASTERING WORKS					
No.	Position	Unit	Quantity	Price per unit with VAT - Euro	Total price with VAT - Euro
1.1	Supply with material and plastering of interior walls and ceiling for the administration and offices, with prefabricated plastering material with a thickness of 2.0cm, in two layers. The first layer with ready-made plaster and the necessary layers, including Abrib 1 in white.	m <sup>2</sup>	5,580.60	12.00 Euro	66,967.20 Euro
1,2	Supply with material and plastering of walls of toilets and kitchens with materials with of cement mortar, to prepare the surface for ceramic tiles attachment.	m <sup>2</sup>	484.50	12.00 Euro	5,814.00 Euro
1,3	Supply with material and works in ceilings of toilets, with gypsum tiles t = 12 mm and processing with smoothing mass until final processing and preparation for painting.	m <sup>2</sup>	113.60	17.00	1,931.20 Euro
1,4	Supply with material and plastering of interior walls for the closed section of the market, with prefabricated plastering material with a thickness of 2.0, in two layers. The first layer with ready-made plaster, whereas the second layer and other layers with white Abrib 1.	m <sup>2</sup>	455.00	12.00	5,460.00 Euro
1,5	Supply with material and plastering of pillars of the facility, with prefabricated plastering material with a thickness of 2.0cm, in two layers. The first layer with ready-made plaster and the necessary layers, including Abrid 1, type 1, coloring according to the graph (plastic color, anthracite).	m <sup>2</sup>	460.80	13.00	5,990.40 Euro
<b>TOTAL POSITIONS 1:</b>					<b>86,162.80 Euro</b>

According to this bill of quantities, 224.1 m<sup>2</sup> were listed in the first contract for supply and plastering of interior walls for the administration, with 8 Euro paid per m<sup>2</sup>. The next table shows that the quantity for this item was increased to 5,580.6 m<sup>2</sup> at a price of 12 Euro per m<sup>2</sup>. The same trend continued in several other items in this category.

**Table 21** - Bill of quantities for 'leveling works' - first contract

LEVELING WORKS					
Pos. 7	Description of Position	Unit	Quantity	Price per unit in Euro	Total price with all taxes applied in Euro
7.1	Supply with materials and leveling work for all sections and floors, with Sika Comfortfloor and kompaktfloor -Screed 6-8 cm '.	m2	3,666.9	0.50 Euro	1,833.4 Euro
7.2	Supply with material and leveling with a 0.5% drop of sanitary joints with lean concrete, including the foil, with a thickness of min 8 cm.	m2	25.8	9.00 Euro	232.2 Euro
7.3	Supply with material and leveling of kiosks with lean concrete, including foils, with a thickness of min 8 cm.	m2	1,464.0	9.00 Euro	13,176.0 Euro
<b>TOTAL: LEVELING WORKS</b>					<b>15,241.63 Euro</b>

**Table 22** - Bill of quantities for 'leveling works' - second contract

LEVELING WORKS					
Pos. 3	Description of Position	Unit	Quantity	Price	Amount
3.1	Supply with materials and leveling work for all sections and floors, with lean concrete for all layers. The whole surface of the base is calculated - Screed 8 cm <sup>2</sup> . The price should include foil and Styrofoam assembly t-3 cm.	m <sup>2</sup>	2,793.00	8.00 Euro	22,344.00 Euro
3.2	Supply with material and leveling with a 0.5% drop of sanitary joints with concrete, including the foil, with a thickness of min 8 cm. The price should also include the Styrofoam assembly t-3 cm.	m <sup>2</sup>	44.08	12.00 Euro	528.96 Euro

3.3	Supply with material and leveling of kiosks with concrete, including foils, with a thickness 8 cm. The price should also include the Styrofoam assembly t-3 cm.	m <sup>2</sup>	882.00	8.00 Euro	7,056.00 Euro
<b>TOTAL POSITION 3</b>					<b>29,928.96 Euro</b>

The bill of quantities in the first contract, item 7.1, category “leveling works” requested the supply of material and leveling work for all sections and final flooring, with a listed price of 0.50 Euro per m<sup>2</sup>, a price which became 8 Euro per m<sup>2</sup> in the second contract. Orders of the same positions and increased prices were also repeated for other items.

**Table 23** - Bill of quantities for ‘plastering of walls and flooring works’ - first contract

<b>FLOOR AND WALL WORKS</b>					
Pos. 8	Description of Position	Unit	Quantity	Price	Amount
8.1	Supply with material and flooring of the front section with cubicles	m <sup>2</sup>	3,666.9	15.00	55,002.86 €
8.2	Supply with material and flooring in all administration spaces with ceramic tiles	m <sup>2</sup>	381.8	20.00	7,635.60 €
8.3	Supply with material and flooring of the restaurant over the administration and toilets with ceramic tiles	m <sup>2</sup>	190.4	20.00	3,808.00 €
8.4	Supply with material and works in walls of all sections of toilets with ceramic tiles	m <sup>2</sup>	205.4	20.00	4,108.00 €
8.5	Supply with material and placement of ceramic tiles to the buffet wall between the kitchen cupboards 1.0m	m <sup>2</sup>	6.0	20.00	120.00 €
<b>TOTAL: FLOOR AND WALL WORKS</b>					<b>€ 70,674.46</b>

**Table 24** - Bill of quantities for ‘plastering of walls and flooring’ - second contract

FLOOR AND WALL WORKS					
Pos. 4	Description of Position	Unit	Quantity	Price	Amount
4.1	Delivery of transportation and production of concrete slabs with rough structure with a thickness of min. 8cm (dim.60×30 cm or 40×40) on the entire surface of the building. The price should include all materials for the assembly and functioning	m2	3,425.00	15.00	51,375.00 €
4.2	Supply with material and flooring in all administration spaces with ceramic tiles	m2	312.76	28.00	8,757.28 €
4.3	Supply with material and flooring of the restaurant over the administration and toilets with ceramic tiles	m2	270.40	28.00	7,571.20 €
4.4	Supply with material and works in walls of all sections of toilets with ceramic tiles	m2	484.50	28.00	13,566.00 €
4.5	Delivery of materials and placement of ceramic tiles to the buffet wall between the kitchen cupboards 1.0m	m2	4.0	28.00	112.00 €
4.6	Delivery of the material as well as the assembly of natural granite tiles in the stairs, with the top thickness of 3 cm and depth of 2 cm. Leveling and assembly to be according to norms and standards. The width of the doorstep is 180 cm. The color and type are chosen by the designer with the investor. Calculation per piece.	m2	51.00	65.00	3,315.00 €
<b>TOTAL POSITION 4</b>					<b>€ 84,696.48</b>

There were also repeated plastering of walls and flooring works, with increased prices between the first and second contracts.

**Table 25** - Bill of quantities for 'landscaping works' - first contract

Pos.9	Description of Position	Unit	Quantity	Price per unit in Euro	Total price with all taxes applied in Euro
9,1	Supply and installation of concrete cubes, including concrete sides on the perimeter, as well as gravel and hydro-insulating protective layer. Concrete cubes with a dim. 20×19×3cm Color determined by the architect	m2	4,679.5	15.00	70,192.50 Euro
9,2	Supply, transport and pavement of of concrete asphalt ASB- 1L, t = 7cm	m2	3,161.6	11.00	34,777.38 Euro
9,3	Delivery of materials, planting of the grass, including pre-cultivation and soil preparation with planning, tillage, grinding, grass planting. Maintenance and irrigation up to 30 calendar days	m2	931.8	6.00	5,590.92 Euro
<b>Total: LANDSCAPING WORKS</b>					<b>110,560.80 Euro</b>

**Table 26** - Bill of quantities for 'landscaping works' - second contract

Pos.5	Description of Position	Unit	Quantity	Price	Amount
5.1	Delivery of supply and installation of concrete cubes for the damaged sections of the works, including concrete sides on the perimeter of all paths paved with concrete cubes in the position, including the gravel and hydro-insulation protective layer. Concrete cubes with a dim. 20×10×30 cm Color determined by the Architect	notional	1.00	1,200.00	1,200.00 Euro

Position of “landscaping” works related to the delivery of materials and planting of grass, including pre-processing and soil preparation with planning, tillage, grinding, grass planting, as well as maintenance and irrigation for 30 calendar days, mentioned in both contracts, with around 300m<sup>2</sup> added in the second contract, and doubling the price from 3 to 6 Euro.

**Table 27** - Bill of quantities for ‘roof works’ - first contract

Pos.12	Description of Position	Unit	Quantity	Price per unit in Euro	Total price
12.1	Supply, transport and processing of roofing from Plexiglas	m2	3,769.30	7.00 Euro	26,385.11 Euro

**Table 28** - Bill of quantities for ‘roof works’ - second contract

Pos.8	Description of Position	Unit	Quantity	Price	Amount
8.1	Supply, transportation and works in the roof cover from sandwich-panels with a thickness of 5 cm, including reinforcing anchors with tightening bolts. Also provide space for lighting in communication stages. All elements until operationalization are included in the calculation. The color is determined by the project supervisor.	m2	5,660.00	25.00 Euro	141,500.00
				Total positions 8	141,500.00

Roof works is another position where the amount of square meters almost doubled, while the price tripled, from 7 Euro per m<sup>2</sup> to 25 Euro per m<sup>2</sup> in the second contract, though, as with most of positions above, the roof was envisaged to be completed in the first contract.



# Municipality of Podujeva

## 19. Renovation of the city library

In March 2021, the Municipality of Podujeva announced the tender for the renovation of the city library. This library was demolished in October 2018 and placed in the old building of the municipality in 2020<sup>50</sup>.

The estimated value of this tender was 50,000.00 Euro, whereas the signed contract was in the amount of 39,969.85 Euro. As shown in the table below, six economic operators applied for this tender.

**Table 29** - Economic operators that submitted bids in this tender

Economic Operators	Bid
EO Detari Sh.P.K.	39,969.85 Eur
EO Tribuna Sh.P.K.	37,869.99 Eur
GEO Kompania Pristina Sh.P.K.& Pristina Group Sh.P.K.	46,444.00 Eur
EO Arad 94 Sh.P.K.	48,948.48 Eur
EO N.N. Global - ING	48,709.81 Eur
GEO Tau -GeN- Injinierring & HALIT S. Rama B.I.	46,869.89 Eur

<sup>50</sup> Kallxo.com 'Podujeva will have a library: <https://bit.ly/3p6GcOi>

The contract was concluded on May 12, 2021, between the Municipality of Podujeva and EO Detari Sh.P.K. According to the analysis of the Tender Dossier documents, the start date of works is set five days from the date of signing the contract, and they will be completed within 80 days, namely in August 2021. However, according to the dynamic plan submitted by Detari Sh.P.K., the operator planned for the works to be completed after 78 days, namely by end-July.

Invoices provided by the Municipality of Podujeva, after a request for access to official documents<sup>51</sup>, indicate that total costs for the works in this tender amount to 24,884.39 Euro, divided into three parts. As this was not a public framework contract, which allows for 30% deviation from the total indicative value, the full contract value should have been executed in this case. The last two invoices, submitted by the winning company, are dated August 26, 2021 and October 5, 2021. Thus, given that these invoices were printed by the winning operator, we understand that the period of completion of works specified by the Municipality of Podujeva in the Special Conditions of the contract, of 80 days, was not respected, much less the deadline of 78 days proposed by the winning EO. In addition, Article 18 in the General Conditions of the contract (document provided by D+) provides for the reasons why the time of execution of the contract may be postponed. The execution of the contract can be postponed only if:

- Failure of the Contracting Authority to fulfill its obligations under the contract;
- Force majeure.

According to the same article, if such circumstances arise, the economic operator must notify the contracting authority (in this case the Municipality of Podujeva), which shall notify the economic operator, within the term specified in the contract, of allowing the extension of the deadline for the execution of the contract.

Thus, given that this is a case of non-compliance with the General and Special Conditions of the Contract, the Contract should have been terminated.

The Municipality of Podujeva has requested in the Tender Dossier, among others, that the EO provides a list of vehicles, facilities, and technical equipment necessary for the implementation of the project. In this case, the Municipality of Podujeva did not specifically request the vehicles. This was left to the discretion of the economic operator. EO Detari Sh.P.K. agreed with company Shkëlqimi Sh.P.K. that the Detari Sh.P.K. will use the vehicles of the company for the purposes of carrying out this project. Detari Sh.P.K. listed 24 necessary vehicles for the implementation of the tender. However, for these vehicles to be accepted for the execution of works, they need to have valid registration. Four of such listed vehicles had expired registration<sup>52</sup>. Thus, these vehicles were all listed as essential vehicles for the works, and four had expired registration, which, in turn, means that they can't be used for the execution of the works. This should have penalized Detari Sh.P.K. in the evaluation of bids.

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<sup>51</sup> It is worth noting that the request for access was sent on July 6, 2021, while the documents were sent on November 22, 2021.

<sup>52</sup> Vehicles with expired registration included the semi-trailer, validity until 08.10.2020, 3.5 ton two-door Mercedes, validity until 14.08.2020. The semi-trailer Renders had valid registration until 26.06.2019. The two-door MAN towing vehicle had a valid registration until 08.03.2019, whereas the other MAN tower had a valid registration until 08.10.2020.

## 20. Supply and installation of greenhouses for farmers

The Municipality of Podujeva, on February 21, 2020, published the tender for the supply and installation of greenhouses for farmers, with a planned budget of 135,379.00 Euro, with 30% of the amount coming from the participation of beneficiaries. Five economic operators participated in this tender procedure, and the contract was awarded to Muharrem S. Rushiti BI, as the lowest bid price in the amount of 113,428.68 Euro.

This tender was not submitted under this name by the Municipality of Podujeva in the Final Procurement Plan for the fiscal year 2020<sup>53</sup>. In clarification provided to D+<sup>54</sup>, the Head of the Procurement Office in the Municipality of Podujeva stated that it is a practice of the municipality for this tender to be named as “Orchardry Project”.

**Table 30** - Bid prices of economic operators

No.	Economic Operator	Price
1	GO: PMC & Adri Zauna – Rrethoja	125,970.90 Euro
2	Muharrem S.Rushiti B.I.	113,428.68 Euro
3	Liria	121,771.00 Euro
4	Euro Sera	115,227.00 Euro
5	Berisha CONSTRUCTION	126,767.40 Eur

In addition to EO Muharrem S. Rushiti BI, four other economic operators submitted bids for this project, with three considered as responsible and one as irresponsible, for non-compliance with the requirements.

The winning EO had violations in the execution of the contract, failing to comply with the deadline of 45 days. The EO was obliged to supply and assemble 100 greenhouses within 45 days. However, only 30 greenhouses were completed within this period, in the amount of 34,028.60 Euro. The additional 10 greenhouses were installed outside the timeframe provided under the contract, specifically on September 1, 2020<sup>55</sup>.

The failure to comply with the deadlines outlined in the Tender Dossier led to delays for farmers, which need the greenhouses prior to the summer season, as the majority of the crops they cultivate are seasonal.

Due to delays in executing the contract, the Municipality of Podujeva, pursuant to the General Conditions of the Contract<sup>56</sup> with EO Muharrem Rushiti BI, could have applied, with no official notice and without prejudice to other indemnities under the contract, applied indemnity per each day passed after the expiration of the contract equivalent to 0.25% per day of the value of undelivered supplies up to a maximum of 10% of the total value of the contract.

53 Final Procurement Planning for the Municipality of Podujeva for fiscal year 2020: <https://bit.ly/32omcOe>

54 Head of the Procurement office in the Municipality of Podujeva, Rasim Fejza, in direct communication with D Plus, on December 14, 2021. Final Procurement Planning for Fiscal Year 2020: <https://bit.ly/3mi37Ez>

55 Invoice 43/20 dated 01.09.2020, of Muharrem S Rushiti BI to the Municipality of Podujeva, Directorate of AFRD.

56 Contract number 615-204-97-1-1, Article 16.

Another issue in this tender procedure is in the Tender Dossier, the requirements on the technical and professional capabilities of economic operators<sup>57</sup>, with the AC requiring a list of necessary tools and vehicles for the execution of works in the project, without specifying the equipment. The contracted EO listed four vehicles in the bid<sup>58</sup> with expired registration, which cannot enter road traffic<sup>59</sup> and cannot be used to perform the contracted works.

The Municipality of Podujeva reinitiated the tender for the “Supply and installation of greenhouses” in 2021, for the same works, a project which is also not included in the Final Procurement Planning for 2021<sup>60</sup>. For this procurement activity, the Municipality of Podujeva planned 117,000.00 Euro. This tender was conducted through open procedure, with 26 interested EOs, but with only GEO Liria Sh.P.K. dhe Berisha CONSTRUCTION Sh.P.K., participating in the process. The municipality concluded a contract with the latter, in the amount of 107,162.50 Euro .

**Table 31** - Bid prices of the group of economic operators

No.	Economic Operator	Price
1	Liria SH.P.K. & Berisha CONSTRUCTION SH.P.K.	107,162.50 Euro

Being the only responsible bidder, the municipality signed the contract with the group of Economic Operators Liria SH.P.K. and Berisha CONSTRUCTION SH.P.K. on April 29, 2021, which envisaged the supply and installation of 250 greenhouses in Podujeva, within a period of 60 days.

On June 21, 2021, the Municipality terminated the contract with the EO, with the reasoning that the delivery was not made according to the terms of the contract, despite written remarks by the CA, requiring specification of the date for the start of work, also citing the pressure from farmers for the supply of greenhouses<sup>61</sup>.

According to the official communication with the CA, the EO justified the delay in starting the works with issues in securing steel (galvanized pipes required according to the Tender Dossier), as a result of the abnormal increase in the prices of metal in the market. The Municipality of Podujeva, in this case, rightly so, terminated the contract with the EO, thus executing the performance security, as per Article 63 of the LPP<sup>62</sup>.

## 21. Repair of paved roads

Upon the request of the Directorate of Public Services, Protection and Rescue<sup>63</sup>, in June 2020, the Municipality of Podujeva initiated the procurement procedure for the project “Repair of paved roads”, with the justification that many older roads were damaged to the extent of dangerous potholes, which needed repair. This project

57 Contract No. 615-204-9711 between the Municipality of Podujeva and Muharrem Rashiti BI, Article 9.1 and 9.2.

58 Vehicles without valid registration listed by Muharrem Rashiti BI include: “Brenderup” Trailer with registration expired on 16.03.2019, truck “VW” with registration expired on 21.09.2019, “VW” pick-up truck with registration expired on 16.05.2019, and SUV “Nissan”, with registration expired on 29.10.2019.

59 Law on Vehicles, Article 39, point 1.

60 Final Procurement Planning for the Municipality of Podujeva for the fiscal year 2021: <https://bit.ly/3pggZRD>

61 Official email communication between the project manager of the Directorate of Services in the Municipality of Podujeva, Granit Hasani, and EO on 21.05.2021.

62 Public Procurement Law, Article 63, on confiscation of performance security by Contracting Authorities.

63 The request of the Directorate for Public Services, protocol number 14-370/01-0026287/20, sent on 09.06.2020, to the Procurement Department in the Municipality of Podujeva.

was included in the Final Procurement Planning<sup>64</sup>, with a total estimated contract value of 185,700.00 Euro, with 95,000.00 in 2020, and the rest in 2021.

Ten (10) economic operators submitted their bids in this open tender process. The lowest bid was of that of EO Eing COM SH.P.K. in the amount of 18.50 Euro, while the highest was from EO Toifor SH.P.K. in the amount of 1,246.08 Euro. This significant difference in the prices between the lowest and the highest bids is due to an error in completing the bill of quantities by the EO, with some bidders listing the final price per unit, while others the total price of the bid.

The Municipality of Podujeva, used the criteria of responsible tender with the lowest price, which in this case was the offer of EO EING COM, with a price of 18.50 Euro, a contract which was concluded in August 2020. We recall that price weighing is for the evaluation of bids, whereas the contract is concluded on unit prices<sup>65</sup>.

**Table 32** - Bid prices of economic operators

No.	Bidder	Price
1	GEO INTEGRAL Sh.P.K., TALI Sh.P.K.	349.28 Eur
2	GEO Burimi – E Sh.P.K., N.T.P. Keni P.N.	744.44 Eur
3	EING COM Sh.P.K.	18.50 Eur
4	K.N.P.Sh PAPPENBURG & ADRIANI COMPANY Sh.P.K.	34.67 Eur
5	N.N.T. ABC	32.49 Eur
6	GEO Pro & Co Group SH.P.K, A-ABC Sh.P.K.	36.27 Eur
7	Toifor Sh.P.K.	1,246.08 Eur
8	EL-BAU Sh.P.K.	23.13 Eur
9	GEO Nnsh VAAKAL, Company Murseli Sh.P.K	37.35 Eur
10	Tahir Batatina B.I.	70.95 Eur

However, the price for the position 1.3<sup>66</sup> regarding the supply, set up and leveling of the covers of the existing manhole covers for atmospheric waters, in the road level quota by EO EING COM is much lower than that of other operators.

In fact, the offered price of 3 Euro per unit by the winning operator is an abnormally low price according to Article 61 of the PPL<sup>67</sup>.

64 Final Procurement Planning of the Municipality of Podujeva for the fiscal year 2020: <https://bit.ly/3yNHq4a>

65 Rules and Operational Guideline for Public Procurement, Article 28.14.

66 The offered price of EING COM for position 1.3 of the bill of quantities for the “Supply, set up and leveling of the existing manhole covers for atmospheric water in the road level quota.

67 Rules for Abnormally Low Tenders by the PPRC: price offered by the EO for this position cumulatively meets the conditions for an abnormally low

**Table 33** - Prices of all bidders for position 1.3

Prices for the position 1.3 of the bill of quantities by responsible economic operators	Price per unit
EING COM Sh.P.K.	3 Eur
EL- BAU Sh.P.K.	20 Eur
GEO INTEGRAL Sh.P.K, TALI Sh.P.K.	40 Eur
N.N.T. ABC	45 Eur
GEO VAAKAL, Company Murseli Sh.P.K.	45 Eur
GEO Pro & Co Group Sh.P.K, A-ABC Sh.P.K.	50 Eur
K.N.P.Sh PAPANBURG & ADRIANI COMPANY Sh.P.K.	80 Eur
Toifor Sh.P.K.	130

In this case, the CA should have requested a written statement by EO EING COM, which would include a detailed breakdown of relevant sections of the tender, and it should have provided an explanation for the low price using the standard form approved by the PPRC “Standard form for abnormally low tenders”<sup>68</sup>.

Then, EO EING COM should submit an explanatory note to the Municipality of Podujeva, which should then decide whether the abnormally low price for position 1.3 is argued. In such situations, if the EO manages to reason such a price, the AC should treat it in the same way as other bidders<sup>69</sup>. However, if the explanation does not suffice, the AC must reject the bid and pursuant to Article 61 of the LPP<sup>70</sup> it must notify the PPRC using the standard form “Notice for rejection of the abnormally low bid”, within two days after taking the decision.

Failing to initiate this notice, and signing the contract with EING COM, regardless of the abnormally low price of the EO, the Municipality of Podujeva has violated the Public Procurement Law<sup>71</sup> on treating economic operators in a fair and non-discriminatory manner.

According to the contract concluded between the Municipality of Podujeva and the EO<sup>72</sup>, the executed quantities cannot be changed from the weight given in DT. During the implementation of this framework contract, the quantity under position 2.4 was exceeded by 13,475.00 Euros, or 29%. The total value of position 2.4, according to the contract, is 46,425.00 Euro, while in two situations this position was paid in the amount of 59,899.00 Euro. According to the contract manager, this happened because some roads were repaired that were not planned for 2020<sup>73</sup>.

tender. The bid price is more than 30% lower than the average price of responsive bidders, is more than 10% lower than the second lowest tender price and more than three tenders have been submitted.

68 Rules for Abnormally Low Tenders by the Public Procurement Regulatory Commission, article 4.2.

69 Rules for Abnormally Low Tenders by the Public Procurement Regulatory Commission, article 4.6.1.

70 Public Procurement Law, Article 61, par. 3.

71 Law on Public Procurement, Article 7.

72 Article 3.1 of the contract between the Municipality of Podujeva and the EO.

73 Audit Report on the Annual Financial Statements of the Municipality of Podujeva for 2020,

## 22. Renovation of entrances and corridors of residential buildings in the city

For the renovation of entrances and corridors of residential buildings in the city, the Municipality of Podujeva concluded a contract with the group of economic operators NN Zhvillimi & N.N.P. Vetoni. The estimated value of this Contract was 148,663.83 Euro, whereas the signed contract was in the amount of 96,931.69 Euro.

Seven economic operators submitted their bids this procurement activity. There is a significant difference between the two bid prices. For instance, the difference between the lowest and the highest offer is 36,338.14 Euro.

**Table 34** - Economic operators that submitted their bids in this tender

No.	Name and address of participating Economic Operators	Total bids value
1	Starlin, Podujeva	119,908.86 Euro
2	Blendi Color, Podujeve	125,593.86 Euro
3	Company Pristina, in Prishtina	124,224.00 Euro
4	GO: Zhvillim & Vetoni, Podujeva	96,931.69 Euro
5	Tribune, Pristina	119,726.81 Euro
6	Cosult - ENG, Pristina	133,269.83 Euro
7	Olti Trasiing, Pristina	98,443.51 Euro

This is an indication that the Municipality failed to adequately analyze the actual market situation, and poorly planned this procurement activity. These cases raise the suspicion of a prior agreement between the contracting authority and the economic operator, with a bid that is much lower than the estimated value. When operators are contracted after having bid a significantly lower price than other bids, works are not performed based on the requirements of the CA or have a noticeably lower quality than planned. The same occurred with this tender. For instance, the delivery in the position 'Supply and installation of doors' failed to meet the t = 8cm profile and three-layer glass requirement. A two-layered glass and a 4.5 cm profile were used in this position<sup>74</sup>. Although such problems and violations by EOs should be recorded by the contract manager, they are often times not. To justify this fact, in this case, the manager approved the works, despite the fact that they did not comply with the requirements in the contract.

In the tender dossier, the Municipality of Podujeva submitted its requirements in order to select the most suitable operator to deliver the works required by the tender. Then defining the requirements, the CA used a generic language, e.g. In the request of vehicles, the municipality requested a list of necessary vehicles and tools for the delivery of the project, which should be evidences through registration licenses, lease agreements, etc. However, since the municipality has a clear understanding of the works to be performed based on bill of quantities, it should better list the equipment and vehicles necessary for the successful completion of the project. This would

<sup>74</sup> Auditor's Report for the Municipality of Podujeva, 2020, pg. 12: <https://bit.ly/3Fqprkr>

have eliminated situations where the economic operator bids any tool or vehicle, regardless of whether it needs it for the job. As a result, the winning economic operator submitted a list with a few tools, including heavy motor vehicles, which serve no purpose in this tender.

## 23. Supply with anti-covid material - hand sanitizers

The Municipality of Podujeva, at the beginning of 2021, initiated a tender for the supply of anti-covid material, with an estimated value of 10,000.00 Euro. 11 economic operators have bid for this tender, with the lowest bid submitted by Matkos Pharm SH.P.K. in the amount of 6,600.00 Euro, while the highest bid was submitted by Infinitt SH.P.K. in the amount of 11,440.00 Euro, bid which had exceeded the estimated value of the contract.

**Table 35** - List of economic operators that bid for this tender

No.	Name and address of participating Economic Operators	Total bids value
1	Selver Shala B.I Prizren	8,800.00 Euro
2	IDEA EET, Suhareka	7,865.00 Euro
3	KORAL & KRAS, Pristina	9,955.99 Euro
4	Troja, Pristina	8,690.00 Euro
5	Europrint Group, Pristina	9,955.44 Euro
6	Blendi O.P, Pristina	9,925.00 Euro
7	Kiga, Fushë Kosova	9,295.00 Euro
8	Teknika, Pristina	8,690.00 Euro
9	Matkos Phram, Pristina	6,600.00 Euro
10	Infinitt, Pristina	11,440.00 Euro
11	AWA, Pristina	10,450.00 Euro

The tender was awarded to the operator IDEA EET SH.P.K. in the amount of 7,865.00 Euro, and the contract was signed on April 30, 2021. EO Matkos Pharm SH.P.K. was eliminated as it had failed to submit the tender security.

In the Tender Dossier, the Municipality of Podujeva included no requirement for technical and professional capacities of operators, thus paving the way for any EO to apply for this tender, regardless of whether they are specialized in performing such works or not. However, since these are products that have a direct impact on human health, the municipality should at least seek evidence that the winning economic operator is able realize this supply without any problems, through references and previously concluded contracts. The only criterion for the tender was lowest price of the bid.

The business activity of the contracted EO, despite being responsible and having the lowest price bid, was not related to supplies of such products. According to KBRA, IDEA EET SH.P.K., established in 2020, has as its primary activity renting and leasing cars and light motor vehicles. Its secondary activity, however, is road transportation of goods. Since this company does not deal with medicinal products, it should have provided evidences of the origin of the product, as required by Article 3 of the contract<sup>75</sup>. The documentation provided to D+ by the municipality indicate that such a document was not submitted.

The Municipality of Podujeva has requested the supply of a total of 5,500 liters of alcohol-based disinfectants, min. 70%, 5 liters to 10 liters packaging. If the CA fails to specify the amount of packaging of the item, it can cause a number of problems, especially in the submission of bids by EOs. With such a description, some EOs can bid in quantities of 10 liters, while others in 5 liters, an element which would make automatic differentiation of bids.

Based on the invoices submitted by the winning economic operator, we understand that this supply was delivered within the foreseen time period. However, it is very unclear whether the economic operator delivered the 5 liter or 10 liter disinfectants. Either way, the price of 1.43 Euro per disinfectant with a packaging of 5 liters is very low, even more so for 10 liters. In terms of market prices, 1.43 Euro can buy, at most, a 500ml disinfectant.

**Table 36** - Bill of quantities and purchase price

No.	Title of Material	Unit	Quantity	Price	Amount
1	ALCOHOL-BASED HAND DISINFECTANT (Minimum 70%), packaging of 5 to 10 liters, liquid	Liters	5,500	1.43	7,865.00
Total					7,865.00

If the municipality practices such way of ordering items, especially failing to specify the exact weight, it will be exposed to the possibility that the supply will not be delivered in line with the requirements of the municipality, and the objective of the CA will not be met.

## 24. Renovation of the entrances of residential buildings

The Municipality of Podujeva planned the allocation of 200,000.00 for the repair of the entrances of residential buildings in 2021. This tender was conducted through open procedure, with a framework contract agreement, with a duration of 18 months. The municipality planned to spend 80,000.00 Euro in 2021, and 12,000.00 in 2022.

Ten economic operators submitted their bids in this tender. As this was a framework contract, economic operators bit with weighted prices. The cheapest offer, according to the weighted price, is 94.22 Euro from EO OK Construction SH.P.K., and the most expensive offer was 406.13 euros from EO NPSH. Starling. The tender was awarded to the cheapest economic operator, EO OK Construction SH.P.K., with which the municipality signed a contract on July 22, 2021.

<sup>75</sup> The contract signed in between the Municipality of Podujeva and economic operator, Article 3, provided to D+ as part of the tender dossier.

**Table 37** - Economic operators that submitted bids, with weighted prices

No.	Name and address of participating Economic Operators	Total bids value
1	OK Construction Sh.P.K. – Pristina	94.22 Euro (weighted price)
2	Ulpiana Group Sh.P.K. – Pristina	103.20 Euro (weighted price)
3	NBT – ING, SHPK – SHIROKË	125.10 Euro (weighted price)
4	GEO NTPSH LIMIT L&B Sh.P.K. Sfinga SH.P.K. Prizren	129.56 Euro (weighted price)
5	GEO NN ZHVILLIMI NNP VETONI – Podujeva	153.20 Euro (weighted price)
6	GEO Pristina Sh.P.K. & Pristina Group Sh.P.K – Pristina	159.34 Euro (weighted price)
7	Limit Project Sh.P.K – Podujeva	190.50 Euro (weighted price)
8	Eing COM Sh.P.K – Podujeva	197.78 Euro (weighted price)
9	NN Blendi Color – Podujeva	358.37 Euro (weighted price)
10	NTSH Starlin - Podujeva	406.13 Euro (weighted price)

In the Tender Dossier, the municipality requested that several eligibility requirements be met and that the economic, technical and professional capacities of the economic operator be verified. In economic and financial capacities, the municipality requested that economic operators have a financial turnover over the last three years of no less than 380,000.00 Euro. Given that the deadline for the submission of bids was May 31, 2021, it means that evidence must be provided from May 2018 to May 2021. In its bid, the winning EO submitted evidence of financial turnover from 2016 to 2020, totaling in the amount of 501,173.3 Euro. However, the turnover in 2016 and 2017 should not be taken into account. This means that the winning EO failed to meet this criterion, rendering it irresponsible. Therefore, its bid should be rejected.

Also, the Tender Dossier requested EOs to provide evidence that they have sufficient employees for the implementation of this project, requesting a minimum of 20 employees. The municipality has also requested evidence of the hiring of a project manager, graduated engineer or with a Master degree in construction, structural management, or a graduate engineer or master of architecture. In order to prove that the EO has such employees, the municipality requested the submission of employment contracts with the employer. The winning EO listed 21 employees, including the director of the company, but only presented employment contracts for 17 employees and one contract for the civil engineer. Thus, a total 18 workers, including the owner, namely a total of 19. The operator also failed to provide evidence of an architectural engineer, as required by the TD. In such a situation, the municipality should reject the offer and declare the economic operator irresponsible.

# Conclusions and recommendations

## Following the elaboration as above, the following conclusions can be drawn:

- Municipalities subject of this report have used the negotiated procedure of public procurement justified under allegedly emergency due to COVID-19. This procedure could have been used and justified in the beginning of the pandemic (spring 2020), but not during the whole 2020 and 2021, contrary to the Law on Public Procurement (LPP);
- Municipalities while using the negotiated procedure, have invited a very limited number of economic operators to bid. This has restricted competition among economic operators also resulting in bid rigging by municipalities, contrary to the LPP;
- Municipalities have not disqualified the economic operators that have submitted invalid documents in the bidding process, but the same operators have been awarded the tenders/contracts, contrary to the LPP;
- Contract managers from the municipalities have not taken any measures including the cancelation of the contract, even when the economic operators have been proven irresponsible by delaying the implementation of contracts;
- Municipalities have continued to ask from economic operators to submit specific certificates outside the scope of work expected to be performed, also country specific standards contrary to the LPP;
- 

## Recommendations for respective municipalities are as the following:

### General recommendations:

- Public institutions should avoid negotiated procedures in violation of the PPL. However, when using a negotiated procedure in line with the PPL, public institutions should invite a larger number of economic operators, to increase competition;
- Public institutions should invest in improving the management of contracts, as this is seen as a major issue with virtually all economic operators;
- Public institutions should use the means to sanction irresponsible Eos which fail to implement their contracts;
- Public institutions should avoid discriminatory requirements, especially in obsolete ISOs, and those not related to the subject of the announced tender.

### Specific recommendations:

#### **Municipality of Gjakova:**

- It must avoid the use of discriminatory criteria in the tender dossier, so as not to restrict competition;
- In any case, it must confiscate the tender security and request the black-listing of the economic operator, as provided by law;
- It must accurately and clearly define the requirements that economic operators must meet, in order to eliminate further issues.

### **Municipality of Gjilan:**

- It must invite more economic operators in negotiated procedures, in order to increase competition and thus have lower prices;
- In framework contracts with a duration of over one year, the value should be determined in the total contract, rather than for just one year;
- To set the deadline of tender validity as provided by law, according to the value of the contract;
- To improve contract management and impose penalties on economic operators and terminate contracts in case of poor implementation.

### **Municipality of Podujeva:**

- It must take necessary measures against economic operators that fail to comply with the terms of the contract, so that it serves as discipline for other economic operators;
- It must exert additional caution in the design of bills of quantities and positions, in order to eliminate ambiguities among economic operators and minimize the possibility of failure in the execution of the contract;
- It must accurately determine the requirements in the TD, especially required vehicles, and request only those that are necessary to perform the work.

### **Municipality of South Mitrovica:**

- It must avoid the requirement of the number of contracts executed as evidence of work performed in the last three years, and rather only define the value;
- No payment should be made prior to the start of the implementation of the contract, unless the contract provides for advance payments;
- To ensure better planning and market research, so as not to exceed the estimated value, except when it is not possible;
- In all cases of abnormally low prices, to request additional clarifications regarding the provisions of the PPL;
- Avoid ambiguities in the tender award criteria, i.e. Using both lowest price and the most economically favorable criteria in the same tender;
- Avoid mentioning brands (trademarks), as it directly damages competition;
- To ensure that the deadlines for the submission of bids are not shortened contrary to the PPL;
- To reject bids that fail to submit references in the value provided in the TD, and reject references submitted for contracts not yet completed.



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