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# Misuse of Special Service Agreements in Municipalities and Ministries

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# **GOOD GOVERNANCE**

**AUTHOR:**

Egzona Kozhani



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**Our Offices:**

Street Bajram Kelmendi, Nr. 92, Kati V  
Prishtina, 10000  
Kosovo

+383 (0) 38 749 288  
[info@dplus.org](mailto:info@dplus.org)



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This report is written in Albanian language, so for any uncertainty in this translated and adapted version, please consult the original version "Keqpërdorimi i marrëveshjeve për shërbime të veçanta në komuna dhe ministri.

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# Summary of findings

- The legal framework on special service agreements (SSA) is overly generic and leaves room for interpretation. The Rules and Operational Guideline for Public Procurement (ROGPP) provides for several such services, however they leave it open to the authorities to decide what to include in the list of services of intellectual and professional nature. This resulted in signing contracts for regular positions in the civil service.
- The misuse of special service agreements has resulted in the contracting of non-qualified persons in performing works and responsibilities determined in the tender dossier.
- When contracting experts/consultants/advisors, contracting authorities (public institutions) include in the tender dossier the minimum requirements for qualifications and professional experience, which indicates that contracting authorities do not intend to contract professionals of a certain field.
- The staff employed in the institution through special service agreements, use this position to apply in internal hiring through which they are then employed as public officials with an indefinite contract.
- Contracting authorities failed to avoid conflicts of interest, despite their clear existence.
- Special service agreements are often used to extend the working term for consultants contracted with the preliminary special service agreement.
- In some cases, contracting authorities have failed to act responsibly when evaluating bids, awarding contracts to bidders who did not submit the documentation as requested in the tender dossier.
- Although special service agreement should be concluded applying the most economically advantageous bid criterion, this legal requirement has not been respected. In some cases, the lowest price criterion was used to conclude special service agreements.
- Many special service agreements have been concluded using the negotiated procedure, without the publication of a contract notice, despite having been no emergency that precludes the use of open procedures.
- Awarding of minimal value contracts was not transparent and has often failed to reach the purpose for which the contract was initiated.
- Contracting authorities fill the vacant positions within the institution through special service agreements rather than initiating regular recruitment procedures.

- The Municipality of Drenas has hired a consultant for the management of contracts in the e-procurement system, which duties must be carried out by contract managers. For this purpose, trainings have been provided by PPRC, which can also be easily found online, on the official PPRC website.
- The Municipality of Drenas, through SSAs, has extended the employment relation of the advisors contracted with a previous SSA.
- The Ministry for Regional Development included in the tender dossier a set of requirements that limit competition, and used such contracts to extend the employment relation of the same person who was previously hired in the ministry through an earlier SSA.
- The Municipality of Kamenica included in its tender dossier various requirements related to work experience, despite the fact that the contracted consultants were already tasked with performing such duties.
- The Municipality of Kamenica contracted a consultant for whom the procurement manager of this municipality issued a reference letter, who is also the contact point for this tender and for procurement in the municipality.
- The bid evaluation commission in the Municipality of Kamenica has awarded a contract to consultants who have submitted their CVs which listed work experience which they failed to prove, and consultants who submitted documentation using identical methodology, completed for six months, with the contract having a duration of 12 months.
- The Municipality of Malisheva has contracted a consultant who has not met the tender dossier requirements regarding work experience.
- The Ministry of Regional Development and the Ministry of Education, Science, Technology and Innovation have not observed the rules stipulated in the tender dossier, eliminating bidders because their bids were not with the lowest price, while the criteria for awarding the tender was the economically advantageous bid.
- The Ministry of Education, Science, Technology and Innovation has contradicted the need for the contracting of six consultants when it divided the tender into six lots, but stated in the tender dossier that the bidders can bid on the six lots, and that one bidder can be awarded the six lots.
- Although inspection and tax collection should be carried out by state institutions, the Municipality of Ferizaj contracted a consulting company to carry out such works.
- The Municipality of Ferizaj awarded a contract to a company which drafted its performance of works methodology in contradiction with the municipality's requirements.

# 1. Concept and use of special service agreements

Special service agreements (SSAs) are agreements concluded for a certain period of time, between a person, group of persons, or organization/company that provides a specific service, when the institution needs the service and the same service cannot be provided through its capacities. SSAs are also known as performance contracts, where the services provided by the contracted consultants or experts mean services of a special professional, artistic or intellectual nature in a certain field.

Although the Labor Law has provided that a contract for a specific task should not be longer than 120 days in a year<sup>1</sup>, they could be extended up to 36 months, according to the deadlines defined in the Public Procurement Law. This extension is allowed by third law, the Law on Public Officials, which provides that such agreements must be concluded through procurement procedures and that procurement rules must be applied thereto.

As stated above, SSAs can be concluded with an individual consultant or a group of consultants or a consulting company. Specific rules apply to individual consultants, as defined in the Rules for the procurement of special services (Individual Consultants/Contractors), whereas other more generic rules apply for companies that offer consulting services, as described in the Rules and Operational Guide for Public Procurement (ROGPP). However, the evaluation of successful consultants or consulting companies is subject to similar requirements. They may have minor differences, depending on the nature of the service.

The purposes which require a conclusion of an SSA are not clearly defined in the Law or bylaws. ROGPP defines consultancy services by listing some of the services that can be provided by such consultants, but fails to specify the exact situations in which a contracting authority is allowed to hire a consultant. According to the legal definition, special agreements should be contracted only for the services which the contracting authority cannot cover, due to lack of qualified staff and the inability to provide such professional services through recruitment procedures. These agreements should not be used for regular positions within the institution, which should be secured through regular recruitment procedures. Similarly, institutions cannot fulfill the need for additional staff through SSAs as such contracts have a fixed term and the contracted persons do not enjoy the same rights as regular employees of the respective institution.

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<sup>1</sup> Official Gazette of the Republic of Kosovo. Law No. 03/L-212 on Labor, Article 10, paragraph 6. <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2735> (last accessed on 14.11.2022)



## 2. Legal Framework

Special service agreements were initially regulated by the Law on Civil Service, according to which these agreements are subject to the Law on Obligations, and a simplified recruitment procedure will apply to them<sup>2</sup>. Law on Obligational Relationships<sup>3</sup> has no specific provision regarding SSAs, implying that the same rules as for other contracts apply to SSAs. The Labor Law<sup>4</sup> is also a relevant law for this purpose, as its provisions establish the employment relation for all categories, and further state that employees for specific works will not be entitled to annual leave, or other rights under the collective agreement and the employment contract<sup>5</sup>. With the entry into force of the Law on Public Officials in 2019, which repealed the Law on Civil Service, SSAs are concluded following the relevant public procurement legislation<sup>6</sup>, implying that such agreements are concluded according to the rules under the Public Procurement Law<sup>7</sup>. Rules and Operative Guide of Public Procurement (ROGPP) envisages consulting services that can be provided by an individual person or contractor, or a company that provides consulting services. The Public Procurement Regulatory Commission (PPRC) has issued Rules for Special Services (Consultants/Individual Contractors) for procurement procedures with individuals who have no registered business, which rules only apply to individual contractors. According to these rules, individual consultants interested in submitting bids and who do not have a business must register on the e-procurement platform as natural persons<sup>8</sup>, and will later be provided with a



Individual consultants will be contracted using the ‘most economically advantageous bid’ criterion.

fiscal number by TAK. Whereas the ROGPP rules will be applied to the contracting of consulting companies.

Individual consultants will be contracted using the ‘most economically advantageous bid’ criterion. Bid evaluation is done by scoring the predetermined criteria, including: specific experience, adjustment of the methodology/work plan, qualification and, optionally, the transfer of knowledge. The technical score and the financial score are collected and the final score will be completed prior to the announcement of the decision by the institution. An advantage of regulating these agreements through public procurement is that e-procurement accurately identifies the number of contracts concluded, their duration and the estimated and actual expenditures. The maximum duration of such tenders can be up to 36 months.

2 Official Gazette of the Republic of Kosovo. Law No. 03/L-149 on the Civil Service, Article 12, paragraph 4. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2679> (last accessed on 14.11.2022).

3 Official Gazette of the Republic of Kosovo. Law No. 04/L-077 on Obligational Relations. <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2828> (last accessed on 14.11.2022).

4 Official Gazette of the Republic of Kosovo. Law No. 03/L-212 on Labor. <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2735> (last accessed on 14.11.2022).

5 Official Gazette of the Republic of Kosovo. Law No. 03/L-212 on Labor, Article 10, paragraph 8. <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2735> (last accessed on 14.11.2022).

6 Official Gazette of the Republic of Kosovo. Law No. 06/L-114 on Public Officials, Article 34. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=25839> (last accessed on 14.11.2022).

7 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on Public Procurement in the Republic of Kosovo. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772> (last accessed on 14.11.2022).

8 Rules for the procurement of special services (individual consultants/ contractors). [https://e-prokurimi.rks-gov.net/HOME/Documents/Lajmet%20levizese/alb/439/Ndryshim\\_Plot%C3%ABsim%20i%20Rregullave%20p%C3%ABr%20prokurim%20te%20Sh%C3%ABrimeve%20te%20ve%C3%A7anta%20.pdf](https://e-prokurimi.rks-gov.net/HOME/Documents/Lajmet%20levizese/alb/439/Ndryshim_Plot%C3%ABsim%20i%20Rregullave%20p%C3%ABr%20prokurim%20te%20Sh%C3%ABrimeve%20te%20ve%C3%A7anta%20.pdf) (last accessed on 14.11.2022).


ROGPP provides examples of special services and consultancies, which include but are not limited to:

- Consultative (implemented policies, tourism and healthcare)
- Studies (environmental impact, population, health, education, market prices)
- Designs (paintings, sculptures, architecture, advertising)
- Institutional (procurement, taxation, budget, police, pensions, customs)
- Trainings (music, sports, education)
- Other services of intellectual and professional nature<sup>9</sup>.


The services listed in the ROGPP leave great room for interpretation, when more clarity and accuracy is needed as for which services can such agreements be applied. For instance, in the institutional services category, procurement, there is much room for interpretation as well as misuse, as there are no clear limits as to which duties are exactly allowed, since procurement works are various and numerous. What should be meant by consultancy services in procurement is beyond technicalities in procurement, namely the provision of a service which doesn't only serve one procurement procedure but rather the procurement as a whole, solving an issue or improving the situation for a long-term period. In the absence of such accuracy, some contracting authorities have contracted consultants tasked with carrying out ordinary administrative work, similar to other procurement officers.

Of concern is also the last point, which generalizes other intellectual and professional services, as it allows significant room for institutions to conclude contracts with persons who perform the same duties as regular officials. This resulted in the conclusion of a series of contracts for legal representation of institutions, supervision of works and projects, business registration, social works, inspections, etc.

For this purpose, D+ has submitted a request to the PPRC to provide an interpretation of the provisions



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regarding SSAs. According to the PPRC, these contracts should be used for the contracting of consultants and consulting companies for the services which the institution cannot provide with its internal staff, and for works which are not intended as employment contracts, as such contracts are excluded from the implementation of the Law on Public Procurement and are regulated by the Labor Law and the Law on Public Officials<sup>10</sup>.

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<sup>9</sup> Rules and Operational Guideline for Public Procurement, Article 59.

<sup>10</sup> The request for interpretation was sent to the e-mail address of the Department of Rules at PPRC on 17.10.2022, and a reply was received on 21.10.2022.

# 3. Overview of the misuse of SSAs - findings of the National Audit Office

Special service agreements should be used to contract persons who are specialized in a certain field, in order to help the budget organization achieve its objective, which cannot be achieved with the internal staff. This means that the contracting of individual consultants or consultancy companies for purposes of performing ordinary works in the organization is not allowed. However, this a frequent practice by all contracting authorities.

The National Audit Office (NAO), through its audit reports, identified persons hired through SSAs. In addition to the number being high, annual audit reports indicate that the same findings are repeated every year. The violations found in the auditor's annual reports include:

1. Hiring of staff through special service agreements without observing the recruitment procedures<sup>11</sup>.
2. The period for which officials are hired is longer than the period defined by the rules<sup>12</sup>.
3. Contracts concluded for these positions were for regular positions rather than for experts of respective fields<sup>13</sup>.

4. Extension of the working term for officials hired in previous years through special service agreements<sup>14</sup>.

Finds of annual reports of the national auditor give a clear picture of how these contracts are actually being used by public institutions.

According to NAO reports, in 2021, 63,841 persons were hired<sup>15</sup> through SSAs. Excluding from this figure those hired for the needs of the CEC during the elections<sup>16</sup> (62,417), we have 1,424 persons hired in the public sector through SSAs. In 2020, 2,233 such contracts<sup>17</sup> were concluded. In 2019, 4,197 contracts<sup>18</sup> were concluded for special services, with 1,115 contracted for the needs of the CEC, meaning that for the purposes of this report, a total of 3,082 persons were contracted in 2019. In 2018, 2,493 special service agreements<sup>19</sup> were concluded.

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11 Annual audit report for 2019. [https://zka-rks.org/wp-content/uploads/2020/09/RaportiVjetor\\_ALB\\_FINAL\\_PRESS\\_01.pdf](https://zka-rks.org/wp-content/uploads/2020/09/RaportiVjetor_ALB_FINAL_PRESS_01.pdf) (last accessed on 14.11.2022).

12 Annual audit report for 2018. <https://zka-rks.org/wp-content/uploads/2019/08/RVA-2018-Shqip-2.pdf> (last accessed on 14.11.2022).

13 Annual audit report for 2019. [https://zka-rks.org/wp-content/uploads/2020/09/RaportiVjetor\\_ALB\\_FINAL\\_PRESS\\_01.pdf](https://zka-rks.org/wp-content/uploads/2020/09/RaportiVjetor_ALB_FINAL_PRESS_01.pdf) (last accessed on 14.11.2022).

14 Ibidem.

15 National Auditor's report for the government's annual financial report for the budget of the Republic of Kosovo 2021. Pg. 78. [https://zka-rks.org/wp-content/uploads/2022/08/RaportiVjetoriAuditimit\\_2021\\_Shqip-2.pdf](https://zka-rks.org/wp-content/uploads/2022/08/RaportiVjetoriAuditimit_2021_Shqip-2.pdf) (last accessed on 14.11.2022).

16 This means that these persons were contracted for the election period and served different purposes in the election process, and were not employed in the Central Electoral Commission.

17 National Auditor's report for the government's annual financial report for the budget of the Republic of Kosovo 2021. Pg. 112. [https://zka-rks.org/wp-content/uploads/2021/08/RaportiVjetoriAuditimit\\_2020\\_Shqip.pdf](https://zka-rks.org/wp-content/uploads/2021/08/RaportiVjetoriAuditimit_2020_Shqip.pdf) (last accessed on 14.11.2022).

18 Annual Audit Report 2019. Pg. 70. [https://zka-rks.org/wp-content/uploads/2020/09/RaportiVjetor\\_ALB\\_FINAL\\_PRESS\\_01.pdf](https://zka-rks.org/wp-content/uploads/2020/09/RaportiVjetor_ALB_FINAL_PRESS_01.pdf) (last accessed on 14.11.2022).

19 Annual Audit Report 2018. <https://zka-rks.org/wp-content/uploads/2019/08/RVA-2018-Shqip-2.pdf> (last accessed on 14.11.2022).

**TABLE 01.** The number of SSAs found in the NAO audit reports and SSAs developed through procurement procedures

	<b>2021</b>	<b>2020</b>	<b>2019-2018</b>
NAO reports	1,424	2,233	5,575
E-procurement.	80	44	19

Notwithstanding, D+ found from the e-procurement platform that there were fewer contracts than included in the NAO reports.

In 2021, the various contracting authorities have concluded around 80 contracts for specific services through the procurement procedure, which procedures were published on the e-procurement platform. Using procurement procedures and published on the e-procurement platform, 44 contracts were concluded through public procurement in 2020, and 19 each year in 2019 and 2018.

This shows that contracting authorities have not complied with the legal requirement of the Law on Public Officials of concluding special service agreement through the procurement procedure.

Another finding according to the NAO reports is that these contracts have a longer duration than what is provided in the law, and that, moreover, their terms are extended. This was also found from the specific cases that D+ selected to address in this report.

Another indication of SSA misuse is that these contracts were used to contract persons for regular positions in institutions, rather than for expertise in certain fields, as required by the law and bylaws. The SSAs are not intended to support the various directorates with additional staff, but rather obtain an expertise that would serve the respective directorate.

# 4. Misuse of SSAs for the performance of ordinary works in institutions

SSAs have been largely used by municipalities and ministries to fill regular civil service positions with temporary staff, as well as for routine work in municipalities and ministries. As a rule, works for which they are hired are covered with civil servants recruited through formal procedures rather than temporary staff recruited through SSAs based on public procurement procedures.

According to the selected samples, municipalities and ministries have reasoned this with the lack of staff or the lack of qualified staff. However, as this paper argues, staff shortages should not be covered through such agreements.

To carry out ordinary work, municipalities and ministries have mainly contracted experts/consultants/advisors for the design, implementation and monitoring of projects, management of contracts in e-procurement, legal representation, assistance in daily works of different directorates, and inspections. However, there are many other contracts through which experts of other fields have been recruited, although the description of tasks indicates that it is in fact ordinary (not special) works, covered by civil servants.

It has been found from the cases selected for study that no external expertise was requested for these services for which the institutions had not no internal resources. Although the tender was titled as a request for the hiring of an expert, the description of duties and the eligibility requirements indicate it has nothing to do with the profile of an expert.

With the exception of legal representation contracting, other requests of institutions for experts required one to two years of work experience. In normal circumstances, to be considered an expert one would require

at least five years of work experience, to be supported by relevant certificates.

The works for which these consultants are contracted mainly included surveys, field visits, preparation of documents depending on the needs of a relevant office, maintaining contact with parties involved in the process, oversee works, participate in conferences and study visits, enter documents in electronic platforms, prepare letters, etc. However, they do not envisage any strategy to be developed by such experts which would serve the institution as a whole, or drafting of a policy needed, perform studies in certain fields, make designs or officer an artistic service, for which experts should be contracted.

It is rather obvious that in most cases SSAs are not used to hire actual experts, but are rather used to recruit persons to carry out daily duties in the institution.



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## 4.1 Management of public procurement contracts

Some institutions have used SSAs to recruit external staff (experts, consultants, advisors), on temporary basis, to help manage public procurement contracts. However, such contracting has failed to resolve the issue, as they hired persons with generic knowledge and not experts able to manage complex and specific projects. The following are cases of institutions that have followed this practice.

### a. Municipality of Drenas

In 2022 the Municipality of Drenas initiated two procurement procedures aimed at hiring consultants to assist the public procurement office. The first tender was concluded at the beginning of February 2022, divided into two lots. Lot 1 envisaged the contracting of a consultant for the contract management module of the e-procurement system, for a period of ten (10) months. Lot 2 envisaged the hiring of a consultant to improve services in the General Administration. The second tender was concluded in June, and was intended to contract consultants for the drafting of official documents and project management in the procurement office, with a duration of six months. Three people were contracted through these two tenders.

There is no need to hire consultants to manage contracts in the e-procurement system, draft official documents and manage projects in the procurement office, as these are tasks for which the officials employed in the municipality have been trained and are responsible for perform them.

That these are consultants can also be seen from the more detailed description of the duties listed in the tender dossiers. The consultant contracted in Lot 1, for the contract management module of the e-procurement system, as well as the consultant contracted in the second tender had very similar duties.

■ **TABLE 2:** Duties of consultants contracted by the Municipality of Drenas.



### Duties of advisers contracted by the Municipality of Drenas

1	Advising contract managers on the e-procurement program
2	Register contract managers in e-procurement
3	Respond to any requests from contract managers regarding the system
4	Advise contract managers on the recording of invoices and purchase orders
5	Advise contract managers on performance evaluation for economic operators
6	Inform managers regarding contract deadlines and dynamic plan expirations, etc.

These consultants are hired for duties which municipal officers are trained to perform. A contract manager is called to manage the contract for which he/she is responsible and use the e-procurement system to record his/her work. For contract management, PPRC offers trainings. Moreover, a step-by-step instruction has been uploaded on the official PPRC website, which is also presented through a video<sup>20</sup>. These videos clearly and in detail explain the procedure, allowing managers to view all the details related to the contract, such as the status of the contract, i.e. to see the stage of the procedure - initiation, implementation, or completed. Also, there is information about the type of procedure, contract name, code, value, etc. One of the tasks the consultant is required to carry out is advise contract

20 E-procurement platform, accessible at: <https://e-prokurimi.rks-gov.net/HOME/ClanakItemNew.aspx?id=453>

managers regarding the e-procurement system! Under normal circumstances, there shouldn't be one person performing this duty, as this is easily achievable following the steps in the video uploaded on the official website of the PPRC. In addition, another duty is informing the managers on the deadlines of contracts and expiration of dynamic plans, which information is easily accessible in the e-procurement platform, entered when the procurement plan is developed.

This implies that this is in fact ordinary operational work of the administration, the performance of which requires no special skills. Furthermore, information for the performance of such works is ready and accessible, and public money should not be spent by the contracting authority. For these services, the Municipality of Drenas has allocated 11,230.00 Euros.

That these are not consultants in the field can also be seen in the tender dossier requirements, where minimum qualification and minimum experience is required. The tender dossier for the first activity, Lot 1, in addition the submission of a declaration under oath, the bidding economic operator was also required to submit a copy of the university degree, proof of two years of work experience in public institutions, as well as a professional certificate for procurement and a certificate for the e-procurement system issued by the institutions of the Republic of Kosovo. The required submissions for the second tender included a certificate issued by the Kosovo Institute for Public Administration (KIPA), a certificate for the drafting of official documents also issued by KIPA, university degree and proof of work experience in public institutions of at least two years.

For the first tender, the contracted consultant met all requirements of the contracting authority. As proof of working experience, the consultant submitted several employment contracts in the private and public sectors. Contracts submitted to prove working experience in public institutions were those concluded between the consultant and the Municipality of Drenas<sup>21</sup>. Thus, these contracts show that the same consultant works in the procurement office of this municipality since

2020, with contracts signed are special service agreements. The first two contracts of 2020 are not signed through the procurement procedure, whereas the 2021 contract was signed using procurement procedures, in the same procurement case as the tender of 2022, with a duration of 10 months, similarly to the current contract.

This shows that contracting authorities use SSAs to hire additional staff, who would have to be recruited through the regular recruitment procedures of public officials rather than using SSAs. Moreover, new contracts extended their term of service, which also confirms the NAO finding that the term of service is being extended for the officials hired previously through SSAs.

The same situation was noted with the second tender where all requirements established by the contracting authority have been met with working experience of two years having been gained in the procurement office of the same municipality. As with the first tender, the 2020 contract was not concluded through procurement procedures, while the 2021 contract was concluded through procurement procedures with a duration of eight months.

A decision was made to terminate the contract for the first tender on 27.04.2022, after the consultant, who until this date was working in the municipality with a special services contract, was appointed as administrative officer in the procurement office in the municipality with an indefinite contract.

The vacancy process through which the consultant was appointed as administrative official was an internal competition of the municipality. Only existing civil servants of the same category were allowed to apply for this vacancy, employed in the same or another civil service institution.<sup>22</sup> Since the consultant was hired by the municipality for a specific job, he/she is not considered to be a civil servant and is not eligible to apply in this vacancy. The Law on Public Officials states that consultants hired through SSAs are not eligible to apply to internal recruitment competi-

<sup>21</sup> Information received from the economic operator bid, after a request for access to public documents on 13.09.2022.


<sup>22</sup> <https://kk.rks-gov.net/glogoc/wp-content/uploads/sites/10/2022/03/download-20.pdf> (last accessed on 14.11.2022).

tions initiated by the institution, and vacant positions in such processes for all categories should be first filled with civil servants of the same category, through the procedure of a transfer within the category<sup>23</sup>. Categories of civil service positions recognized by this law are senior management, middle management, lower management, and professional officials<sup>24</sup>, i.e. staff who perform specific work or services through SSAs are not included in the civil service category.

The conclusion of SSAs through procurement procedures was intended to limit misuse, to ensure that the process is transparent and restricted. However, some institutions do not apply the rules, and others only partially. It must be noted that the two procedures initiated by this municipality followed the procurement procedure, as provided in the Regulation for the Procurement of Special Services<sup>25</sup>, applying as contract award criterion the most economically advantageous bid, after the professional and financial bid scoring. Despite observing the criteria for awarding and evaluation, these two cases are proof that institutions continue to use SSAs to hire administrative staff rather than experts/consultants. In fact, the hired consultants saw their contracts extended for years until an opportunity for permanent recruitment in the institution was created. In the absence of action to tackle this situation, institutions are filling the workplace with staff in disregard of the recruitment procedures, committing legal violations.

## 4.2 Design, implementation and monitoring of projects, including writing strategies

Ministries and municipalities continuously contract staff to design, implement and monitor various projects. Although SSAs can be used/applied for the recruitment of an expert for a job that cannot be performed with the capacities of the staff of the ministry/municipality, research shows although subject lines



Despite observing the criteria for awarding and evaluation, these two cases are proof that institutions continue to use SSAs to hire administrative staff rather than experts/consultants. In fact, the hired consultants saw their contracts extended for years until an opportunity for permanent recruitment in the institution was created.

were for experts, works requested to be performed were unrelated to works of an expert, or special skills that would justify outsourcing.

### a. Municipality of Kamenica

In 2022 the Municipality of Kamenica initiated four tenders, three of which were reviewed for our purposes. Two procedures were intended to contract consultants for the design and implementation of projects, and the other one a consultant for the design and planning of projects. For these services, Municipality of Kamenica planned to spend 26,664.00 Euros.

Both tenders intended to contract consultants for the design and implementation of projects included the same description of duties.

23 Official Gazette of the Republic of Kosovo. Law No. 06/L-114 on Public Officials, Article 38, item 2. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=25839> (last accessed on 14.11.2022).

24 Official Gazette of the Republic of Kosovo. Law No. 06/L-114 on Public Officials, Article 33, item 2. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=25839> (last accessed on 14.11.2022).

25 Rules for the procurement of special services (Individual Consultant/ Contractors), Article 3, par. 5. [https://e-prokurimi.rks-gov.net/HOME/Documents/Lajmet levizese/alb/439/Ndryshim Plotësim i Rules for procurement of special services.pdf](https://e-prokurimi.rks-gov.net/HOME/Documents/Lajmet%20levizese%20alb/439/Ndryshim%20Plot%C3%ABsim%20i%20Rules%20for%20procurement%20of%20special%20services.pdf) (last accessed on 14.11.2022).



**TABLE 3:** Duties of consultants contacted by the Municipality of Kamenica.



### Duties of consultants contracted by the Municipality of Kamenica

1	To apply for funds of central institutions and non-governmental organizations to secure funding for prepared projects and for new projects
2	To participate in the design of conceptual architectural projects
3	To ensure management and implementation of capital investment contracts
4	To prepare conceptual designs and develop technical descriptions with bills of quantities
5	With an associate, to draft plans and implement the objectives for which they are hired
6	To divide duties between members or associates, etc.

Although the works expected to be carried out by the two consultants are the same, one required two years of working experience in the field of management and project design, and the other required one year of working experience in the required field. Unlike other institutions, as proof of the working experience, the Municipality of Kamenica did not request references or previous work contracts, which means that the municipality considered it wasn't necessary to verify the experience the consultants listed in their CVs. Requesting documents proving working experience and qualifications should be applied to every tender, to prevent bidders from making false

statements. This, consequently leads to the contracting of persons who are not qualified to perform the works required by the institution.

In addition, for the performance of these duties bidders were requested to be architecture graduates, whereas the described duties are not related to this field. This requirement has limited competition, as candidates with university qualifications in other fields could have performed the described duties.


The requirement for working experience of two years indicates this is not a process of hiring an expert. Moreover, the consultant contract in the second tender, based on the CV included in the bid<sup>26</sup>, has never worked in designing and implementing projects. The CV included, and this was assessed by the Municipality of Kamenica as compliant with the requirement, experience in the projection and design of interiors, field work, design of water-supply, filtration ventilation, etc., but not experience in design and implementation of projects. This meant that the consultant was not competent to perform the duties assigned in the design and implementation of projects. The consultant contracted with the first tender submitted a reference issued by the Municipality of Kamenica, specifically the procurement manager of the municipality, who is also the contact person for this tender. In addition, the applicant submitted in his bid contracts signed with the municipality, showing that he was working in the municipality since 2018. This effectively means that through SSAs, his work in the municipality was extended for another 12 months.

The most serious violation in this case is that the reference was issued by the procurement manager himself, who is also the signatory party of the contract with the consultant. In this situation, the application of one of the most important principles, the principle of objectivity, is also called into question. In this situation there is also a conflict of interest. According to the Law on Public Procurement, Article 7, par. 1.75, conflict of interest represents "any situation where staff members of either a contracting

<sup>26</sup> The economic operator's bid was received after the request for access to public documents submitted on 13.09.2022.

authority or procurement service provider acting on behalf of the contracting authority are involved in performing a procurement procedure or who can influence the outcome of that procedure could have, directly or indirectly, a personal financial benefit, economic or any other interest that could be perceived as a compromise to their impartiality and independence in the context of the procurement procedure". In addition to this provision, the PRB board has also issued a decision on the case 198/21<sup>27</sup> regarding the conflict of interest, calling on the same Article of the law, confirming there is conflict of interest in cases where any connection between the bidder and the official acting on behalf of the contracting authority or institution in question is proven. In this situation, the Municipality of Kamenica should not have concluded the contract with the bidder due to a conflict of interest, also considering the fact that the same person works in the institution since 2018. Elements that cast doubt about influence in this decision also include the fact that the reference issued to the consultant by the procurement manager in the municipality states that he was employed in the municipality from May 2018 to February 2022, while the notice for the new contract was published on 09.03.2022 and the contract was signed on 24.03.2022 by the consultant and the procurement manager on behalf of the contracting authority. This has allowed the consultant to work without any interruption in the municipality.

Another requirement in the tender dossier was the submission of a working methodology that the consultant will apply. Both winning consultants of the first and second tender have submitted the same exact methodology, verbatim, without a single difference<sup>28</sup>. The two consultants who signed the contract for a duration of 12 months, start the methodology with the sentence "During the six-month period, I will work as a consultant in the design and implementation of projects...", which means they submitted the methodology for only six months, rather than 12, as per the contract, or that the document was prepared for another tender and then copied, and does not



The Municipality of Kamenica should not have concluded the contract with the bidder due to a conflict of interest, also considering the fact that the same person works in the institution since 2018

belong to the applicants in question. The two consultants contracted by the Municipality of Kamenica have also used the same CV template and made a description of themselves which was the same, verbatim, stating in English that they have more than 50 architectural projects and that they have participated in various competitions in Kosovo and abroad. These statements are followed by a few lines of a description of their work and experience, never mentioning these achievements, nor documenting them in any form. Not only was the contracting authority irresponsible in spending public money, but it was also not vigilant and professional in carrying out its duties. This contract shouldn't have been concluded, firstly because it has a conflict of interest with this bidder and secondly because the bidder doesn't fulfill the requirements the contracting authority has established in the tender dossier.

This is not only a case of a misuse of SSAs, but also a misuse of position, contracting as consultants incompetent people who cannot assist the municipality and, based on their submissions, lack the qualification to perform the works. For the contracting of incompetent persons, the municipality planned to spend 17,904.00 Euros.

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27 Procurement Review Body, accessible at: <https://oshp.rks-gov.net/sq/ProcurementActivities/Download/8bce069e-d68b-eb11-b597-005056ba09d5> (last accessed on 14.11.2022).

28 Documents obtained through the request for access to public documents made on 13.09.2022.

The same steps were also followed in the third tender concluded by the Municipality of Kamenica, which intended to contract a consultant for the design and planning of projects. For this tender, the consultant was required to prepare technical designs and financial planning, research for potential funds and application, hold meetings to discuss the plans of the municipality, review opportunities for cooperation and management and supervision of projects, etc.

## b. Ministry of Regional Development


Moving to the central level and activities of a similar nature, in 2022 the Ministry of Regional Development (MRD) contracted two consultants. One consultant in the field of capital investments, and another for the monitoring of projects of MRD.

For the consultant contracted with the first tender, the title alone indicates that its aim is not to hire an expert, but rather recruit a person of general knowledge who will serve as an additional staff member. This is also clear looking at the duties assigned, as well as the requirements for the procedure, listed in the tender dossier.

To be awarded with this contract, the consultant was required to prove that he/she has graduated in engineering sciences, environment, or similar fields, proved by submitting a notarized diploma; to have at least two years of working experience, proven by at least one positive reference; with no requirement for trainings in the relevant field and knowledge of English, although listed as desirable, for which evidence or certificates must be provided.

Provided that these qualification requirements are met, the consultant will be responsible to carry out the following duties.

**TABLE 4:** Duties of the consultant contracted by the Ministry of Regional Development


	<b>Duties of the consultant contracted by the Ministry of Regional Development</b>
1	To assist in the drafting and development of application criteria; selection, implementation and monitoring of project proposals
2	To coordinate with the colleagues of the department and the head of the division
3	To organize the process of monitoring and reporting data for capital projects in the beneficiary municipalities
4	To maintain contacts between the parties involved and ensure a smooth running of all processes
5	To ensure the completion of capital project documentation and for documentation for payment
6	To maintain and constantly refresh the project progress table, etc.

On 30.12.2020, MRD concluded the same tender with the same person. In the 2020 tender, MRD requested an official for project development and management, and in the 2022 tender, the ministry sought to contract a consultant in the field of capital investments. The same requirements were listed for both, with the only difference being that the first tender required one year of work experience, and the second tender two years of work experience. This shows that the requirements have been adapted to suit the winner of the contract, whose work in the ministry was extended for an additional 12 months.

Furthermore, the requirement on education limits competition for several reasons. Firstly, the nature of projects is not restricted in the description of duties by MRD to justify a link between the profession and the nature of the project. That the requirement for a degree in engineering, environmental or other sciences is unreasonable is also proven in the reports<sup>29</sup> prepared by the consultant himself for the work performed, with the works mainly involving preparation of various documents, translation, drafting of agendas, participation in workshops, conferences and study visits, acceptance of documents and online communication with the parties, monitoring and preparation of reports. Clearly, there is no need for the requirement for an environmental engineer. In addition to the extension of the contract to the same person, based on the conclusion of the special services contract, the criteria for the winner of the contract were also adapted, thus limiting competition. An indication of this is the fact that despite an open procedure tender, the only bid submitted was the winner.

MRD has contracted another consultant for similar purposes. Similarly to the previous tender, the requirements, among other, include: university degree in law or economy; at least two years of work experience; and to have performed similar services in the last three years from the date of the publication of the contract notice. However, the requirement for experience and performance of similar services contradict each other, causing confusion to any interested party in applying.

Three individual consultants applied for this tender. The bidder who was declared winner had the lowest financial offer, while the other two were eliminated on the grounds that their tenders were not the lowest price. In the tender dossier, MRD established that the criterion for awarding the bid is the most economically advantageous and responsive bid, while taking a decision to eliminate bidders on grounds that their bid was not the lowest. This is a violation on the part of MRD, and no elimination should take place against the criteria it decided not to apply. Of the three bid-



In addition to the extension of the contract to the same person, based on the conclusion of the special services contract, the criteria for the winner of the contract were also adapted, thus limiting competition. An indication of this is the fact that despite an open procedure tender, the only bid submitted was the winner.

ders, only the winner had a contract with the ministry, for special services. As in the previous tender, this procedure was also used for the purpose of extending the contract. The previous contract was concluded on 10.02.2021, with a duration of 12 months, meaning that the contract would expire on 10.02.2022. This date was also the deadline for the submission of bids, allowing the consultant to immediately apply to the same tender, which was most likely intended for him.

### 4.3 Assistance in the daily affairs of institutions

Various municipalities and ministries have contracted people tasked to assist certain departments in carrying out their usual work. On this issue samples were taken from the Ministry of Education, Science, Technology and Innovation (MESTI), and the Municipalities of Prizren, Malisheva, and Klina.

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<sup>29</sup> Reports were obtained following a request for access to public documents submitted in MRD on 13.09.2022.

## a. Ministry of Education, Science, Technology and Innovation

In 2022, for the contracting of consultants, MESTI initiated two procurement procedures. It aimed to hire six individual consultants in one procedure, and five individual consultants with the other, for the needs of the National Academic Recognition Information Centre - NARIC, which operates under MESTI.

With the first tender, MESTI contracted only one bidder, declaring the bids of other operators as irresponsible on various grounds, such as: failure to meet the criteria for work experience; failure to prove the know-how required by the tender dossier; lack of declaration under oath, etc.

The tender dossier stated that the tender is divided into six lots, and the title of the tender gives us the understanding that the purpose is the contracting of six consultants. However, the same tender dossier also states that all bidders can bid on all Lots and one bidder can be awarded all six Lots. If the ministry needs to contract six consultants, how is it possible for one person to carry out the work for the other five requirements?!. This omission could only have happened if MESTI's goal from the start was to contract only one consultant, otherwise the ministry would have stipulated in the tender dossier that the maximum number of lots/parts that can be awarded to a bidder is one, rather than six. After analyzing the documents, MESTI contracted only one consultant with this tender.

The contracted consultant met the requirements of the ministry as per the tender dossier. However, bid documents<sup>30</sup> also show that this consultant has been contracted to this ministry since 2017. This is listed in the CV submitted with the contracts. The last contract concluded between the consultant and the ministry was in 2021, signed on 01.03.2021 as a fixed-term contract, with a one year duration. The 2021 contract ended on 01.03.2022, and the new contract was signed on 09.03.2022, i.e. immediately after the expiry of the previous contract. This is yet another case where SSAs were used to extend employment contracts in the same job position.

2017

The contracted consultant met the requirements of the ministry as per the tender dossier. However, bid documents also show that this consultant has been contracted to this ministry since 2017.

2021

This is listed in the CV submitted with the contracts. The last contract concluded between the consultant and the ministry was in 2021, signed on 01.03.2021 as a fixed-term contract, with a one year duration.

2022

The 2021 contract ended on 01.03.2022, and the new contract was signed on 09.03.2022, i.e. immediately after the expiry of the previous contract. This is yet another case where SSAs were used to extend employment contracts in the same job position.

On 05.06.2022, MESTI announced the new tender through which five consultants were contracted, for the same NARIC center. Unlike the previous case, this tender dossier stipulates that the tender is divided into Lots or sections, and bidders can apply for all Lots. This time, however, no mention is made of the number of tenders the bidders can be awarded, which resulted with the contracting of five consultants of ten (10) that applied.

30 The economic operator's bid was received after the request for access to public documents submitted on 13.09.2022.

The standard list for the five eliminated bidders was included in the ministry's decision. Five were eliminated for failing to meet some of the requirements under the tender dossier, and three were eliminated because their bids were not with the lowest price. This decision is contradictory and this should form the grounds for the elimination of the three bidders, as the ministry specified in the tender dossier that the criterion for awarding the contract is the most economically advantageous bid, rather than the lowest price.

The analysis of the documents of the tender dossier show that four out of five contracted consultants were already working in the ministry, some from 2019.

One consultant contracted in this tender, signed a work contract with the ministry on 15.08. 2019, expected to end on 13.02.2020. The same consultant, on December 30, 2020, founded a non-governmental organization (NGO) with the consultant contracted in the first tender of this ministry, above. This NGO had signed an agreement with the ministry, and 01.03.2021, the contract with the same consultant was extended, on behalf of the agreement of the NGO and the ministry. The contract is extended to the consultant for a one-year period, who is also the founder of the NGO. How is it that a newly established organization, with only three months of experience, has specialized to the extent the ministry offers consultancy work?!. It is clear that a few persons employed through SSAs in the ministry have founded an NGO in order to extend their earlier contracts. Moreover, in its description of purpose<sup>31</sup> the NGO does not indicate it provides consulting services.



This decision is contradictory and this should form the grounds for the elimination of the three bidders, as the ministry specified in the tender dossier that the criterion for awarding the contract is the most economically advantageous bid, rather than the lowest price.

## b. Municipality of Malisheva

In 2022, Municipality of Malisheva contracted six consultants to work in several directorates, including in the Directorate of Education, Directorate of Agriculture, Directorate of Administration, Directorate of Economy, and two in the Directorate of Urbanism. The analysis of the description of duties for which the consultants in question will be hired shows that these are daily administrative works. In general, duties involve identifying the needs of the directorate, completing databases, accepting applications, holding meetings, maintaining IT equipment and software, accepting cases, registering cases in systems, reporting expenses and performing other field work, which should all be carried out by regular employees within the department.

Moreover, according to the eligibility requirements listed in the tender dossier, the municipality wants to contract a consultant with no or only six months of work experience.

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<sup>31</sup> Electronic System of Non-Governmental Organizations, accessible at: <https://ojq.rks-gov.net/KerkoOJQ.aspx> (last accessed 06.12.2022).

**TABLE 05.** Requirements of the Municipality of Malisheva for the contracting of consultants.

Lot	Directorates	Education and qualification requirements	Work experience requirement
1	Education	Faculty of Education, FMNS, Philosophical or Social Sciences	0
2	Agriculture	Faculty of Agriculture and certification as an agricultural consultant	6 months
3	Administration	Faculty of Computer Science	2 years
4	Economy	Faculty of Economy and certification from the Treasury of Kosovo	6 months
5	Urbanism	Faculty of Economy	6 months
6	Urbanism	University of Public Administration	6 months

What is first observed is that some of the contracted consultants were previously employed in the municipality. In the bid of the consultant contracted with Lot 2, we see<sup>32</sup> that the consultant was employed in the same directorate from 2018 to 2020 through a special service agreement. The same situation was with the consultants contracted with lots 4 and 5. The consultant contracted with Lot 3 did not meet the requirements of the municipality as he was asked to provide proof of the work experience of two years. In his bid submitted to the municipality there is no document proving the required experience. The list of tender documents generated by the e-procurement system shows that such a document has not been submitted, which means the bid would have to be rejected. The bid evaluation committee did not adequately and responsibly evaluate the bids, and, even stated in the report that this requirement has been met. The municipality shouldn't have declared as winner a bidder who doesn't meet the requirements, which were already minimal.

## 2. Municipality of Klina

The Municipality of Klina contracted a business registration expert for a period of six months, and a social works expert for a period of 12 months. These positions should be filled in regular recruitment procedures and these duties should be carried out by public officials, as this is a service provided by the municipality on daily basis and not a services to be completed within a short contracting period only.

Requirements for this contract included university degrees and minimum work experience. Despite the procedure titled as a request for experts, it is clear that works to be carried out are not those of an expert's profile.

<sup>32</sup> The economic operator's bid was received after the request for access to public documents submitted on 13.09.2022

**TABLE 06.** Positions and requirements for experts contracted by the Municipality of Klina

Title of Position	Business registration expert	Social works expert
<b>Education</b>	Faculty of Economy, Law, or similar	Faculty of Sociology, Pedagogy, Psychology, Law, or similar
<b>Work experience</b>	1 year of work experience	1 year of work experience

The business registration expert will have to maintain contact with the businesses of the Municipality of Klina, obtain data on the registration of businesses, register and close businesses, monitor all changes in businesses, etc. The social works expert will mainly assist the Center for Social Work to assess the needs of the community, assist workers in the center in their daily activities, help in the review and registration of the core dates of social assistance, assist in promotion of the services offered, etc. These are purely administrative tasks, the performance of which should be done by officers hired through regular recruitment procedures. As seen in the description, no social policy development assistance is requested, or develop innovative ideas to improve the two sectors or perform other duties which are responsibilities of regular officers. Moreover, there is no need to hire a business registration expert with specific knowledge in this field as the entire procedure is explained step-by-step in a user-friendly manual<sup>33</sup> which is accessible to all interested parties.

#### 4.4 Performing inspection works

The Ministry of Agriculture, Forestry and Rural Development (MAFRD) and the Municipality of Ferizaj have used the SSAs to hire consultants tasked with carrying out the work of inspectors and perform inspections. Inspection is primarily a state and public duty that can

only be performed by public bodies and public officials and, consequently, cannot be a responsibility of temporary or fixed-term staff, as is the case with SSAs.

#### a. Ministry of Agriculture, Forestry and Rural Development

MAFRD initiated a tender to recruit individual consultants through SSAs, as technical inspectors for the needs of the Agricultural Development Agency (ADA). 14 consultants were contracted with this tender, five for the region of Prishtina, three for the region of Ferizaj, two for the region of Gjilan, two for the region of Peja, one for the region of Mitrovica and one for the region of Gjakova, for a one-year period.

For the seven lots the award criterion was the most economically advantageous bid, and bidders were required to have knowledge and experience in computers, software programs, knowledge of inspection procedures, knowledge of laws and regulations related to support in agriculture and rural development, communication and teamwork skills, proficiency in the use of Microsoft Office, and university degree in agronomy, food technology, social, exact/technical sciences. Graduates of fields not related to agriculture are not relevant and do not provide any value, as inspectors are intended for the needs of ADA. Therefore, MAFRD should not allow candidates from fields such as marketing, business administration, arts, law,

<sup>33</sup> Kosovo Business Registration Agency, "Registry of Businesses in Kosovo". Accessible at: <https://rbk.rks-gov.net/manuali-online.pdf> (last accessed on 14.11.2022).



etc. to apply. Moreover, MAFRD has not requested any submission of documents to serve as evidence of eligibility, including proof of work experience. Because such proof was requested, these are not specialized consultants in the field, but rather persons who only have basic knowledge.

The procedure has resulted in the award of these contracts to persons who do not meet the minimum professional criteria. 13 out of 14 contracted consultants provided no proof of knowledge of the Microsoft Office package or other computer skills, as required in the tender dossier. A written declaration that one possesses such skills is not proof of meeting the requirement. Three consultants had previously worked in ADA, and one consultant was employed in the ministry for five years through an SSA. Of the 14 contracted consultants, nine are graduates of the Faculty of Agriculture. Others have not graduated in this field, but according to the documents submitted, they have never worked on projects related to agriculture and inspection. Some have even only worked as interns in institutions.

Based on the description of the duties, it is clear that this is not inspection work, but rather monitoring of the implementation of projects and reporting to the direct supervisor. The job description of the consultants includes how to review and prepare documentation of files to be checked in the field, prepare control lists, perform field controls to check for the implementation of projects, participate in trainings, report on controls performed, and other duties as requested by the supervisor.

## **b. Municipality of Ferizaj**

The Municipality of Ferizaj has also taken similar actions as MAFRD, initiating tender procedures to hire staff in order to achieve the property tax targets. However, in this case the municipality contracted a company to carry out inspection works in at least 20% of buildings and provide services of collection and enforced collection of property taxes.



Three consultants had previously worked in ADA, and one consultant was employed in the ministry for five years through an SSA.

The tender award criterion in this procedure was the most economically advantageous bid. Bidders were required to hire professional staff with adequate education and qualifications. For example, for the position of Project Manager the requirement was for a Master's degree in economy. Notarized proof of qualification must be submitted, including an employment contract, as well as a submission of the decision for the project manager, signed and sealed.

This activity was not planned with the procurement plan 2022. However, the Municipality of Ferizaj justified it with the lack of inspection staff, and the funds for this tender were provided by the Directorate of Finance. The municipality justified the request for inspection on the lack of staff. However, in the procedure the municipality only required one project manager, without specifying the number of additional inspectors needed to achieve the property tax objectives. The municipality has not foreseen the number of additional staff it needs, this putting the fulfillment of the objective at risk, as the company will not know the needs of the municipality. Moreover, the municipality has not requested the company to perform a needs assessment.

For this procurement activity 80,000.00 Euro have been allocated. The winning economic operator was the only bidder to submit an offer, in the value of 72,000.00 Euros, which was also the value of the signed contract. The winning company was founded in April 2021, whereas the works performed by the company include the organization of conferences and business fairs, publication of surveys, wholesale trade of computers and other ancillary equipment, computer program activities, etc.

The description of activities of the Business Registration Agency (KBRA) doesn't include inspection works or activities similar to the services of collection and enforced collection of property tax. There was no request for qualified and specialized staff, and the winning company is not specialized in collection.

Highly specific skills are required to perform inspections in buildings and perform mandatory property tax collections. Inspection work is completely separate from enforced tax collection. Whereas, the Manager, as the only employee required by the contracting authority, holds a degree in economy, majoring in Management and Informatics. Education is not linked with the works to be performed, and no CV or proof of qualification or work experience was provided. However, in a work plan submitted by the company indicates that it will hire several groups of surveyors who will carry out the verification of the buildings, but failed to provide proof of their skills to perform such works. Hence, on-site inspections will be carried out by people who potentially have insufficient skills for this work. For collection services and enforced collection of property tax, the company will distribute fliers with awareness messages. In addition, for this purpose, when doing field work, surveyors will inform the citizens that the payment of property taxes brings benefits to the municipality, and contributes to the development and the wellbeing of citizens. In other words, the company will not do any property tax collection and enforced collection, but will rather conduct an awareness campaign. This makes the operator an irresponsible bidder, having failed to provide a debt collection implementation plan, and the municipality must comply with its requirements. The municipality must not outsource companies to collect taxes, as this a municipal power, and alternative solutions to the institution's requirements should be accepted.

**TABLE 7:** Duties to be performed by the economic operator, and its work plan

Main duties according to the title of the tender	Inspection of at least 20% of buildings	Collection and enforced collection of property tax
Duties included in the work plan of the economic operator		

A conclusion can be drawn that this tender will not fulfill the objective of the municipality. The municipality will spend 72,000.00 Euros for these services, when it could have easily implemented itself an awareness-raising campaign on the benefits of property tax payments.

## 4.5 Legal Representation

Contracting of an expert for legal representation is a more complex case. Numerous court disputes involving municipalities led to a higher workload of legal offices and legal representatives of municipalities. SSAs were used as a solution, contracting legal representatives, individual lawyers or law firms. This goes beyond what the law and relevant bylaws allow.

ROGPP envisages a number of institutional services that can be offered through an SSA, including procurement, Customs, taxation, budget and pensions<sup>34</sup>. However, this list is not exhaustive. Among other things, through its interpretation of special agreements<sup>35</sup> PPRC stated that agreements should be used only for the services that the institution needs and cannot perform through recruitment procedures under the Law on Public Officials. This means that institutions cannot outsource persons whose purpose is to perform the same jobs as public officials recruited through regular procedures.

<sup>34</sup> Article 59 of the Rules and Operational Guideline for Public Procurement.

<sup>35</sup> Answer received after a request for interpretation send by D+ on 17.10.2022.

■ **TABLE 08.** Contracting of legal representatives in a few municipalities

Municipalities that have contracted legal representation	Value of Contract
Municipality of Prishtina	60,000.00 euro
Municipality of Vushtrri	30,000.00 euro
Municipality of Obiliq	98,000.00 euro
Municipality of Gjilan	1,999.98 euro
Municipality of Mitrovica South	108,000.00 euro

The municipalities we reviewed all have legal offices or legal departments, and in some cases even a separate municipal attorney, yet they outsourced companies for legal representation. Both legal offices and municipal attorneys are authorized to represent and defend the interests of the municipality in civil, criminal, executive and administrative judicial procedures in the country's courts at all levels. Thus, SSAs shouldn't be used in such cases. If the legal office or the municipal attorney lack the capacities for litigation, the matter should be addressed to relevant institutions in order to ensure a solution for all municipalities. Contracting legal representation through tenders, for short periods of time, in addition to not envisaged in the law, is also inefficient as court processes take a long time and cases cannot be completed within a year.

There is also a high disproportion of monthly remuneration of officials of legal offices and payments made to outsourced companies. This can also be seen as a discouragement for such officials, and could lower their motivation to work, which consequently leads to a failure in individual and office performance.

### a. Municipality of Prishtina

The Municipality of Prishtina also has a legal sector with a number of officers who are also tasked, among other duties, to represent the municipality and defend its interests in court. On the other hand, the municipality has been outsourcing lawyers or law firms for several years now, to represent the municipality.


In 2019, the Municipality of Prishtina opened a tender for representation, which was canceled after no bidders was found as responsive. In 2020 the Municipality contracted a law firm twice. In both procedures it applied a negotiated procedure without publishing the contract notice. In 2021, it had initiated an open procedure with the same purpose, which activity was then canceled for the same reason, declaring all bidders as irresponsible. The first tender of 2022 was initiated with a negotiated procedure, with an estimated value of 60,000.00 Euros. This year the Municipality allocated 90,000.00 Euros for representation and developed this activity with a negotiated procedure without publishing the contract notice, for only six months.

For the first tender of 2022, the contract envisaged a total price of 50,000.00 Euros for the services, concluded for a period of three months, with the lowest price as the award criterion. This tender applied a negotiated procedure, despite the Law only envisaging a few cases when such contracts can be concluded. According to the Law on Public Procurement (LPP) there are only a few cases where this procedure can be applied, i.e. in cases where the contract is followed by a design competition exercised through open or limited procedures, and which has to be awarded to the successful candidate, and if the bidder enjoys an exclusive right to provide the service<sup>36</sup>. This case involves no exclusive rights or activities that follow any previous contract rendering it necessary to sign with a subsequent contract.

The municipality has concluded another contract with the same economic operator in 2020, through a negotiated procedure. However, the municipality had no right to conclude a tender using such procedures neither in 2020 nor in 2022. Application of this procedure for reasons other than those foreseen in the law is harmful as it limits competition, and the municipality reduces its opportunity to receive the best service. The municipality justified this action stating that the open procedure carried out earlier was not under review in PRB, which at that time was without a functioning board. Thus the Municipality of Pristina developed a negotiated procedure based on past experiences and only invited one operator to participate in this procurement activity.

## b. Municipality of Vushtrri

The Municipality of Vushtrri has also contracted similar services, in the amount of 30,000.00 Euros for three years. The municipality of Vushtrri also has a legal office and a public attorney whose duty it is to represent the municipality and defend the interests of the municipality in court, at all levels. The outsourced lawyer in the municipality, among other things, has the duty to represent the municipality in court. This means that the municipality pays both its regular mu-



In both procedures it applied a negotiated procedure without publishing the contract notice.

nicipal officials and the outsourced company for the same work.

According to the tender dossier, to apply for this tender bidders were required to submit declaration under oath, a court certificate, a certificate issued by the Tax Administration of Kosovo (ATK) confirming that the economic operator has no tax debt, a copy of the business certificate, and the license to practice law issued by the Bar Association.

The Municipality of Vushtrri has not required proof of work experience, which should be required for such works. If the Municipality of Vushtrri needs to contract additional legal representatives of the municipality, it should recruit professional persons.

Among other things, the Municipality of Vushtrri included in the tender dossier the eligibility requirements for winning bidder, which documents must be submitted by the bidder prior to the award of the contract. In case of failure to submit the documents, the tender will be rejected. This contracting procedure is inappropriate, because how can one assess which economic operator it should proceed further in the procedure if adequate documents are not made available during evaluation. This also contradicts the rules established for the selection of economic operators, which state that the requirements determine whether an operator is eligible and do not constitute grounds for awarding the contract<sup>37</sup>. Hence, the documents should have been submitted with the bid by the deadline for submission of bids.

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<sup>36</sup> Law No. 04/L-042 on Public Procurement in the Republic of Kosovo. Article 35, item 2.3 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772>

<sup>37</sup> Rules and Operational Guidelines for Public Procurement Par. 26.5.

Three economic operators submitted their bids. Two bids were reason as they were not with the lowest price. This means that the economic operators were only evaluated on the basis of the financial offer, rather than professional capacities they offer. This contracting should be avoided, as it may result in spending public money without generating benefits to the municipality, and contracting of incompetent persons.

The Municipality of Vushtrri has also requested the economic operators to submit the license to practice law, issued by the Bar Association. After reviewing the financial offers, the municipality invites three economic operators separately for negotiations. After the negotiation, only the winning operator is required to submit eligibility and professional capacity documentation. In this process, the municipality only requested TAK certificate, court certificate and a copy of the bank account, but not eligibility documents, such as proof of business registration and the license to practice law issued by the Bar. Thus, the municipality failed to observe its own requirements as defined in the tender dossier.

Such a situation should be avoided at any cost, as the eligibility and qualification criteria make the difference between responsible and irresponsible operators, directly impacting the decision of the contracting authority. Such tenders should be evaluated and awarded on the basis of the most economically advantageous criterion, rather than the lowest price, as quality and professionalism must be ensured, particularly when it comes to such services. The winning operator offered a low bid, and continued to low its price in negotiations, as the operator stated, with fees lower than those applied by the Bar Association, only for its bid to be the lowest and declared as winner. This is highly inappropriate, as some positions are under the baseline value of fees applied by the Bar<sup>38</sup>, and contracts should not be concluded with abnormally low prices, as this is prohibited by the Law on Public Procurement. The contracting authority should also strive to obtain quality services, rather than spend public money for poor services which do not yield results.



The municipality of Vushtrri also has a legal office and a public attorney whose duty it is to represent the municipality and defend the interests of the municipality in court, at all levels. The outsourced lawyer in the municipality, among other things, has the duty to represent the municipality in court. This means that the municipality pays both its regular municipal officials and the outsourced company for the same work.

### c. Municipality of Obiliq

Despite having a legal office, the municipality of Obiliq initiated two procurement procedures for legal representation of the municipality, one in 2021 with 25,000.00 Euros allocated for this purpose, and the other in 2022 with 98,000.00 Euros allocated, with a duration of 36 months.

Both activities were developed through a negotiated procedure, despite it had no right to do so, as it undermines the basic principles of transparency and competition, which is why it should only be used in exceptional cases. This situation is not exceptional, nor does it include exclusive rights of an economic operator or a procedure that preceded another design procedure. However, the Municipality of Obiliq, in the notification sent to PPRC for the use of this procedure, justified that they didn't foresee the lawsuits against the municipality and they couldn't risk losing time with the use of the open procedure. This reason is not valid

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38 Kosovo Bar Association. Lawyers' fees. Accessible at: <https://www.oak-ks.org/tarifa>


because the Declaration of Needs and Availability of Funds<sup>39</sup> indicates that this procurement activity was planned in the annual procurement plan. Therefore, the municipality should have initiated this procurement activity in advance and develop procedures that guarantee transparency and competition.

Both tenders were awarded to the same economic operator, which is an indication that the negotiated procedure and the invitation of only one economic operator to participate in the procedure was done deliberately, to award the contract to this operator. This fact has been stated by the municipality in the notification to the PPRC, that negotiations will be conducted with the current economic operator who represents the municipality. According to the ROGPP, specific circumstances must exist in order to use this procedure and the contract can be negotiated with an economic operator if that economic operator has exclusive rights for services and if the contract follows a design competition<sup>40</sup>. This means that regardless of the situation, the municipality has no legal basis to conduct this procedure.

#### d. Municipality of Gjilan

Municipality of Gjilan, using the minimum value procedure developed two procurement procedures with the same subject in the same year, 2022, for the provision of legal services and representation of the municipality. Both these tenders were awarded to the same economic operator. Minimum value contracts are contracts which do not exceed the value of 1,000.00 Euros. However, despite having a minimum value, effective competition, transparency and effectiveness in the use of public funds must be ensured.

Despite the municipality having a separate municipal attorney's office, this has not deemed sufficient and a request was made for additional staff in this office using an SSA. This goes against the rules for these agreements, as SSAs should never serve as employment contracts.



Both activities were developed through a negotiated procedure, despite it had no right to do so, as it undermines the basic principles of transparency and competition

The first tender was concluded for 22 working days with a value of 998.80 Euros, and the second tender was for 19 working days against a fee of 997.50 Euros. Based on all the information provided by the municipality, the procedure had a number of errors. Firstly, the same economic operator, for 41 working days, was awarded with two contracts which together reach a value of 1,996.3 Euros. Although the amount is high compared to the number of days, it is not possible to perform such duties effectively for 41 days. Court proceedings last more than a month and such contracting fulfills no objective. In this case the municipality wasted public money and has not received value for money.


Payments to this economic operator were made in a single invoice, without listing the activities of the operator. Invoice included the procurement title and the total amount for payment. In fact, no report or monitoring document for the work of 41 days has been attached, even though ROGPP require the contracting authority to draft reports on the acceptance of goods, works or services<sup>41</sup>. This report was either not drafted, or was not provided by the municipality even after a request for access to public documents.

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<sup>39</sup> Document accessible on the E-procurement platform.

<sup>40</sup> Rules and Operational Guidelines for Public Procurement Par. 51.2.

<sup>41</sup> Rules and Operational Guidelines for Public Procurement Par. 54.10.



Despite the municipality having a separate municipal attorney's office, this has not deemed sufficient and a request was made for additional staff in this office using an SSA.



The municipality must focus its activity in recruiting a municipal attorney using regular recruitment procedures, as this is a regular position in the municipality.

### **e. Municipality of Mitrovica South**

The Municipality of Mitrovica South concluded a contract in the amount of 101,962.00 Euros for legal representation for a period of three years. Despite applying an open procedure, only the winning economic operator submitted a bid.

The municipality stated that it had lost its municipal attorney and many cases remained pending. This was the justification of the municipality to apply this procedure and shorten the tender submission deadline. However, this is inaccurate, as according to official procurement documents the municipality declared it has planned this tender in its procurement plan.

The municipality must focus its activity in recruiting a municipal attorney using regular recruitment procedures, as this is a regular position in the municipality. This would resolve the issue of the lack of municipal attorney indefinitely, rather than for only three years. This would also mean that the municipality will pay for the municipal attorney for many more years than the duration of the contract. The contract notice for this procurement process was published on 15.02.2022, and the contract was concluded on 15.03.2022. For one month, the municipality could have implemented the Law on Public Officials and fill the remaining vacancy.

# 5. Conclusions

Special service agreement are very important and useful when used for the purposes defined by the law. The conclusion of SSAs through procurement procedures was intended to limit misuse, to ensure that the process is transparent and restricted. However, institutions, as above, are not following the provisions which define when should an SSA be applied.

The most frequent violation with SSAs is that they are being used to hire additional staff for ordinary administrative works in the institution, which should be performed by public officials hired through regular recruitment procedures. Initiation of other procedures for the recruitment of experts/consultants or advisers is being used to extend the employment relation of experts/ consultants or advisers who are already employed through an SSA. Institutional requirements for these experts are very low, both in terms of work experience and qualifications.

Municipality of Drenas, has contracted as consultants people who are tasked to perform administrative work in the procurement office, which should be carried out by public servants in the municipality. Municipality of Kamenica, although requiring consultants to have at least two years of work experience, did not request proof of experience with adequate documents. Although not mandatory, this should be required to prevent false statement regarding work experience. For several consecutive years, MESTI used SSAs to contract the same person to perform the same work that should be performed by the officials of the ministry. In a tender procedure for the contracting of consultant for a number of directorate, the Municipality of Malisheva contracted people with little to six months of work experience. Municipality of Klina contracted persons with a working experience of 1 to 2 years as experts. Municipality of Ferizaj contracted an economic operator who failed to include in the work plan one of the objectives of the tender. Although municipalities have their legal representatives, they outsourced legal representation with rather high values.

This report reviewed 19 tenders in 13 contracting authorities. These authorities planned to spend a total of 647,055.22 Euros. More specifically, the Municipality of Kamenica allocated 26,783.88 Euros, Municipality of Drenas allocated 11,700.00 Euros, Municipality of Gjilan allocated 1,999.98 Euros, MESTI allocated 59,400.00 Euros, MRD allocated 9,600.00 Euros, Municipality of Pristina allocated 60,000.00 Euros, Municipality of Vushtrri has allocated 30,000.00 Euros, Municipality of Obiliq allocated 98,000.00 Euros, Municipality of Mitrovica South allocated 108,000.00 Euros, Municipality of Klina allocated 6,900.00 Euros, Municipality of Malisheva allocated 35,808.00 Euros, Municipality of Ferizaj has allocated 80,000.00 Euros, and MAFRD allocated 118,863.36 Euros.

Gaps in the legal framework on these agreements made it easier to contract people through special service agreements for the performance of works that should be carried out by public officials hired through regular recruitment procedures.



## 6. Recommendations

- The lack of staff in municipalities and ministries should be addressed to the Ministry of Internal Affairs, which is responsible for public administration, including staff recruitment, in order to recruit competent persons through regular recruitment procedures.
- Reorganize the staff in central and local level institutions, following an analysis of shortages and needs for additional staff in accordance with the responsibilities of departments in ministries or directorates in municipalities.
- Increase the supervision of PPRC on the use of SSAs by institutions.
- Identify municipalities that need additional internal resources for legal representation and offer long-term solutions.
- In coordination with the Ministry of Internal Affairs, to specify the legal framework governing SSAs, specifically the Rules and Operational Guide for Public Procurement and the Rules for the Procurement of Special Services for Individual Consultants, to leave no room for interpretation and misuse.
- Municipalities and ministries to stop hiring people for routine work in departments or directorates, disguised as consultants or experts of specific jobs.
- Municipalities to avoid using SSAs for other hirings and rather apply the public procurement legislation.
- Implement the annual procurement plans and accurately identify the needs that must be procured, to ensure that no hiring of staff takes place through SSAs on grounds of urgency
- Restrict the use of negotiated procedures without publication of contract notices for the contracting of consultants/experts/advisors or legal representatives through SSAs, in order not to limit competition.
- Ministries and municipalities should apply the most economically advantageous bid criterion when awarding tenders, not only for special service agreements but also for any contracting where quality is most important.
- PPRC to provide training for procurement officials regarding the use of SSAs to minimize errors.
- PPRC to play an active role in providing advice to ministries and municipalities to reduce the use of the negotiated procedures without publication of the contract notice.
- In every procurement activity, unless otherwise required, to ensure transparency and competition between economic operators using the open procedures, and not discriminatory criteria.
- To reduce the use of minimum value contracts and, when they are used, to ensure competition between economic operators and transparency regarding the objectives of the contract.



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