

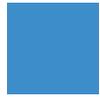


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Monitoring of Public Procurement Activities in Five Municipalities: Gjakova, Prishtina, Prizren, Gjilan, and Peja

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GOOD GOVERNANCE

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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 "Monitorimi i prokurimit publik në pesë komuna: Gjakovë, Prishtinë, Prizren, Gjiilan dhe Pejë".

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List of abbreviations

CA ↗ Contracting Authority

CPA ↗ Central Procurement Agency

EO ↗ Economic Operator

FVA ↗ Food and Veterinary Agency

FMC ↗ Family Medicine Center

GEO ↗ Group of Economic Operators

IT ↗ Information Technology

KBRA ↗ Kosovo Business Registration Agency

LPP ↗ Law on Public Procurement

MLGA ↗ Ministry of Local Government Administration

MFMC ↗ Main Family Medicine Center

PPRC ↗ Public Procurement Regulatory Commission

PRB ↗ Procurement Review Body

ROGPP ↗ Rules and Operational Guidelines for Public Procurement

TAK ↗ Tax Administration of Kosovo

TD ↗ Tender Dossier

Summary of findings

- Public institutions have applied discriminatory criteria which have harmed competition and lowered the number of bidders.
- Public institutions have awarded contracts to economic operators who did not fulfil the requirements defined in the Tender Dossier.
- Although institutions referenced legal provisions for their actions, they failed to fully observe those provisions.
- Evaluation committees have not responsibly and professionally evaluated the bids of economic operators.
- Despite the possibility to conclude contracts that are more favorable for the public money spent, public institutions continue to conclude contracts with higher prices, or contracts that do not serve the public interest.
- Public institutions have not clearly and legally stipulated the requirements to be met by interested economic operators, which leaves room for winning operators to manipulate and evade the requirements.
- Public institutions continue to use negotiated procedures, with no publication of contracts, despite the legal requirements for the use of this procedure not being met.
- Although annual procurement plans are drafted and approved according to the steps outlined in the law, such plans are not observed by institutions, leading to other chain problems in procurement.
- Failing to observe the criteria for the use of procedures, public institutions have signed contracts in higher values, due to an insufficient number of bids submitted.
- As a result of the non-appointment of new members of the Procurement Review Body (PRB), public institutions, in order to implement projects, were forced to take actions which were not in line with the Law on Public Procurement.
- Public institutions concluded contracts with various economic operators which were not specialized in the performance of such services.
- Due to unspecified bills of quantities by public institutions, economic operators have used the possibility of benefiting from applying different prices for similar works or supplies.
- Public institutions do not apply the right of division of responsibilities in fulfilling the requirements between members of economic operator group/s.

- Public institutions continue to receive invoices from economic operators which do not accurately specify what was purchased, in what quantity and in what price. To eliminate the possibility for operator to manipulate in prices and quantities, institutions must require them to accurately list the products purchased and follow the pricing schedules attached to the bill of quantities.

Municipality of Gjakova

- Has reduced competition by applying an ISO standard irrelevant to the performance of the contract.
- Has awarded contracts to economic operators who have not fulfilled the requirements for the professional staff to be engaged in the implementation of the contract.
- Has not requested additional clarification on the missing Value Added Tax certificate and, unlawfully, calling on this omission, rejected the bid entirely.
- Initially signed the contract and then annulled it after later noticing mistakes in the contract.
- Has failed to take steps to extend the validity of the bid, which led to the contract annulment.

Municipality of Pristina

- In 2021 and 2022, proceeded with the conclusion of the negotiated contract without publication of the contract notice, increasing the yearly value of the contract, although the contracted platform was not being used and wasn't functioning well when it was used.
- Concluded the contract although neither the owner of the company nor the person authorized by the company signed the declaration under oath, an action against the Law on Public Procurement.
- Used the negotiated procedure without publication of the contract notice to supply rapid antigen tests, although such a contract could have been implemented with an open procedure as there was no emergency necessitating the use of this procedure.
- As a result of the use of the negotiated procedure, products were purchased at prices higher than those of the market.
- With the justification that the contract for physical security of municipality's buildings is pending review in Procurement Review Body due to the lack of a board, it conducted a new procurement activity using the negotiated procedure without publication of the contract notice.

Municipality of Prizren

- Concluded a contract with the economic operator it had requested Procurement Review Body to disqualify, after no decision was taken due to the Procurement Review Body having no functional board, it concluded the contract with the same operator.
- Concluded a contract for awareness-raising of students and drivers on traffic behavior with a company the registered activities of which were clearing of various areas.
- Did not use its right to request additional information on the abnormally low prices, ignoring the situation and concluding contract with the winning operator, with a bid value 64.14% lower than the average price of responsive bids.
- As a result of an erroneous evaluation of bids, it delayed the organization of the 33rd Edition of the Music Festival “Zambaku i Prizrenit” for additional five months.

Municipality of Gjilan

- Using a negotiated procedure, with no publication of the contract notice, concluded two contracts with the same group of economic operators for the cleaning of school facilities, even though such activities were already planned through the annual procurement plan.
- Concluded a contract with an economic operator who submitted the bill of quantities listing the net wages of employees, fully ignoring the tax liabilities deducted from the gross

wage. Neither the municipality nor the awarded operator of the contract ensured the fulfillment of this legal obligation.

- Shortened the deadline for the submission of bids in the tender aimed in addressing the issue of stray dogs, without providing a legal clarification for such an action.

Municipality of Peja

- Failed to correctly evaluate the bid of the economic operator who was initially declared winner and noticed that the arithmetic mistakes exceed 2% of the allowed amount, which resulted in the annulment of the contract notice, thus delaying the implementation of the project.
- As a result of inaccurate identification of the needs, it drafted a generic bill of quantities in which the same operator applied different prices for the same works and products.
- Used double standards with regards in evaluating bids of economic operators. Excluded from the competition four economic operators on grounds of not having submitted a catalogue, which requirement was also not fulfilled by the winning bidder.
- Failed to act against an operator who delayed the completion of the contract for almost one year, for which the contract manager also failed to submit regular reports.



Municipality of Gjakova

Commissioning of automatic hand sanitizer dispensers

At the end of 2021, the Municipality of Gjakova announced the contract award notice for the commissioning of automatic hand sanitizer dispenser, with procurement number 632-21-10207-1-2-1. The purpose of this procurement activity with an estimated contract value of 51,324.00 EUR was to commission 91 automatic hand sanitizer dispensers for 12 months, which will be placed in schools in the Municipality of Gjakova.

The Municipality of Gjakova also had an earlier similar contract for the commissioning of such dispensers (05.11.2020 – 04.11.2021), concluded with the consortium N.Sh Alb Consulting; Fresh - C.O LLC in the amount of 49,140.00 EUR. Despite both tenders were concluded using an open procedure, with an estimated value of 98,280.00 EUR, only one bidder (N.Sh Alb Consulting; Fresh – C.O LLC) submitted a bid and was awarded the contract in both cases. One reason for this reduced competition is the technical requirement in the Tender Dossier, that the economic operator must have an ISO 22716 license – good production practices.

ISO 22716 is a certification that provides guidelines for the production, control, storage and delivery of cosmetic products. This standard serves as guidance for cosmetic products, and it doesn't apply to the distribution of finished products¹. To ensure competition between economic operators and, consequently, to contract the lowest price, the municipality shouldn't have applied this criterion, as it was not relevant for the products requested in the Tender Dossier and could have been replaced with other requirements that guarantee quality and do not eliminate competition.

It has been noted also in similar procurement activities aimed at commissioning disinfection dispensers, administered by other contracting authorities (see table 1 below), that this requirement has limited competition. In the selected cases where the ISO 22716 certificate was requested, only one (1) economic operator submitted a bid, while the Kosovo average is 4.5 economic operators per public procurement activity².

1 ISO 22716:2007. Cosmetics – Good Manufacturing Practices (GMP) – Guidelines on Good Manufacturing Practices. <https://www.iso.org/standard/36437.html> (last accessed on 07.11.2022).

2 Report on Public Procurement Activity in Kosovo for 2021. (last accessed on 07.11.2022).

In an another similar tender, which didn't include this requirement but rather only proof of completed contracts of similar nature in the last three years, four economic operators participated, and the price was contracted for 30% cheaper than the projected value.

TABLE 1. Comparison of procurement activities for the commissioning of disinfection dispensers in cases where ISO 22716 certificate was required and where it was not

Contracting Authority	Procurement No.	Is ISO 22716 required?	Number of bids received	Winning Economic Operator
Universiteti Haxhi Zeka	uhz-21-7798-2-3-6	Yes	1	N.Sh. Alb Consulting; Fresh-C.O
Ministry of Labour and Social Welfare	209-20-7952-2-3-6	Yes	1	N.Sh. Alb Consulting; Fresh-C.O
Municipality of Gjakova (2020)	632-20-5759-1-2-1	Yes	1	N.Sh. Alb Consulting; Fresh-C.O
Municipality of Gjakova (2021)	632-21-156-1-2-1	Yes	1	N.Sh. Alb Consulting; Fresh-C.O
Constitutional Court	243238-22-2270-2-2-1	No	4	S.V., Veterina

In addition to the application of the ISO certificate that prevented competition, the very nature of the tender was also problematic. The total indicative value of the two contracts is 98,280.00 EUR, with the winning consortium required to install the dispensers in schools of the Municipality of Gjakova, Main Family Medicine Center (MFMC), Directorate of Education, and top them up monthly with disinfectant fluid for 24 months.

According to the contract, the 91 devices will be paid 45.00 EUR per unit, for 12 months (24 months including the previous contract), which dispensers will then be returned to the economic operators.

TABLE 2. Two framework contracts concluded between the Municipality of Gjakova and N.Sh Alba Consulting; Fresh – C.O LLC

Year	Monthly price per device	Total contract value	Duration
2020	45.00 Euro	49,140.00 Euro	12 months
2021	45.00 Euro	49,140.00 Euro	12 months

This procurement activity was associated with a significant lack of transparency, including no distinction made between the price of the use of devices and the price for the supply of consumables. These two elements, which should be separate, were merged in the bill of quantities and a single price was offered for both, which was then applied to 91 devices for 12 months.

TABLE 3. Bill of quantities for the commissioning of sensor devices for hands disinfectant

No.	Description	Unit	Quantity	Months	Unit price with VAT	Total price with VAT
1.	Provision and assembly of the automatic hand sanitizer dispensers with permanent top-up of disinfectant for monthly use. The automatic dispenser must have a capacity of 1000ml.	Pieces	91	12	/	/

This generalization of supply leaves room for manipulation, with no indication of the quantity (liters) of disinfectant liquid, the price to be paid for the quantity used or the cost of maintaining the devices. The supply quantity is not indicated in neither the manager’s reports nor the invoices paid by the Municipality of Gjakova, which made payments based on the contracted price per unit, regardless of the amount of liquid used.

In total, the Municipality of Gjakova paid 1,080 EUR per dispenser for 24 months (540 EUR per year). According to the Contract Manager, these dispensers had an “unlimited” supply, depending on the demand of schools, and were topped up twice a month on average. This supply does not justify the high price of dispensers, as one (1) liter of hand sanitizer costs between two (2) and five (5) EUR³ retail. The municipality of Gjakova should’ve purchased dispensers, the market value of which varies from 16 to 100 EUR per unit, for a total cost of less than 10 thousand EUR, instead of concluding two contracts for commissioning and supply of dispensers with a total cost of about 100 thousand EUR.

Another anomaly in this procurement activity is the appointment of the Gjakova school director as contract manager by the Chief Financial Officer. All contract oversight committee reports, which are made after the handover of the supply, required the signature of the contract manager, in this case the “Yll Morina” school director on one side, and signatures of accepting committee members of the respective school, namely the school director and two other members, on the other side.

In this situation, the contract manager would sign both sides of the supervision report. On the one hand as the Contract Manager, and as committee member in the school, on the other.

3 Bid for hand sanitizers from Fresh Co, Peja.

Supply and Maintenance of “Smart City” Cameras, Multi-Function Poles, and other Equipment

In December 2021, the Municipality of Gjakova signed the public contract for the supply and maintenance of “Smart City” Cameras, Multi-Function Poles, and other equipment (Phase IV) with procurement number 632-21-3045-1-1-1. Two economic operators participated in this procurement activity, which had an estimated value of 219,630.00 EUR, and the contract was awarded to Ati-Kos LLC, which offered 218,910.00 or 720 EUR less than the estimated value.

TABLE 4. Bids of Economic Operators in this Procurement Activity

No.	Name of Economic Operator	Total bids value
1.	Ati – Kos LLC	218,910.00 EUR
2.	OE Group of Komtel Project Engineering LLC; Kujtesa Net LLC; Panamic ICT LLC	174,413.00 EUR

Prior to submitting bids, the OE Group of Komtel Project Engineering LLC; Kujtesa Net LLC; Panamic ICT LLC (hereinafter Komtel et al.), made a request for the revision of the Tender Dossier, claiming that the technical specifications were discriminatory and favored a specific producer.

Municipality of Gjakova partially approved this request, providing additional clarifications on the required devices and software versions. However, the request to divide this tender into Lots, as works were not of the same nature (laying of the fiber network, supply/installation of cameras), was rejected on the grounds that such projects are successful when companies provide all services and only one company is contacted in case of problems⁴.

Company Ati-Kos LLC was awarded the contract as the only responsible bidder, with Komtel et al bid considered as having not met some requirements. One of the reasons for the elimination of Komtel et al was related to the failure to meet the staff qualification requirement, specifically submitting only two (2) university diplomas, for A.L and D.Sh, whereas A.G had not included a diploma but rather only a CISCO certificate.

The Tender Dossier, in the technical and/or professional requirements, specified that the economic operator must submit evidence that it has engaged:

- a.) two (2) electrical engineers with a university or Master’s degree;
- b.) two (2) engineers of telecommunication networks with a university or Master’s degree.

The evidence required for this section were: “List of educational and professional qualifications of management and other staff, CVs (originals, signed by engineers), diplomas, certificates, employment contracts with the bidder.

⁴ Additional clarifications in the Tender Dossier, drafted on 21.05.2021.

However, even Ati-Kos LLC, with which the Municipality of Gjakova concluded the contract, had failed to fulfill this request. The Ati-Kos LLC bid listed two electrical engineers, Fatos Stavileci and Zekri Pozhari, for whom university degrees were submitted, and two telecommunication network engineers, for whom only CCNA (Cisco Certified Network Associate) and Panduit Installer Program – Copper and Fiber certificates were submitted.

CISCO certificates do not meet the requirement defined by the Municipality of Gjakova in the Tender Dossier for “engineers of telecommunication networks with university or Master’s degree”, as they are not university qualifications. The evaluation committee report, in the section recommending to award the tender to Ati - Kos LLC, stated that “after evaluating and comparing the bids, the committee concluded that the most responsible economic operator with the lowest price is Ati-Kos LLC”.

Technical specifications are mandatory requirements which bidders must comply with in order to be responsible⁵. As it had found that CISCO certificates in the Komtel et.al bid do not meet the requirements, the Municipality of Gjakova should have eliminated Ati-Kos LLC, based on the same violation, and the conclusion of the contract with this economic operator constitutes a violation of public procurement rules. The statement that an operator is “more responsible” shouldn’t stand, as only responsive bids should be accepted.

Another document in the winning economic operator’s bid, for which the municipality should have sought additional clarifications, was the employment contracts of the engaged staff. In the first contract, Ati-Kos LLC was represented by Z.P, who signed an employment contract with F.S. In the second contract, however, Ati Kos LLC was represented by F.S, who in turn signed an employment contract with Z.P. Both contracts were concluded on the same date: 02.01.2011.

Supply of Sanitary Materials for Schools

In June 2022, the Municipality of Gjakova announced the contract notice for the supply of sanitary materials for schools, with an estimated contract value of 45,040.00 EUR. The objective of the tender with procurement number 632-22-5530-1-2-1 was the purchase of cleaning detergents, brooms, soaps, biodegradable waste bags and other sanitary materials for schools in the Municipality of Gjakova.

The Municipality of Gjakova again applied the requirement for cosmetic products GMP ISO 22716 in this procurement activity, despite it being about the supply of sanitary materials. Following the recommendation of the Public Procurement Review Commission (PPRC), dated 17.06.2022, the municipality replaced this requirement with the ISO 90001 - 2018 quality management certificate. Three economic operators submitted bids to the Contracting Authority, in an open procedure, while the criterion for awarding the contract being the responsive tender with the lowest price.

5 Official Gazette of the Republic of Kosovo. Rules and Operational Guidelines for Public Procurement. Article 20.0. January 2021 <https://kk.rks-gov.net/shterpcce/wp-content/uploads/sites/29/2022/04/A01-Rregullat-dhe-Udhezuesi-Operativ-per-Prokurimin-Publik.pdf> (last accessed on 11.11.2022).

TABLE 5. Bids of Economic Operators in this Procurement Activity

No.	Name of Economic Operators	Total bids value
1	EO Group PM Group LLC; Ramadan Gërxfhaliu	25,738.10 EUR
2	EO Group N.Sh Alb Consulting; Fresh – C.O LLC	39,616.00 EUR
3	KIGA LLC	37,777.50 EUR

Of the three bids submitted, two were rejected with the reasoning that the declaration of conformity by the producer didn't meet the requirements of the Tender Dossier, and one bidder was missing the VAT certificate. N.Sh Alb Consulting; Fresh – C.O LLC was recommended for contract award, with a higher bid price than all three bidders.

Against this decision, PM Group LLC filed a request for review, claiming that the Municipality of Gjakova failed to comply with Rule 39 of ROGPP when it didn't receive the declaration of conformity which they had completed, and didn't request additional clarification regarding the missing VAT certificate. The procurement unit of the Municipality of Gjakova rejected this request with the reasoning that according to Article 72 of the LPP, in cases where one economic operator fails to fulfill one of the requirements set in the tender dossier, additional clarification is not sought, and the tender will be rejected with no request for further information.

In fact, Article 72 of LPP⁶ referenced by the Municipality of Gjakova allows contracting authorities to request economic operators to submit, complete, clarify or complete the appropriate information or documentation within a set period, provided that such requests are made in full compliance with the principles of equal treatment. Article 39 of the ROGPP also gives detailed guidance on how to proceed in cases when the VAT certificate is missing, stipulating that the contracting authority will send the economic operator who failed to complete the documentation, an electronic "Request for clarification of tender".

TABLE 6. Article 39.8 of the ROGPP which, depending on the case, gives guidance to the contracting authorities

Issue	How to proceed?	LLP provision
Missing VAT Certificate	Clarification may be requested	66

The second reason for eliminating a bidder was that the submitted declaration of conformity of the procedure is generic rather than specific as requested in the tender dossier.

This claim is also invalid as bidders did submit a declaration of conformity, thus fulfilling this technical requirement. Company Ramadan Gërxfhaliu B.I., which was part of this consortium, according

⁶ Official Gazette of the Republic of Kosovo. Law on Public Procurement Article 72.

to the KBRA registration information is a producer of sanitary materials and its main activity is listed as “production of soap, detergent and cleaning products”. As a result, the declaration of conformity submitted by this consortium should have been accepted. Given that both requirements were met by PM Group LLC; Ramadan Gërxfhaliu B.I, and that their bid was 13,878.00 EUR cheaper than that of the operator recommended for contract award, the Municipality of Gjakova should have accepted this bid and award the contract as the lowest price bid.

The contract award decision to N.Sh Alb Consulting; Fresh – C.O LLC was appealed in PRB, with the review expert recommending the annulment of the Contracting Authority decision and returning the case for a reevaluation.

Supply with Information Technology Equipment

At the end of 2021, the Municipality of Gjakova initiated the mini-tender procedure for the supply of information technology equipment, based on the framework contract signed between the Central Procurement Agency (CPA), and 16 economic operators, titled “Supply with Information Technology Equipment”, with procurement number UA/2016-19-9628-1-1-1.

Based on the CPA framework contract, with a value of 5,400,000.00 EUR, contracting authorities would invite economic operators, already signatories of this contract, to mini-tender procedures for supply with IT equipment. Three economic operators participated in the mini-tender procedure in the Municipality of Gjakova, with procurement number 632-21-10162-5-5-8, and with an estimated contract value of 48,890.00 EUR. On 08.04.2022, the municipality published the contract award notice for the EO Group Tech Vision LLC; Mehmet Sahitolli B.I.; Nita Macula B.I., as the lowest bid with a value of 41,866.00 EUR.

TABLE 7. Bids of Economic Operators in this Procurement Activity

No.	Names of participating economic operators	Total bids value
1.	EO Group of Trio Tech LLC; N.T.P Eramed: Artech	59,770.00 EUR
2.	EO Group of OE Tech Vision LLC; Mehmet Sahitolli B.I.; Nita Macula B.I	41,866.00 EUR
3.	Aritech	44,300.00 EUR

Initially, the contract was not signed after the request for review of EO Aritech, which led to the suspension of the activity. The request for review was rejected as unfounded and the municipality decided to continue with the procurement activity.

The Municipality of Gjakova, however, did not continue with the signing of the contract, but rather announced the notice for the annulment of the contract award, on the grounds that the winning EO had not extended the validity of the bid, which fact, according to them, was initially not noticed by the contracting authority, but as soon as it had, the award was annulled. In this notice, the CA also stated that it would proceed with the second economic operator, which had a bid 2,434.00 EUR more expensive than the bid of EO Group Tech Vision LLC; Mehmet Sahitolli B.I.; Nita Macula B.I. According

to the applicable legislation, bids must have a validity until the award and signing of the contract, and no public contract can be signed with an expired validity of the bid.

ROGPP⁷ provides that the tender validity period specified in the Tender Dossier changes depending on the complexity of the procurement. The required validity period will be no longer than necessary, and sufficient for the CA to evaluate the accepted bids and award and sign the contract. Article 31.4 of ROGPP provides that “Under justifiable and/or exceptional circumstances when unexpected delays appear, meaning that the evaluation process cannot be finalized within the tender validity period because of clarification of technically complex details, the CA shall request the EOs to extend the validity of their tenders. The request for extension of the tender validity shall be in writing and shall be requested before the expiration date (it is important to verify that all tenderers receive the request for the tender validity extension)”.

The contracting authority claims that, through e-procurement, it sent a request to participating EOs for an extension of the validity of the bids, whereas the economic operator, in the complaint submitted to the PRB, stated that no such a request of CA was delivered to their address. The Municipality of Gjakova should have been attentive in monitoring the validity of bids, send the request for validity extension prior to the expiration date, and verify that all the tenders have accepted the request. This did not happen, as the Municipality of Gjakova itself, in the decision for review, admitted that they had failed to notice that the validity of the offer was not extended by the winning EO, and that no verification was made if the request for extension of the validity of bids was accepted by the bidders.

As a result of an omission by the contracting authority, this procurement activity was canceled entirely.

7 Rules and Operational Guidelines for Public Procurement Article 31.3



Municipality of Pristina

Implementation of the Online Platform for Digitalization of Schools (“E-shkollori”)

At the end of December 2021, the Municipality of Pristina signed a negotiated contract with the Economic Operator Illyrian LLC for the implementation of the “E-shkollori” platform, a platform created earlier by the same company. The platform was launched in May 2020 and supports distance learning, digital evaluation of students, enables Online communication between teachers and parents, and offers a number of other services related to the teacher-student-parent relationship.

For this tender, the Contracting Authority only invited Illyrian LLC to submit a bid, because, according to the Notice for the Public Procurement Regulatory Commission,⁸ it owns the intellectual rights, thus reference was made to Article 35, paragraph 2.1 of the LPP, which states that “if, for reasons of protection of intellectual or industrial property right or other exclusive rights, the contract may be awarded only to a particular economic operator”. The justification to proceed with a negotiated procedure is valid, however, there are other issues identified in the evaluation of the bid and the implementation of the contract.

For this procurement activity the municipality estimated 182,000.00 EUR, whereas the EO awarded the contract submitted a bid of 181,896.00 EUR, which price was reduced after negotiations for 7,896.00 EUR. The final price of the contract was signed for 174,000.00 EUR, or 14,500.00 EUR per month.

For this service, CA also had two prior contracts of 2020 and 2021 as reference, also concluded with Illyrian LLC. The first contract was concluded two months after the beginning of the pandemic, in May 2020 with a duration of five months, with a value of 41,300.00 EUR, for which the municipality paid 8,260.00 EUR per month, while the second contract was signed in March 2021 for a duration of eight months in the amount of 87,760.00 EUR, or 10,970.00 EUR per month. As can be seen, the price of the last contract, which is still in force, was signed for almost double the price of previous contracts. The table below lists the prices that the municipality contracted with the same company for the same services for three consecutive years.

⁸ The PPRC notice was sent on 18.11.2021.

TABLE 8. Contracts between the Municipality of Prishtina and Illyrian LLC for the E-shkollori platform

Year	Price per month	Total contract value	Duration of Contract
2020	8,260.00 Euro	41,300.00 Euro	Five months
2021	10,970.00 Euro	87,760.00 Euro	Eight months
2022	14,500.00 Euro	174,000.00 Euro	12 months

According to the reasoning given in the Evaluation Report⁹, this difference and this increase in the price is a result of tripling the “hosting” and “bandwidth” capacities (data maintenance and transmission), as well as the addition of 11 new modules.

One of the documents requested from all economic operators is the declaration under oath, which document evidences compliance and eligibility of candidates in a relevant procurement activity. Declarations under oath must be signed by EO’s competent person, or authorized representative. In the specific case, the declaration was signed by a person who is not listed in KBRA as neither owner nor authorized person, and no authorization was attached in the bid submitted to the CA – Municipality of Pristina. Although LPP provides no specification as to who must sign it, an opinion issued by PPRC states that the signing of the declaration on behalf of an EO without an appropriate authorization is not acceptable¹⁰.

On the other hand, one of the Tender Dossier requirements was not in line with Law on Public Procurement. In the technical and/or professional requirements, the Municipality requested the Economic Operators to provide sufficient proof of completed contracts for similar services in the last three years, and a list of contracts, without specifying the value threshold for such contracts to be deemed acceptable. Pursuant to this requirement, OE Illyrian LLC has only submitted two references, one in a value of 41,300.00 EUR, issued by the Municipality of Pristina, and the other issued by the Municipality of Malisheva, with a value of 38,052.64 EUR, but not a list a contracts, which the Municipality has requested through clarifying information requests¹¹.

Two meetings were also arranged as part of the analysis of the bids, with two schools of the Municipality of Pristina, “Faik Konica”¹² and “Xhemail Mustafa”¹³. The purpose of these meetings was to see the relevance and measure the use of the “E-shkollori” platform. According to the directors of the two schools, this platform is a very good opportunity for all parties, students, teachers and parents. However, it is not fully used in practice yet. The reasons for not fully using the platform include the legal requirement to still manually record everything which, according to the heads of the two schools, is doubling the work of teachers. They still manage to transfer some of the data in the platform, only not in real time.

9 Evaluation Report dated 24.11.2021.

10 Opinion no. 40 of the PPRC <https://e-prokurimi.rks-gov.net/Home/ClanakItemNeë.aspx?id=268>

11 Article 72 of the LPP “When information or documents to be submitted by economic operators are or appears to be incomplete or erroneous, or specific documents are missing, the contracting authority may require from economic operators to submit, supplement, clarify or complete with proper information or documentation within a certain time period, provided that such claims are made fully in compliance with the principles of equal treatment and transparency”.

12 Meeting with the School Director, Jehona Oruqi, on: 03.02.2022.

13 Meeting with the School Director, Shpresa Shala, on: 03.02.2022.

One of the issues with the platform is the non-functioning of virtual classes, as one of the most important components of the platform. According to the two directors of the aforementioned schools, “E-shkollori” platform and, specifically the online classes module often crashed when overloaded and had poor sound which then made teachers to move to the open Zoom platform.

Supply of Rapid Antigen Tests

In December 2021, the Municipality of Pristina initiated the procurement procedure (No. 616-21-9891-1-5) for the supply of rapid antigen tests for schools due to COVID 19, through a negotiated procedure, without publishing the contract notice.

In this procurement process, the Municipality of Pristina only invited three Economic Operators. Of the three invited companies, only two submitted bids, and the contract was concluded with the only administratively responsible company, Madekos LLC, according to the lowest price criterion. This company submitted a bid in a price of 324,000.00 EUR, exceeding the estimated value by 4,000 EUR.

TABLE 9. Bids of Economic Operators in this Procurement Activity

No.	Economic Operators	Total bids value
1	Madekos LLC	324,000.00 EUR
2	N.Sh.T “Neramed”	450,000.00 EUR

After negotiating with the Economic Operators Madekos LLC, the Municipality of Pristina reduced the price from the initial 324,000.00 EUR to 316,000.00 EUR, a concluded the contract on 16.12.2021.

On this occasion, the Municipality of Pristina used the negotiated procedure without publishing the contract notice, justifying it on the urgency to identify potential viral diseases amongst the students of Pristina schools, whereas this testing form for COVID 19 (with saliva), was being used for the first time in public institutions.

The Municipality of Pristina shouldn’t have used a negotiated procedure, since the COVID 19 pandemic was not an urgency when the procedure was initiated, and the procurement activity could have, and should have been planned earlier. Although the legal requirement of inviting three economic operators was fulfilled, negotiations with only two operators reduced competition and consequently a higher market price was paid.

In the beginning of December 2021, during which period the procurement procedure was conducted, such tests could have been contracted for as low as around two (2) EUR, with negotiation for a 100 thousand tests the price could have gone as low as 1.6 EUR per test. Due to the abuse of the negotiated procedure which reduced competition, the Municipality of Pristina overpaid the supply of these tests. According to the Tender Dossier, the Economic Operator was to provide training for the school staff

on the use of the tests which activity, but according to the meetings with respective schools¹⁴, wasn't delivered and only a video instruction to use was sent instead.

In addition to the lack of trainings on the use of tests, Pristina schools were not supplied with protective and preventive equipment for the administration of tests, such as gloves and masks. Another issue with the supply of these antigen tests in the schools of Pristina was the refusal of the Family Medicine Centers¹⁵ to test asymptomatic students, which institutions, referencing this supply, referred the students back to the school. Thus, students with symptoms were forced to go to the school to take the test, thus adding the risk of infection to teachers and other students.

Physical Security of Municipal Buildings

In February 2022, the Municipality of Pristina concluded a negotiated contract with a value of 126,748.80 EUR for the physical security of its buildings. This contract, with a duration of three months, was signed with the Economic Operator Rojet e Nderit LLC, which company was among the three invited EOs. Despite that three companies received an invitation to bid, only the winning operator Rojet e Nderit LLC, and Alpha Private Security LLC submitted bids. The latter bid a price of 136,080.00 EUR, whereas the estimated value was 157,500.00 EUR.

The CA justified the use of negotiated procedure in this tender, without any contract notice, with the fact that the previous procedure was pending review in the Procurement Review Body¹⁶, following complaints of two EOs against the decision to award the contract to operator Rojet e Nderit LLC. Due to a lack of functional board, PRB was unable to take a decision on these complaints, though the expert assigned issued an expertise on the claims of the complaint. In his report, the expert proposed the review panel to partially approve the claims of complaining EOs as founded, and annul the contract award notice and return the case for reevaluation¹⁷. Note should be made that the CA had not invited the complaining EOs to submit a bid in the emergency procedure tender.

The Municipality of Pristina, after the evaluation of bids, took a decision to initiate an emergency procedure, thus overlooking several requirements of the tender dossier, such as the submission of a list of contracts implemented and a list of vehicles, with proof attached. The failure to submit proof for the two afore-mentioned requirements makes the operator non-responsible and, in line with the LPP provisions, the bid should have been rejected. The bid of EO Alpha Private Security also failed to comply with the tender dossier requirements. However, this EO was only disqualified for having a higher price.

Several procedural violations were also made with the deadline to submit bids. Bid submission deadline was one day after the drafting of the Tender Dossier. The TD was drafted on 19.01.2022, and the bid was to be submitted the next day, on 20.01.2022, and the bids were opened on 21.01.2022. According to LPP and ROGPP, deadlines can be shortened in two types of procedures – opened and restricted, with the negotiated procedure not specified.

¹⁴ Meeting of D+ with the Director of School "Faik Konica", Jehona Uruqi, held on 3 February 2022, and meeting with Director of School "Xhemail Mustafa", Shpresa Shala, held on 3 February 2022.

¹⁵ Ibidem.

¹⁶ Notice for the Public Procurement Regulatory Commission, 17.01.2022.

¹⁷ Review expert report 230-267/21, 30.03.2021.

Regardless of this legal omission, the CA should have applied the same deadlines as in the restricted procedure, as three operators were invited to bid, and a single day is insufficient to submit a responsive bid.

TABLE 10. Shortened deadlines according to ROGPP

	Procedures	
	Open	Restricted
Large value	15 days	15 days receiving the requests 10 days accepting bids
Low value	10 days	15 days receiving the requests 10 days accepting bids

The fact that the Municipality of Pristina invoked an emergency was not proven in the later stage of this procedure, as the contract was signed after almost a month, on 18.02.2022. The LPP requires CAs to sign the contract 10 days from the publication of the contract notice¹⁸. This provision excludes some cases, including emergencies. Hence, even though it could have immediately signed the contract on grounds of emergency, the municipality did not and delayed the signing of the contract for a month.

According to the contract, the Rojet e Nderit LLC will cover 48 positions, 29 providing 24 hours guard, one for 16 hours guard, two for 12 hours guard, and 16 for 8 hours of guard a day. However, no mention is made as to which municipal buildings will be guarded and where will the security guards will be stationed.

Treatment of Stray Animals

In January 2022, the Municipality of Pristina initiated a tender for the treatment of stray animals, including the capture, control, feeding, vaccination, castration (sterilization), and release (return) of dogs to the place where they were taken, as well as carrying out the process of euthanasia and hospitalization of 72 hours. Also known as the capture, neuter, vaccinate, release (CNVR) method, it is recognized as the most humane and effective way to reduce the number of stray dogs. The estimated value for this procurement activity was 50,000.00 EUR, while the value contract signed was 46,360.00 EUR.

Stray dogs are one of the biggest problems of the Municipality of Prishtina, and its citizens face the uncertainty and fear of moving freely every day. The municipality aimed to address this issue through the tender “Treatment of Stray Animals”, which contract was concluded using a negotiated tender procedure with the only invited EO, Veteria 1 LLC.

¹⁸ Article 26.4.1. The persons having signing authority under paragraph 1 and 2 or 3 of this Article may sign such contract only if the following conditions are met: at least ten (10) days have passed since the date of publication of the concerned contract award notice; provided, however, that this condition shall not apply to an emergency procurement conducted pursuant to Article 35.2.1(iii); or to procurement activity conducted pursuant to Article 36. or minimal value contracts.

The financial offer of this EO was initially 47,900.00 EUR, but was later reduced after negotiations to 46,360.00 EUR. The use of this procedure was justified through a Notice to the Public Procurement Regulatory Commission¹⁹. The notice states that the reason for using this procedure is the urgency to deal with the issue of stray dogs, with many citizens having suffered injuries from attacks and bites.

The notice mentions one of the earlier tenders initiated for the same purpose, but with an open procedure. This tender²⁰ went to the Procurement Review Body following complaints of two non-winning bidders²¹. Therefore, according to the CA, the increased number of stray dogs necessitated a negotiated contract.

One of the requirements of the tender dossier for EOs was to submit proof of completed contracts for similar services in the last three years, without specifying the amount these contracts should reach. OE Veterina 1 submitted a list with four municipalities and relevant references, two from the Food and Veterinary Agency (FVA) and two from the Municipality of Pristina. However, only the contract with FVA can be considered a completed contract of similar nature, titled “Services for the Management and Control of Stray Dogs – Region of Pristina” – Lot 1, Procurement No. 40800-19-6574-2-1-5, with a value of 20,000.00 EUR, and the contract with the Municipality of Pristina, for the tender “Treatment of Stray Dogs” with Procurement No. 616-20-140-2-2-1 in a value of 39,941.00 EUR. The other two contracts are not of a similar nature, as they involve vaccination of cattle, sheep, goats, and pet dogs, and “Veterinary Services on the Ground – Lot 1 – Municipality of Pristina” with Procurement Number 40800-19-1186-2-1-5.

Hence, the CA didn’t specify the value of completed contracts, which is not in line with LPP requirements. Nexhmi Makolli, procurement officer in the Municipality of Pristina was part of the evaluation committee for the tender, recommending Veterina 1 LLC for contract award. His participation in the evaluation committee is prohibited under Article 40.4 of ROGPP, which provides that the responsible procurement officer shall not serve as evaluation committee member.

19 Date: 10.01.2022.

20 Treatment of stray dogs, Procurement No. 616-21-1498-2-2-1

21 Complaints against the contract award notice for EO Veterina 1 were filed by two bidders, GOE Crazy Pet LLC & Blendi Bejdoni B.I. and “EO Qendra për trajtimin e kafshëve LLC”. On the claims of the complainant, the review expert proposed the panel to approve the complaint as partially founded, annul the contract award notice and return the case for reevaluation. As the PRB Board was not functional, no decision was taken on this and many other tenders pending complaint review since March 2001.



Municipality of Prizren

Supply with stomatology materials

In June 2022, the Municipality of Prizren initiated the procurement procedure for the supply with stomatology materials for the needs of the stomatology department, with an estimated contract value of 9,900.00 EUR.

Two economic operators participated in this procurement procedure, with Matkos Pharm LLC awarded the contract, as the lowest price bid, and the contract was signed on 10.08.2022. The signing of the contract is the end of a long saga in the supply of stomatology materials between the Municipality of Prizren and Matkos Pharm LLC, spread into three procurement activities.

TABLE 11. Bids of Economic Operators in this Procurement Activity

No.	Economic Operators	Total bids value
1.	MATKOS PHARM LLC	7,496.50 EUR
2.	PRO MEDICAL LLC	8,346.00 EUR

First tender: In 2021, the Municipality of Prizren terminated the framework contract for the supply of stomatology materials (Procurement No. 622-21-1045-1-2-1), which had been concluded with Matkos Pharm LLC, claiming that the EO had participated in the procurement procedure with forged documentation.

In addition to terminating the contract, the municipality of Prizren, on July 8, 2021, filed a request to PRB to disqualify Matkos Pharm LLC from participating in public procurement activities for a period of one year, claiming that two references in the bid were confirmed by the relevant institutions as forged.

Second tender: only two days following the termination of the contract by the Municipality of Prizren, Matkos Pharm LLC submitted its bid to the institution's retendering activity, with Procurement No. 622-21-4365-1-2-1. Although it had similar nature with the procedure where the bidder was excluded, this

was a new procurement activity by the Municipality of Prizren and Matkos Pharm LLC participated again. This time, the economic operator changed its references, excluding the previous reference which the municipality claimed to have been forged.

The Municipality of Prizren eliminated Matkos Pharm LLC from this procurement activity, finding it irresponsible with the previously signed contracts with the contracting authority. As the Economic Operator was not blacklisted by PRB (as it had no functional Board and had not reviewed the request of the municipality), and there was no final decision of the court (although the Director of the company had been arrested on suspicion of forgery), its elimination by the Municipality of Prizren was unlawful. The municipality acted in violation of Article 65 of LPP, which states that no bidder can be disqualified outside of the conformity requirement defined under the LPP.

In relation to this situation, the Public Procurement Regulatory Commission (PPRC), at the request of Democracy Plus (D+), issued an interpretation²², considering that the contracting authority, in this case the Municipality of Prizren, cannot declare an EO irresponsible, which it filed to PRB, in a new procurement procedure. Although the eliminated offer of Matkos Pharm LLC was the lowest bid, the Municipality of Prizren awarded the contract to the second bidder N.T.Sh Koslabor. This decision to award the contract to the second bidder was appealed by Matkos Pharm LLC, and the procurement activity was suspended for a year, until the Municipality of Prizren decided to annul the procedure entirely on 10.08.2022.

The story between the Municipality of Prizren and Matkos Pharm LLC, reveals the consequences with the non-appointment of new members of the PRB Board by the Assembly of Kosovo, leading to a non-implementation of LPP, and Article 99 in this case, requiring PRB to review and disqualify economic operators from participating in public procurement after claims of contracting authorities regarding the submission of forged documents.

In relation to the references suspected of being forged, the Basic Prosecutor's Office in Prishtina filed an indictment on 30.12.2021²³ against the Director of Matkos Pharm LLC, on charges that he committed the criminal offense "Abuse and fraud in public procurement" under Article 415 of the Criminal Code of the Republic of Kosovo.

Raising Awareness of Elementary and School Students and Drivers in the Municipality of Prizren on Traffic Behavior

In April 2022, the Municipality of Prizren initiated the tender procedure aimed at raising the awareness of primary school students and drivers about traffic behavior. Three economic operators submitted bids for this procurement activity, which had an estimated contract value of 40,000.00 EUR.

22 Public Procurement Regulatory Commission. Frequently Asked Questions No. 93. 14.10.2022. <https://e-prokurimi.rks-gov.net/HOME/ClanakItemNew.aspx?id=268> (last accessed on 16.10.2022).

23 Basic Prosecution of Prishtina confirmed via an official email to D+, that on 31.12.2021 it has filed an indictment against the person L.B. for the criminal offense of "Abuse and fraud in public procurement", under Article 415 of the Criminal Code of the Republic of Kosovo, and forwarded the case to the competent court.

TABLE 12. Bids of Economic Operators in this Procurement Activity

No.	Economic Operators	Total Bid value
1.	Ballon Pacha – Project LLC	24,580.00 EUR
2.	EO Group Limit L&B LLC; Model 5 Doo & Sfinga LLC	20,508.47 EUR
3.	Samire Osmani B.I	39,950.00 EUR

The evaluation committee recommended for the conclusion of the contract Samire Osmani B.I - trade name Eko Pastrimi DDD - as the economic operator with the lowest bid price, after declaring the other two bidders administratively irresponsible, despite having a lower price.

The purpose of this tender was to raise the awareness of pupils and drivers on traffic behavior, and the contract was awarded to a company whose primary activity is general cleaning of buildings, service and maintenance of squares, dry cleaning of textiles, etc.²⁴. The Tender Dossier of the Municipality of Prizren, required economic operators to submit certificates ISO 9001: 2015, ISO 14001: 2015 and ISO 45001: 2018.

ISO 9001:2015 is the international standard that specifies the requirements for quality management, which serves to demonstrate the ability of companies to provide continuous products and services²⁵. ISO 14001:2015 is a voluntary standard that certifies organizations that follow an environmental management framework²⁶. ISO 45001:2018 specifies requirements and provides guidance to organizations for safe and healthy working environments, preventing work-related injuries and illnesses²⁷.

Back in 2021, the Municipality of Prizren had also initiated a tender to raise the awareness of pupils and drivers on traffic behavior, with an estimated value of 40,000.00 EUR. Although the purpose of both procurement activities in the Tender Dossier and the services required in the bill of quantities are the same, no ISO certificate had been requested in the 2021 tender. These certificates are not related to the nature of the tender, as they have nothing to do with awareness-raising campaigns, and their inclusion in the Tender Dossier raises suspicion that they favor an economic operator.

Of the three economic operators that submitted bids, only Samire Osmani B.I delivered the required ISO certificate, which seem to have been issued only three days prior to the deadline for submission of bids.

The description of certificates states that they are valid for the field of application:

“DDD Services (disinfection, disinsection, deratization), removal of reptiles; environmental protection, and awareness raising campaigns. Trade in disinfection and biocide products”.

²⁴ Kosovo Business Registration Agency. <https://arbk.rks-gov.net/page.aspx?id=1,38,155269> (last accessed on 11.11.2022).

²⁵ What is ISO 9001:2015 – Quality Management Systems. <https://asq.org/quality-resources/iso-9001> (last accessed on 11.11.2022).

²⁶ What is ISO 14001:2015 – Environmental Management Systems? <https://asq.org/quality-resources/iso-14001> (last accessed on 11.11.2022).

²⁷ ISO 45001:2018 Occupational health and safety management systems – Requirements with guidance for use. <https://www.iso.org/standard/63787.html> (last accessed on 11.11.2022).

The 2021 tender, with a procurement no. 622-21-1780-2-2-1, also awarded the contract to Samire Osmani B.I, which was in a consortium with B&D Business Support Center L.L.C.

In both procurement activities to raise the awareness of pupils in traffic, the winning company was the only responsible EO and in both cases the contracted price was 95% of the estimated value, which raises suspicion that the economic operator may have had prior knowledge regarding the tender requirements.

TABLE 13. Value of contracts signed in the two procurement activities for the awareness-raising of primary school pupils on traffic behavior

Year when the contract was signed	Estimated value	Value of contract signed	The percentage of the contracted price compared to the estimated value
2021	40,000.00 Euro	38,200.00 Euro	95.5 %
2022	40,000.00 Euro	39,950.00 Euro	99.87 %
2022	14,500.00 euro	174,000.00 euro	12 muaj

Supply of furniture for offices and healthcare facilities

In May 2022, the Municipality of Prizren initiated the procurement activity for the supply of furniture for offices and healthcare facilities, with procurement number 622-22-5067-1-2-1. The purpose of this tender was to supply chairs, tables, wood cabinets, with an estimated contract value of 50,000.00 EUR, and the municipality applied an open procedure, with four (4) economic operators participating to the bid.

TABLE 14. Bids of Economic Operators in this Procurement Activity

No.	Economic Operators	Weighted price of bids
1.	Mobelland LLC	748.10 EUR
2.	Wood Corporation L.L.C	2,582.85 EUR
3.	Gent Ademaj	2,910.97 EUR
4.	Trendy Home	2,116.10 EUR

After evaluating the bids, the municipality recommended Mobelland LLC for the contract, with a weighted price of 748.10 EUR, as the bidder with the lowest price. This evaluation of the Municipality of Prizren was not in line with the LPP, specifically Article 61, which states that if an economic operator submits a tender that is, or appears to be abnormally low, the Contracting Authority must send a written request for clarification regarding the basis of the tender.

The tender submitted by Mobelland LLC is a tender with an abnormally low price which meets the three criteria of the legal formula defined by regulation B57 of the PPRC. In this situation, the Contracting Authority should not have rejected the offer, but rather ask for clarification *inter partes* in order to breakdown the elements of the bid and its price.

TABLE 15. Requirements to be met for a tender to be considered abnormally low

The requirements for a bid to be qualified as abnormally low	Situations
At least three (3) offers have been submitted;	Four bids were received
The price offered is more than 30 % lower than the average price of the responsive tenders	The average price of responsive tenders is 2,086.01 EUR. The price of Mobelland LLC was 64.14% lower.
The price offered is over 10 % lower than the price of the second lowest tender	The price offered is 65.65 % lower than the price of the second lowest tender

The municipality of Prizren did not ask for additional explanations from the winning economic operator, despite a request for review submitted by the second lowest bidder, Trendy Home LLC, alleging abnormally low prices. In addition, the municipality issued a decision rejecting the claim of Trendy Home LLC²⁸ in which it stated that the claims that the winning economic operator has abnormally low prices is wrong and that the prices offered for office furniture by this operator are market prices.

This case was sent to the PRB, and its review panel approved the complaint of EO Trendy Home LLC as founded, annulling the contract award notice to Mobelland LLC, and returning the case for reevaluation. Here, the contracting authority made an incorrect evaluation and comparison of bids, failing to notice the abnormally low prices, which then led to a complaint filed by the EO to the PRB, with the supply of furniture not having started after more than five months²⁹ from the deadline for submission of bids.

Organization of the Music Festival *Zambaku i Prizrenit* 2022

In May 2022, the Municipality of Prizren initiated the tender with procurement number 622-22-3939-2-2-1 for the organization of the traditional musical festival “*Zambaku i Prizrenit*” and cover the technical aspects of the festival. The estimated value of the tender was 30,000.00 EUR, and the deadline for submission of bids was May 25, 2022 with the festival scheduled to be held at the end of June 2022.

²⁸ The decision of the Municipality of Prizren to the request for review, dated 08.08.2022, submitted by the economic operator Trendy Home LLC, regarding the procurement activity titled: “Supply of furniture for offices and healthcare facilities, with Procurement No: 622-22-5067-121.

²⁹ The deadline for the submission of bids was 21.06.2022, 14:00 hrs. The tender was opened on the same date.

Three economic operators participated in this procurement activity, and the Group of economic operators - N.Sh Shkolla Private e Muzikës Studio Helix; TV Prizreni (hereafter winning GEO) was awarded with the contract, as the tender with the lowest price, in the amount of 23,956.00 EUR.

TABLE 16. Bids of Economic Operators in this Procurement Activity

No.	Name of Economic Operator	Total bids value
1.	Amc Corporation LLC,	27,615.00 EUR
2.	Sfinga LLC	25,600.00 EUR
3.	Group of Economic Operators N.Sh. Shkolla Private e Muzikës Studio Helix; TV Prizreni	23,956.00 EUR

Despite having the lowest price, the bid of the economic group recommended for the contract had major omissions, rendering it an irresponsible bidder that should have been eliminated at the initial stage of evaluation. An analysis of the Winning GOE bid indicates that it was missing the Declaration under Oath, which must be completed, signed, and stamped in the original copy. This proof is required to be part of the documentation of the bid submission and is a prerequisite for eligibility.

The winning GOE had also failed to meet the technical requirements, which provide that the winning bidder should have implemented projects of a similar nature in the last three years, in a minimal value of at least 45,000.00 EUR. The winning GOE bid listed references of implemented projects of a similar nature with a total value of 32,158.72 EUR, which doesn't reach the minimal threshold under Article 9.1 of the Tender Dossier. The Tender Dossier also requires the economic operators to have at least five (5) employees of different adequate profiles for the implementation of the contract, to be evidenced through the list of employees in TAK in the last three months. According to the data in TAK, company Studio Helix has four (4) employees and the other consortium member, TV Prizreni has provided no data on employees.

The second economic operator with the lowest price, Sfinga LLC, filed a request for review against the contract award notice for the winning GOE, claiming that the consortium did not meet the requirements specified in the Tender Dossier. The municipality rejected the requests as unfounded, leaving the contract award decision in force, without providing a reasoning to the claims.

The Municipality of Prizren violated Article 59 of LPP, which states that evaluation of bids must take into account the criteria defined in the Tender Dossier and Contract Notice, as well as Article 108 of the LPP³⁰ with the failure to reason the rejection of the request for review. This case was also sent to the PRB, and the review panel approved the complaint of EO Sfinga LLC as founded, annulling the decision³¹ of the Municipality of Prizren and returning the case for reevaluation.

30 Official Gazette of the Republic of Kosovo. Law No. 04/ L-042 on Public Procurement Article 108, par.10 *The refusal will be reasoned and communicated in writing, in accordance with this law, to the complainant and all interested parties, if any. Moreover, the contracting authority may prevent any further procedure, accepting a written notification from the complainant regarding its willingness to withdraw the request submitted for review.*

31 Decision No. 277/22 of the PRB review panel.

The Municipality of Prizren initially failed to accurately evaluate bids, according to the criteria it had set in the Tender Dossier, and then made a mistake in the review of the complaint, not reasoning its decision. Due to these mistakes, the 33rd edition of the “Zambaku i Prizrenit” Festival, scheduled to be held at the beginning of June 2022, was postponed to November 2022.



Municipality of Gjilan

Cleaning of school facilities

In April 2022, the Municipality of Gjilan initiated the procedure for the cleaning of school with an estimated value of 40,334.00 EUR. This activity was developed through a negotiated procedure, with no publication of the contract notice, and was concluded with the Group of Economic Operators (GEO) Krasniqi LLC and N.T.P. Beni on 13.04.2022, in the amount of 40,262.86 EUR, with a duration of one month. A contract for the same purpose was also concluded later in 2022, with the same GEO, in the amount of 87,050.00 EUR, again conducted through a negotiated procedure with no publication of the contract notice. In 2021, the Municipality of Gjilan developed two procedures for the same purpose, conducted in an open procedure, which were then annulled by the municipality.

According to LPP, a negotiated procedure can be applied if, for objective and mandatory technical or artistic reasons the contract must be concluded with one specific EO, to protect intellectual or industrial property rights or other exclusive rights if there are circumstances of extreme emergencies which couldn't have been predicted³². Specifically, service contracts must be developed with negotiated procedures if the contract follows a design competition and of the EO has exclusive rights in the provision of this service³³. In the case of this contract, the use of this procedure had no legal basis. This is because, initially, there was no unexpected event which couldn't have been foreseen by the Municipality. Moreover, according to the Declaration of Needs and Availability of Funds³⁴ the municipality has stated that this procurement activity was scheduled in the annual procurement plan. This contract was not a subsequent contract of a previous design competition, and the contracted EO doesn't hold exclusive rights to carry out this supply. This means that the municipality had no right to apply this procedure, excluding from application other EOs providing this service, thus restricting competition. However, in the negotiated procedure the municipality invited three economic operators to submit their bids.

To apply this procedure, the institution must inform PPRC within two days from taking a decision to use the negotiated procedure, providing a justification for its use. According to the municipality, because the previous contract with the EO for the cleaning of facilities expired, this procedure was necessary to ensure continuity of service. The explanation given to the PPRC is similar to the request initiated for the procedure, stating, among other "...we request the procurement office to find a possible and

32 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on the Public Procurement of the Republic of Kosovo, Article 35, par. 2,

33 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on the Public Procurement of the Republic of Kosovo, Article 35, par. 2.3,

34 The document obtained through a request for access to public documents, sent on 26.08.2022.

long-term solution in order not to have interruptions for these services. Therefore, we urgently request the procurement office to carry out a negotiated procurement procedure, in line with the Procurement Law. The term of the implementation of this contract will be one (1) month, and the estimated value of this contract is 40,334.00 EUR". This explanation is in fact the request of the requesting unit, asking for a long-term solution, while it goes on to state that the contract will be concluded for a period of one month. Whatever the municipality's need, no durable solution is offered through one-month contracts. In fact, the request to proceed with negotiated procedure for this activity should have been rejected, because this procurement activity was already scheduled and planned to be procured.

The Municipality of Gjilan has initiated several procedures for the contracting a company that will clean school buildings. In this period, namely in 2021 and 2022, four tender procedures were initiated for the same purpose, two of which were annulled and the other two were contracted. Two of the annulled tenders were conducted with an open procedure, and the two the contracted ones were conducted with a negotiated procedure, without publication of the contract notice. The fact that only the negotiated procedures resulted with a conclusion of the contract is rather interesting, as they indicate that the municipality failed to successfully conclude contracts with open procedures and, moreover, they were annulled by the municipality. In one case, the reason for annulment was due to the inability to amend the tender dossier and the contract notice, as annulment was not allowed in the e-procurement platform, and the other due to a legal violation which couldn't have been adjusted.

In the first case of the tender annulment, the municipality invoked Article 62, par. 2.2 of LPP, which states that annulment is allowed if it happens as a result of an objective and demonstratable event, which cannot be foreseen and is beyond the control of the contracting authority. The same paragraph states that it must take at least three days prior to the opening of the bids³⁵. Bid opening was scheduled to take place on 05.01.2021, whereas the notice was issued on 27.01.2022, or 22 days later than the planned bid opening date. In addition, the reasons leading to this inability are delays due to requests for review. However, the requests for review cannot be considered grounds for annulment, as they occur in virtually every procurement activity. Therefore, the municipality should not reference such an event to annul this important procedure, as it is not a valid reason. Moreover, the estimated value of this procurement activity was 1,343,997.00 EUR and this action blocked the funds.

In the second annulled case, municipality referenced Article 62, par. 1.1 of LPP, which allows an activity to be annulled if it occurred due to a violation of the current law, or a violation is expected, and which cannot be fixed or prevented through an amended in the legal terms of the procurement³⁶. The annulment notice indicated that the municipality received a request for review, and thus it suspended the activity and revised the tender dossier. However, the notice falls short of stating the legal violation which occurred or was expected to occur. This decision points to no violation, thus the legal basis for the annulment of the procurement activity is unclear.

As a result, in the next activity for the same services, the municipality applied the negotiated procedure, despite having no legal basis, as no legal requirement is met. Annulment of the procurement procedures, particularly in such situations, damages municipal procurement planning and public money.

35 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on the Public Procurement of the Republic of Kosovo, Article 62, par. 2.2,

36 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on the Public Procurement of the Republic of Kosovo, Article 62, par. 1.1,

As indicated above, the contract between the contracting parties was concluded with a value of 40,262.86 EUR, with a duration of one month. To spend this public money, municipality asked the GEO awarded with the contract to submit proof of economic and financial state and technical and professional capabilities. The municipality asked the bidding operator to include in the tender dossier only proof of business registration, fiscal number, business registration certificate, and VAT certificate, namely only the professionally adequacy requirements, as well as the eligibility requirements, i.e. declaration under oath, court certificate, and TAK certificate.

These requirements are insufficient and do not prove that the winning bidder has the capabilities to carry out these works, and also shows a lack of accountability of the municipality in spending public money. For a medium-size tender, the municipality must ensure that the operator has a track record in performing these services, has sufficient staff and resources to perform, and that it is a stable business with sufficient financial turnover.

Three economic operators were invited to participate in this tender, and two were eliminated on grounds that their bid was not with a lower price. Initially, the winning GEO submitted a bid with a price of 40,312.86 EUR, which was then lowered to 40,262.86 EUR following negotiations (50 EUR lower).

TABLE 17. Bidding economic operators and the value of their bids

No.	Bidding Economic Operator	Bid value
1	Erik LLC	40,470.10 EUR
2	Schafberger Jr. GmbH	40,519.65 EUR
3	GEO Krasniqi & N.T.P.Me	40,262.86 EUR

This tender's bill of quantities includes three sections: the first one is for cleaning, the second for cleaning materials, and the third is remuneration for the technical support staff. There were six schools scheduled for cleaning in the first group, however, the last two positions (1.7 and 1.8) include requests for six workers, who will be engaged as caretakers at the entry gate of the schools (namely, one guardian for each school).

The purpose of this tender is to clean six schools, at a price of 0.55 EUR per square meter for the indoor cleaning, and 0.03 EUR for outdoor cleaning, and 0.40 EUR for the cleaning of the gym. The municipality required the GEO to provide a list of at least 24 employees and their minimum wage is set at 251.70 EUR. They will work five days a week, cleaning the facilities twice a day.

TABLE 18. Positions 1.7 and 1.8 of the bills of quantities

	Name of the building to be cleaned		Unit	Total Quantity	Price per unit	Cleaning months	Amount per month
1.7	Caretaking and maintenance at the entry gate of Mehmet Isai and Arbëria schools throughout the day	Caretaking at the entrance - opening and closing the gate	Pieces	4	338.10	1	1,352.40
1.8	Caretaking and maintenance at the entry gate of Marin Barleti school throughout the day	Caretaking at the entrance opening and closing the gate	Pieces	2	338.10	1	14,538.60

Source: Economic operator's bid

As can be seen in table 18, the EO has completed the bill of quantities, indicating that the workers will be paid 338.10 EUR. However, the municipality required the EO payment of a total of 100 employees, including the 75 additional employees who currently work in the schools. Payment of workers who are not company staff, but rather municipal employees should not be left in the responsibility of the winning EO. Workers who are under the financial coverage of the municipality require a solution, to be paid independently from the companies that operate in this field.

TABLE 19. The third section of the bill of quantities includes the payment for 75 workers who work in schools.

No.	Description of Position	Unit	Quantity	Monthly unit price net	Compensation months	Amount
A		b	c	d	e	$f=c*d*e$
	Technical workers in schools and other support staff, such as cleaners, etc.	Persons	75€	€ 338.10	1	€ 25,357.50
Total						€ 25,357.50

Source: Economic operator's bid

In turn, the Municipality of Gjilan has made a solution, albeit temporary, for the maintenance of public schools, signing an agreement with the POE Tregu Sh.A., which procedures do not go through procurement.

In such a complex situation, the largest irregularity lies in the fact that the EO included in the bill of quantities the monetary remuneration for workers in net sums. Thus, the municipality wasn't prudent in this important element, completely ignoring payroll tax and pension contributions. The EO has not foreseen the gross monetary remuneration for workers, and the municipality has not planned the payment of such taxes, and there is no mechanism to ensure such compensation. This is a highly harmful act in many aspects, as it firstly leads to fiscal evasion with the non-payment of taxes, which is against the applicable laws of the country and, secondly, it harms public money as well as the workers, as they are prevented the enjoyment of pension contributions.

Treatment of Stray Dogs

The Municipality of Gjilan contracted the Economic Operator Monumi LLC to address the issue with stray dogs. It was the only economic operator who had applied to participate in this tender, with a bid of 18,500.00 EUR, which was also the price of the contract concluded for a duration of 12 months. This tender was planned to treat 250 dogs, and work started on June 22, 2022. This activity was not included in the procurement plan, despite that the issue with stray dogs is significant throughout the country. Despite that it wasn't planned, the municipality should refrain from applying legal provisions dedicated to procurement emergencies, as the issue with stray dogs is neither new nor unpredicted.

The deadline for the submission of bids was shortened for this activity, with no clarification in the tender dossier on the reasons for this action. In any case, the contracting authority must define a reasonable timeframe, and allow the operator sufficient time to prepare and submit the documentation as required in the tender dossier. Shortening deadlines with no strong reason, thus preventing the compliance of the LPP deadlines, is firstly a violation of LPP, and limits competition. Interested economic operators have no time to prepare the bidding documentation, which is of particular importance for tenders with such high complexity, requiring a lot of documents in order to be considered responsive. LPP and the ROGPP envisage all procurement deadlines as well as the possibilities to shorten them. Therefore, the CA is not allowed to set deadlines which are shorter than those defined in the provisions of LPP and ROGPP.

This is a medium-value tender, and the standard timeframe for these tenders in open procedures is 20 days³⁷. Shortened deadlines for medium-value contracts in open procedures are 10 days³⁸. Deadlines are calculated from the date of publication of the contract notice. Publication date of the contract notice for this tender was 19.05.2022, and the bid submission deadline was 30.05.2022. This means that EOs interested to bid had only 11 days to prepare their documentation, to prove they meet the requirements of the tender dossier. This means that the municipality complied with the shortened deadline, however, the issue is whether it has a legal basis. Article 46 of LPP provides for the special rules to shorten deadlines, listing several circumstances when this is allowed. Shortening deadlines is allowed in urgent cases, when compliance with deadlines according to articles 44 and 45 of the LPP is not possible, when emergencies are not caused ac-

37 Official Gazette of the Republic of Kosovo. Rules and Operational Guidelines of Public Procurement, par. 21

38 Ibidem.

ording to article 35.2.1 of the LPP, and they cannot be attributed to the actions or inactions of the contracting authority³⁹.

There is no legal basis to shorten deadlines and accelerate the submission of bids for tender of this nature. The Municipality of Gjilan should have planned this procurement activity, and implement it earlier, applying regular deadlines. As it is stated in Article 46 of LPP, shortening of deadlines cannot be attributed to the inactions of the authority⁴⁰. This action has clearly harmed competition in this procurement procedure, because even though it was developed through an open procedure, only one economic operator submitted a bid. Hence, prior to setting deadlines, the CA should consider the complexity of the bid. In this case, in addition to cutting deadlines, the CA applied a series of requirements for operators to fulfill to be considered responsive and, as a result, to be awarded the contract.

The Municipality of Gjilan has requested that EOs must submit a declaration under oath for eligibility requirements, a declaration under oath that the EO owns a temporary collection center for dogs, business certificate, court and TAK certificates, a list of references of similar contracts carried out in the last three years, a list of two veterinarians and copies of their diplomas, licenses, CVs, employment contract or agreement for the engagement in this project, and their previous experience. In addition, the municipality requested operators to have two veterinary technicians and attach the same documentation for them as for the vets. Proof of ownership of two “pick-up” cars and an excavator was also required, through the submission of the vehicle registration, unique customs documents, or lease agreements.

The OE’s bid included a series of documents. Initially, to prove its track-record with similar jobs, the EO submitted a long list of implemented contracts. However, the municipality made no requirement on the amount and value of such contracts. In the last three years the EO has implemented 33 contracts, mainly related to Disinfection, Disinfestation and Deratization (DDD) in various institutions, and supply of food, and only four contracts for services like those under this contract. Moreover, the last three contracts listed are still ongoing, and shouldn’t have been included in the list, as they are not completed contracts.

The contracts were required to be associated with references, and only two issued by the Food and Veterinary Agency (FVA) have been submitted. One contract with FVA was completed on April 26, 2021, and the other on October 1, 2022. This means that when the EO applied and was awarded the contract, they were already executing one large contract of 46,000.00 EUR. When an EO agrees to implement more than one public contract simultaneously, it cast doubt in the service and the quality it provides, particularly in large-value contracts such as the two respective ones. With the contract signed with FVA, the operator would treat up to 10,000 various pets, whereas through this tender it would treat 250 dogs. This requires significant staff, whereas the EO submitted proof of only eight veterinarians.

The Municipality of Gjilan also had two other active contracts with the same EO. One contract for the provision of DDD services with a value of 101,690.00 EUR and another for the supply of animal feed, with a value of 83,256.00 EUR. The first contract was signed on 14.07.2022, and it required the EO to have one vet and four veterinary technicians. The second tender was signed on 14.06.2022, a few days prior to the signing of this agreement, and the EO was required to submit proof of one vet and one vet technician. It is clear the same company contracted a number of works, which is why the contract

39 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on the Public Procurement of the Republic of Kosovo, Article 46, par. 1,

40 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on the Public Procurement of the Republic of Kosovo, Article 46, par. 1, iii,

manager should be careful in reporting, as it is practically impossible to complete that many services simultaneously.

The Municipality of Gjilan had concluded the same contract with the same EO in 2019. However, in the 2019 tender for the treatment of stray dogs, the CA had specified in the bill of quantities the services required to be carried out and the price per position.

TABLE 20. The bill of quantities for the tender for the treatment of dogs in 2019 between the Municipality of Gjilan and EO Monuni LLC.

Description		Unit price with VAT
I.	Capture and transportation of stray dogs to the veterinary clinic	45.00
II.	Treatment against parasites	20.00
III.	Castration or sterilization and placement of metrics	10.00
IV.	Euthanasia in special cases	1.00

Source: Economic operator's bid

The Municipality of Gjilan specified the services that will be performed in the four positions, for which the price per unit has been set. However, the bill of quantities lacked the specific number of dogs required to be treated, which is why a higher price has been applied for the first position, i.e. for the capture and transportation of dogs. However, such pricing is in contradiction with the legislation on financial compensation for field veterinary services, which clearly defines the fees for these services. According to this legislation, the price for the capture of stray dogs and the evaluation of their health per head/piece should be 15.00 EUR, 10.00 EUR for the treatment (control, feeding, vaccination, deworming, identification) of stray dogs, 35.00 EUR for castration or sterilization, and 25.00 EUR for euthanasia⁴¹. The same happened with the bill of quantities of this tender, with the positions or the price per unit not included in the bill of quantities, but rather only total and the number of dogs to be treated.

⁴¹ Official Gazette of the Republic of Kosovo. Administrative Instruction No. 01/2018 on the Financial Compensation for Veterinary Services in the Field, Annex 1. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=37699>

TABLE 21. The bill of quantities for the tender for the treatment of dogs in 2022 between the Municipality of Gjilan and EO Monuni LLC.

No.	Description	Unit	Quantity	Amount in €
1.	Treatment of Stray Dogs	Pieces	250	18500.00
Total:		18500.00	Totali:	18,500.00

Source: Economic operator's bid

Such a bill of quantities is wrong, as EOs should not have discretion to decide on the needs of the authority, and the treatment of stray dogs can include many or a few captures and treatments. Furthermore, such bill of quantities creates confusion as it is not clear whether it is treatment with control, food, vaccination, deworming and identification, or treatment from the start to the release, or euthanasia. Requirements regarding the treatment are included in the tender dossier, and they should also be placed in the bill of quantities, in order to determine the exact price per position. Such specification eliminates the possibility of misuse, as the operator can apply a high price for the capture of dogs, as in the previous case, with 45.00 EUR per dog for 250 dogs, or 11,250.00 EUR spent only in capture, and 7,250.00 EUR for treatment, castration, hospitalization, and euthanasia. These elements, albeit technical, play an important role in the course of implementation of the process, as well as in the execution of the purpose of the contract. Thus, in any other situation the municipality must ensure that it clearly specifies the positions in the bill of quantities, and thus comply with the law.

In addition to the mistakes by the municipality, the operator has also failed to fully meet the requirements. The municipality requested proof of professional staff for two vets and two vet technicians, with the submission of university degrees, licenses, CVs, employment contract or agreement of engagement in the project, and references of previous work. The EO submitted documentation for eight veterinarians, but the university degrees were not notarized, licenses of operation were not submitted for neither veterinarian, the employment contracts were expired for some of the vets and for other vets, employment contracts indicated they were hired as managers, or employees in the veterinary and agricultural pharmacy. Moreover, several CVs of the veterinarians do not specify if they were employed with the operator or not.

For these omissions the EO should request additional clarification, however, if the CVs submitted fails to include the basic requirements, there is ground to reject the bid without requesting additional information⁴². In addition, one excavator was required, documented through vehicle registration or Customs Unique Document, or lease agreement. However, in its bid, the EO only submitted one agreement which states that another EO will be involved in the opening of pits. However, no document was submitted for the excavator in question. This means that there was an agreement not for the lease of the machinery, but rather through sub-contracting of another operator for the digging of pits. This goes beyond the requirements of the tender dossier and shouldn't have been accepted. In addition to shortening the deadline for the submission of bids, the Municipality made a mistake which leaves room for misuse and awarded the contract to a company which didn't fully meet the requirements of the authority.

⁴² Official Gazette of the Republic of Kosovo. Rules and Operational Guidelines of Public Procurement, par. 39.8

Spatial disinfection and deratization of buildings in the Municipality of Gjilan – retender

The Municipality of Gjilan, on 06.06.2022, published the contract notice for the Disinfection, Disinfection and Deratization of buildings in the Municipality of Gjilan. This activity was in a retendering procedure, after the Tender with Procurement No. 651-22-1970-2-1-1 was annulled, on grounds that following requests for review, the municipality was unable to revise the tender dossier, as the last request was submitted on 26.05.2022 whereas the bids were scheduled to be opened on 30.05.2022. Here, the municipality's justification was that they can no longer revise the tender dossier when the time is to open the bids. However, according to Article 62, par. 2.2 of LPP, annulment is allowed if it is a result of an objective event, which can be demonstrated, couldn't have been predicted, and is beyond the control of the contracting authority, which action must take place at least three days prior to the opening of bids⁴³. Although the provision invoked by the municipality to annul the procedure requires that the decision is taken at least three days prior to the opening of bids, the municipality took this decision on the day of the opening of bid.

Decision on annulment is published at 16:04 hrs., namely after working hours, which casts suspicion that the bids may have been opened. Therefore, when invoking this Article of the Law, contracting authorities must implement the provision in full. The deadlines for the submission of bids were also shortened for this procurement activity. In the justification given for shortening the deadline for the submission of bids, the Municipality stated that: this activity is necessary and should be retendered, because it is vital to carry out the disinsection, disinfection and deratization of the buildings in the Municipality of Gjilan, therefore we ask the unit to continue with retendering in the shortest possible time. According to this, the requesting unit asked for the deadlines to be shortened and proceed as quickly as possible with the procedure.

To shorten a deadline, the legal requirements must be fulfilled. For such a high-value public contract, the deadline cannot be shorter than 15 days⁴⁴. The contract notice for this procedure was published on 06.06.2022 and the deadline for the submission of bids was 24.06.2022, which means that interested economic operators had 18 days to prepare the required documentation. Although this legal provision was not violated, it is disputable whether the municipality had rights to shorten the deadlines for the submission of bids.

According to the LPP, there are several situations in which the CA has the right to shorten the deadline. Shortening of deadlines is allowed if a procurement activity has to be implemented urgently; if it is impossible to observe the deadlines set in Articles 44 and 45 of the LPP, if there are intellectual or industrial property rights, if there are situations when the contract must be awarded to an economic operator for technical or artistic reasons, and in cases of extreme emergencies that could not be foreseen⁴⁵. The municipality of Gjilan has clarified in the tender dossier that this procurement activity aims to prevent contagious diseases and eliminate bacteria and microorganisms harmful to the health of the population. Also, it was stated that the municipality has planned for this activity to be regular and annual, in order to create conditions for a healthier life for the citizens. In addition, the "Declaration of Needs and Availability of Funds" indicates that such an activity is planned. The conclusion drawn from the above

⁴³ Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on the Public Procurement of the Republic of Kosovo, Article 62, par. 2.2.

⁴⁴ Rules and Operational Guidelines of Public Procurement, par. 21

⁴⁵ Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on the Public Procurement of the Republic of Kosovo, Article 46, par. 1,

is that the municipality had no right to shorten the deadlines for the submission of bids, although it was a retender. Moreover, when a procedure is retendered after an annulment, the understanding is that it is a new procedure with the same procurement title. This means that sufficient time should have been allowed for preparation, as in the case of a first tender.

Pavement of the road in Arbëria

The Municipality of Gjilan has initiated several procedures with the aim of paving various parts of the city. This was the case also with the procedure for the pavement of the road in Arbëria, which was developed in an open procedure, with an allocation of 198,127.00 EUR, making it a medium value procurement. Seven operators participated in this process, and the contract was concluded with GEO Bejta Commerce JSC & Murseli LLC with a value of 165,480.25 EUR. Works for the pavement of the road were planned to be completed within three months.

TABLE 22. Bidding economic operators in this tender and the value of their bids

No.	Bidding Economic Operator	Bid value
1	Company Zuka Commerc LLC	177,108.99 EUR
2	GEO Bejta Commerce JSC & Murseli LLC	165,480.25 EUR
3	K.N.P.Sh. Papenburg & Adriani Company LLC	165,996.08 EUR
4	TALI LLC	203,354.54 EUR
5	EL- BAU LLC.	197,934.54 EUR
6	Pro & Co Group LLC	189,095.18 EUR
7	GEO SBP Construction LLC	173,550.49 EUR

A series of requirements were applied for this tender, and according to the contracting authority they were met by the group of economic operators who were awarded the contract. There is a high number of requirements in the tender dossier for this procurement activity, in order for operators to be responsive and awarded the contract. These requirements were met by the winning GEO, however they were all met by the Lead Operator of the Group, namely Bejta Commerce JSC. The other EO had only contributed with the provision of two essential vehicles for the performance of the works.

Although the LPP doesn't specify any division of responsibilities between operators forming a group, the ROGPP allows the possibility for the contracting authority to specify in the tender dossier the requirements for each operator separately. According the LPP, all group members are jointly and individually responsible to the contracting authority for the contents of the tender of the group, and if the contract is awarded to the group, they are jointly and individually responsible to the contract-

ing authority for the execution of the contract⁴⁶. This means that the objective of the establishment of the group of economic operators is to support each-other with financial resources, workers, and capital, to be awarded the contract and to best implement the contract. In this case, the purpose of the establishment of the group was not met, as the financial turnover, the list of contracts executed, professional staff, and the majority of vehicles, facilities and technical equipment were only met by one group member.

The LPP and the ROGPP include no special provision specifying the share (%) of the project should be implemented by the leader and that of the other group members. However, the ROGPP gives the right to contracting authorities to apply a requirement for the fulfillment of duties. According to the ROGPP, when necessary, the CA may specify in the tender dossier and the contract notice how economic operators can fulfill the requirements of the economic and financial situation, or technical and professional ability⁴⁷. This means that CAs may apply a minimum threshold of requirements to be met by members of the group.

The CA must utilize this legal option and ensure that EOs joining groups with the purpose of completing the works as per the needs of the municipality. If only one member of the group fails to meet the requirements for banking turnover, implemented contracts, equipment and workers, it means that it will be only this EO that will carry out the works. If the EO already has the economic, financial, technical and professional capabilities to implement the contract, the purpose of the establishment of the group is put into question.

In such cases there is the possibility of groups of operators being formed only for the references issued for the execution of the contract, which references can also be used by the non-contributing members for future applications in tenders. This cannot be allowed, as there is a chance of such operators being awarded contracts and having inadequate implementation. If the contracting authority opts out of the use of percentages for the fulfillment of requirements, it must ensure that it specifies in the letter of reference the percentage of works carried out by each member.

PPRC has also issued an interpretation on this matter, stating that references issued on behalf of the group can be accepted by the CA relative to the percentage (%) of works performed by each group member. The economic operator may ask the CA issuing the reference to specify the percentage of works performed by each member. The CA is required to specify in the reference the percentage of works carried out by each member⁴⁸.

46 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on the Public Procurement of the Republic of Kosovo, Article 71, par. 3.

47 Rules and Operational Guidelines of Public Procurement, par. 274

48 Public Procurement Regulatory Commission. Frequently Asked Questions, 26.



Municipality of Peja

Lighting and installation of cobblestones in public spaces in the municipality of Peja - part II

The municipality of Peja initiated in 2021 a procedure for the construction of several town squares and public lighting in several villages of the municipality. However, in August 2021 the procedure was canceled, and was not finalized until March 2022. The procedure was divided into four Lots, which included villages of Gorazhdevc, Lozhan, Loxhe, Poqest and Vragoc, including the public spaces as well around the MFMC's and the 'Gjimnazi' neighborhood. For the four Lots, interested economic operators could bid for all lots, but could only win one. In case the bidder offered the lowest price in more than one Lot, then they would be awarded with the Lot which was more favorable to the contracting authority.

The total estimated value of this procurement activity was 466,647.50 EUR, with a duration of 3 months. Out of this amount, 72,848.00 euros were allocated for Lot 1 - 96,998.00 EUR, for Lot 2 (40,000.00 EUR from the Ministry of Local Government Administration - MLGA), and 101,913.00 EUR were allocated for Lot 3 (40,000.00 EUR from MLGA) and 194,888.50 (60,771.78 EUR from MLGA) were allocated for Lot 4.

LOT 1 – Development of the Square in Village Gorazhdevc and Public Lighting in Villages Lozhan, Loxhe, Poqest and Vragoc – part 1

The Municipality of Peja, on 02.08.2021, about a month after the publication of the contract award notice, canceled Lot 1 of the procurement activity. In the notice of cancellation, the municipality emphasized that this activity was canceled based on an instruction issued by the PRB, which requested the cancellation of the contract award in accordance with Article 108/A paragraph 10.2 of the LPP. However, according to this article, after accepting the request for review, the contracting authority shall approve it as well-founded, and shall partially or completely cancel the approved decision⁴⁹. Therefore, this article only speaks about the authority of the CA to cancel a decision, however, in the notice of cancellation, the municipality reasoned that the PRB decided and instructed the cancellation, which means that the legal basis presented in the notice of cancellation is not related to the decision of the PRB. In such a situation, the authority of the PRB is regulated by point 14 of Article 108/A, which allows for interested parties to submit an appeal to the PRB against rejections approved by the CA. Moreover, such a procedure cannot be found on the electronic platform of appeals of the PRB, which means that no decision has been made by the PRB on this procedure.

⁴⁹ Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement of the Republic of Kosovo, article 108/A, point 10.2.

In the same document, in the additional information section, the municipality states that the reason for the cancellation of this award notice is that the EO has made some errors in the bill of quantities, the value of the error exceeding more than 2%. These are arithmetic errors in the bid which, if the corrected amount is less than +/- 2%, the CA will correct such errors. However, if the amount to be corrected exceeds +/- 2%, then the CA will exclude the economic operator⁵⁰. In this case, after the opening and evaluation of bids by the evaluation committee, the municipality of Peja was supposed to declare the group non-responsive and exclude it from the competition. So, it shouldn't have declared it winner yet cancel the Lot entirely later.

TABLE 23. Ofertat e operatorëve ekonomikë për Lot 1

No.	Economic operators	Price of bids
1	GOE BK-Construction LLC & Ilir Lajçi B.I.	70,484.00
2	GOE Engineering Group LLC & Ridvan Elezi B.I.	84,135.00
3	BM Group LLC	87,131.00
4	Sky Line Co LLC	73,046.50
5	Mondi LLC	69,707.00
6	GOE N.P.Sh El-Ing & Asfalti LLC	53,034.00

As can be noticed from the table, the lowest bid was from GOE N.P.Sh El-Ing & Asfalti LLC, however, the same operator was declared non-responsive because, according to the notice of decision of the CA, this GOE listed only two engineers in their bid, whereas the tender dossier required three.

As in this situation, where the evaluation commission found that the GOE with the lowest bid could not be rewarded with a contract because it is non-responsive, it should have acted the same way with the GOE that was declared the winner. Either way, the municipality would have had no other option but to cancel this Lot because 72,848.00 EUR had been allocated for it, whereas the other bids exceed the estimated value. Therefore, in this situation, the municipality should have relied on article 44 of the ROGPP which allows for cancellation of tenders after the opening of bids if all bids by responsive operators exceed the budget of the contracting authority⁵¹ and should not have announced any of the respective operators as winners.

A new procedure has been developed for this Lot, a re-tender with procurement number 635-21-5160-5-2-1. The estimated value for this tender was the same, that is 72,848.00 euros, with a duration of 3 months. With the same requirements in the tender dossier, this Lot was awarded to GOE N.P.Sh. El-Ing & Asfalti LLC, their bid being in the amount of 67,997.00 EUR.

⁵⁰ Rules and Operational Guidelines for Public Procurement, article 41, point 8.

⁵¹ Rules and Operational Guidelines for Public Procurement, article 44, point 6.

TABLE 24. The first bill of quantities with prices provided by GOE N.P.Sh. El-Ing & Asfalti LLC

Lot 1 – RECAPITULATION		
1	Construction of the public space in the village of Gorazhdevc	26,175.00
2	Construction of public space in the village of Llozhan and surrounding walls of the cemetery in the villages of Vragoc and Poqest	7,718.00
3	Construction of public lighting in the villages of Poqest, Babiq, Millovanc and Vragoc	19,141.00
TOTAL 1+2+3		53,034.00

Source: Bid of the economic operator

TABLE 25. The second bill of quantities with prices provided by GOE N.P.Sh. El-Ing & Asfalti LLC

Lot 1 – RECAPITULATION		
1	Construction of the public space in the village of Gorazhdevc	26,175.00
2	Construction of public space in the village of Llozhan and surrounding walls of the cemetery in the villages of Vragoc and Poqest	22,396.00
3	Ndërtimi i ndriçimit publik në fshatrat: Poqest, Babiq, Millovanc dhe Vragoc	19,426.00
TOTAL 1+2+3		67,997.00

Source: Bid of the economic operator

Although the works to be performed are completely the same, in the second category we see a very big difference between the prices set in the first and second bill of quantities. For the construction of public spaces in the village of Llozhan and the surrounding walls of the cemeteries in the village of Vragoc and Poqest, foreseen to be spent in the first offer, were 7,718.00 EUR, whereas in the second bid the price for these works was set at 22,396.00 EUR, in other words 14,678.00 EUR higher.

However, the problem between the two bids does not lie in the price increase, but in the problems that the bill of quantities contained in the first case, which the evaluation commission did not record as a fact that makes the GOE in mention non-responsive. In the first bill of quantities, the economic operator did not include in the calculation of the total for the second chapter, the expenses for the surrounding wall, for which it had planned to spend 16,088.00 euros.

TABLE 26. Expenditures for the surrounding wall which the GOE did not include in the calculation of total expenditures

Surrounding walls of the cemetery in the village of Vragoc and Poqest 200 m ²					16.088.0 EUR
Works related to the surrounding wall					
4.1 Soil works					
Excavation of floor III-IV for strip foundations and transportation of excavated soil to the landfill.	m ³	54	5.0 euro	270.00 euro	
Supply and laying of gravel under foundations with a thickness of 10,000 cm after compaction.	m ³	6	8.0 euro	48.00 euro	
4.2 Works related to the foundation					
Supply of transport material and the concreting of foundations, with dimensions: 0.5*0.5*200.0m ³	m ³	50	50.0 euro	2.500.00 euro	
Material supply, transport and cross-section reinforcement of foundation beams with longitudinal reinforcement 6ø12	kg	1750	0.5 euro	875.00 euro	
Rod armor: ø8/20cm ³	kg	750	0.6 euro	450.00 euro	

Source: Bid of the economic operator

The second chapter of the first offer had a total value of 7,718.00 euros, as can be seen in table above, but it should have had a value of 23,806.00 euros including the costs for the surrounding wall.

TABLE 27. Prices per position and Chapter 2 total, not including surrounding walls

Recapitulation – 2		
1	Recordings and preliminary field work	170.00 euro
2	Site clearing and earthworks	288.00 euro
3	Construction of the area	4,430.00 euro
4	Fountain works and adjustment of sedimentary	750.00 euro
5	Greenery and playground	2,080.00 euro
TOTAL 1+2+3+4+5		7,718.00 euro

Source: Bid of the economic operator

As can be seen in this table, the wall was not presented in, as was titled by the GOE, recapitulation 2, nor the value of 16,088.00 EUR. If such a value were to be added, then category two would have a total of 23,806.00 EUR. Consequently, the value of the bid by the GOE at 53,034.00 EUR was an incorrect value because it should have been 69,122.00 EUR. This means that the second bid is cheaper than the first offer by 1,125 euros. In the second bid, the surrounding wall and its cost have been evidenced, and in the second bid this service cost the GOE 14,678.00 euros.

TABLE 28. Prices per position and Chapter 2 total, including surrounding walls

Recapitulation – 2		
1	Inçizimet dhe punët paraprake në teren	170.00 euro
2	Pastrimi i terrenit dhe punët tokësore	288.00 euro
3	Konstruksioni i hapësirës	4,430.00 euro
4	Punët e fontanës dhe rregullimi i sendimentusit	750.00 euro
5	Gjelbërimi dhe këndi i lodrave dhe muri rrethues	16,758.00 euro
GJITHSEJ 1+2+3+4+5		22,396.00 euro

Source: Bid of the economic operator

Although the surrounding wall was foreseen in category 4, the costs for this work have been merged with those of category 5. Greenery and playground in the two bids were 2,080.00 euros, whereas together with the cost for the wall, in category 5 it was estimated to cost 16,758.00 euros. This situation was avoided in the second case, and the GOE was rewarded a contract. However, this bill of quantities has other issues which the evaluation commission should have identified and for the same municipalities it should have asked for clarifications⁵² from GOE in order to clarify the situation.

The beginning of the problems with the bill of quantities started when it was drawn up by the municipality. In the bill of quantities of this tender, the municipality has, in a very generalized way, split only three positions according to the places where the works will be carried out. However, it did not specify which works should be performed. The municipality could have presented accurately the works needed to be done, given that it clearly knows its needs regarding the construction of these spaces. Therefore, in this case, the municipality should have expanded the positions and specified exactly what works need be done and not leave these estimations at the discretion of the EOs because this has caused many confusions. This left room for EOs to repeatedly add work that is not needed and even place the same works in several positions, which has caused for abnormally low prices to be set.

52 Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement of the Republic of Kosovo, article 59, point 2.

TABLE 29. The bill of quantities drawn up by the municipality

Lot 1 – Recapitulation	
1	Construction of public space in the village of Gorazhdevc
2	Construction of public space in the village of Llozhan and surrounding walls of the cemetery in the villages of Vragoc and Poqest
3	Construction of public lighting in villages: Poqeste, Babiq, Millovanc and Vragoc
Total 1+2+3	

Source: The bill of quantities drawn up by the CA

For the leveling and compacting of the sub-base of the boulevard body and green parts, until a compaction of 30-35 MPa is achieved, the GOE has set the price of 0.1 cents per square meter. As far as the other bidding operators, three of them bid at higher prices. Two of them bid at 1.00 euro, and another one at 0.50 cents, which means that the price of 0.1 cents is much lower. Not only compared to other bids, but in practical terms as well, there is no possibility that such work can be done with that amount.

TABLE 31. The position presented with the price of 0.1 cents

Leveling and compacting of the sub-base of the boulevard body and green parts until a compaction of 30-35MPa is achieved	m2	320	0.1 euro	32.0 euro
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Source: Bid of the economic operator

In this situation, when a tender or a position appears to have an abnormally low price, the contracting authority must request in writing from the EO a statement that includes all the necessary clarifications for the low price and do this using the standard form approved by the PPRC “Standard letter for abnormally low tenders”⁵³. The fact that such action was not undertaken by the municipality in this case, shows that the bid was not evaluated carefully, and that the necessary steps as required by the LPP were not undertaken either.

Within this bill of quantity, different prices have been set for the same work. In the first category, the construction of the public space in the village of Gorazhdevc, planting of seedlings, limiting the seedlings with wooden strips, watering and maintenance until seedlings start growing, a price of 30.00 EUR per piece was provided. Whereas, for the construction of public spaces in the village of Llozhan, a price of 25.00 euros was provided for the same work. Also, a price of 45.00 EUR per piece was set for the supply, transportation, and assembly of garbage bin in the village of Gorazhdevc. For the same position, the price of 40.00 euros was set in the village of Llozhan. A price of 200 euros per piece was set for the work, transport, and assembly of seats in the village of Gorazhdevc, whereas for the same seats in the village of Llozhan, the price set was 250 EUR per piece. The municipality should have also

⁵³ Rules for abnormally low tenders, article 4, point 2.

been careful about this issue and made sure that it has the necessary information on why such a situation was created. However, since we are dealing with the same type of work, the prices should not have varied from one place to another.

The creation of such situations comes because the contracting authorities leave much room which the economic operators use. If the CA had drawn up a precise bill of quantities from the beginning, this would have facilitated the work of the evaluation commission, and the EOs would not have the chance to take such steps and manipulate with prices in different positions. Furthermore, if the CA was more careful in evaluating the bids, such manipulations would have been avoided.

LOT 2 – Development of the Square in Village Gorazhdevc and Public Lighting in Villages of Lozhan, Loxhe, Poqest and Vrogoc - part 2

Like Lot 1, Lot 2 was also intended to carry out the same works in the same villages. Unlike Lot 1, the municipality precisely determined its needs in Lot 2 and what is in the interest of the municipality as regards construction of these spaces. However, it did not split locations as to which service should be performed in which village.

For Lot 2, there were 96,998.00 euros allocated, and ten EOs bid with different prices. The contract was signed with EO Mondi LLC, which offered a price of 72,053.60 euros.

TABLE 31. Bidding economic operators for Lot 2

No.	Bidding economic operators	Bid price
1	MONDI LLC	72,053.60 EUR
2	GOE-Construction LLC & Dino LLC	78,895.00 EUR
3	BM Group LLC	85,774.00 EUR
4	N.N. 100% Design LLC	73,785.00 EUR
5	GOE Engineering Group LLC & Ridvan Elezi B.I.	86,644.50 EUR
6	GOE N.M.I.Q. Montkomerce LLC & Euroasphalt LLC	92,780.00 EUR
7	Sky Line Co LLC	61,999.99 EUR
8	GOE N.P.Sh. El-Ing & Asfalti LLC	73,698.00 EUR
9	Multi Business Group LLC	88,927.28 EUR
10	GOE BK- Construction LLC & Ilir Lajçi B.I.	87,822.00 EUR

The economic operator Sky Line Co LLC had a cheaper offer, but it was excluded from this procurement activity because it had not met the requirements related to staff and bank turnover. But neither did the EO announced as winner meet the requirements related to staff. So, for the same reason, one was declared non-responsive whereas the other was awarded the contract.

Specifically, the municipality requested that the EO submits a list of staff with a minimum of 15 employees who will be engaged in the contract execution, and present pre-contracts for the employees on behalf of this project or present a list from the Tax Administration confirming payment of contributions in at least the last six months. If the deadline for submission of offers was 28.06.2021, then it is implied that the list from the Tax Administration submitted must be for the year 2021, between January and June. The EO, in its bid submitted a TAK list for 2020 and only for 12 employees. Some other employees were added to the list, but they didn't show up in the TAK list, and no contract was presented which would prove those employees work in the company or are engaged in the project.

Another request in the tender dossier was that the EO shall engage three engineers as senior professional staff. One shall be designated as the project manager, and he/she shall be a construction engineer. For this engineer, the request states there shall be a contract or pre-contract on behalf of the project, however no contract or pre-contract was submitted, only an agreement for their engagement as project manager. One of the three engineers shall be electronics engineer who will be designated as the site manager. The same person was appointed as site manager, but the request was not fully met as no contract or pre-contract for this project was submitted. Meanwhile, the EO did not engage a third engineer at all, therefore it did not submit any documents for this staff. That is, three engineers were requested to be engaged, but only two were engaged.

Just as with EO Sky Line Co LLC, the bid by EO Mondi LLC should have been considered non-responsive and excluded. In this case, the municipality acted against the law, it did not evaluate the offers correctly and did not treat all offers equally, thus favoring some of them. Moreover, in the bill of quantities offered by the municipality in position 4, which describes the purchase, transportation and assembly of LED lamps, at the end of the text it is required that the bidder for these lamps attaches a catalog of lamps, the manufacturer's ISO certificate.

TABLE 32. Position 4 of Bill of quantities for Lot 1 and 2

Position	Lot 1	Lot 2
Purchase, transportation, and installation of LED lamps	70.00 EUR	18.00 EUR

Source: Bid of the economic operator

These documents not only they were not submitted, but they were also not even recorded by the evaluation commission as omissions in the bid by the economic operator that was awarded with contract. Furthermore, these two Lots should have been split into different topics because the works are not in the same locations. In Lot 1, according to the bill of quantities, works have been carried out in the villages of Gorazhdevc, Llozhan, Vrogoc and Poqest, whereas in Lot 2, works were carried out in the village of Loxhe. Such a split should have been done in order not to create confusion among economic operators. The two bills of quantities of awarded operators for Lot 1 and Lot 2 have the same position descriptions, but the prices between them are very different. In the bill of quantities for Lot 1, "the purchase, trans-

port and installation of LED lamps” as shown in table 32, cost the municipality in Lot 1 - 70.00 EUR per piece, whereas the same lamp cost 18.00 EUR in Lot 2, that is 52 EUR cheaper.

Thus, the only difference between the two lamps is that the lamp in Lot 1 was 63-50 W, whereas the one in Lot 2 was 63-80 W. The same goes for the supply and installation of 10-meter-long concrete poles; in the same tender, in Lot 1 they cost 70.00 EUR, whereas in Lot 2 they cost 150.00 EUR, that is 80.00 EUR more. In this case, the municipality should have paid more attention to the prices in positions, considering that we were dealing with similar work and the same procurement activity.

Purchase of motor cultivators

In May 2022, the municipality of Peja launched a tender for the purchase of motor cultivators in an estimated contract value of 157,500.00 EUR. This tender was intended for the purchasing of 150 motor cultivators and was implemented in partnership with farmers, with the municipality financing 60% of the amount while the rest would be covered by the farmers.

Five (5) economic operators participated in this procurement activity, and the process was characterized by numerous complaints which came because of errors in defining the criteria in the Tender Dossier.

TABLE 33. Economic operators who participated in this public procurement activity

No.	Name of Economic Operator	Total bid amount
1.	N.P.T Haxhijaha LLC	126,600.00 EUR
2.	Komtel Project Engineering LLC	157,200.00 EUR
3.	N.P.T Bajra	157,200.00 EUR
4.	Agri Bau LLC	84,000.00 EUR
5.	Ana Co LLC	116,550.00 EUR

The municipality of Peja initially changed the bill of quantities by removing the words “European products...”, to enable the participation of other manufacturers that possess the certificates required according to EU standards. This change was important since the contract was later awarded to an economic operator that offered products manufactured outside Europe (China).

After complaints by the economic operators, the municipality again changed the bill of quantities of the tender, adding the word “or equivalent” in the technical specifications, which although didn’t specify the name of a manufacturer, the economic operators claimed that the required standard (power: minimum 7.1 - maximum 8.0 HP, 252 cm³), was unique only to the manufacturer STIHL (MH700).

The municipality recommended for the contract the economic operator, Agri Bau LLC, which had offered 84,000.00 euros, an amount 46% less than the estimated value of the contract. The other four economic operators who participated in this tender were excluded on the grounds that they did

not meet the criteria set by the municipality. Nevertheless, even Agri Bau LLC, which the municipality signed a contract with on December 9, 2022, did not meet the requirements of the tender.

In the Tender Dossier it was required that the bidders present certificates ITAF 16949:2016 and ISO 5001:2018. Agri Bau LLC submitted four ISO certificates, but none of them were required in this procurement activity. Also, this economic operator did not provide evidence for a number of criteria defined in the technical specifications. In the catalog presented in the bid of Agri Bau Sh.PK, the data for some technical criteria are completely missing, such as: motor cultivators to be two-wheel, with pneumatic wheels, folding steering wheel, central adjustment of the steering wheel up to 180 degrees, etc.

Precisely for this reason, the municipality excluded the other four economic operators, saying that the brochure catalogs of these economic operators' products did not meet technical requirements of the Tender Dossier.

“The economic operator must present to the CA catalogs/brochures for the products offered, highlighting the product offered, together with a description of the characteristics of the products as required in the technical specifications”.

In this case, the municipality of Peja has applied a double standard by excluding four economic operators for their catalogs presented, whereas it awarded the contract to Agri Bau LLC, which had not provided descriptions in the catalog for a number of product characteristics required in Tender Dossier. Based on the analysis of offers, at least two economic operators (Komtel Project Engineering LLC and Haxhijaha LLC) have presented brochures describing the type and characteristics of the product they offered which should have been accepted by the municipality.

The acceptance of these two offers would have produced a new situation, where the price offered by the winning economic operator would have been abnormally low (the price offered by Agri Bau LLC would have been 31% lower than the average price offered and 33% lower than the second lowest price offered⁵⁴). In this situation, the municipality should have asked for additional explanations regarding the abnormally low price and if the explanation would not have justified the price offered, the municipality should have excluded this bidder.

Also, in the Tender Dossier, specifically in part III of the contract “special conditions” it is specified that the delivery of the goods by the supplier will be made within 5 days after receiving the “purchase order”, but in the delivery statement of Agri Bau Sh. P.K., there is no mention of the 5-day deadline. It only says that “the items in the price list will be delivered within a maximum period of 120 days from the date of signing the contract and the purchase order”.

The statement of delivery is contrary to the terms of the Tender Dossier, as it offers a maximum delivery period of 120 days, which does not comply with the 5-day period defined in the special conditions of the contract.

54 Public Procurement Regulatory Commission. Regulation B57 on abnormally low prices

Development of public spaces near the MFMC

The Municipality of Peja concluded a contract for the development of public spaces in the vicinity of Main Family Medicine Center (MFMC). The specific works are surveying and preliminary field work, cleaning of the terrain and groundwork, construction of the space, greenery, and electrical works. Three economic operators submitted their bids for this contract, with the contract awarded to GEO VB Tofaj & PE-VLA-KU LLC, at a price of 95,365.00 EUR.

■ **TABLE 34. Bids of economic operators for this contract**

No.	Economic Operator	Bid
1	GOE VB. Tofaj & PE-VLA-KU LLC	95,365.00 EUR
2	Worlds LLC	89,562.50 EUR
3	GEO BK - Construction LLC & Ilir Lajçi B.I.	92,772.00 EUR

Operator GOE BK-Construction LLC & Ilir Lajçi B.I. submitted a lower price bid, but was not awarded the contract, after the municipality had this GEO winner of Lot 1, but later annulled it. For this Lot, the Municipality didn't specify in the decision notice any issue with the GEO, in terms of the requirements of the tender dossier, but wasn't declared winner as the tender dossier stipulates that an EO can only be awarded one Lot.

The erroneous actions taken by the municipality caused a chain effect, damaging and unjustly eliminating the bidder from the competition. According to the tender dossier, the duration of Lots is 90 days, whereas the contract signed between the parties, in the special conditions section, states that the completion of all works will be within 60 working days. Since the special conditions prevail over the general conditions, the deadline for the completion of works is indeed 60 days. In addition, this section of the contract also stipulates that works will start five days from the signing of the contract. Thus, if the contract was signed on 15.07.2021, works will have to start on 20.07.2021. As a result, works will have to be completed by September or October 2021.

According to the documents made available by the Municipality of Peja for this tender⁵⁵, the contract manager signed a document notice of the completion of works for the contract, dated 12.08.2022. In another document, also dated 12.08.2022, the contract manager stated that the reasons for going over the dynamic plan are the high traffic congestion.

However, ten months, almost a year, have passed from the planned date of completion and the date of the notice on the completion of works, including the justification. This means that the works planned to be completed within 60 days were not completed for almost a year. Moreover, according to the documents made available by the municipality there were no notices on delays in the execution of this contract. This means that the contract manager has not accurately reported on what was realistically happening with the implementation of the contract.

⁵⁵ Documents obtained received following the request for access to public documents made on 26.08.2022.

The contract concluded between the EO and the municipality clearly stipulates the contract violations and termination. Article 36 of the contract states that a party is in violation of the terms of the contract if it fails to perform its liabilities under the contract, and Article 36.2, point b states that in cases of such violations, the injured party may terminate the contract. In this case, the institution was the injured party, as the project was not implemented within schedule, and any delay has an impact on the citizens, especially in this case, as it involves the area around the MFMC, with a high number of visitors.

Contracting authorities must utilize such provisions, and even terminate contract, in order to discipline economic operators. However, this requires the contract manager to fulfill his/her obligations responsibly and, in case of unreasonable delays, to recommend to the Procurement Office the termination of the contract, or the taking of other measures according to the LPP and by-laws. The notice on completion of works was submitted on 12.08.2022, which means that the final contract by the operator was submitted to the municipality on 15.08.2022, at a value of 43,888.50 EUR, and the payment order for the services was made on 06.09.2022. This is the only invoice in which the municipality allowed access, and it is not clear if the contract was fulfilled in full, or only this amount was spend out of the total contract value of 95,365.00 EUR.

The situation is made more difficult for the authority with the fact that the invoice fails to clearly specify the products purchased, works performed, and quantities. Instead, the economic operator only stated in the description the name of the contract, and the monetary value spent.

TABLE 35. Invoice of EO

No.	Description	Unit	Quantity	Contract total	Included value and VAT
1	Installation of lighting and cobblestones in public spaces in the Municipality of Peja - Part II	Percentage	88.00 %	95,365.00 €	Percentage 88.00 % 95,365.00 € 43,888.50 €
	Lot 3 - Development of public spaces near the MFMC				

The invoice as in the table above is unclear, indicating only that the municipality is obliged to pay the stated amount. This practice must be prohibited, as CA must accurately know if the products were purchased or works were performed, and if they have the same price as the bill of quantities. This situation leaves room for EOs to manipulate with prices and quantities of products and works performed.

The bill of quantities envisages electrical works, and position 5.7 requires the supply and assembly of lighting lamps. This position states that for these lamps the bidder must attach in the bid the catalog, highlighting the type offered and the manufacturer's ISO standard. Although this request was not included in the tender dossier, the requirement in the bill of quantities is still mandatory and must be fulfilled. Contracting authorities must carefully consider every tender document and decide to either evaluate it with the other requirements or remove it altogether in order to eliminate any possibility of double standards in bid evaluation.

Horizontal and vertical road signs in the Municipality of Peja

In April 2022, the Municipality of Peja initiated the tender for horizontal and vertical road signs, with an estimated contract value of 74,000.00 EUR, and a duration of 24 months. The purpose of the tender was the supply and painting of broken white lines, full white lines in the center of the road, pedestrian crossing, various direction arrows, and the installation of horizontal road barriers.

Seven economic operators participated in this procurement activity, and the contract was awarded to company ER - Lis LLC, as the lowest price responsive bid.

TABLE 36. Bids of Economic Operators in this Public Procurement Activity

No.	Name of Economic Operator	Total Bid value
1.	Lindi Markings LLC	52,490.00 EUR
2.	Is – Lis LLC	41,515.00 EUR
3.	N.Sh. Liriu	73,800.00 EUR
4.	RSM Company LLC	63,750.00 EUR
5.	Limit L & B LLC	51,000.00 EUR
6.	Sinjalizimi LLC	49,895.00 EUR
7.	I.T.K LLC	52,945.00 EUR

However, even the economic operators which the evaluation committee recommended for contract award had failed to fulfill the tender dossier requirements, and the Municipality of Peja made errors in evaluation.

Initially, the economic operator awarded with the contract failed to include the turnover records, customs unique document, purchase or lease invoices, proving the possession of equipment required in tender dossier. Also, the Er Lis JSC bid doesn't include the catalog of the vertical signs, but rather only one technical specification declaration.

The contract included for the use of machinery for this procurement activity, concluded between the winning bidder and company VE More JSC has no date, and no indication of start or expiration. In these situations, according to Article 39 of the ROGPP, the evaluation committee must request additional clarification on these documents not included in the bid. In addition, the evaluation committee also failed to notice that the bid price of the winning economic operators was abnormally low⁵⁶, in which case the municipality should have requested additional clarification on the prices.

⁵⁶ Article 3 of B57 Rules on Abnormally Low Bids.

The Municipality of Peja also violated the LPP when rejecting the request for review of Lindi Markings LLC, which it considered time barred. The Municipality published the Notice on the CA Decision on 20.05.2022, whereas the complaining economic operator filed a request for review on 25.05.2022, i.e. after five days. The Municipality acted contrary to the LPP⁵⁷, as alleged violations to the decision on the contract award can be filed within 5 days from the date of the contract award notice, where the day of publication is considered as day 0.

57 Official Gazette of the Republic of Kosovo. Law on Public Procurement Article 108/A par. 3, point 3.2.

Recommendations

- Public institutions concluding contracts with economic operators must ensure competition in any procurement activity, to achieve a more economic spending of public money.
- Public institutions must fairly and responsibly evaluate the bids of economic operators who will be awarded contracts, to ensure that project requirements will be fulfilled and value for money is achieved.
- When invoking legal provisions in taking decisions, institutions must ensure they comply and fully observe that provision.
- When drafting the requirements of the tender dossier and the bill of quantities, institutions must clearly define their needs and avoid any gap, to avoid any possibilities of manipulation and misuse.
- Public institutions should not accept invoices from economic operators which do not clearly specify the quantity and price of purchased products, works performed and supplies provided. This also avoids discrepancies from the prices listed in the bill of quantities.
- Ensure full compliance and implementation of the annual procurement plan.

Municipality of Gjakova

- Avoid any application of ISO standards which restrict competition.
- To ensure there is no annulment of the contract notice and that no non-responsive bidders is awarded the contract, accurately evaluate bids of operators, and take all required legal steps to ensure smooth implementation of procurement activities.

Municipality of Pristina

- Avoid any situation of extending contracts that do not serve the public interest.
- Avoid using negotiated procedures with no publication of contract notices if there are no circumstances mandating such use.
- Ensure that no legal violation occurs when it is easily avoidable.

Municipality of Prizren

- Ensure that contracts are not concluded with economic operators which lack the capability to perform the works required for the projects.
- Use all rights guaranteed with the Law on Public Procurement, to ensure that all provisions of the Law are observed, and that no contract is concluded with non-responsive bidders.

Municipality of Gjilan

- Implement the annual procurement plan, in order to implement all projects planned for the year.
- To ensure that the implementation of the Law on Public Procurement does lead to violations of other applicable laws in the Republic of Kosovo.
- Avoid shortening the deadlines for submission of bids without valid reasons based on the law.

Municipality of Peja

- Ensure continuous communication with contract managers, in order to identify irregularities and take measures in line with the Law on Public Procurement.
- Accurately evaluate the bids of economic operators and ensure that no double evaluation standards are applied.



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