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# Monitoring of Public Procurement Activities in Publicly Owned Enterprises: Prishtina Parking, Urban Traffic, Central Kitchen, and R.W.C Pristina

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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 ndërmarrjet publike lokale: Prishtina Parking, Trafiku Urban, Kuzhina Qendrore dhe Iber Lepenc".

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# List of abbreviations

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**CA** ↗ Contracting Authority

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**EO** ↗ Economic Operator

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**LPOE** ↗ Local Publicly Owned Enterprise

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**LPP** ↗ Law on Public Procurement

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**PC** ↗ Personal Computer

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**PPRC** ↗ Public Procurement Regulatory Commission

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**POEs** ↗ Publicly Owned Enterprises

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**PRB** ↗ Procurement Review Body

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**RWC** ↗ Regional Water-supply Company

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**TD** ↗ Tender Dossier

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# Introduction

There is a high number of central, regional, and local publicly owned enterprises (POEs) in Kosovo, covering many important fields, such as water supply, electricity supply, food supply, public transport, waste collection, city parking, etc.

The Law on Public Procurement (LPP) applies to all procurement activities and to all public institutions (budgetary organizations), including publicly owned enterprises. Over the years, Democracy Plus (D+) has monitored the procurement activities of various municipalities and ministries. This year, the monitoring of public procurement is focused on local and regional POEs.

This brief report includes four tenders of four different public enterprises. The first tender concerns the supply of technological equipment for LPOE Pristina Parking; the second tender concerns the servicing of fire extinguishers for LPOE Urban Traffic; the third tender concerns the supply and assembly of solar panels for LPOE Central Kitchen, and the fourth tender concerns the supply of chlorine gas and sodium hypochlorite of the Regional Water-supply Company - Pristina.

# Methodology

The first step for this report was the online research using the electronic e-procurement platform, through which the four tenders were selected. The research is focused on tenders for which the tendering procedures were developed from January to March 2023.

To complete the necessary research documents, D+ continued to submit requests for access to public documents in the selected enterprises, in line with Law No. 06/L-081 on Access to Public Documents and collect documents necessary for monitoring.

The report was finalized with the analysis of the documents, and D+ also made a visit to POE Urban Traffic to see from close the serviced machines.



# Prishtina Parking

## Supply of Technological Equipment

The local POE Prishtina Parking (hereinafter the contracting authority - CA), in January 2023, signed a framework contract with a duration of 36 months for the supply of technological equipment. The estimated value of this activity was set at 10,050.00 EUR, and the contract was signed in the amount of 8,967.00 EUR between the company and the economic operator (EO) Infinit LLC In this tender, only two economic operators have submitted bids, although this procurement activity was carried out through an open procedure.

■ **TABLE 1. Bids of Economic Operators**

No.	Bidding Economic Operator	Value of Bids
1	Trio Tek LLC	9,779.00 EUR
2	Infinit LLC	8,967.00 EUR

According to the special conditions of the contract, the delivery of the equipment would be made within ten days from the receipt of the purchase order by the supplier. Through this contract, Prishtina Parking was to purchase 12 personal computers, 12 monitors, and 11 external hard drives. The technical specifications were defined for these devices, and the supplier must comply with them to fulfill the contract (see the following table).

■ **TABLE 2. Incomplete bill of quantities, with the description of the technical specifications of the equipment**

Supply with technological equipment						
No.	Description of goods	Specifications	Unit	Quantity	Price	Total price
1	Personal Computer	Intel Core i5 -10105, 8gb ddr, 480 gb SSD + 1 TV HDD, Keyboard and mouse	Pieces	12		
2	Monitor	24 Wide VA24DQ, Eye Care Monitor 23.8 Full HD	Pieces	12		
3	External Hard Drive Disc	1 TB	Pieces	11		
					Total with VAT	

According to table 2, 12 PCs were requested in the first position. However, the defined specifications render this supply impossible, as there are no computers with these specifications. More precisely, Intel Core i5 - 10105 does not exist, as Intel has never produced i5 processors numbered 10105, but rather i3 processors with these specifications. This can be confirmed in the official website of Intel, which lists the names and specifications of their products. Accordingly, i3 processors have different identification numbers, including 10105, 10105F, 10105T, 10305, 10305T, 10325, 10100Y, 10100F, 10200, 10100E, etc<sup>1</sup>. The list of i5 processors includes the following identification numbers, including such as 10505, 10500H, 10200H, 10310U, 1038NG7, 10400, 10400F, etc<sup>2</sup>. However, this list doesn't have i5 processors with the number 10105. This means that the supply with the required specifications made it impossible for many other companies to submit bids. This problem was also noticed by the companies interested in applying to this tender. An EO has requested clarification regarding this position in the bill of quantities, suggesting there may have been an error in the specifications for this position, stating that Intel Core i5 is available in the market, but not the identification number 10105. However, the CA did not accept the request and stated that the technical specifications are mandatory and remain unchanged. Moreover, the CA added that even more advanced processor specifications, such as i7 and i9, are acceptable.

This clarification contradicts the tender dossier, which states that variants are not authorized, meaning that the supply of personal computers with a different processor should not be allowed. In addition to the fact that this allowance is contradictory to what the CA has stipulated in the tender dossier, it also contradicts the Law on Public Procurement (LPP), as the CA must indicate in the tender dossier whether variants are authorized. Variants without this indication will otherwise not be authorized<sup>3</sup>. CAs are allowed to authorize variants if the contract will be awarded to the most economically favorable bidder<sup>4</sup>. However, the tender dossier states that the criterion for awarding this tender is the lowest price. On this issue, the Public Procurement Regulatory Commission (PPRC) issued an opinion clarifying that *"Whenever the CA allows variants, it must use the most economically favorable criterion and clearly define the sub-criteria that allow a fair, equal, transparent, and non-discriminatory evaluation of bidders."*<sup>5</sup>

Although variations are not allowed in this situation, it turns out that even the i7 and i9 processors do not have the identification number 10105. The i7 processor, according to the manufacturer's database has the following numbers: 10870H, 10610U, 10810U, 1068NG7, 10700, 10700E, etc.<sup>6</sup>, where the number requested by CA cannot be found anywhere. Similarly, number 10105 cannot be found for i9 processors either, but rather only 10850K, 10885H, 10900, 10900E, 10900F, 10900K, etc.<sup>7</sup>

Hence, with such specifications, the CA has requested a product that does not exist and, consequently, even the winning economic operator will not be able to make the supply with these requirements. With these specifications, the CA has violated one of the fundamental principles of public procurement, which is non-discrimination, as in management of procurement activities, CAs must ensure an extensive participation of interested economic operators, and the CAs may not execute a procurement activity in such a way that reduces or eliminates competition<sup>8</sup>. This must also be the reason why only two companies submitted their bids for this tender, while the average number of bids for the same procurement cases in 2022 was four.

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1 10<sup>th</sup> Generation Intel Core i3 Processors, Intel. <https://ark.intel.com/content/www/us/en/ark/products/series/195733/10th-generation-intel-core-i3-processors.html> (last accessed on 29.03.2023).

2 10<sup>th</sup> Generation Intel Core i5 Processors, Intel. [10th Generation Intel® Core™ i5 Processors Product Specifications](#) (last accessed on 29.03.2023).

3 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on Public Procurement in the Republic of Kosovo, Article 29.2. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772> (last accessed on 29.03.2023)

4 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on Public Procurement in the Republic of Kosovo, Article 29.1. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772> (last accessed on 29.03.2023).

5 Public Procurement Regulatory Commission. Opinion, par. 9, 22.11.2022. <https://e-prokurimi.rks-gov.net/HOME/ClanakItemNew.aspx?id=545> (last accessed on 29.03.2023).

6 10<sup>th</sup> Generation Intel Core i7 Processors, Intel. [10th Generation Intel® Core™ i7 Processors Product Specifications](#) (last accessed on 29.03.2023).

7 10<sup>th</sup> Generation Intel Core i9 Processors, Intel. [10th Generation Intel® Core™ i9 Processors Product Specifications](#) (last accessed on 29.03.2023).

8 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on Public Procurement of the Republic of Kosovo, Article 7 pars. 2 and 6. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772> (last accessed on 29.03.2023).

Based on the answers from the CA, the winning economic operator has delivered a personal computer with the specifications Intel Core i5 - 10400 and 465 GB<sup>9</sup>. Consequently, the equipment was accepted by the CA in violation of the specific requirements, despite the fact they are mandatory. In the catalog submitted by the winning EO<sup>10</sup>, the personal computer specifications state that the device is of the 11th generation, whereas the one offered is 10th generation. Technical Specifications are mandatory requirements, and all bids must comply to be considered responsive<sup>11</sup>. As a result, the CA has awarded an irresponsible economic operator with the contract.

The winning economic operators for this request supplied the CA with a Lexus personal computer, with a price set at 535.00 EUR, including a keyboard and mouse, namely a total of 6,420.00 EUR for 12 computers.

Lexus personal computers are not found on any existing platform specializing in the sale of such electronic devices. In fact, Google indicates that the Lexus personal computers do not exist. The same resulted from the field research, and no store was found which has Lexus personal computers. In this case, since the CA plans to spend around 9,000 EUR on the purchase of such equipment, it must ensure that it receives reliable equipment and is able to research the market for that equipment, to get assurances it is purchasing the equipment at the market price. However, for such a product, assessing the market prices is made difficult since the product cannot be found in the market.

**TABLE 3. The bill of quantities completed by the winning EO, with the description of the technical specifications of the equipment.**

Supply with technological equipment						
No.	Description of goods	Specifications	Unit	Quantity	Price	Total price
1	Personal Computer	Intel Core i5 -10105, 8gb ddr, 480 gb SSD + 1 TV HDD, Keyboard and mouse	Pieces	12	535.00	6420.00
2	Monitor	24 Wide VA24DQ, Eye Care Monitor 23.8 Full HD	Pieces	12	160.00	1920.00
3	External Hard Drive Disc	1 TB	Pieces	11	57.00	627.00
					Total with VAT	8967.00

The EO described the specifications for these personal computers in the brochure, which only mentions “PC Intel Core i5 Lexus - gen 11, 8gb RAM ddr, 480 gb SSD 1 TV HDD”, but not number 10105. Failure to specify this figure means that the EO has not complied with the said request.

<sup>9</sup> Information obtained from the contracting authority LSOE Prishtina Parking, dated 14.03.2023, after additional questions. The request for access to public documents was sent on 23.02.2023.

<sup>10</sup> Documents obtained through the request for access to public documents, sent on 23.02.2023.

<sup>11</sup> Regulation No. 001/ 2022 on Public Procurement, Article 19.11. <https://e-prokurimi.rks-gov.net/HOME/ClanakItemNew.aspx?id=233> (last accessed on 29.03.2023).

The situation is somewhat similar with the second position. A simple Google search indicates that such specifications lead to a monitor of a specific manufacturer, as code VA24DQ is unique only to the monitor manufactured by ASUS<sup>12</sup>. In this situation, the CA failed to take into account a very important element, that the technical specifications must be drafted in such a way that they are consistent with the purpose of the procurement and allow access to all operators interested in the procurement activity. CAs are specifically prohibited from establishing technical specifications that favor or disfavor one or more economic operators<sup>13</sup>. In addition, CAs should not draft technical specifications that refer to any particular manufacturer, type, or origin<sup>14</sup>. By drafting these specifications, the contracting authority has violated the LPP, which precisely provides how the technical specifications should be drafted, and in which cases variants should be allowed and how they should be used.

Until now, the CA has ordered only six personal computers, six monitors and six external hard drives, with a total of 4,512.00 EUR, and supplies of 4,455.00 EUR remain to be made.

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12 ASUS VA24DQ Eye Care Monitor. <https://www.asus.com/displays-desktops/monitors/eye-care/va24dq/> (last accessed on 29.03.2023).

13 Official Gazette of the Republic of Kosovo. Law No. 04/ L-042 on Public Procurement in the Republic of Kosovo, Article 28.2. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772> (last accessed on 29.03.2023).

14 Official Gazette of the Republic of Kosovo. Law No. 04/ L-042 on Public Procurement in the Republic of Kosovo, Article 28.7. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772> (last accessed on 29.03.2023).

# Urban Traffic

## Servicing of Fire Extinguishers

POE “Urban Traffic” (hereinafter CA) has initiated a minimum value tender procedure for the servicing of fire extinguishers. According to the request, these devices should be serviced biannually<sup>15</sup>. The contract envisages two services in 2023, one on 07.01.2023 and the second on 07.07.2023. Five different items will be serviced through this contract, with a total of 104 devices.

This contract was concluded between CA and the successful economic operator in the amount of 962.00 EUR.

■ **TABLE 4.** Devices to be serviced through this tender and prices set by the winning economic operator

Items	Description	Unit	Quantity	Unit price - € (including all taxes, etc.)*	Total price - €
1	P6 for buses	Pieces	52	10.00 Euro	520.00 Euro
2	C10 for buildings	Pieces	13	8.00 Euro	104.00 Euro
3	C5 for buildings	Pieces	13	8.00 Euro	104.00 Euro
4	P9 for buildings	Pieces	13	8.00 Euro	104.00 Euro
5	P6 for buildings	Pieces	13	10.00 Euro	130.00 Euro
<b>Total</b>					<b>962.00 EUR</b>

\*These prices are set for both services, i.e. half of the price will be paid for the first service, and the other half will be paid in the next service.

Three economic operators have submitted bids in this procurement activity, and the contract was awarded to the economic operator Albkos Safety LLC.

<sup>15</sup> Administrative Instruction (MIA) No. 17/2017 on the Testing and Servicing of Fire Extinguishers, Article 9.2. <https://gzk.rks.gov.net/ActDetail.aspx?ActID=15810> (last accessed on 29.03.2023).

■ **TABLE 5.** Bids of Economic Operators

No.	Bidding Economic Operator	Value of Bids
1	L&G LLC	994.50 EUR
<b>2</b>	<b>Albkos Safety LLC</b>	<b>962.00 EUR</b>
3	N.P.Sh. Emergjenca	945.00 EUR

Of the three bids, N.P.Sh Emergjenca had the lowest bid, in the amount of 945.00 EUR. However, this company was disqualified from the procedure. According to the announcement of the decision of the CA, the EO was disqualified as he did not correctly complete the price table and declaration under oath. According to the CA, the conclusion that the declaration under oath was not completed correctly was erroneous<sup>16</sup>, as the operator did not make a mistake in this document. As for failing to complete the price table, the bidding EO listed a price of 945.00 EUR in the tender submission form, and the price of 994.50 EUR in the bill of quantities. The CA was right to reject the bidder, because if these forms are not completed properly, the tender must be rejected without requesting further information<sup>17</sup>.

However, 106 fire extinguishers were serviced in the first service, despite that 104 devices were listed in the preliminary bill of quantities, and the amount paid was 436.00 EUR. This indicates that half of the total price has not been spent on this expenditure. The first invoice should have been 481 EUR, or 45 EUR more.

■ **TABLE 6.** First invoice with prices and items/services submitted by the winning EO.

No.	No. of item	Description of item/services	Quantity	Price/ excluding VAT	VAT (%)	Price with VAT*	Total without VAT
1	SAKZCO2-5KG	Servicing of AKZ 5 kg – CO2 (SH)	12 pcs.	4.24 EUR	18	5 Euro	50.85 Euro
2	SAKZCO2-10KG	Servicing of AKZ 10 kg – CO2 (SH)	13 pcs.	3.39 EUR	18	4 Euro	44.07 Euro
3	SAKZ6KG	Servicing of AKZ 6 kg – powdered (SH)	70 pcs.	3.39 EUR	18	4 Euro	237.29 Euro
4	SAKZ9KG	Servicing of AKZ 9 kg – powdered (SH)	11 pcs.	3.39 EUR	18	4 Euro	37.29 Euro
Total without VAT							369.49
Total VAT							66.51
Total with VAT							436.00
Payment							0.00
Due for payment							436.00

\*prices set with VAT were calculated by the author of the report to serve this report, as they were not included in the original invoice.

16 The meeting held with the procurement office on 15.03.2022.

17 Guideline No. 001/ 2023 on Public Procurement, par. 10. <https://e-prokurimi.rks-gov.net/HOME/ClanakItemNew.aspx?id=233> (last accessed on 29.03.2023).

There is a discrepancy between this invoice and the bill of quantities completed by the winning EO. This discrepancy is also seen in the service quantities and the service price. The bill of quantities (table 4) lists a total of 104 devices to be serviced, whereas the service of 106 devices was paid with the invoice (table 6). The service report of fire extinguishers shows that, in reality, 100<sup>18</sup> such devices were serviced.

The invoice indicates a servicing of 70 pieces of 6kg devices, whereas the CA hasn't listed any such 70kg devices in the bill of quantities. According to the CA, P6 per bus and P6 per facility are equivalent to the third position on the invoice, i.e. SAKZ 6KG. However, 52 P6 devices for buses and 13 P6 devices for facilities are described in the bill of quantities, which means that even if the two positions are merged, there aren't 70 fire extinguishers, but rather 65. In the tender for the same purpose initiated in 2021, the CA has made an identical request, i.e. 52 P6 devices for buses and 13 P6 devices for facilities, meaning that there are only 65 6kg devices, rather than 70.

When asked about the invoice, the CA only replied on the prices, and provided no clarification on the difference in quantity. The fire extinguisher servicing report made by the winning EO shows that 51 6kg extinguishers were serviced for buses and 14 extinguishers of the same weight for buildings. This means that 65 devices were serviced and 70 were invoiced, five more. Such errors have also occurred in devices of other weight, such as the 9kg devices, where 13 devices were planned for servicing in the bill of quantities, and 13 were invoiced and paid. The servicing report shows that 10 9kg devices were serviced, which means one device more was paid.

The bill of quantities (table 4) shows the price for 6 kg devices at 5 EUR for one service (10 EUR total for two services). However, in the invoice, devices weighing 6 kg are billed at 4 EUR. In addition, 5 kg devices listed a price of 4 EUR in bill of quantities, while the invoice shows that 5 EUR were paid. 13 5kg devices were expected to be serviced, but only 12 were serviced.

This procedure was poorly planned, and issues emerged during implementation, as the CA's needs were not adequately planned or the service was not performed according to the request.

Although the CA claims that the mix-up in payments is due to a technical error<sup>19</sup>, the errors also occurred in the number of serviced devices. In the second part of 2023 when the second servicing will take place, the CA can pay a maximum of 481 EUR, i.e. half of the contract, if it is to comply with the planning in the bill of quantities, and the full price of the contract will otherwise not be fulfilled. Therefore, the CA must be cautious in the fulfillment of the rights and obligations deriving from such a procedure. Although from a monetary perspective the difference is not significant, the CA mustn't allow failures in fulfilling the obligations towards the operators, and vice-versa. Moreover, this is not a framework contract, which requires the execution of at least 70% of the contract<sup>20</sup>. This contract must be executed in full, which will be problematic for the contracting authority.

According to the e-procurement platform, the winning EO has 30 contracts in progress with various contracting authorities, which are mainly related to the supply or servicing of firefighting equipment. The second part of this contract is expected to be fulfilled in the second half of 2023, while the remaining amount from this contract is 526.00 EUR.

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18 Document received from the CA dated 16.03.2023, after a request for access to public documents on 23.03.2023.

19 Meeting held on 15.03.2023.

20 Regulation No. 001/ 2022 on Public Procurement, Article 54.11. <https://e-prokurimi.rks.gov.net/HOME/ClanakItemNew.aspx?id=233> (last accessed on 29.03.2023).

# Central Kitchen

## Supply and installation of solar panels

Public Enterprise “Central Kitchen JSC” (hereinafter: CA) in January 2023 initiated the tender for the supply and assembly of solar panels, with an estimated contract value of 36,000.00 EUR. This capital investment was co-financed with the Municipality of Pristina, where the “Central Kitchen” participated with 5,000 EUR, and the rest was an investment from the municipality.

The “Central Kitchen” was established as a publicly owned enterprise in June 2019<sup>21</sup>, while procurement activities are still carried out through the procurement office of the Municipality of Prishtina.

Four economic operators submitted bids for this tender, with Unisolar L.L.C. recommended for the contract, with 29,499.10 EUR as the lowest price bid. The other three bidders were eliminated as irresponsible.

■ **TABLE 7. Economic operators who participated in the tender for the supply and assembly of solar panels**

No.	Name of Economic Operator	Total bids value
1.	<b>Unisolar L.L.C.</b>	<b>29,499.10 EUR</b>
2.	Meps-A	31,339.97 EUR
3.	Ra-ta LLC	34,821.60 EUR
4.	N.T.Sh Elen	35,478.65 EUR

However, the contracting authority did not fully comply with the requirements set in the Tender Dossier (TD) during the evaluation and comparison of bids, recommending EO Unisolar L.L.C. for the contract, although it had failed to meet some criteria.

Initially, in the section on technical and professional capacities, the TD requested EOs to submit a signed and sealed list of staff, of at least four people, who would participate in this project. Also, the project leader was required to be an electrical engineer with at least two years of post-graduation work experience.

21 POE “Central Kitchen” JSC was established on June 5, 2019 by the Municipal Assembly of Pristina. See more: <https://kuzhina.net/per-ne/> (last accessed on 29.03.2023).



The bid of the EO recommended for the contract shows no signed and sealed list of hired staff, or the decision to appoint the project leader. In fact, neither of the six persons listed as professional staff have provided the evidence required for the position of the project manager (diploma in electrical management/references for two years of post-graduation work experience).

Furthermore, the description of prices in the bill of quantities requested a nominal power of solar panels of 545W, whereas Unisolar L.L.C. listed solar panel power at 550W.

With regards to the eligibility requirements, Unisolar L.L.C. submitted a certificate from the Commercial Court in Prishtina, stating that it was requested in order to participate in the Expansion of the Company in Albania, and that it can also be used for other purposes. The Evaluation Committee accepted this regular evidence, although it should have requested additional clarification from this EO.

A violation of procurement rules was also observed in the drafting of the bill of quantities, which states that EOs with abnormally low prices will be automatically eliminated in the bid evaluation process. The placement of this requirement is not in the discretion of the CA, and the elimination on the basis of abnormally low prices is prohibited with the Regulation on Public Procurement, specifically Article 41.2<sup>22</sup>, which provides:

*“In any case, where an abnormally low tender threshold is provided, it is precluded the automatic exclusion of abnormally low tenders without the recourse to an inter partes procedure with the concerned economic operator for examining the tender regarded by the contracting authority as abnormally low.”*

A complaint was filed to the Procurement Review Body (PRB) against the decision of the CA to award the contract to Unisolar LLC<sup>23</sup> by NTSh. Elen, for which there is still no final decision (until the publication of this report).

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22 Regulation No. 001/2022 on Public Procurement. <https://e-prokurimi.rks-gov.net/HOME/ClanakItemNew.aspx?id=233> (last accessed on 29.03.2023).

23 Procurement Review Body. Complaint 93/23 received on 16.02.2023.

# RWC Prishtina

## Supply of chlorine gas and sodium hypochlorite

At the beginning of 2023, the Regional Water-supply Company (RWC) “Prishtina” JSC initiated a tender for the supply of chlorine gas and sodium hypochlorite with an estimated contract value of 67,600.00 EUR.

RWC Prishtina aimed to supply 18,000 kg of chlorine gas and 10,000 kg of sodium hypochlorite for the treatment of unprocessed water, as one of the main processes for drinking water disinfection.

This tender was developed with a negotiated procedure without publication of the contract notice, with the reasoning that there were successive failures in this procurement activity as a result of terminations of contracts and complaints to PRB. The use of the negotiated procedure without publication of the contract notice remains a problematic area, as it violates the principle of equality in treatment/non-discrimination. According to the Law on Public Procurement (LPP) on the use of the negotiated procedure:

*“The contracting authority may use the negotiated procedure for reasons of extreme emergencies that are caused by objectively verifiable events that could not have been reasonably foreseen by the contracting authority”<sup>24</sup>.*

Hence, the LPP specifically prohibits the use of this procedure if the circumstances creating the situation of extreme urgency can be attributed to the negligent or purposeful acts or omissions of a contracting authority.

The justification given by RWC Prishtina<sup>25</sup>, that the use of this procedure was necessary due to failures of similar procurement activities as a result of the termination of contracts and complaints to PRB is not valid as this supply was planned in the Annual Procurement Plan<sup>26</sup> whereas the complaints filed to PRB do not represent an extreme emergency. RWC Prishtina invited five economic operators in this procurement activity, of which only three submitted bids.

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<sup>24</sup> Official Gazette of the Republic of Kosovo. Law on Public Procurement, Article 35. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772> (last accessed on 29.03.2023).

<sup>25</sup> Notification for the Public Procurement Regulatory Commission (PPRC), 30.01.2023.

<sup>26</sup> RWC Prishtina. Final Procurement Planning for 2023. See at <https://kru-prishtina.com/rz/planifikime-te-prokurimit/> (last accessed on 29.03.2023).

■ **TABLE 8. Economic Operators who submitted bids in this Procurement Activity**

No.	Economic Operator	Bid value
1.	Infinitt LLC	52,700.00 EUR
2.	Seykos LLC	66,600.00 EUR
3.	Afrim Sadriu B.I	67,307.20 EUR

In addition to using the negotiated procedure, the contracting authority also shortened the deadline for the submission of bids, and the invitation to bid was sent to economic operators on 07.02.2023, while the deadline for submitting bids, according to the tender dossier, was 13.02.2023 at 13:00: 00.

This shortening of the deadline for the submission of bids to only six days is not in line with the LPP, which, even in urgent cases<sup>27</sup> of shortening the deadlines, does not allow a shorter period than 10 days for the receipt of bids. Hence, the deadline, which in this case is shorter than the minimum legal deadline, is not justifiable even in the emergency implementations of procurement activities, due to the fact that the period for the implementation of the contract according to the tender dossier was three months.

In addition, the identification of economic operators who were invited to submit bids was inadequate, because they invited operators who are not active in this field. As the invitation made to EO New Corp LLC illustrates, this company's activity is the distribution of construction materials, plastic products, and food items, and has never made any supply of this nature.<sup>28</sup> The second operator invited to bid, Profitech Sh.PK, also doesn't supply chlorine gas, hence it did not a bid<sup>29</sup>.

RWC Prishtina recommended the bid of Seykos LLC for contract award, which had a value of 66,600.00 EUR, or 98.5% of the estimated value, as the tender with the lowest price among the responsive tenders. Although the offer of the economic operator Infinitt LLC was 13,900.00 EUR lower, it was eliminated on the grounds that it had failed to submit a valid copy of the licensed driver's employment contract, proof of which was required in the tender dossier.

The bid submitted by Infinitt JSC includes a contract with the licensed driver committed to this project, however, article 4 of the contract states that *"the employee establishes employment for a fixed term, for the duration of the contractual period, for a period of 120 days (4 months), in case we, EO Infinitt Sh.PK, sign the contract for (this) project"* which was the grounds for disqualification.

According to the CA, this requirement is conditional (if a contract is signed for this project) and, as such, it does not represent a regular employment contract, leading to a default in the professional suitability requirements. A complaint against the decision of the CA to award the contract to Seykos LLC was filed by Infinitt LLC to PRB, causing this activity to be suspended until a decision is taken by the PRB.

27 Official Gazette of the Republic of Kosovo. Law on Public Procurement Art. No. 46, par 3. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772> (last accessed on 29.03.2023).

28 New Corp L.L.C., Rreth Nesh. <http://www.newcorp-ks.com/rrethnesh.php> (last accessed on 29.03.2023).

29 The managers of Profitech JSC, in a conversation with D+, have confirmed that they were never involved in this type of chlorine supply.

RWC Prishtina and Infinitt LLC, have another dispute of the same nature in PRB, namely related to gas chlorine supply, after the contracting authority had eliminated Infinitt LLC on the grounds that the EO cannot be recommended for contract award for the next two years, as it failed to fulfill a previous contract.

This procurement activity, which was initiated in 2022, has also not been finalized in PRB (until the publication of this report), which had initially rejected the complaint of Infinitt LLC as time-barred, and then decided in its favor, annulling the decision of RWC Prishtina.

# Findings

## LPOE Pristina Parking

- LPOE Pristina Parking, when preparing the specifications for the required supply, has listed specifics which prevent the delivery of the supply, as a product of such specifics doesn't exist.
- In its open procedure activity, N.P.L. Prishtina Parking only received two bids. The low number of bids is a result of the erroneous specifics drafted by this POE. In 2022, there was an average of four bids for similar procurement activities.
- Despite that the technical specifications are binding and the winning EO must comply with them, LPOE Pristina Parking has awarded the contract to an EO which submitted a catalog of deliveries which doesn't comply with the specifications defined by the POE.
- LPOE Pristina Parking although did not allow variations in the tender dossier, in the additional clarifications it stated that it accepts later models, or variations. Such an action is not allowed under the Public Procurement Law.
- LPOE Pristina Parking has acted in violation of the Law on Public Procurement, as it has favored one brand in the purchase of monitors, defining a serial number according to which only ASUS brand monitors are acceptable.

## LPOE Urban Traffic

- LPOE Urban Traffic has failed to accurately plan the number of devices to be serviced. Based on the invoice, it has paid for more devices than those planned in the bill of quantities.

- LPOE Urban Traffic has failed to responsibly manage the execution of the contract for the servicing of fire extinguishers, because the devices were not serviced as planned, and the payment was not made as planned.

## LPOE Central Kitchen

- LPOE Central Kitchen has awarded a contract to an EO which failed to comply with the requirements defined in the Tender Dossier.
- LPOE The Central Kitchen, contrary to the rules on abnormally low bids, stated in the bill of quantities that bids with abnormally low prices are automatically eliminated from the competition, without using the "inter-partes" procedure.

## RWC Pristina

- Despite the fact that there is no extreme emergency situation, RWC Pristina initiated the procurement activity using the negotiated procedure without the publication of the contract notice.
- RWC Pristina has shortened the deadline for the submission of bids, contrary to the Law on Public Procurement.
- RWC Pristina has invited in this activity Eos which are not specialized in carrying out supplies according to the authority's requirements.

# Recommendations

- Contracting Authorities should not draft technical specifications which do not include accurate identification elements and prevent the execution of the contract according to the technical specifications.
- Contracting Authorities must draft the technical specifications in line with the Law on Public Procurement and eliminate any limitation of competition, favoring a certain brand.
- Receipt Committees of Contracting Authorities must strictly comply with the technical specifications and not accept deliveries, services and work which are not in line with the technical specifications.
- Contracting Authorities should not allow variations if they are not envisaged in advance in the tender dossier.
- Contracting Authorities must accurately describe their needs in the bill of quantities and apply them as planned.
- In cases of suspicion of abnormally low-price bids, the Contracting Authorities must apply the procedures envisaged in the rules on abnormally low price bids.
- Contracting Authorities must avoid using negotiated procedures without publication of contract notices, if there are no circumstances mandating such use.
- In each procurement procedure, contracting authorities must define the deadlines for the submission of offers in accordance with the Law on Public Procurement, ensuring that the economic operators have sufficient time for the preparation of bids.
- If the circumstances exist for the use of the negotiated procedure without publication of the contract notice, contracting authorities must ensure they invite economic operators covering that relevant field.





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