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Monitoring of Public Procurement Activities in Public Enterprises: RWC Ekoregjioni, Hidroregjioni Jugor, Public Housing Enterprise, and Hortikultura

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GOOD GOVERNANCE

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List of Abbreviations and Acronyms

CA ↗ Contracting Authority

EO ↗ Economic Operator

GEO ↗ Group of Economic Operators

ISO ↗ International Organization for Standardization

JSC ↗ Joint Stock Company

LPE ↗ Local Public Enterprise

LPP ↗ Law on Public Procurement

PE ↗ Public Enterprise

PRB ↗ Procurement Review Body

RWC ↗ Regional Waste Company

TD ↗ Tender Dossier

Introduction

Following the monitoring of public procurement in public enterprises, Democracy Plus (D+) is issuing its second report for 2023, focusing on four enterprises, two each local and regional. The public enterprises addressed in this report cover particularly important areas for the well-being of citizens, such as: collection and transportation of waste, cleaning of public spaces, maintenance of green spaces, and supply of drinking water.

Since the Law on Public Procurement (LPP) applies to all budget organizations including public enterprises, the research into the procurement activities of these enterprises has been conducted based on the rules and responsibilities arising from this law.

The report focuses on four tender procedures conducted by four public enterprises, as follows: 1) supply of equipment for the digitization of invoicing and businesses for the needs of RWC Ekoregjioni; 2) supply of sanitary material for company needs - Hidroregjioni Jugor; 3) valuation of properties of the Public Housing Enterprise; and 4) branding and digitization of the Hortikultura local enterprise

Methodology

The first step for the delivery of this report was to conduct research on the e-procurement platform, which served for the purposes of initial research and selection of tenders for examination. Research focused on tenders where tendering procedures were conducted between April and June 2023.

In order to assemble the necessary records for research, D+ sent requests for access to public records to the selected companies, pursuant to Law No. 06/L-081 on Access to Public Documents, in addition to the collection of documents required for monitoring.

The report was finalized upon analyzing these documents, while prior to publication, it was shared for reading with the contracting authorities included in the report.

Supply of equipment for the digitization of invoicing and businesses for the needs of RWC Ekoregjioni

At the beginning of January 2023, the Regional Waste Company (RWC) Ekoregjioni JSC in Prizren, published the contract notice for the supply of equipment for the digitization of invoicing and businesses with procurement number KRMP-23-78-1-2-1. This procurement activity was intended to create a framework public contract for a term of 12 months, while the estimated value of the contract was EUR 55,000.00.

RWC Ekoregjioni JSC shortened the legal deadline for accepting bids on grounds that there was a need to digitize field services and that the lack of equipment was causing various issues such as double billing, where customers with minor variations in name were billed twice or invoices were not delivered to the correct addresses. For these reasons, the minimum deadline for accepting bids for public contracts of small value, which is 20 days, was shortened to 10 days.

Although the deadline was shortened, RWC Ekoregjioni JSC failed to properly calculate the closing time for bid submission, setting it at 10:00 on the last day, while the Law on Public Procurement (LPP) provides that the time limit runs until 16:00 on the expiry day. According to the LPP,¹ the contracting authority may decide to set a different closing time, provided that it is not earlier than 12 noon of the expiry day. The time limit set by the contracting authority for the acceptance of bids must be sufficient to give the interested economic operators enough time to prepare and submit the required documents. Therefore, in this case, the shortening of the deadline for bid submission may have had the impact of reduced interest in bidding.

Further, in the tender dossier, under the requirements on technical/professional capabilities, RWC Ekoregjioni JSC (contracting authority), inter alia, required economic operators to be equipped with three ISO certificates (9001, 14001, 27001). While ISO certificates are a good way to ensure that economic operators apply international standards in their activities, in this case, including the ISO 14001:2015 certificate as a professional requirement may have reduced the number of economic operators interested in bidding due to the fact that this certificate is not related to the nature of the tender and the activity of the operators who usually provide this type of supply. This is because ISO 14001:2015 as an optional standard helps companies achieve the intended outcomes of their environmental management systems. This certification is intended for use by companies seeking to manage their environmental responsibilities in a systematic manner². An indicator to the above is the fact that 42 economic operators downloaded the tender dossier, yet only one (1) economic operator submitted a bid.

1 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on Public Procurement. Art. 5. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772> (last accessed on July 11, 2023).

2 ISO 14001:2015 Environmental management systems — Requirements with guidance for use. <https://www.iso.org/standard/60857.html> (last accessed on July 11, 2023)

RWC Ekoregjioni JSC has argued that the reason this ISO certificate was required is due to the fact that RWC Ekoregjioni JSC is an enterprise that cares for the environment, therefore, the processes of contract implementation, equipment, and servicing were intended to serve environmental protection. However, since the supply was for technology equipment such as a mobile printer for printing invoices, adapter, USB cable, camera, software, etc., it would have been more acceptable and competitive if this requirement would not be part of the tender dossier, especially due to the fact that it involved a shortened deadline for bid submission.

The only economic operator that submitted a bid, Solvit LLC, was declared the winner, signing a contract worth EUR 44,980.00.

TABLE 1. Sole participating operator in this tender

No.	Name of Economic Operator	Total bid value
1.	Solvit Sh.P.K.,	EUR 44,980.00

The contract between RWC Ekoregjioni JSC and Solvit LLC was signed on February 6, 2023, while the contract signing notice was published in the e-procurement system two days later.

Before the contract signing notice was published, namely on February 6, 2023, RWC Ekoregjioni JSC made a decision on the appointment of the contract manager and on the same day, the contract manager published the contract management plan, making the first request for equipment supply to the economic operator. Also, on the same day, the Technical Acceptance Commission composed of three members accepted the requested equipment in the amount of EUR 11,620.00, attesting to the haste of the contracting authority to fulfill the contract.

Supply of Sanitary Material for Company Needs - Hidroregjioni jugor

Hidroregjioni Jugor allocated EUR 17,953.50 for the supply of sanitary material for company needs. Seven economic operators bid on this procurement activity, while the contract was awarded to PM Group LLC, with the cheapest bid in the amount of EUR 7,492.50. It can be observed that the contract was concluded for EUR 10,461.00 less than the value that the contracting authority had allocated for this tender.

■ TABLE 2. Economic operators bidding in this procurement activity

No.	Bidding Economic Operator	Bid Price
1	Dauti Komerc Sh.P.K.	EUR 12,128.20
2	Ardit Tarashaj	EUR 8,600.00
3	Shaip Mustafa B.I.	EUR 8,622.00
4	PM Group Sh.P.K.	EUR 7,492.50
5	N.T. El -Shpëtimi	EUR 11,194.00
6	Ananas Implex Sh.P.K.	EUR 12,116.79
7	Kiga Sh.P.K.	EUR 7,995.10

Although this involves a framework public contract for a term of 24 months, it can be observed that there are large differences both between the estimated contract value and the concluded contract value, as well as between the bid values of the seven bidders. The highest bid price was that of Dauti Komerc LLC in the amount of EUR 12,128.20, while the lowest was of PM Group LLC in the amount of EUR 7,492.50, which means that for the same supply, the bids differ by EUR 4,635.70. Per the rules governing abnormally low tenders, the price of the winning bid does not meet the specified conditions by only EUR 3.65, because the calculation of the average price of the responsive tenders turns out to not be less than 30% lower than the average price. However, it is on the verge of being considered an abnormally low tender. Therefore, as required by the rules for such tenders, where tenders appear to be abnormally low for reasons other than the specified conditions, contracting authorities may assess the reliability of such tenders and consequently request explanations in accordance with the

LPP³. For this tender, the contracting authority did not ask for any clarification regarding the prices, despite the big difference with the estimated value that the contracting authority had determined.

There are two circumstances that lead to the situation where the contracted price differs a great deal from the estimated price: 1) the contracting authorities fail to make a proper estimation of market prices thus allocating large sums for such contracts, or 2) the economic operator in question offers products below the market price or with abnormally low values.

The estimated value for a public contract must be reasonable and realistic. For its calculation, the contracting authority is responsible for comparing market prices⁴ and setting an average price which ensures that they can fulfill the contract. That such an analysis was not done in advance can also be seen from Table 3, providing the estimated prices for certain products and the prices offered by bidders for the same products.

TABLE 3. Estimated price and price offered by bidders for certain products in the Bill of Quantities

		Estimated price and price offered by bidders for certain products in the Bill of Quantities						
Position # and required product	Price planned by CA	Dauti Komerc Sh.P.K.	Ardit Tarashaj B.I.	Shaip Mustafa B.I.	PM Group Sh.P.K.	N.T. El-Shpëtimi	Ananas - Impex Sh.P.K.	KIGA Sh.P.K.
14. Trash bags, 60 liters, 10 count	EUR 1.80	EUR 0.63	EUR 0.30	EUR 0.40	EUR 0.30	EUR 0.60	EUR 0.60	EUR 0.30
16. Trash bags, 150 liters, 10 count	EUR 2.80	EUR 1.13	EUR 0.56	EUR 0.60	EUR 0.55	EUR 0.75	EUR 1.01	EUR 0.60
24. Cobweb duster set with handle/pole	EUR 5.00	EUR 3.13	EUR 1.50	EUR 1.50	EUR 0.90	EUR 2.00	EUR 3.38	EUR 0.80
25. Mop, long string, metal handle/pole	EUR 3.00	EUR 2.50	EUR 1.50	EUR 0.80	EUR 0.80	EUR 1.50	EUR 3.38	EUR 1.50
29. Soft car wash brush, metal handle	EUR 5.00	EUR 3.13	EUR 1.60	EUR 2.25	EUR 1.20	EUR 3.50	EUR 3.90	EUR 1.00
33. Toilet paper, 10-roll multipack	EUR 5.00	EUR 2.50	EUR 2.20	EUR 1.30	EUR 1.10	EUR 1.40	EUR 2.10	EUR 1.10

For position 33 in the Table, the contracting authority planned to allocate EUR 5.00 per pack. The price is extremely high for this product, where the average price according to the bids of economic operators, but also according to the market price, is around EUR 1.67, or EUR 3.32 less. The plan provided for the purchase of 80 items under this position; should the contracting authority conduct a proper market price estimation, then it would pay about EUR 133.00 and not EUR 400.00 as it had planned to spend. Such differences can also be observed in other positions, where e.g., for position 29 (soft car wash brush), the contracting authority allocated EUR 5.00, while the average price of the submitted bids is around EUR 2.36, or EUR 2.63 more. For 30 such brushes,

³ Public Procurement Regulatory Commission. Rules on Abnormally Low Tenders, Art. 3, para. 3.2.

⁴ Public Procurement Regulatory Commission. Regulation No. 001/2022 on Public Procurement, Art. 13.1.

the contracting authority could pay around EUR 78.00 instead of the planned EUR 150.00.

When calculating the estimated value, the contracting authority must also take into account the prices in previous contracts, if any.⁵ In April 2020, the contracting authority concluded a similar contract with another economic operator, where the Bill of Quantities included some of the products requested with this tender. E.g., in the previous contract, the contracting authority procured 60-liter garbage bags for EUR 0.40, while in this procurement activity it planned to allocate EUR 1.80, or EUR 1.40 more, to purchase such bags. If only one quantity is taken as an example, it turns out to be a low value, but if the contracting authority were to conduct a market price estimation or take into account the prices of previous contracts, then instead of allocating EUR 1,820.00 for 1,300 pieces of this item, the contracting authority could have allocated about EUR 600 to make this purchase. According to the bids of economic operators in the 2023 tender, the average price for this product was EUR 0.44, which means that it was quite close to the purchase price of this product in the last tender.

The same situation is encountered with the 150-liter trash bags; in the previous tender for this item, the contracting authority paid EUR 0.70 per piece, while in this tender it allocated EUR 2.80, or EUR 2.10 more, per piece of this item. The average bid price for this position in the 2023 tender is 0.74, quite close to the purchase price in the 2020 tender. In total, the contracting authority, instead of allocating about EUR 700.00 to procure 900 pieces of this item, allocated EUR 2,520.00, or EUR 1,854.00 more.

If we look at each position individually, we are dealing with small amounts, but when the entire contract is taken as a whole, we see that the values differ greatly. Therefore, the contracting authority must always take into account and comply with the principle of economic efficiency, whereby all contracting authorities are under an obligation to ensure that public funds and public resources are used in the most efficient and cost-effective manner⁶.

In the course of monitoring procurement activity implementation by the contracting authority, it was observed that there were also cases of procurement procedure cancellation because the estimated value was not properly estimated, where the estimated value was low while the bids were high. The contracting authority conducted two procurement activities for the supply of invoice rolls, and both were canceled. The first time, this activity was canceled because the estimated value was EUR 850.00, while only one operator had bid with a price of EUR 1,400.00. Whereas the second time this activity was canceled because the contracting authority decided that there were no responsive economic operators. Additionally, in 2022, the activity for the supply of chlorine gas and sodium hypochlorite was canceled as a result of exceeding the budget. The contracting authority conducted the same activity in 2023 and canceled it due to the lack of responsive bids.

Despite the fact that such differences may not be significantly high if only one contract is subject to analysis, if the budget planned for procurement is taken as a whole, the values would certainly be much higher.

⁵ Public Procurement Regulatory Commission. Regulation No. 001/2022 on Public Procurement, Art. 13.1.

⁶ Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on Public Procurement of the Republic of Kosovo, Art. 6, para. 1. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772> (last accessed on July 11, 2023).

Valuation of properties and leases of the Public Housing Enterprise (PHE)

The Public Housing Company JSC, in February 2023, published the contract notice for the valuation of properties and leases under the purview of this company. The purpose of the contract was the valuation of all PHE property in the territory of the Municipality of Prishtinë, including real estate (buildings and lands) and the lease of such property. This procurement activity was subject to re-tender because the first tender, initiated in April 2022, was canceled in November 2022.

In the 2022 tender, PHE initially awarded the contract to the group of economic operators Baker Tilly Kosovo; Pro Insurance Brokers JSC. CV LLC appealed this decision, on the grounds that the economic operator recommended for the contract had presented the list of staff without signed CVs and that this bidder had bid an abnormally low price. Based on these claims, PHE remanded the case for re-evaluation, resulting in the award going to Pro Acc Group LLC. There was an appeal against the outcome of the second evaluation as well, and the matter was referred to the PRB.

■ TABLE 4. Operators participating in the 2022 tender

No.	Name of Economic Operator	Total bid value
1.	Pro Acc Group Sh.P.K.	EUR 9,322.00
2.	Baker Tilly Kosovo; Pro Insurance Brokers Sh.A..	EUR 11,800.00
3.	Novaza L.L.C; KRG – Kosova Realty Group L.L.C	EUR 9,749.00
4.	CV Sh.P.K	EUR 17,700.00

The PRB in its decision dated August 18, 2022, upheld the appeal on both claims of CV LLC, which had been grounds for its elimination, vacating the reasoning of the PHE and remanding the case for re-evaluation⁷. Upon re-evaluation, the PHE issued a new decision, eliminating all the bidders because they did not meet the criteria and canceling the tender. This decision was also appealed to the PRB, but it was dismissed on grounds that it was *res judicata*, i.e., a matter that has been finally decided on its merits, giving the contracting authority the right to cancel the tender. In addition to the decision to cancel the tender, the PHE, in November 2022, also submitted a request for the disqualification of the economic operator CV LLC to the PRB, claiming that this EO had presented false evidence in its bid documents. The PRB has not yet reviewed this request by the PHE, although

⁷ Decision No. 231/21 of the PRB Review Panel.

more than seven months have passed since the time of submission⁸.

Both in the first tendering procedure in 2022 and in the re-tendering procedure, the estimated value of the contract was EUR 23,600.00, while in the re-tendering procedure, the deadline for contract completion was shortened from 90 days in 2022 to 60 days in 2023.

Unlike the first procedure where four (4) economic operators submitted bids, only two (2) economic operators participated in the re-tendering procedure.

■ TABLE 5. Operators participating in this tender

No.	Name of Economic Operator	Total bid value
1.	Grupi i OE CV Sh.P.K; Vizatimi Sh.P.K.; Vlera FS Sh.P.K.; Rinor Haziri B.I	EUR 9,322.00
2.	Pro Acc Group Sh.P.K.	EUR 22,900.00

The PHE made some changes in the tender dossier in re-tendering procedure which may have affected the reduction of the number of participating economic operators. Specifically, the requirement introduced in the re-tendering procedure that economic operators have at minimum four (4) *full-time employees on payroll in the last three (3) years*, could eliminate many small/new companies unable to meet such requirement.

The human capacities of economic operators may be proven with work contracts/preliminary contracts with workers of the required profiles, while their professional experience, in this case three (3) years post-graduation, may be proven by asking for diplomas, work contracts (or preliminary contracts) as well as references of work experience issued by employers.

In the standard letter requesting clarification of tender, the PHE argued that this requirement was introduced because for this procurement activity, human capacities are the main source for contract delivery, therefore, the required staff represents the minimum that economic operators must have on a full-time basis for purposes of contract delivery.

⁸ In an e-mail response dated July 7, 2023, the PRB informed that it is in the process of examining the request for disqualification in accordance with Article 92.2 of the LPP, where 232 days have passed since the day the contracting authority submitted the request.

■ TABLE 6. Tender Dossier Modification

Tender Dossier	2022	2023
Requirements related to technical and professional capability	<p>Min. eight (8) graduated or certified employees.</p> <p>Min. three (3) (accountants) with at least 3 years of work experience.</p> <p>Min. four (4) employees certified as valuers with at least 3 years of work experience.</p> <p>Min. one (1) (surveyor) with at least 3 years of work experience.</p> <p>Proof of delivery for contracts worth EUR 30,000.00 in the last 3 years.</p>	<p>Min. seven (7) graduated or certified employees.</p> <p>Min. four (4) full-time employees on payroll in the last 3 years.</p> <p>Min. two (2) certified surveyors with at least three years of work experience.</p> <p>Min. four (4) certified valuers with at least 3 years of work experience.</p> <p>Min. one (1) (surveyor) with 3 years of work experience.</p> <p>Proof of delivery for contracts worth EUR 30,000.00 in the last 3 years.</p>

Even in the re-tendering procedure, the PHE Evaluation Commission made a decision that all bidders were administratively non-responsive, deciding that this procurement activity should be canceled again.

The group of economic operators CV LLC; Vizatimi LLC; Valera FS LLC; Rinor Haziri IB; was found to have bid with secondary staff and falling short of minimum four (4) full-time employees on payroll in the last three (3) years and that the list of completed projects, i.e., contracts, was not proven with corroborating documents. The other operator, Pro Acc Group LLC, was eliminated because the list of full-time staff included an employee who was on unpaid leave and the surveyor’s license was expired.

The PHE found that the staff proposed by the group of economic operators CV LLC; Vizatimi LLC.; Valera FS LLC; Rinor Haziri IB; had not submitted the regular (primary) staff list as required in the tender dossier, where (4) full-time employees were listed as a requirement. According to the PHE evaluation, the group of EOs had pre-sented one employee as a full-time employee, whereas in the presented contract, specifically in Section 7 of her contract it was stipulated that “the employee shall establish a part-time employment relationship. The part-time schedule during the day is 8 hours of work per day, with 40 hours of work per week”. For this reason, GEO was found to have failed to provide evidence of a minimum of four (4) full-time or primary employees.

Although this section of the contract stipulates that it is “part-time employment,” work of 8 hours per day and 40 hours per week is considered full-time work in Kosovo. According to the Labor Law, full-time working hours

shall be forty (40) hours per week⁹, while part-time working hours means shorter working hours than the full-time working hours.

In this case, the CA should have evaluated the fulfillment of the requirement (four full-time employees) for the group of EOs as a whole, since the technical/professional capability requirements apply only to the group as a whole and not to the individual members¹⁰. On the ambiguity of the working hours presented in the contract, the CA could have requested additional clarification according to the Guideline for Public Procurement¹¹.

Even the second ground for the elimination of this group of economic operators, which had to do with the delivery of contracts of a similar nature in the last three years to the value of no less than EUR 30,000, was not properly administered by the PHE. This is due to the fact that the PHE, based on Art. 72 of the LPP, had contacted the companies listed in the contracts to confirm the references presented in the bid, and after receiving no response, it had come to the conclusion that these contracts were not proven by valid corroborating documents.

Consequently, the PHE exceeded the authorizations of Art. 72, directly contacting the companies noted in the references through their contact information, while it should have sent the request for clarification/completion of documents to the bidding economic operator, as provided in this article. The PHE misinterpreted Art. 72 of the LPP, which provides for additional documentation and information, allowing the contracting authorities to request economic operators to submit, supplement, clarify, or complete the information within a certain time limit in cases where the documentation to be submitted appears incomplete or incorrect, or where specific documents are missing. The same is stated in the Guideline for Public Procurement¹², which in such cases instructs contracting authorities to request clarification information from economic operators.

The group of economic operators CV LLC; Vizatimi LLC; Valera FS LLC; Rinor Haziri IB; appealed the second decision of the PHE to cancel the tender to the PRB, which again decided in favor of the economic operator, vacating the decision of the PHE, and remanding the case to re-evaluation. In re-evaluation, the PHE again declared the two bidders non-responsive, deciding to cancel the procurement activity. Once again, the reasons for the elimination of the two bidders were the same as the first time.

The valuation of PHE properties represents an international standard which is conducted every five (5) years. The last time PHE conducted this valuation was in 2017, while more than 470 days have already passed since the first notice of contract. The importance of the new valuation of buildings and land owned by this enterprise becomes even greater due to the fact that this valuation serves as basis for setting and updating the lease of assets owned by the PHE, which in 2020 were valued at EUR 83,257,803.00¹³.

⁹ In an e-mail response dated July 7, 2023, the PRB informed that it is in the process of examining the request for disqualification in accordance with Article 92.2 of the LPP, where 232 days have passed since the day the contracting authority submitted the request.

¹⁰ Regulation No. 001/2022 on Public Procurement. Art. 26.5

¹¹ Guideline No. 001/2023 on Public Procurement. Art. 10.1

¹² Ibid.

¹³ Public Housing Enterprise JSC Prishtinë. 2020 Annual Report. https://npbanesore.com/wp-content/uploads/2021/09/NPB_raporti-vjetor-2020_preview8.pdf (last accessed on July 11, 2023).

BBranding and Digitization – Hortikultura

For branding and digitization services related to the company website, the contracting authority Hortikultura JSC allocated EUR 30,000.00. Under this tender, it is required to redesign the logo, create a new brand for the company based on its scope, digitize the archive and other operating units, and enhance it with all the necessary information about the company. Further under this tender, it is required to create modules for internal use, such as leave benefit administration, scheduling, contracts, goods recording, etc. In May 2023, a contract was signed for this procurement activity with the economic operator Safebit LLC in the amount of EUR 28,109.96. For this procurement activity, there were bids submitted by three economic operators, while the cheapest bid was in the amount of EUR 22,777.00.

■ TABLE 7. Economic operators bidding in this procurement activity

No.	Bidding economic operators	Bid value
1.	GOE Prishtina Rea & Brain Inside Sh.P.K.	EUR 28,777.84
2.	Safebit L.L.C.	EUR 28,109.96
3.	Compass IT Sh.P.K.	EUR 22,777.00

The economic operator with the lowest bid was found to be non-responsive by the contracting authority. In its notice of decision, the contracting authority explained that this economic operator forged a document and failed to meet certain requirements related to the contracts delivered in the last three years, because those were not similar to the requirements of the contracting authority under this tender.

More precisely, on this item the contracting authority required the economic operator to have delivered at least one or more contracts of a similar nature in the last three years, where such contracts must reach the minimum value of EUR 40,000.00. For this requirement, the list of contracts specifying included services, value of contracts, date, and recipient must be submitted. Relevant evidence, such as references or certificates of good delivery, should be attached to this list.

For this requirement, the winning economic operator submitted a list of nine delivered contracts. Of these nine contracts, on five of them, instead of noting the date of contract conclusion, note the date of issue of the reference, which does not provide the information that the CA requested. The references issued by Home Concept, Mobin, Scampa, and Sparkle note only the reference date and in the content of the reference there is neither indication of when these contracts were concluded nor any specific amount, therefore these contracts should not have been accepted by the CA. While the content of the reference of Banka për Biznes notes the contract dates, but not the value. By all means, this is considered a more acceptable reference than the others, at the value of EUR 20,301.00.

Four of the nine contracts have their own issues as follows: the contract with Z-mobile is from 2019, which means that it is older than required by the CA; the contract with the Tax Administration of Kosovo (TAK) provides that the date of contract is December 10, 2022, while in the reference it appears that this contract was concluded in 2020, more precisely on November 6, 2020, for a term of six months. While the reference presented as proof of contract was issued on December 10, 2020, which is four days after the signing of the contract, therefore the contract is yet to be completed. On this point there are many discrepancies between the dates and such a contract should not be considered acceptable. Nevertheless, this contract is of low value compared to that required by the contracting authority. The contract with the Kosovo Energy Corporation (KEK) concerns the supply of switches¹⁴, which does not represent any similarity to the requirements of the contracting authority, since that contract provided for the sale of such devices and no activities related to branding, redesign, and digitization were made. The other contract in the amount of EUR 59,738.68 between EO Safebit LLC and Storm ICT involves the purchase of Microsoft licenses, which is also not similar to the requirements of the contracting authority since this contract provided for the acquisition of licenses, but no work related to website digitization and branding was conducted. Additionally, a reference was submitted for this contract, but it can be observed that this reference is not related to the contract because the contract was concluded on March 1, 2021, while the reference is dated December 2, 2020, and the contract involved the supply of Microsoft licenses, while this service is not noted in the reference. The economic operator has also attached references related to seven other contracts, where only one reference for a contract carried out in 2019-2020 meets part of the requirements, but fails to specify the exact dates of the contract, it was not recorded in the list of completed contracts, no proof of contract was submitted, and most importantly, the contracting authority did not request additional clarifications for these references as required by the Guide on Public Procurement.¹⁵ Consequently, this means that the requirement has not been fulfilled by the economic operator awarded with the contract either.

The other requirement concerns the staff where the economic operator must present the necessary staff of at least five people who will be engaged in this project. More precisely, EOs must have at minimum one IT specialist, one senior graphic designer, one software developer, and all of them must have at minimum five years of work experience. For this requirement, the economic operator must provide the list of employees who will be involved in the project, and for the specific labor required, their CV and employment contract must be delivered as proof.

The way the CA split the requirement for the list of five employees and the requirement for the other three specialists makes it unclear whether eight employees were required, i.e., five from the list and three specialists or in the list of five employees, three of them should be specialists with specific requirements. Also, initially part of this requirement was that IT specialists who have been engaged in international projects should have priority. Such a requirement is not at all relevant and was removed by correcting the tender dossier.

Nevertheless, the winning economic operator submitted a list of five employees, including the owner of the company, an ICT officer, an administrative officer, a software developer and IT specialist, and a senior graphic designer. For three of the specialist employees, the economic operator attached their CVs, but not the contracts, as required by the contracting authority. For the position of senior graphic designer, a CV has been provided that proves the required experience, but the engaged person has his own company and does not work for the winning economic operator, therefore, in his case, a preliminary contract and not the contract as required by the contracting authority has been provided. In this contract, Section 3 indicates that this contract was tailored for inclusion in the project for branding and digitization of the website of Hortikultura JSC. For the position of IT

¹⁴ Technological hardware in a computer network that connects other devices for data exchange.

¹⁵ Public Procurement Regulatory Commission. Guide No. 001/2023 on Public Procurement, Art. 10.1.

specialist and software developer, the economic operator provided only one person who will cover the responsibilities of these two positions, while at minimum one IT specialist and at minimum one software developer were required according to the tender dossier. Like the previous case, this worker also does not work in the company of the winning economic operator, but a preliminary contract has been submitted for engagement in this project. While only the administrative officer has a regular contract, among the five workers included in the staff list.

In this case, based on the requirements of the contracting authority, the economic operator would have to prove having one worker for each required position and submit their contracts and not preliminary contracts. Delivering preliminary contracts instead of contracts should not be accepted because the contracting authority must evaluate the bids only on the basis of the requirements in the tender dossier. This means that this economic operator has fallen short on this requirement.

In conclusion, this economic operator should have been declared non-responsive and should not have been awarded the contract.

In addition to issues in the evaluation of bids, in this activity there were also other procedural issues related to the engagement of the company's workers in the process of evaluating and managing the implementation of the contract. In the implementation of this procurement activity, one of the members of the bid Evaluation Commission was committed to managing the implementation of the contract. This is not allowed in public procurement and is in conflict with the separation of duties between the persons involved, because a member of the Evaluation Commission cannot be appointed as the Contract Manager¹⁶. This is only allowed in case of re-evaluation, where members of the previous Evaluation Commission may serve as Contract Manager¹⁷. The separation of duties is extremely important because the responsibilities are divided between the persons involved, having different persons at each stage and consequently preventing any possibility of influence and avoiding conflict of interest. Therefore, the contracting authority must precisely set out the separation of duties to avoid any possibility of circumventing the basic principles of public procurement. In the clarification provided by the CA, it was stated that this was done due to the small number of staff and their absence during the annual holidays.

Further, despite the fact that this activity was foreseen with the procurement plan¹⁸ and the contract had been signed, work on this project is pending because the contracting authority does not have the funds to pay for the provision of services¹⁹. This problem goes beyond the scope of the LPP since it involves the commitment of funds or the allocation of funds from the Treasury, which is governed by the Law on Public Financial Management and Accountability²⁰, but it also indirectly affects public procurement. In the clarification provided by the CA, it was stated that the process was prolonged due to the procedure of defining the change of the company name, conducted in stages by the Municipal Assembly of Prishtinë as shareholder in the company. Nevertheless, the CA should not initiate any procurement procedure and even less sign any contract if there are no funds to cover the expenditures because by signing the contract it enters into contractual obligations with the economic operator. In the specific case, Section 10 of the contract signed between the contracting authority and the winning economic operator, grants the economic operator the right to terminate the contract if the contracting authority fails to fulfill its obligations and in case of termination, the contracting authority shall pay the economic operator for any loss or harm that may have been caused. Therefore, such action should be avoided at all costs because it can have greater financial implications.

16 Public Procurement Regulatory Commission. Regulation No. 001/2022 on Public Procurement. Art. 75, para. 3.7.

17 Ibid.

18 Document received from Hortikultura JSC, upon Request for Access to Public Records made on May 30, 2023.

19 Information provided by the Procurement Officer following the meeting held in June 2023.

20 Law No. 03/L-048 on Public Financial Management and Accountability, Art. 35. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2524> (qasur për herë të fundit 11.07.2023).

Findings

KRWC Ekoregjioni:

- RWC Ekoregjioni shortened the deadline for accepting bids, despite the fact that the time limit available to economic operators for bid preparation is provided by law.
- In addition to failing to observe the legal deadlines provided in the LPP, RWC Ekoregjioni failed to calculate the time of bid submission as determined by the LPP, setting 10:00 AM on the day of expiry as the deadline for submitting bids.
- RWC Ekoregjioni restricted competition by requiring an ISO certificate which is not relevant to the nature of the supply. Consequently, only one economic operator applied for this activity.

Hidroregjioni Jugor JSC:

- Public Enterprise Hidroregjioni Jugor failed in both conducting a market price estimation and taking into account previous contract prices in the calculation of the estimated value.
- Regional Public Enterprise Hidroregjioni Jugor signed a contract for EUR 10,461.00 less than the estimated value, as a result of not engaging in market price analysis, resulting in making it difficult to use these funds in the current budget year.

Public Housing Enterprise JSC:

- The Public Housing Enterprise, after the failure of the procurement activity of 2022, in the same activity of 2023 introduced some changes in the tender dossier, affecting a reduction in the number of bidders.
- The Public Housing Enterprise exceeded authorization granted by Art. 72 of the LPP, requiring additional clarification/supplementation of information from third parties and not from the bidding economic operator, as provided in the Law.

LPE Hortikultura:

- Local Public Enterprise Hortikultura failed to evaluate bids according to the technical and professional requirements set by this enterprise.
- Local Public Enterprise Hortikultura awarded the contract to the economic operator who fell short of meeting the requirements set in the tender dossier, resulting in the award going to a non-responsive economic operator.
- Local Public Enterprise, Hortikultura, entered into a contract without available funds to pay for contracted services. As a result, the contract signed on April 28, 2023, is pending implementation.
- Local Public Enterprise Hortikultura failed to observe the applicable legal provisions for the separation of duties and appointed one of the members of the Evaluation Commission as Contract Manager.

Recommendations:

- Contracting authorities should comply with the legal deadlines as determined by the LPP, allowing the necessary time for the preparation of documents to all interested economic operators and by extension ensure competition.
- Contracting authorities should, when drafting requirements, ensure that those requirements are relevant to the nature of the tender and ensure that the number of bidders shall not be restricted by those requirements.
- Contracting authorities should, before setting the estimated value, conduct accurate research into market prices, but also compare the prices of previous contracts, if any.
- Contracting authorities should apply the rules for evaluating bids submitted by groups of economic operators as provided by law.
- Contracting authorities should avoid concluding contracts if the funds have not been committed accordingly.
- Contracting authorities should take into account the separation of duties and responsibilities in a procurement activity and not appoint the same person to more than one position to avoid any potential for abuse.



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