



# Use of Single-Source (negotiated) Contracts in Public Procurement

2019-2023

## Introduction

To conclude public contracts in Kosovo, Contracting Authorities (CA) can apply several procedures defined in the Law on Public Procurement in the Republic of Kosovo (LPP). When administering any procedure, CAs must ensure that the basic public procurement principles are met, including:

- a. Competition between Economic Operators (EO);
- b. Efficiency and effectiveness, non-discrimination, objectivity; and
- c. Professionalism and accountability.

One of the most sensitive procedures in awarding tenders is the negotiated procedure without publication of the contract notice (hereinafter: negotiated procedure). Through this procedure CAs invite one or more operators to submit bids, this tender process is only open to invited companies. LPP allows for the use of this procedure in cases of extreme emergencies as defined in Article 35 of the LPP<sup>1</sup>; though no precise definition is provided as to what is considered extreme emergency, leaving room for different interpretations by CAs. However, “if the circumstances creating the situation of extreme urgency can be attributed to the negligent or purposeful acts or omissions of a contracting authority, this provision may not be invoked”<sup>2</sup>.

According to the law, CAs can even use this procedure in situations where, for objective and binding technical or artistic reasons, the contract must be awarded to a certain economic operator. This is applied in cases where the contract is extended due to unforeseen reasons, within the amount of 10% of the contract value<sup>3</sup>.

<sup>1</sup> Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on Public Procurement, Article 35, par. 2.

<sup>2</sup> Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on Public Procurement, Article 35, par. 2.1.iii.

<sup>3</sup> Public Procurement Regulatory Commission Regulation No. 001/2022 on Public Procurement. Article 13, par 4.

Based on the preliminary analyses and the annual reports of the PPRC<sup>4</sup>, it appears that the negotiated procedure without publication of the contract notice is used in cases where we are not dealing with the circumstances provided for in Article 35 of the PPL. Moreover, this procedure is continuously used for some specific activities such as services for the physical security of institutions' buildings, transportation of workers, etc.

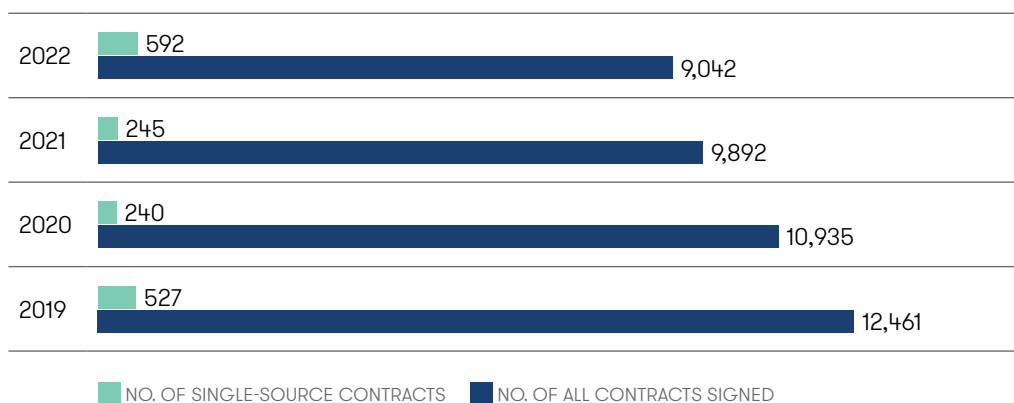
The Public Procurement Regulatory Commission (PPRC) is the only authority that can issue opinions regarding the decisions of CAs on the use of this procedure, however, these opinions are not binding.

CAs have discretion regarding the number of EOs to invite, as well as setting the deadline for the submission of bids. CAs are required to notify PPRC within two days of the date for the decision to apply this procedure, providing detailed reasoning of the facts considered and a justification for the use of this procedure.

## Use of the Negotiated Procedure and Conclusion of Single-Source Contracts in the Period 2019-2022

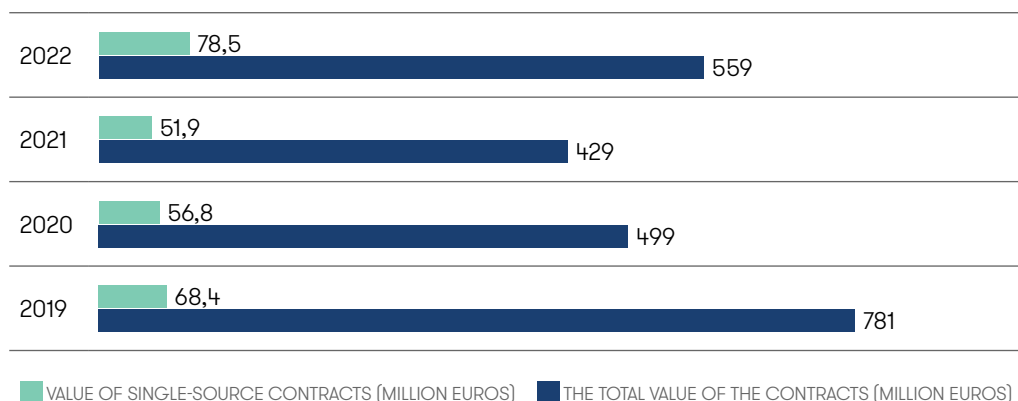
Contracts concluded using the negotiated procedure are known as single-source contracts. The number of single-source contracts varies from year to year. In the period 2019-2022, a large number of single-source contracts was concluded in 2020 with activities addressing the COVID-19 pandemic. Roughly the same number of single-source contracts concluded in the following year, despite the height of the pandemic having passed. A slight decrease was observed in 2022, however, compared to 2019, the number remains high.

**FIGURE 1:** Number of all signed contracts and the number of single-source contracts 2019-2022



<sup>4</sup> Public Procurement Regulatory Commission. Annual Report 2022, pg. 48. <https://e-prokurimi.rks-gov.net/HOME/Documents/Legislation/Raportet%20Vjetore/shq/Raport%20vjetor%202022.pdf>

**FIGURE 2:** The total value of signed contracts and the total value of single-source contracts 2019 -2022



The year 2023 is excluded from these tables because the year hasn't ended yet and measurements cannot be made similarly to prior years. However, from January to August 2023, 3,352 contracts were completed, with 63 being negotiated. The expected value to be spent on these contracts is 567 million euros.

In addition to the total number of single-source contracts, Table 1 presents the institutions that have used this procedure the most during the years 2019-2023

Vitet	Total number of contracts signed by the institution	The number of one-source contracts concluded by the institution	Share of the number of contracts with a source in percentage
2019	Municipality of Prishtina - 191	Municipality of Prishtina - 41	21.47%
	Municipality of Ferizaj - 82	Municipality of Ferizaj - 23	28%
2020	Municipality of Prishtina - 161	Municipality of Prishtina - 60	37.2%
	Municipality of Gjakova - 124	Municipality of Gjakova - 40	32.2%
2021	Municipality of Prishtina - 152	Municipality of Prishtina - 38	25%
	Municipality of Gjakova - 142	Municipality of Gjakova - 38	26.7%
2022	KEC - 278	KEC - 43	15.4%
	Municipality of Prishtina - 163	Municipality of Prishtina - 27	16.5%
2023	KEC - 196	KEC - 24	12.2%
	Municipality of Shtime - 73	Municipality of Shtime - 11	15%

**TABLE 1:** Participation of the number of one-source contracts in the total number of signed contracts in 2019-2023

According to the table, the Municipality of Pristina signs numerous single-source contracts annually and also has a high percentage of single-source contracts among the total number of contracts.

## Institutions concluding and spending the most on single-source contracts

It has been observed in the analysis of the use and signing of single-source contracts for the period 2019-2023 that some institutions continuously had the highest number of spending on such contracts.

These institutions continue to sign single-source contracts for the same procurement cases which are not extreme emergencies and do not meet the legal requirements, such as services for the physical security of institutions' buildings, transportation of workers, supply of textbooks, etc., elaborated in this report.

### Single-source contracts in 2019

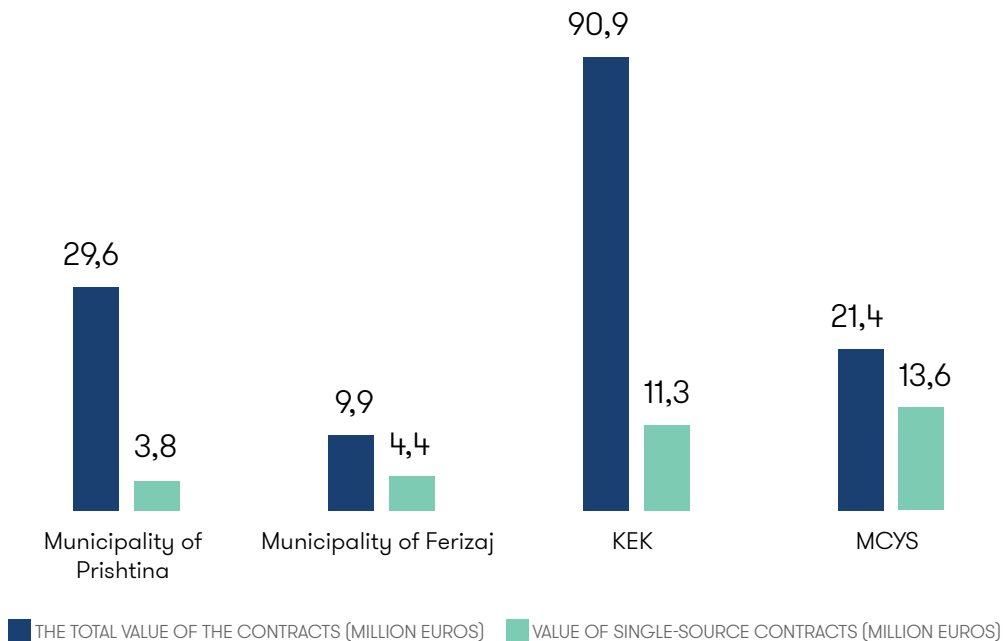
In 2019, two institutions that signed the highest number of single-source contracts were the Municipality of Prishtina and the Municipality of Ferizaj.

The Municipality of Prishtina signed 42 single-source contracts, with a value of around 3,869,641.74 Euros, five of which were for additional works, with a value of around 106,350.25 Euros. These contracts were mainly concluded for services (22 contracts for services). The most frequently contracted services were the cleaning of the municipal premises and schools, for which six single-source contracts have been concluded, and contracts were awarded to the same three economic operators, namely two contracts per each operator, with a total value of 315,835.92 Euro. In addition, four contracts for physical security were signed, with two economic operators being awarded two contracts each, reaching a total value of 426,830.40 Euros.

These services carried out through negotiated contracts are not of an emergency nature, they do not meet any of the circumstances provided for in Article 35 of the PPL and, as a result, shouldn't have been concluded using the single-source procedure.

In terms of the value of single-source contracts, Kosovo Energy Corporation (KEC) and the Ministry of Culture, Youth and Sport (MCYS) are the two leading institutions with the highest spending.

**FIGURE 3:** Contracting authorities that spent the largest amount on single-source contracts in 2019



MCYS concluded 10 such contracts with a total value of 13,670,461.92 Euros. Of note in these activities is the signing of the contract with a value of 12,394,800.00 Euros for the renovation and reconfiguration of the city stadium of Mitrovica, and another contract in the amount of 185,000.00 Euros for the professional supervision of renovation for the same stadium. As a result, the ministry concluded a single-source contract for the same project for 12,579,800.00 Euros.

KEK holds second place in terms of the value of contracts with a negotiated procedure, signing 14 single-source contracts with a total value of around 11,381,032.00 Euros. In addition to the additional works and specific supplies needed by this enterprise, KEK, through a negotiated procedure, also concluded two one-source contracts for the transportation of workers with a total value of 474,993.78 Euros.

### Single-source contracts in 2020

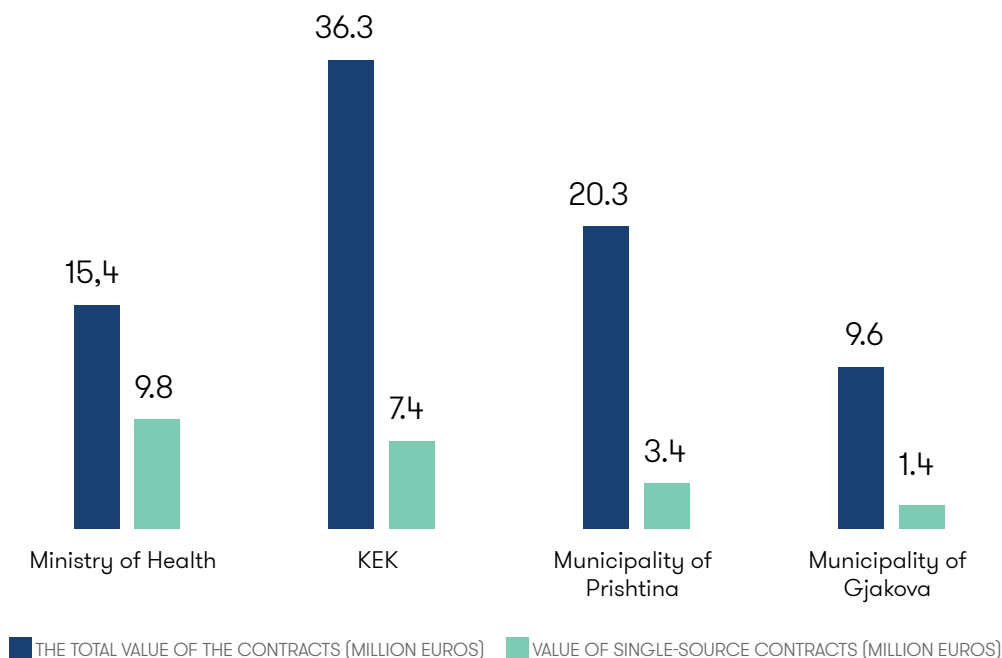
Institutions that concluded the highest number of single-source contracts in 2020 were: the Municipality of Prishtina with 60 contracts, with a value of 3,441,606.79 Euros, and the Municipality of Gjakova with 60 contracts and a value of 1,417,839.79 Euros. Most contracts of the Municipality of Gjakova were for additional works, awarded to the same Economic Operators. Of the 40 contracts for additional works, nine are for the same group of Economic Operators, with a value of 545,069.63 Euros for the annex contracts alone.

Other institutions that concluded single-source contracts at high values in 2020 were the Ministry of Health (MH) - 9,863,372.32 Euros and KEK- 7,438,319.67 Euros.

KEK spent about 7,438,319.67 euros on single source contracts. Out of 27 such contracts, three of them have to do with informing the public about the work and obligations of KEK. In these three contracts, 161,586.00 euros were spent and it is an activity that was not done before 2020 or in

the following years. It is unclear why three tenders with a negotiated procedure and a duration of 12 months each were opened for similar activities, when using the open procedure for these activities and developing only one activity would suffice.

**FIGURE 4:** Contracting authorities that spent the largest amount on single-source contracts in 2020



On the other hand, MH spent 9,863,372.32 Euros on single-source contracts. These contracts were mainly for the supply of materials, vaccines, and medicine for protection from COVID-19.

The signing of these contracts in 2020 was forced by the COVID-19 pandemic and the urgent need for the supply of the required materials for the public and the medical staff. The use of this procedure was essential. However, the procedure for non-emergency activities was also marked by several irregularities, such as poor planning, a lack of market price research, a lack of additional clarifications for low product prices, acceptance of expired documents, acceptance of goods that do not comply with the technical specifications in the tender file<sup>5</sup>, inviting only one economic operator, determination by the municipality that companies should bid as a consortium<sup>6</sup>, etc.

#### Single-source contracts in 2021

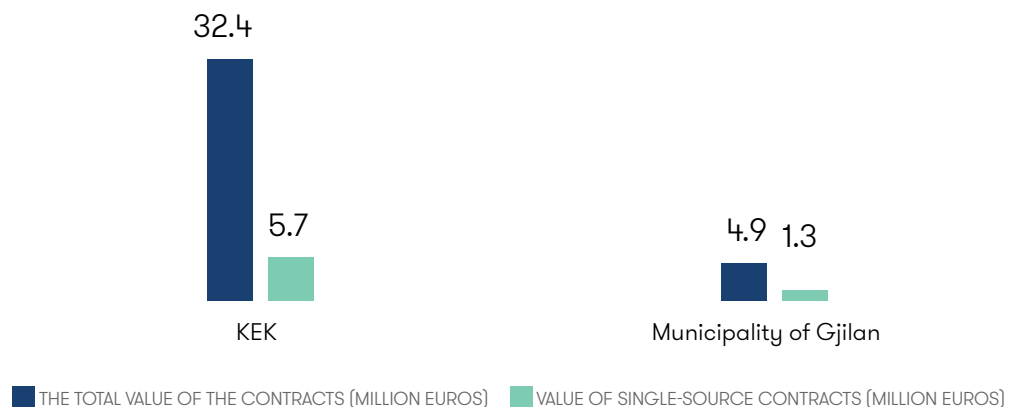
<sup>5</sup> COVID-19 as an excuse for urgent public procurement contracting II, November 2021. [https://dplus.org/wp-content/uploads/2021/12/ENG\\_COVID-19-si-pretkest-per-lidhje-emergjente-te-kontratave-ne-prokurim-publik-II.pdf](https://dplus.org/wp-content/uploads/2021/12/ENG_COVID-19-si-pretkest-per-lidhje-emergjente-te-kontratave-ne-prokurim-publik-II.pdf)

<sup>6</sup> COVID-19 as an excuse for urgent public procurement contracting, June 2021. [https://dplus.org/wp-content/uploads/2021/06/ENG\\_COVID-19-si-pretkest-per-lidhje-emergjente-te-kontratave-ne-prokurim-publik-I.pdf](https://dplus.org/wp-content/uploads/2021/06/ENG_COVID-19-si-pretkest-per-lidhje-emergjente-te-kontratave-ne-prokurim-publik-I.pdf)

In 2021 the number of single-source contracts declined, as well as the spending for these contracts. Most single-source contracts signed in 2021 were by, KEC, the Ministry of Infrastructure, Ministry of Internal Affairs, and the Municipality of Gjilan.

In 2021, the municipality of Gjilan has awarded 16 single-source contracts, spending a total of 1,331,680.69 euros, with the majority being for the construction of roads and public spaces. The same economic operators were frequently awarded these contracts, with four going to one operator for 171,697.68 euros and three going to another operator for 820,480.96 euros. KEC signed single-source contracts at a value of around 5,730,932.28 Euro.

**FIGURE 5:** Contracting authorities that spent the largest amount on single-source contracts in 2021



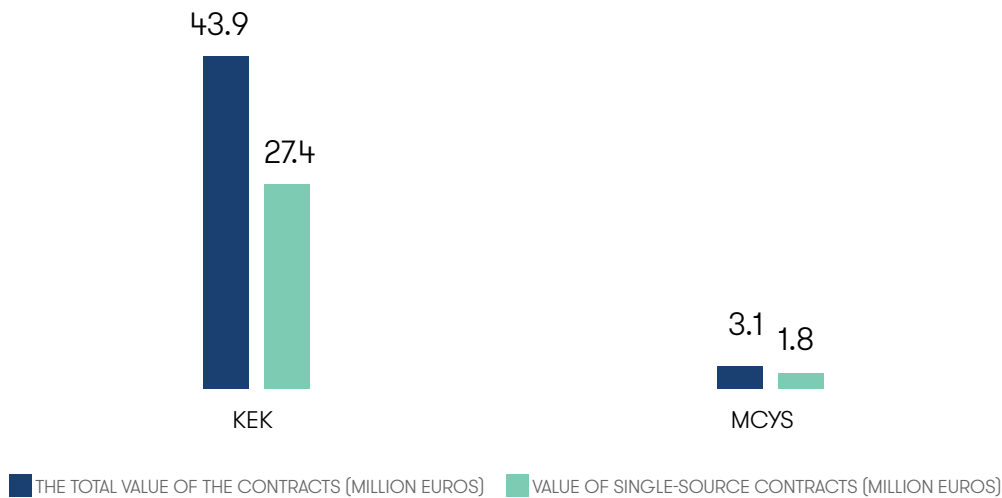
In addition, in 2021 the Municipality of Prishtina spent around 2,089,391.80 Euros on single-source contracts. What stands out about these single-source contracts is that they were signed for the physical security of the municipal facility and other institutions. These contracts were concluded with only two economic operators with a total value of 746,649.77 Euros. The Municipality of Prishtina concluded contracts on the same subject and with the same economic operators in 2020 and 2019.

## Single-source contracts in 2022

The same institutions appear again with the highest use of single-source contracts in 2022. The Municipality of Prishtina and KEC have the highest number of such contracts. KEC, the Ministry of Internal Affairs, and the Ministry of Culture, Youth and Sports spent a considerable amount on single-source contracts in 2022.

In 2022, KEC spent about 27,406,550.38 Euros on such contracts. It is of note that the single-source procedure was used for the same cases. For example: for the physical security of the KEC facility, four single-source contracts were concluded with the same economic operator, holding a total value of 2,185,665.96 Euros. In addition, four single-source contracts were concluded for the transportation of KEC workers with the same economic operators. Deviations from the estimated value were also observed in these KEC contracts, with eight contracts concluded at a higher price than what was planned to be spent.

**FIGURE 6:** Contracting authorities that spent the largest amount on single-source contracts in 2022



MCYS used the negotiated procedure mainly for additional work, but also for other procurement subjects. The cost of 18 single-source contracts was approximately 1,857,914.89 euros. For instance, a single-source contract was signed to make interventions in the Youth Palace in Prishtina, despite no clarifications in the tender file that testified to any emergency. The same operator was given the contract for interventions in the former prison of Prishtina, where even in this case, there were no clarifications proving that the use of the negotiated procedure was necessary. The value of these two contracts combined is 37,283.95 euros.

## Single-source contracts in the first half of 2023

In the first half of 2023, KEC has continued to take the lead in the number of single-source contracts concluded. In addition to KEC, the Municipality of Prishtina and Municipality of Shtime have also had a high number of single-source contracts, although the latter has concluded low-value contracts.

The Municipality of Prishtina spent 2,275,825.36 Euros on 10 contracts. The highest-value contract was awarded to O.U.D. Architects and Kengo Kuma and Associates, for 1,600,000.00 Euros, for the design of the Multifunctional Center “Gërmia” in Prishtina. The Municipality of Prishtina has again concluded a single-source contract for the security of municipal buildings, although this time with another economic operator.

In only the first six months of 2023, KEC concluded single-source contracts in the amount of 67,423,530.77 Euros. As in the previous years, single-source contracts were mainly concluded with the same economic operators for the same subjects this year too. Again, in the first half of the year, KEC has had cases exceeding the estimated value. The highest value contract was concluded for the modernization of B1 and B2 turbines, which had an estimated value of 55,100,000.00 Euros, whereas the contract was concluded at a value of 56,522,100.00 Euros, 1,422,000.00 higher than the estimated value.



## The role of PPRC in monitoring and limiting the use of single-source contracts

The Public Procurement Regulatory Commission (PPRC) issues opinions to Contracting Authorities regarding their decisions, acts, or omissions during a procurement activity. In cases where CAs decide to apply single-source contracts, they must inform PPRC within two days of the decision to use such procedure, including detailed explanations of the facts considered and the justification for using the procedure<sup>7</sup>. Based on the monitoring of public procurement and the analysis of single-source contracts, it appears that the CAs do not provide sufficient explanations based on facts that would justify the use of this procedure in their notifications to the KRPP. According to a sample of the cases received, it is observed that the explanations are not detailed and sufficient.

The PPRC fails to address all CA notifications, within two days, due to its limited human resources<sup>8</sup>, with CAs mostly considering the administrative silence from the PPRC as approval and continuing with single-source contracts. During the year 2022, PPRC monitored 319 such procedures/contracts<sup>9</sup>, while there is no reported data on the result of these monitoring. Whatever the answer of the PPRC regarding the decision taken by the CAs, it is not binding. This means that even when the PPRC doesn't endorse the use of this procedure, the final decision remains at the discretion of the Contracting Authority.

The widespread use of single-source contracts for non-urgent activities over the years shows that this phenomenon continues, despite the nominal role of the PPRC to oversee it. This way the supervisory role of the PPRC, namely the opinions issued for this procedure, remains weak as they are not binding for contracting authorities.

7 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on Public Procurement, Article 35, par. 1. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772> (last accessed on 11.07.2023).

8 Public Procurement Regulatory Commission. Annual Report 2022, pg. 49. <https://e-prokurimi.rks-gov.net/HOME/Documents/Legislation/Raportet%20Vjetore/shq/Raport%20Vjetor%202022.pdf>

9 Public Procurement Regulatory Commission. Annual Report 2022, pg. 27. <https://e-prokurimi.rks-gov.net/HOME/Documents/Legislation/Raportet%20Vjetore/shq/Raport%20Vjetor%202022.pdf>

## RECOMMENDATIONS

1. Regulate in detail the issue of when the negotiated procedure can be used by CAs, in the drafting of the new Law on Public Procurement. The law should categorize extreme emergencies within which CAs can justify the use of single-source contracts;
2. PPRC needs to make additional revisions to the secondary legislation for public procurement to restrict the application of the negotiated procedure and make it mandatory for contracting authorities to publish a notice on the use of the negotiated procedure without publishing the contract notice on the e-procurement platform. The notice should include clarifications and the legal basis so that interested parties can be informed and have the opportunity to appeal in PRB;
3. Contracting authorities must have the option to publish a notice for the use of the negotiated procedure without publishing the contract notice on the e-procurement platform;
4. Increase the number of human resources in PPRC to handle all notifications of the Contracting Authorities on the use of this procedure and emphasize that the silence of the PPRC does not mean endorsement for the use of this procedure;
5. Contracting authorities should provide, in notifications to the PPRC, comprehensive fact-based explanations to justify the use of the procedure, to facilitate the evaluation and issuance of an opinion by the PPRC;
6. The PPRC must provide trainings for procurement officials, to increase interpretation capacity and the fair use of the provisions that regulate the application of this procedure and issue comprehensive guidelines/instructions on the use of this procedure;
7. The PPRC must increase its cooperation with the PRB and Contracting Authorities, and take disciplinary measures against officials who repeatedly use this procedure unlawfully.

