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Procurement Monitoring Report

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DISCLAIMER: The author's views expressed in this report do not necessarily represent the views of the United States Agency for International Development (USAID) or the United States government.

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List of Abbreviations

CA → Contracting Authority

CAO → Chief Administrative Officer

CMP → Contract Management Plan

CPA → Central Procurement Agency

EO → Economic Operator

LPP → Law on Public Procurement

MoH → Ministry of Health

MTBF → Medium-Term Budgetary Framework

PPRC → Public Procurement Regulatory Commission

PRB → Procurement Review Body

RPO → Responsible Procurement Officer

UCCK → University Clinical Centre of Kosovo

Introduction

The Balkan Investigative Reporting Network – BIRN and Democracy Plus (D+) have joined efforts to monitor 27 tenders under the *Supporting CSOs to monitor procurement activities in the USAID Kosovo Municipal Integrity Activity Phase 1 municipalities and Ministry of Health* project, supported by the USAID Kosovo Municipal Integrity Activity. Among these tenders, three are under the purview of the Ministry of Health (MoH).

Monitoring covered the three key procurement phases: pre-tendering, tendering, and post-tendering. The monitoring process included collecting and examining documentation, field inspections, and discussions with relevant actors.

The report focuses on the findings of monitoring of 24 tenders during the pre-tendering, tendering, and post-tendering phases. Common discoveries in several tenders are clustered under separate headings to help establish whether the violations are systematic and spread across more than one tender or municipality.

The tenders conducted by the MoH were approached like special case studies because the nature of those tenders is different from the municipal tenders. Monitoring efforts have identified flaws in the pre-tendering, tendering, and post-tendering phases.

Monitoring methodology

During the implementation period of monitoring procurement activities conducted by Phase 1 municipalities (Gjakovë/Djakovica, Gjilan/Gnjilane, Lipjan/Lipljan, Pejë/Peć, Prishtina, Rahovec/Orahovac, Suharekë/Suva Reka, Vushtrri/Vučitrn) and the MoH under the USAID Kosovo Municipal Integrity Activity project, D+ and BIRN Kosovo have comprehensively examined the entire procurement process, to understand the whole procurement performance thoroughly. To this end, D+ and BIRN Kosovo have selected 27 procurement activities based on financial value, risk assessment analysis, and activity or tender phase. In particular, monitoring focused on the following:

- 1 Pre-tendering process:** Includes the design of tasks, terms of reference for the tender, specification of technical criteria, project design and more, for the nine tenders (one each per municipality and the Ministry of Health).
- 2 Tendering process:** Focuses on the actual performance of the procurement process for the nine tenders (one each per municipality and the Ministry of Health).
- 3 Post-tendering process or contract management phase:** Covers nine tenders (one each per municipality and the Ministry of Health).

In addition, for purposes of identifying potential problems in tendering procedures, D+ and BIRN Kosovo reviewed the following indicators:

- 1 Time limits:** Examining tender time limits by value category to detect potential red flags.
- 2 Contract value avoidance (if the contract value is 40% or higher than the estimated value):** Examining contract value variations from estimated values.
- 3 Single bidder:** Investigating cases with only one bidder in open procedure.
- 4 Contract value vs. estimated value:** Analyzing how closely the contract value match the approximate values.
- 5 Abnormally low price:** Identifying tenders where contract value are significantly lower than the average of other bids.
- 6 Debarred winner:** Screening whether contracts have been awarded to debarred economic operators.
- 7 Weighted price tender:** Examining where item quantities are set to 1 for each item.

This comprehensive approach aims to enhance transparency and accountability in the procurement processes conducted in the above municipalities and at the MoH. The list of monitored tenders is attached as an Annex at the end of this report.

1**Pre-tendering process**

In the pre-tendering phase, our project team has closely examined key aspects, including Procurement forecast adjustment; Unforecasted procurement; Data consistency; Technical specifications; Compliance with standards; Product sourcing; Designated brands; Patented products; and Business-political connections.

2**Tendering process**

In the tendering phase, our team has closely monitored and evaluated various particularly important aspects, including: Evaluation Committee composition; Professional background; Conflict of interest; Links to influential people; Competition; Adherence to time limits; Compliance with price criteria; Most Economically Advantageous Tender (MEAT); Complaint handling; Withdrawn bidders; Other Red Flags; Evaluation report integrity; Chief Procurement Officer Decisions; Business history and connections; and Complaints related to the evaluation.

3**Post-tendering process or contract management phase**

In the post-tendering or contract management phase, attention was focused on monitoring contract management activities for the nine tenders (one each per municipality and the Ministry of Health). Contract management is the capstone of the procurement process, highlighting the need to understand the project as thoroughly as possible and communicate effectively with the contract manager responsible for each contract segment.

Accordingly, our monitoring efforts included seeking essential documents, such as the appointment of a project manager, contract management plan, verification of whether the management plan has been published on the e-procurement platform; All communications between the contract manager, EO, and the CA; Documentation related to the project manager's log; Frequency of site visits by the contract manager; All project progress reports; Reports or requests that the contract manager has addressed to the CA or Procurement Office; Records of meetings related to contract management; Documentation confirming acceptance of supplies, services, or works; Investigating delays in implementation, if any; Verification of payments made by the CA and copies of all invoices for works. Likewise, the monitors conduct field visits to assess the work progress on site. e monitors conduct field visits to assess the work progress on site.

1. Executive Summary

The MoH and municipalities continue to face challenges in completing procurement processes without violating the Public Procurement Law and relevant Rules. Violations have been identified from the first stage of procurement forecast to the management and full implementation of a contract. Although some violations are isolated, some exist across most contracting authorities.

The Balkan Investigative Reporting Network (BIRN) and Democracy Plus (D+) have joined efforts to monitor 27 tenders under the *Supporting CSOs to monitor procurement activities in the USAID Kosovo Municipal Integrity Activity Phase 1 municipalities and Ministry of Health* project, supported by the USAID Kosovo Municipal Integrity Activity. Three of the 27 monitored tenders were under the purview of the Ministry of Health. Monitoring focused on three stages: the pre-tender, tender, and post-tendering or contract management. At the same time, the monitoring process included collecting and examining paperwork, field visits, and meetings with relevant stakeholders.

One of the most frequent violations observed in monitoring was setting discriminatory criteria, particularly high criteria for the project or designation of requested products and manufacturers. Of the nine tenders monitored in the pre-tendering phase, only one did not have any correction of errors in the notices, namely in technical or professional criteria. In eight monitored tenders, errors were corrected at least once through error correction templates (B54). There were two cases with six corrections each to the notices, primarily reductions in technical or professional criteria, only after economic operators made complaints.

Even for ordinary tenders, such as road widening and pavement, discriminatory criteria led to some tenders being entirely canceled or receiving only one responsive bid. Due to the complexity and nature of its work, the MoH had trouble completing two of the monitored tenders. Tender of the Ministry of Health - "Maintenance of 70% of the Health Information System (HIS)"¹ was canceled even though the only company that had applied was recommended for the award. An expert report by the World Bank highlighted the discriminatory criteria influencing the situation where only one bid was finally submitted out of the 49 economic operators interested in the project in question. The MoH had trouble completing another procurement process - "BHIS Maintenance and Upgrade."² The Procurement Review Body (PRB) decided to cancel the decision of the MoH to award the contract, remanding the tender to reevaluation.

In the publication of the public procurement activity, contracting authorities are required to provide a period for the submission of bids from economic operators. The minimum time limits that each Contracting Authority (CA) must observe are provided by law. The time limits differ based on the estimated contract value. However, the law and procurement rules allow reduced time limits for bid submission in certain cases. Monitoring revealed instances where municipalities reduced time limits in violation of legal requirements. Reduced time limits may affect bidder participation. On the one hand, municipalities reduce time limits for bid submission, drag out the bid evaluation, in some cases even beyond the legal limits.

1 Tender "[Maintenance of 70% of the HIS HW for Health Care Facilities](#)", Procurement No. 206-23-1650-2-1-1

2 Tender "[BHIS Maintenance and Upgrade - Retender](#)," Procurement No. 206-23-571-2-1-1

One of the most important links in public procurement is preparing technical and professional specifications for a project. Often, setting technical specifications can pre-determine who will get the award. The municipalities subject to monitoring were mostly unable to share the names of the people who prepared the technical specifications for a project. Typically, municipalities keep the names of those who determine tender rules secret. Only the MoH revealed the names of the people who prepared the technical specifications for three monitored tenders. The latter has instituted a practice³ where members of the Committee responsible for preparing the specifications sign an examination of tender time limits by value category to detect potential red flags statement under oath, stating that they are aware of the importance of the work they do and that such work has not extended favoritism to any company or manufacturer.

While monitoring the 27 tenders, there were instances where the municipality's budget suffered harm due to the tender rules established from the beginning. One tender was announced with multiple lots and an attached restriction that one Economic Operator (EO) may get only one lot per contract, where the EOs who had not submitted the lowest responsive bids were recommended for the award.

Despite the advancement of the bid evaluation process, this phase is still among the most challenged by economic operators, disputing evaluations made by the contracting authorities in the PRB. The most frequent violations have been found precisely during the examination, evaluation, and comparison of tenders. 13 of the 27 monitored tenders, or 48%, had complaints that were filed to the PRB. For these 13 tenders, there were 32 complaints with the PRB, of which 15 were rejected and in 13 of them, the claims of the complaining economic operators were upheld. Out of 13 decisions where the PRB found legal violations, 12 of them were violations committed during the tender examination and evaluation phase.

Contract management is another particularly important process of public procurement. Nine of the 27 tenders were monitored with a focus on contract management. In one of the tenders selected for monitoring the contract management process has not yet been signed even though the tender was announced on September 16, 2022, and the contract award notification was made on April 14, 2023. Four monitored contracts were for supply, and the remaining four were for works.

In the contracts that have been monitored for work, delays in work are observed because the projects were not carried out following the terrain or because all barriers were not eliminated before the work began. Expropriation, removal of transformers, and electric or telephone poles are some barriers to implementing fieldwork. Due to poor designs and the lack of discussions about the design, municipalities are often compelled to amend the project and relevant positions.

Monitoring the management of supply contracts once again reveals the correlation between frivolous product orders and abnormally low prices. Frequently, products that are not necessarily required by the CA are included in the long list of products to be acquired by contract. For those products that are not necessarily required, economic operators bid abnormally low prices, and, in the end, contracting authorities never order them anyway. This practice undermines the ability to accurately determine whether the cheapest bid has been selected, based on municipalities' real needs.

3 Enhancing transparency and accountability at Ministry of Health and UCCK, drafters of technical specifications to sign sworn statements

2. Pre-tendering phase

2.1. Discriminatory criteria

In nine of the 27 tenders, monitoring focused on the pre-tendering phase, one of Kosovo's most crucial procurement phases. Five of the nine tenders were for work contracts, while the other four were service contracts.

Of the nine tenders monitored in the pre-tendering phase, only one did not have any correction of errors in the notices, namely in technical or professional criteria. In eight monitored tenders, errors were corrected at least once through error correction templates (B54). There were two cases with six corrections each to the notices, primarily reductions in technical or professional criteria.

Despite corrections and complaints, the contracting authorities completed the procurement procedures up to the contract conclusion in seven cases. Meanwhile, in two of the tenders monitored in the pre-tendering phase, contracts have not yet been finalized, and one has been canceled while the other is still in process.

Error correction has highlighted the discriminatory or unnecessary criteria the contracting authorities introduced to the tenders.

Municipality of Gjakovë/Djakovica, in the tender for "Repair of dams and irrigation canals in rural areas – Two-year contract"⁴ had set particularly high criteria for the project they intended to implement. Such criteria could be discriminatory for any economic operator interested in bidding in that procurement process. Before bidding, the Municipality of Gjakovë/Djakovica softened the criteria by half the initial requirements for the equipment the bidding operators must have.



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In nine (9) of the 27 tenders, monitoring focused on the pre-tendering phase, one of the most important phases of procurement in Kosovo.



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Five (5) of the nine (9) tenders were for work contracts, while the other four (4) were service contracts.

In this regard, in the first notice by the Municipality of Gjakovë/Djakovica, it was required that the EO should have at least two loader buckets with a total weight of over 15 tons, while this requirement was corrected by requiring only one loader bucket. The first notice required three excavators weighing over 15 tons, but only one excavator was required upon correction. Initially, two "mini excavators with a total weight of up to 5 tons" were required, while only one was required after the correction.

⁴ Tender: [Repair of dams and irrigation canals in rural areas – Two-year contract](#); Procurement No. 632-22-14081-5-2-1

Upon correction, only two tipper construction trucks with a load weight of more than 10 tons were required, while five such trucks were previously required. The same was done with the initial requirement that the EO has four “auto mixer trucks with a load weight of over 9m³”, while after the correction, the required number was changed to only two of them. In the first notice, two “self-propelled boom pumps with a length of over 32m” and “compression cylinders or rollers with a total weight of over 9 tons” were required, while only one was required with the correction.

Public Procurement Law allows the correction of errors. However, introducing softer criteria for the tender in question shows that the initial criteria were higher than required to implement that project. Correcting requirements only a few days before bid opening leaves little time for new economic operators to enter the competition for the same tender, compared to the other operators with ample bidding time.

The same happened in the Municipality of Pejë/Peć tender for the construction of irrigation canals on the agricultural lands of some villages⁵ with Procurement No. 635-23-1756-5-2-1. After the publication of the contract notice, the Municipality of Pejë/Peć modified the technical and professional capacities required for participation in this procurement activity. One of the requirements in the “Contract Notice” was that the bidders must have at least a “concrete mixer truck, minimum three each.” The correction significantly reduced this criterion since only one “concrete mixer truck” is now required.

There was a record number of corrections in the notices and the tender dossier for “Cleaning of school facilities – Secondary schools and preschool facilities”⁶ with Procurement No. 616-23-781-2-1-1, in the Municipality of Pristina.

For this activity, one day after the publication of the contract notice, the CA started making modifications through standard templates for correcting errors in the published notice, and by March 15, 2023, there were no less than six modifications/corrections forms and no less than two tender dossiers published. Modifications were made to the technical and professional capacity regarding the number of employees on the CA list and wages.

The Municipality of Pristina had initially requested six(6) vehicles (pick-ups) for transporting the equipment but later reduced the requirement to only two vehicles necessary to implement this contract. Similarly, the requirement for “five motorized devices (lawnmowers) for mowing the lawn (timer)” to only two such items. Also, they had first asked for “four carpet and rug washing machines” and later reduced the requirement to just one. As it happens, in their last modification, the Municipality of Pristina removed from the list of equipment the requirement for a “motorized machine for cleaning the outdoor space (machine must be equipped with a broom)” and amended the quantities of other equipment. All these modifications were made without publishing clear information in the modification forms since none of the six forms refer to changes in the tender dossier.

As a result of numerous modifications and ambiguities created in the requirements under this tender, some EOs were interested in bidding but did not follow through. In significant notice changes, Procurement Law⁷ allows the Responsible Procurement Officers (RPO) to cancel the entire procurement activity. Article 21, item 7, paragraph d, of the Regulation on Public Procurement, states “should any corrected or added information lead to a substantial change of the conditions provided for in the original contract notice and the PO determines that there is a substantial change in the conditions, the PO must cancel the procurement activity and re-launch the same if there is still interest to continue with the same procurement activity.”⁸

5 Tender “Construction of irrigation canals on agricultural land Part 1; LOT 1- Construction of irrigation canal for agricultural land in the village of Baran (Jazi i Mullirit); LOT 2- Construction of irrigation canal for agricultural land in the village of Kotradiq and Kamenicë; LOT 3- Construction of irrigation canal for agricultural lands in the village of Qallapek; LOT 4- Construction of irrigation canal for agricultural lands in the village of Vranoc; LOT 5- Construction of irrigation canal for agricultural lands in the village of Buqan,” Procurement No. 635-23-1756-5-2-1

6 Tender “Cleaning of school facilities – Secondary schools and preschool facilities in the Municipality of Prishtina”, Procurement No.: 616-23-781-2-1-1

7 Law No. 04/L-042 on Public Procurement in Republic of Kosovo, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092

8 Rules and Operational Guideline for Public Procurement

Numerous changes to the required technical specifications were also made during the procurement process designated “Horizontal and vertical traffic signals and road equipment in the Municipality of Gjilan/Gnjilane”⁹ with Procurement No. 651-22-10313-2-1-1 in the Municipality of Gjilan/Gnjilane. The most substantial changes through error correction templates (B54) were made after PRB Decision No. 631/22, upholding the application by EO “Er-Lis” Sh.P.K. and obliging the Municipality of Gjilan/Gnjilane to change the tender dossier. Changes were to be made mainly to the annex for “mandatory equipment and mechanism” and to the requirements in the first tender dossier.

2.2. Discrepancy between “tender dossier” and “contract notice”

The tender dossier is the primary document of the procurement process. The Regulation on Public Procurement states that “every sentence in the tender dossier must be well-compiled, as the tender dossier is the basic material, based on which the economic operators shall establish their tenders.” It is further stated that the tender dossier must be drafted in comprehensible language that does not contain ambiguity and does not require additional clarification.

The Regulation on Public Procurement,¹⁰ item 17.12, specified that “requirements specified in the tender dossier and the contract notice must be identical.” However, while monitoring the 27 tenders, BIRN and Democracy Plus have encountered cases where the tender dossier and the contract notice are not identical. Such was the case in the tender of the Municipality of Suharekë/Suva Reka - “Construction and operationalization of FMC-Studençan, FMC-Duhël, and FMC-Gjinoc” with Procurement No. 624-23-1039-5-2-1. In the tender dossier dated February 20, 2023, under requirements for economic and financial capacity, the municipality required that the “Economic operator must provide satisfactory evidence to the CA of the annual turnover of the EO, in the last three years (2020- 2021-2022).” While in the contract notice, they



The tender dossier is the main document of the procurement process. The Regulation on Public Procurement states that “Every sentence in the tender dossier must be well-compiled, as the tender dossier is the basic material, based on which the economic operators shall establish their tenders.” It is further stated that the tender dossier must be drafted in comprehensible language that does not contain ambiguity and does not require additional clarification.

⁹ Tender “Horizontal and vertical traffic signals and road equipment in the Municipality of Gjilan/Gnjilane”, Procurement No. 651-22-10313-2-1-1
¹⁰ [Rules and Operational Guideline for Public Procurement](#)

required that proof of annual turnover be provided for the years 2019, 2020, and 2022. As noted, the CA required evidence of annual turnover for different periods 2019-2020-2022. As noted, the CA required evidence of annual turnover for different periods of time.

BIRN and Democracy Plus have found that in the tender “Repair of dams and irrigation channels in rural areas – Two-year contract, with Procurement No. 632-22-14081- 5-2-1 (Municipality of Gjakovë/Djakovica), there were discrepancies between the Tender Dossier and Contract Notice. However, these discrepancies were corrected to match through error correction templates (B54).

2.3. Lack of Executive Project

Under the obligations stemming from the Law on Public Procurement (LPP),¹¹ the CA is responsible for preparing the Executive Project, more precisely according to Article 28, paragraph 10, “Technical Specifications must include, as a substantial part of it, an Executive Project. The contracting authority is responsible for the design of the Executive Project, which should be necessarily attached (in an electronic copy as well) to the Technical Specifications, which are part of the Tender Dossier.”

The National Audit Office, in its 2022 Annual Audit Report,¹² noted that “municipalities had initiated procurement procedures and signed contracts for works, without drawing up in advance Executive Projects for the construction.” Moreover, procurement procedures without executive projects were implemented due to the negligence of requesting units and the ineffective functioning of controls.

A similar situation was noted in one of the tenders subject to monitoring - “Construction and operationalization of FMC-Studençan, FMC-Duhël, and FMC-Gjinoc” with Procurement No. 624-23-1039-5-2-1. On February 23,

2023, the Municipality of Suharekë/Suva Reka initiated the procurement procedure. However, it did not have an executive project, designed to adapt to the geographical terrain where FMCs were to be built.

To initiate the procurement procedure, the Municipality of Suharekë/Suva Reka borrowed from the Municipality of Prizren the project designed for the FMC Gjonaj and used it as a template project, attached to the tender dossier. BIRN Kosova and D+, through a request for access to public information, asked the Municipality of Suharekë/Suva Reka to share any concept project specifically designed for this contract. After a long hesitation, the team received the main project for FMC Gjonaj, which was designed by “Arsa Construction.” Whereas the Municipality of Suharekë/Suva Reka received the project on June 16, 2023 for FMC Duhël and on June 30, 2023 for FMC Studeqan. So, the projects for these FMCs were drawn up four months after the tender announcement on February 23, 2023.

Similarly, the Gjakovë/Djakovica Municipality tender: Repair of dams and irrigation canals in rural areas – Two-year contract, with Procurement No. 632-22-14081-5-2-1 was initiated without an Executive Project, but only with a Bill of Quantities.

2.4. Unplanned tenders

Procurement forecast is the first stage of public procurement. Within fifteen (15) days of the announcement of the appropriations legislation for a fiscal year, each CA must submit to the Central Procurement Agency (CPA), in writing, a final procurement forecast that identifies in reasonable detail all supplies, services and works that the CA intends to procure over the fiscal year. Planning must be in accordance with the Law and the Regulation on Public Procurement.¹³

11 [Law No. 04/L-042 on Public Procurement in Republic of Kosovo, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092](#)

12 National Audit Office, “[2022 Annual Audit Report](#)”

13 [Law No. 04/L-042 on Public Procurement in Republic of Kosovo, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092, Article 8, paragraph 2, and Article 5, paragraph 5.4 of the Regulation on Public Procurement.](#)

Of the 27 monitored tenders, only 19 tenders were part of the procurement forecasts of the respective contracting authorities, while in eight cases, the tenders were initiated even though they were not part of the procurement forecast. Municipalities have provided various justifications for initiating procurement activities even though they did not forecast them at the beginning of the year. In some cases, the commitment of funds by the CA was significantly lower than the cost of the tender.

For example, in August 2020, the Municipality of Gjilan/Gnjilane initiated the tender with Procurement No. 651-22-7819- 5-2-1 to hire a company for “Sports Hall floor refurbishment at Zenel Hajdini School.”¹⁴ The CA initiated procurement procedures for this activity without forecasting sufficient funds in either the 2023 procurement forecast or the 2022-2025 Medium-Term Budgetary Framework (MTBF).¹⁵

The same happened in the other tender – “Horizontal and vertical traffic signals and road equipment in the Municipality of Gjilan/Gnjilane”¹⁶ with Procurement No. 651- 22-10313-2-1-1. This activity was included in the 2022 procurement forecast with EUR 10,000, while in the contract notice the estimated value is EUR 340,000, for which there is also a commitment from the Department of Finance. So, the Municipality of Gjilan/Gnjilane initiated this activity without financial coverage. The works in the project are planned to run 36 months, while in the 2023-2025 MTBF, only EUR 65,000 are allocated for this activity, specifically for the year 2022, there are EUR 25,000 planned, and for the years 2023 and 2024 – EUR 20,000 each.

Also, the “Construction and setup of Wastewater Collection System on Skenderbeu Street - Suharekë/ Suva Reka – Retender”¹⁷ with Procurement No. 624-22- 8920-5-1-1 was initiated even though there were insufficient funds committed in the budget documents. In the tender dossier, the Municipality of Suharekë/ Suva Reka set the estimated value of EUR 870,000, while in the 2022 procurement forecast, there are EUR 182,500 planned.



BIRN and D+ have found, in the course of monitoring the 27 procurement activities, cases where bid submission deadlines were reduced without any compelling justification, however, both have also come across cases where the time limits set for the evaluation of bids have not been respected.

¹⁴ Tender “[Floor refurbishing of the sports hall in School Zenel Hajdini – Re-Retender](#),” Procurement No.: 651-22-7819-5-2-1

¹⁵ Municipality of Gjilan/Gnjilane “[Medium-Term Budget Framework 2023-2025](#)”

¹⁶ Tender “[Horizontal and vertical traffic signals and road equipment in the Municipality of Gjilan/Gnjilane](#)”, Procurement No. 651-22-10313-2-1-1

¹⁷ Tender “[Construction and setup of Wastewater Collection System on Skenderbeu Street - Suharekë/Suva Reka – Retender](#)”, Procurement No. 624-22-8920-5-1-1

2.5. Reduction of time limits for bid submission

In the publication of the public procurement activity, contacting authorities are required to provide a period for submitting bids from economic operators. The law provides longer deadlines for submitting bids for large-value contracts. The minimum time limits each CA must implement are provided in Article 8, paragraph 2, Article 5, articles 44, 45, and 46 of the LPP.¹⁸ The time limits differ based on the estimated contract value. While special rules for the reduction of time limits are provided “if circumstances exist that (i) necessitate the conduct of a procurement activity on an urgent basis, (ii) make it impracticable to observe the time limits specified in Article 44 of this law or, if applicable, in Article 45 of this law.”

BIRN and D+ have found, in the course of monitoring the 27 procurement activities, cases where bid submission deadlines were reduced without any compelling justification. However, both have also encountered cases where the time limits set for evaluating bids have not been respected.

The Municipality of Rahovec/Orahovac reduced the time limit for bid submission, as provided by the Public Procurement Regulation, in the tender “Construction and setup of the sewer system (septic tank) in the Municipality of Rahovec/Orahovac,”¹⁹ with Procurement No. 623-23-179-5-1-1. This tender had an estimated value of EUR 697 thousand, qualifying as a large-value contract. The municipality reduced the time limit for bid submission.

The tender was announced on March 27, 2023, while the deadline for bid submission was set for April 20, 2023, so the time limit for bid submission was set for 24 days instead of 40 days as required by law. In cases where an “indicative notice” is published, the Contracting Authorities are allowed to reduce time limits to 24 days from the 40 days required by law.

The municipality’s justification was that it was “a request from the requesting unit that this project be announced in an expedited procedure and that the time limit for bid opening be reduced, due to the weather conditions in the following months and the site designated for project implementation would be constantly subjected to flooding in the fall-winter season, and according to Article 6.5, item b, of the ROGPP,²⁰ whereby the indicative notice allows the time limit to be reduced, but not less than 24 days.”

Although the Municipality of Rahovec/Orahovac had reduced the time limit for bid submission because there may be floods, it still needed 50 days to evaluate the bids. The CA decision notice was published on June 9, 2023, or 50 days after bid opening, the maximum period allowed by law to evaluate the bids.

Law No. 04/L-042 on Public Procurement in the Republic of Kosovo,²¹ amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092, Article 59, paragraph 1 states that the CA shall establish an Evaluation Committee for the examination, evaluation, and comparison of offers.

Article 40.3 of Regulation No. 001/2022 on Public Procurement²² provides that the procedure for examination, evaluation, and comparison of tenders and issuance of the notice on CA decision shall be completed by the CA within the shortest possible period. No more than 30 days from the opening of the tenders, only in exceptional and well-justified cases, in particular with contracts of a complex nature, this period may be extended for an additional 20 days.

Time limits were also reduced in the Municipality of Gjilan/Gnjilane tender with Procurement No. 651-22-7819-5-2-1 to hire a company for “Sports Hall floor refurbishment at Zenel Hajdini School.” The reduction of time limits for bid submission was made on the grounds that “the school year begins in September, and it must end at that time.”

18 [Law No. 04/L-042 on Public Procurement in Republic of Kosovo, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092](#)

19 Tender “Construction and setup of sewer system (septic tank) in the Municipality of Rahovec/Orahovac,” Procurement No. 623-23-179-5-1-1

20 [Rules and Operational Guideline for Public Procurement](#)

21 [Law No. 04/L-042 on Public Procurement in Republic of Kosovo, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092](#)

22 [Rules and Operational Guideline for Public Procurement](#)

On top of reducing time limits for bidding, the municipality violated the Procurement Law several times during bid evaluation, and consequently, the tender has not yet been completed. So, the next school year has started, and the school floor has not been refurbished yet.

The Municipality of Gjilan/Gnjilane reduced the time limit for accepting the bids in the tender – “Horizontal and vertical traffic signals and road equipment in the Municipality of Gjilan/Gnjilane”²³ with Procurement No. 651-22-10313-2-1-1. The reduction of time limits for bid submission was made because the estimated value was reached on a previous contract. As a result, they could not deliver services to the citizens. The “Construction and setup of Wastewater Collection System on Skenderbeu Street,”²⁴ also reduced the time limit initiated by the Municipality of Suharekë/Suva Reka.

The Municipality of Suharekë/Suva Reka had reduced the time limit for bid submission in the procurement activity number 624-22-8920-5-1-1, with the reasoning that “*this project is planned only through the first phase at medium value due to the budget, the assembly has approved the transfer of funds to complete the project, and now it has moved to a large value. However, it appears as a medium value in the procurement forecast and taking into account the urgent need for the works to be completed before the winter season. The Chief Administrative Officer (CAO) has approved the request to reduce the time limit.*”

However, after the publication of the contract notice, there was a correction of errors in the notice, and later on, two complaints²⁵ were filed to the PRB. The latter found that the Municipality of Suharekë/Suva Reka had violated the law in one of its decisions, and later the municipality decided to cancel this tender in its entirety, citing the lack of responsive bids as justification.

There were also reduced time limits for submission of bids in the tender of the Municipality of Peja/Peć for “Supply of hygienic material and food for

schools and kindergartens not covered by CPA,”²⁶ with Procurement No. 635-22-11129-1-1-1. Although this tender was for food products, hygienic products, and electric bulbs, the municipality reduced the time limit for bidding. This project was not in the procurement forecast, while the estimated contract value in this tender is EUR 192,010. According to the municipality, the reason for initiating the expedited procedure is that the requesting unit ran out of food and hygienic material for nurseries and schools, and this procedure had to be expedited.

2.6. Secret committees for preparing technical specifications

One of the key aspects of a procurement process is the development of technical, professional, and financial terms for a given tender. The requesting unit usually determines the technical specifications of the tender. How conditions and criteria are defined can determine which companies get the award or how many bids will be accepted.

Article 39, item 12 of the Regulation on Public Procurement²⁷ states that the persons who participated in developing specifications or terms of reference should not be included in the Tender Evaluation Committee. “Members of the Tender Evaluation Committee must be not involved in the preparation of specifications or terms of reference.”

To find if there are any cases where the people who drafted the technical specifications proceeded to be part of the procurement process, BIRN and D+ requested information on the names of the people who prepared the technical specifications in the 27 tenders in the spotlight. Out of the 27 monitored tenders, in only 11 cases, the contracting authorities could tell us the names and positions of the persons or the name of the company that developed the technical specifications of a tender.

23 Tender “[Horizontal and vertical traffic signals and road equipment in the Municipality of Gjilan/Gnjilane](#)”, Procurement No. 651-22-10313-2-1-1

24 Tender “[Construction and setup of Wastewater Collection System on Skenderbeu Street - Suharekë/Suva Reka - Retender](#),” Procurement No. 624-22-8920-5-1-1 624-22-8920-5-1-1

25 [Procurement Review Body \[PRB\]](#)

26 Tender “[Supply of hygienic material and food for schools and kindergartens not covered by CPA](#),” Procurement No. 635-22-11129-1-1-1”

27 [Rules and Operational Guideline for Public Procurement](#)



27 tenders subject to monitoring in

15 tenders, there were corrections to the notices

mostly related to the technical and professional specifications required by the contracting authorities as minimum conditions that must be met to participate in those tenders. Most corrections were made to lower the technical and professional criteria originally required. Lowering the criteria means that they were initially not in proportion to the project size that was planned to be implemented or were discriminatory for certain operators.

While for the other 16 tenders, the contracting authorities have not responded or said that the requesting unit drafted the specifications without indicating which persons were in the committee tasked to develop the technical specifications.

Contracting authorities do not have a standardized procedure for developing technical specifications. Based on the monitoring of 27 tenders, in most of them, we failed to find a decision of the CAO of an institution for the appointment of the person or persons/committee for drafting the specifications. Without such a decision, BIRN and D+ cannot conclude whether the persons who drafted the technical specifications later participated in the evaluation committees for the same tenders, engaged in contract management, or were part of the final inspection committees.

Of the 27 tenders subject to monitoring, in 15 tenders, there were corrections to the notices, mostly related to the technical and professional specifications required by the contracting authorities as minimum conditions that must be met to participate in those tenders. Most of the corrections were made to lower the technical and professional criteria initially required. Lowering the criteria means that they were originally not in proportion to the project size that was planned to be implemented or were discriminatory for certain operators.

Some of the municipalities were satisfied with the information that the requesting unit drew up the specifications for tenders. The Municipality of Suharekë/Suva Reka, for its “Construction and operationalization of FMC Studençan, FMC Duhël, and FMC Gjinoc”²⁸ tenders, said that “officials of this municipality did the drafting of the specifications.”

Some municipalities shared the names of the people who prepared the technical specifications. They highlight the negligible importance these institutions give to one of the most essential steps in procurement: preparing technical specifications.

²⁸ Tender “Construction and operationalization of FMC-Studençan, FMC-Duhël, and QMF-Gjinoc” Procurement No. 651-22-10313-2-1-1

For example, representatives of the Municipality of Gjilan/Gnjilane stated that the director of Zenel Hajdini School, otherwise a math teacher, designed the technical specifications for the tender “Sports Hall floor refurbishment at Zenel Hajdini School – Re-Retender.”²⁹ This tender was announced in 2022 with the aim that before the start of the school year 2022/2023, “Zenel Hajdini” school would have a refurbished floor, but the contract has not yet been signed even though the school year 2023-2024 has started.

The Municipality of Gjilan/Gnjilane had granted the requests for reconsideration filed by the EOs and re-evaluated the bids three times. Based on the complaints of EOs, the ‘Court of Tenders’ made two decisions on this tender, vacating the decisions of the Municipality of Gjilan/Gnjilane and remanding the tender to reevaluation both times. In the first decision, the PRB concluded that one of the criteria required by the Municipality of Gjilan/Gnjilane was not specific and measurable. Therefore, it held that one of the EOs had been eliminated unlawfully.

“Based on the tender dossier requirements, it is difficult to assess the qualifications of the floor worker since it is not specifically provided under the qualification requirements what certification means, what kind of certification the floor worker should have since the floors are laid with different materials. Neither the complaining EOs nor the recommended EO can be eliminated on the grounds that they have no references since this case involves construction work and each building has floors, and it depends on the type of construction material used,” states the decision of the PRB (PSH. No. 592/22. The Municipality of Gjilan/Gnjilane tender has not yet been finalized, as a new complaint was filed with the PRB on 08/30/2023.

The Municipality of Gjilan/Gnjilane, in another case, had entrusted the preparation of technical specifications for the “Horizontal and vertical traffic signals and road equipment in the Municipality of Gjilan/Gnjilane”³⁰ with Procurement No. 651-22-10313-2-1-1, to a subject matter

expert. An officer of the Department of Public Services, Infrastructure, and Housing, a traffic engineer by trade, prepared specifications.

Although the technical specifications were prepared by a professional, the PRB held that the established criteria were discriminatory and required the Municipality of Gjilan/Gnjilane to make corrections to the Tender Dossier. In its decision (PSH. No. 631/22), PRB demanded the removal of the requirement for the EO to have an agreement with the authorized manufacturer or distributor of “hydraulic pistons,” finding that the EO could also provide services with subcontractors offering such devices. Similarly, it moved to remove the requirement for the EO to have a printer or quadruple processing capability. This tender has not yet concluded either due to complaints to the PRB.

Representatives of the Municipality of Prishtina stated that the technical specifications for the tender “Cleaning of school facilities – Secondary schools and preschool facilities,”³¹ with Procurement No. 616-23-781-2-1-1, were drawn up by the officer of the Department of Education, Arbër Gashi and the Director of Education, Besiana Musmurati.

2.7. One operator, one lot, an opportunity for small and medium businesses at a cost for municipalities

In two examined tenders, the Municipality of Pejë/Peć used a contracting method that disallowed any company from getting more than one lot. As a practice introduced by the CPA and supported by other actors, including civil society, this contracting method was intended to increase opportunities for including Small and Medium Enterprises (SMEs) in the national public procurement market. Several years down the road, facts show that while the opportunities for SMEs are

29 Tender “Sports Hall floor refurbishment at Zenel Hajdini School – Re-Retender,” Procurement No. 624-23-1039-5-2-1

30 Tender “Horizontal and vertical traffic signals and road equipment in the Municipality of Gjilan”, Procurement no.:651-22-10313-2-1-1

31 Tender “Cleaning of school facilities – Secondary schools and preschool facilities” Procurement No.: 616-23-781-2-1-1

growing, the cost to the Contracting Authorities while applying this model is also rising.

The tender for the “construction of irrigation channels”³² conducted by the Municipality of Pejë/Peć was divided into five lots. The contract notice states that one economic operator may be awarded a maximum of one lot, i.e., only one contract. BIRN and D+ have examined the procurement process, including the contract award decision, to see whether the budget cost was potentially higher because of the condition that one economic operator may get only one lot.

Upon examination, it turned out that the first lot was awarded to an operator who did not have the lowest responsive bid. The contract was awarded to EO “V-Shala SHPK” for EUR 69,760, which was EUR 1,600 higher than the lowest bid by GEO “VB.Tofaj; Etnogroup CO shpk; Niva Construction shpk.” But the latter received Lot 3, so it could not get more than one lot award.

The same situation was repeated in the second lot, which was awarded to GEO “KBC Group SH.P.K & ARFA GROUP SH.P.K” with a total bid price of EUR 71,750.51. In this lot, the lowest bid was submitted by EO “N.P Auremont” at EUR 62,719. Although they submitted a bid that was cheaper by EUR 9,031, they were not awarded the second lot because they were awarded the third lot and, according to the contract notice, were not eligible for more than one lot award.

In the third lot, too, the contract was not awarded to the lowest bidder. The contract was awarded to the company “N.P. Auremont” with a bid price of EUR 76,484.40, although “VB. TOFAJ; ETNOGROUP COSH.P.K.; NIVA Construction” SH.P.K” had bid only EUR 52,858. But the latter was recommended for an award in the fourth lot.

Next, in the fifth lot, the contract was awarded to EO “ENGINEERING GROUP SH.P.K” at a price of EUR

60,505, while two other economic operators had bid cheaper prices, “V - SHALA” SH.P.K with EUR 59,722.80 (winner of Lot 1) and N.P. “Auremont” (winner of Lot 2) with a price of EUR 58,877.10. Both EOs that had the cheapest price in the fifth lot were winners in the other two lots.

The other tender of the Municipality of Pejë/Peć for “Construction and pavement of roads in Rugovë”³³ was also divided into seven lots. In the first lot, the contract award recommendation was in favor of the company “Graniti Shpk,” which had bid EUR 918,214. The lowest bid in this lot was from the company “RSM Company SH.P.K” in the amount of EUR 887,585.26. The economic operator “RSM Company Sh.P.K.” was awarded the contract on Lot 7, with the lowest bid price of EUR 306,262.07, after complaints to PRB from “Graniti Shpk.”

³² Tender “[Construction of irrigation canals](#)” Procurement No. 635-23-1756-5-2-1

³³ Tender “[Construction and pavement of roads in Rugovë](#) LOT 1 Construction and pavement of the road “Varri i Sykut - Bellopaq” Phase I LOT 2 Construction and pavement of the road in the village “Shtype i Madh- Qafa e Broqit” LOT 3 Construction and pavement of the road in the village “Rekë e Allagës- Pecaj” LOT 4 Construction and pavement of the road “Koshutan – Gunishtë” LOT 5 Pavement of the road “Koshutan Pepajë” LOT 6 Construction and pavement of the road “Kujisht (Bardhaj Neighborhood) LOT 7 Construction and pavement of the road in the village of Dugaivë, continued Part II”, Procurement no.: 635-22-11435-5-1-1

3. Tendering phase

3.1. Delays in bid evaluation

Tender examination, evaluation, and comparison represents a crucial phase in procurement. Based on the decisions of the PRB, most violations of the Law on Procurement are committed. Based on Article 59 of the LPP,³⁴ the CA, on a case-by-case basis, shall establish an Evaluation Committee for the examination, evaluation, and comparison of bids. The Regulation on Public Procurement³⁵ developed by the Public Procurement Regulatory Commission (PPRC) provides that “the RPO shall make recommendations of membership for the Tender Evaluation Committee to the CAO, who shall either approve all the nominations or, where appropriate, elect alternative members to the Committee.” Furthermore, the bid opening committee members may serve as evaluation committee members.

Unlike the people who prepare the technical specifications, the names of the evaluation committee members are featured in each tender evaluation report. BIRN and D+ have examined the names of people involved in the evaluation committees and found that in each of the evaluation committees, there was at least one expert in the field in which the contract would be concluded.

The bid evaluation process starts when the bids are opened and ends when the CA issues the notice of the CA’s Decision. Paragraph 1 of Article 59 of the LPP³⁶ provides that the CA shall establish an Evaluation Committee for the examination, evaluation, and comparison of bids.

Article 40.3 of Regulation on Public Procurement³⁷ provides that the procedure for examination, evaluation, and comparison of tenders, and issuance of the notice on CA decision, shall be completed by the CA within the shortest possible period and no more than 30 days from the opening of the tenders. Only in exceptional and well-justified cases, in particular with contracts of a complex nature, this period may be extended for an additional term of 20 days.

Several cases have been identified during the tender monitoring exercise where the contracting authorities have dragged out the bid evaluation process. For example, on September 6, 2022, the Municipality of Pristina initiated the procurement activity for the “Construction of a Wastewater Collection System in Hajvali.”³⁸ For the same tender, on July 27, 2022, they published the bid opening record, while on September 29, 2022, they issued the Notice of the CA’s Decision. It took exactly 63 days for the municipality to evaluate the bids submitted by economic operators versus the maximum 50 allowed. Consequently, the Municipality of Pristina overran the bid evaluation time limit by 33 days, while the maximum deadline was exceeded by 13 days.

Even the Municipality of Rahovec/Orahovac had delays in the evaluation of bids for the tender “Construction and setup of the sewer system (septic tank) in the Municipality of Rahovec/Orahovac,”³⁹ with Procurement No. [623-23-179-5-1-1](#).

34 [Law No. 04/L-042 on Public Procurement in Republic of Kosovo, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092](#)

35 [Regulation on Public Procurement](#)

36 [Law No. 04/L-042 on Public Procurement in Republic of Kosovo, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092](#)

37 [Regulation on Public Procurement](#)

38 [Tender “Construction of Wastewater Collection System in Hajvali.”](#) Procurement No. 616-22-5630-5-1-1

39 [Tender “Construction and setup of sewer system \(septic tank\) in the Municipality of Rahovec/Orahovac.”](#) Procurement No. 623-23-179-5-1-1 623-23-179-5-1-1

The tender was announced on March 27, 2023, while the deadline for bid submission was set for April 20, 2023. The CA decision notice was published on September 06, 2023, or 50 days after bid opening, which was the maximum period allowed by law to evaluate the bids.

3.2. Suspicious references

The Municipality of Pristina, on June 09, 2022, initiated the procurement activity for the “Construction of Wastewater Collection System in Hajvali.” With Procurement No. 616-22-5630-5-1-1, this tender had an estimated value of EUR 800,000. Five economic operators submitted bids in the tender, administered under the open procedure. At the same time, the applicable criterion for awarding the contract was the lowest responsive bid. This tender was reviewed three times by the PRB, finding that there were legal violations. As a result, the PRB was compelled to issue an ordinance and initiate the procedure to revoke the procurement officer’s license.

Initially, the first evaluation committee recommended the consortium “N.N.Sh. Co-Ing & N.N.T Bini Sh. P.K & Hidro Project Sh.P.K.” Taking issue with this evaluation, two EOs filed a request for reconsideration, ruled unfounded by the CA. The PRB, by decision (PSh. No. 516/22), ordered the municipality to reevaluate the tender. Due to its failure to act, the CA received an ordinance issued by the PRB, ordering the implementation of Decision No. 516/22.

On January 27, 2023, the Municipality of Pristina, based on the re-evaluation report, published the “Notice of CA’s Decision” and recommended awarding the contract to the same consortium that it had recommended in the first evaluation, where the leading company was “N.N.Sh. Co-Ing.”

During the re-evaluation process, the CA sent questions for clarification to “Co-Ing,” where it sought clarification regarding the references of the construction site manager, Zenun Tolaj. Specifically, the CA requested evidence that Tolaj has managed at least one project with an estimated value of EUR 800,000. The EO submitted to the Municipality of Pristina several references issued by the company “PMN Sh. P.K”

(specializing in supervision, construction, and design), according to which Zenun Tolaj served as manager in various capital investment projects, reaching the amount designated by the CA.

In the delivered clarifications, the company provided references produced by “PMN,” according to which the nominated manager, Zenun Tolaj, was the construction site manager in the following contracts:

- “LOT 3 – Construction of local roads in the Municipality of Rahovec/Orahovac - Phase 2”
- “Pavement of the Fortesë - Hamoc - Rahovec/Orahovac road”

According to Business Registration Agency records, the owner of the company “P.M.N Shpk” is Zenun Tolaj. Aiming to check these references, BIRN and D+ reached out to the Municipality of Rahovec/Orahovac, and they said that Tolaj was not the construction site manager nominated by the companies that signed those contracts. According to the Municipality of Rahovec/Orahovac, the managers nominated by the winning companies for the respective contracts were as follows:

- For the contract “LOT 3 – Construction of local roads in the Municipality of Rahovec/Orahovac - Phase 2” signed by the company “KAG Asphalt” – The construction site manager from the beginning to the end of works was Sadik Sadiku;
- For the contract “Pavement of the Fortesë - Hamoc - Rahovec/Orahovac road” signed by “Euroasphalt” – construction site manager from the beginning to the end of works was Fatmir Kryeziu;

For further confirmation, BIRN and D+ requested additional clarification from the Municipality of Rahovec/Orahovac to see if the same person was the contract manager appointed by the CA to these contracts. In the responses provided by the Municipality of Rahovec/Orahovac, it appears that Zenun Tolaj was the manager of the above contracts, appointed by the Contracting Authority.

BIRN and Democracy Plus have requested clarification from the PPRC to see if the contract manager appointed by the EO and the one appointed by the

CA have the same responsibilities. In their response, the PPRC stated that there is no job description in the procurement legislation for the responsibilities of the contract manager assigned by the EO.

Based on the Procurement Regulation (Article 70.23), the contract manager appointed by the CA manages the obligations and duties of the CA specified in the contract and ensures that the EO performs the works per the terms and conditions specified in the contract

While Article 70.24 of this Regulation provides the functions of the contract manager assigned by the CA, there is no provision stating that the contract manager is the construction site manager or responsible for being in charge of works conducted on-site. The responsibilities of the contract manager assigned by the CA mostly relate to supervision, quality control of works, acceptance of additional works, and the like.

Even after the second decision of the Municipality of Pristina, there were complaints to the PRB from EO "Valdrini." The PRB, by decision (No. 2023/0082), held that the complaint of this company was untimely. But in terms of substance, this matter was dealt with by compelling the municipality to implement the previous decision of the PRB. This decision also imposed a penalty fine of EUR 5,000 because the CA failed to comply with the previous decisions and ordinances issued on this activity. Furthermore, the review panel initiated a procedure to revoke the procurement certificate against the responsible procurement official as a penalty.

The PPRC, with the scope of revoking the licenses of procurement officers through Decision No. 24/2023, issued a written warning to Nexhmi Mekolli for noncompliance with the LPP.

The last evaluation of this activity was conducted on 05/12/2023, recommending awarding the contract to GEO "Valdrini" Sh. P.K & Limitproject Sh.P.K. & N.N.P. Ndërtimi".

This company was initially told that the employment agreements of two construction technicians were missing. In addition, there is a document titled "Timeline of Hajvalia Wastewater Collection System Construction Process," which the Municipality of Pristina sent to the PRB as a written argument, where it is stated that this bidder does not have the employment agreements of the construction technicians. BIRN and D+ requested clarification from the Municipality of Pristina on this criterion, but they stated that the PRB had declared this company to be responsive.

The "GEO electronically sends the documents to E-Procurement because the Decision of the CA stated that it lacks the contracts, but since they submitted the list and submitted all other documents such as the notarized diploma, references, etc., and were declared responsive by PRB decision, subsequently, without any request for clarification from the CA, but only upon receiving the decision of the PRB dated 02/22/2023, they uploaded the above noted two documents into the system on 03/03/2023 and 04/06/2023, without waiting for the re-evaluation of the bids."⁴⁰

BIRN and Democracy Plus again requested clarification from the Municipality of Pristina, with the latter sending two documents that this EO had uploaded to E-Procurement as evidence. The document that was delivered as evidence is the "Special Service Agreement" signed between the company "Limit Project" and Driton Çelaj, construction technician. The date of the agreement is June 1, 2022. In this contract, dated June 01, 2022, the procurement number of the tender they have bid on is also referenced. The tender referenced in this contract was published on June 10, 2022, or 10 days before the contract was signed. The procurement number was not yet public on June 1, 2022.

⁴⁰ Reply from Flamur Sallahu, Senior Procurement Officer, provided on 09/14/2023.

4. Post tendering phase

Immediately after a contract has been signed, the CAO (mayor) shall appoint a contract manager according to the LPP. In cases where the contract is of large value, they will also appoint a direct supervisor of the contract manager. The LPP states that the responsible Procurement Officer shall inform the CAO after both parties have signed a contract. The CAO shall, in writing, appoint a Contract Manager responsible for the management of the specific contract and a direct supervisor of the Contract Manager, who shall have the responsibilities as in paragraphs 70.23-25 of the Regulation on Public Procurement.⁴¹ According to the Regulation on Public Procurement, the contract management process refers to “the administration of the performance of contracts by the CA through the module for contract management in the e-procurement system.”

Nine of the 27 tenders were monitored with a focus on contract management. In one of the tenders selected for monitoring the contract management process, the contract has not yet been signed, even though the tender was announced on September 16, 2022, and the contract award notification was made on April 14, 2023. Four of the eight monitored contracts were contracts for supply and the remaining four were for works.

4.1. Delays in work performance

One of the most frequent violations established during the monitoring of contract management was delays in the performance of works or delivery of supplies. While weather conditions and unplanned works feature as primary “culprits” for the delays in the performance of works, there were more multiple-day delays in fulfilling certain orders on the supply side.

For example, delays were noted in the performance of works in the Municipality of Suharekë/ Suva Reka tender for “construction and maintenance of riverbeds.”⁴² Upon examining the management plan, it was found that the implementation of the project in question launched on December 7, 2022, and is scheduled to end on February 08, 2023. However, according to the contract management plan, the construction works were completed on April 7, 2023, exactly 60 days later than planned.

BIRN and D+ were granted access to the final report of the contract manager, who referenced the delays, stating that “works were not completed because of weather conditions – high flow rates.” Considering the nature of this project, i.e., riverbed cleanup, it is expected that such contracts would run into delays if implementation started in December and is planned to be completed by February, i.e., the three months of the winter season. Municipalities should exercise due diligence and, in such projects that are directly tied to weather conditions, aim for contracts to start implementation during the summer months when there is less rainfall.

Delays against the projected timeline were also present in implementing the following contracts: “Construction of Central Town Square – Retender”⁴³ in the Rahovec/Orahovac. The contract worth EUR 3.8 million with the Group of EOs “FAMIS- CO” ShA and NPT “Bamirs” was signed on December 14, 2022. The contract management plan states that the work started on January 23, 2023, while the contract is expected to wrap up on July 30, 2025.

There are very few details regarding the contract management process in the contract management plan. In this plan, it is stated that works launched on January 21, 2023, while completion is projected for July

⁴¹ Regulation on Public Procurement

⁴² Tender “Construction and maintenance of riverbeds” Procurement No. 624-22-3252-5-2-1

⁴³ Tender “Construction of Central Town Square” Procurement No. 623-22-6778-5-1-1

30, 2025. In addition to this section, there is also the insurance of liability made on January 10, 2023, while the performance guarantee is worth EUR 381,734 with a duration of 990 days. All other sections in the PPRC template for the “Contract Management Plan (CMP)” are blank.

BIRN and D+, in addition to accessing the contract management documents, also visited the site and met with the project supervisor, Albnor Mullabazi, and the contract manager, Diellza Çanta. They admitted that in the beginning, there were delays in the performance of the works, primarily due to weather conditions. According to them, the delays are up to a month.

Furthermore, according to the contract manager, the implementer damaged a FI350 water pipe, having received incorrect depth information before the start of the works.

Even though the works on constructing the town square in Rahovec/Orahovac have started, not all aspects of property expropriation have been resolved. Supervisor Albnor Mullabazi stated that there have been no delays in the performance of works due to property disputes. According to him, work is expected to start next year in the area by the market, and in that area, there are some properties that will be exchanged with the municipality. This decision is expected to pass through the Municipal Assembly of Rahovec/Orahovac. The exchange was once approved in the Municipal Assembly. Still, the Ministry reversed the decision because it is unlawful since the Municipality of Rahovec/Orahovac had not yet approved the Zoning Map.

In addition to the expropriations, two other obstacles have emerged for the performance of works: a fuel station and a transformer owned by KEDS. The latter provided a technical solution for moving the transformer and replacing the grid but stated that they did not forecast this investment in their 5-year investment plan. The Municipality of Rahovec/Orahovac had to announce a new tender to contract a

company to move the transformer. The tender with an estimated value of EUR 83,162 was announced on June 16, 2023, but it was blocked after an EO complained to the PRB.⁴⁴

Based on the examined files and meetings with the contract managers, the works foreseen in the first situation have been completed, and EUR 130,305 have been paid accordingly.

Regarding the performance of works in the parking lot area, a position has been changed to allow the construction of a wall, which was not foreseen in the contract. The changes were made with the approval of the design company and the mayor of the Municipality of Rahovec/Orahovac.

BIRN and D+ have also observed the change of positions in the Decision of the mayor of Rahovec/Orahovac Municipality, dated March 27, 2023, on the construction of the protective wall. The positions that have been changed are 2.1 to 2.5 related to soil works and filling, then 3.1 to 3.11 to concrete works, and 4.1 to rebar works.⁴⁵

4.2. Design flaws

The Municipality of Gjilan/Gnjilane signed a contract worth EUR 246,296 with GEO “AAB Constructions SH.P.K.; Eco Holding Group SH.P.K” for “Construction of Baja Park – Retender.”⁴⁶ The works started in March 2023, and the BIRN and D+ teams visited the site several times during the implementation of this project.

Omissions in the drawing of the executive project became evident at the onset of work. Visits to the site revealed that the location of the park entrance, according to the designer’s plans, would be on a slope. This made implementing the project as foreseen in the original design impossible. Because the terrain incline was significant, the park entrance had to be moved a few meters to the left.

⁴⁴ Interview with contract manager Diellza Çanta and supervisor Albnor Mullaabazi on 06/21/2023

⁴⁵ Interview with contract manager Diellza Çanta and supervisor Albnor Mullaabazi on 06/21/2023

⁴⁶ [Tender “Construction of Baja Park – Retender”](#) Procurement No. 651-22-11519-5-2-1

A similar problem was also encountered where the park amphitheater would be built. According to the contract manager, more overburdened soil had to be excavated and removed than was specified in the Bill of Quantities, which caused additional costs.⁴⁷ The design for this park was drawn up in 2019 by the company “PRO ING Desing & Partners” while the Municipality of Gjilan/ Gnjilane has not provided any information on what, if any, measures have been taken against the designer for such planning that compelled the municipality to change the design.

From the beginning of the works, the contract manager raised the issue of three KEDS/ KOSTT high voltage electric poles in the park area, even before the design was drawn. Yet, there was no solution to this matter during the design process. These electric poles were not removed even after the park’s construction started. According to the contract manager, the Municipality of Gjilan/Gnjilane submitted a removal request to KEDS but has not received a concrete answer.

The manager stated that there is a KEDS transformer near this park, which means that the main electricity supply passes through these poles located in the park. The park’s construction has continued even though nothing has been done to remove the electric poles. In addition, an IPKO cell tower is located in the park. The manager advised that they had requested the company to remove that cell tower, giving them 90 days to remove it. During the site visit on August 3, 2023, we were informed by the contract manager that this deadline was not respected and that the Municipal Inspection had given the company a few more days to remove the cell tower. In conclusion, the relocation of the cell tower remains under the purview of Inspections.⁴⁸

An examination of the contract and site visits revealed that public toilet facilities, covered rest areas, access ramps and paths for people with disabilities were not included in the park’s design.

4.3. Games of low prices and frivolous products

On October 13, 2022, the Municipality of Pejë/ Peć announced a tender to supply hygienic materials and food for schools and kindergartens. The municipality compiled a long list of products for which it requested prices, ranging from food to hygiene products and electrical equipment. All these products were included in a contract signed with the company “D.P.T. TEFI” for EUR 149,594.

BIRN and D+ received records of the orders, invoices, and payments made since the signing of the contract until March 16, 2023. Based on the invoices, out of 98 contracted positions, it was found that hygienic material and food supplies were ordered in 71 positions for a total value of EUR 24,268.80. However, the contract is for two years with a total value of EUR 149,594; until this period, orders amount to over 16 percent of utilization.

BIRN and D+ have analyzed the products that have not yet been ordered; some are priced below the market price. For example, the Municipality of Pejë/Peć contracted them to purchase 1,000 packs of 100 plastic forks, each at only three cents per pack, but so far, they have not ordered any. Likewise, no orders were placed for two meter-long tablecloths, which were contracted for only 6 cents each, and for 500 such items, EUR 30 was forecast. There were no orders for fabric softener, which was contracted at a price of EUR 0.95 each or EUR 30 for 500 such items. No orders have been made for the 100- and 50-watt electric bulbs, which were contracted at 30 cents each.

⁴⁷ Interview with the contract manager, Taulant Maliqi.

⁴⁸ Interview with the contract manager, Taulant Maliqi, on August 3, 2023.

Some of the food products that have not been ordered so far include avocados contracted at EUR 1 per kilogram, kiwis at 50 cents per kilogram, tomatoes at 30 cents per kilogram, oranges at 50 cents per kilogram, UHT milk 0.50L 2.8% at 30 cents each, pineapple at 35 cents per kilogram.

An examination of the placed orders reveals that the amount provided in the contract is about to reach fulfillment in some positions. For example, 414 square mops have been ordered, out of 500 pieces provided to purchase, EUR 1.95 each. While in five positions of this contract, the ordered goods exceeded the contracted quantity. In position #6, 400 liters of liquid floor cleaner with a price of EUR 1.50 were contracted, while the ordered quantity of this type of cleaning supply was 1,191 liters. Similarly, in position #10, hygienic tissue 1/100 contracted for 1,000 each at 35 cents, while the ordered quantity is 1,509 each, or an excess of about 151 percent.

The ordered quantity about the contracted quantity has also been exceeded for position #24 kitchen paper towel 1/10 for 450 each at 45 cents. In contrast, 1,278 such items have been ordered, translated into an excess of 284%. At position #27, bleach 1/1 at 98 cents, 300 liters were contracted, while 840 or 280% were ordered. Further, in position #57, lettuce greens 1/1, 500 kilograms were contracted at 5 cents, while 80 kilograms or 150% of the contracted quantity were ordered.

According to the supply trend, flaws and improper forecasting are notable, while the contract in question runs the risk of being spent before the set term. The contract manager has even said that the contract can be consumed before the calendar deadline for its completion is reached, as two new kindergartens are expected to start operating soon in Pejë/Peć.

4.4. Year after year: Conclusion of contracts with abnormally low-price tenders

On November 21, 2022, the Municipality of Gjakovë/Djakovica published the contract notice for the “Supply of printed office material – Two-year contract”⁴⁹ tender, with Procurement No. [632-22-13150-1-1-1](#). The open procurement procedure was applied for this tender with the lowest price criterion for awarding the contract. The estimated value for this contract was EUR 220,000. This project is part of the Municipality of Gjakovë/Djakovica Procurement Forecast.

Even though it was part of the procurement forecast, the Municipality failed to observe the minimum time limit set by law for accepting bids related to the supply of printed office material – a two-year contract, under the justification of not wanting to run out of such supplies. Based on the Regulation on Procurement, for medium-value contracts, the deadline is not less than 20 days, while for large-value contracts, it is not less than 40 days. The contract in question is a large value. The tender dossier and the contract notice state that the time limit for bid submission has been reduced.

For this tender, the Municipality of Gjakovë/Djakovica received four bids. The company “Erpo-Print” bid EUR 116,135, the company “Europrinty” bid EUR 139,887, “Blendi OP” bid EUR 198,557, and the company “Agimi-De” bid EUR 194,544.

The Municipality of Gjakovë/Djakovica recommended the company “ERPO-PRINT” ShPK, which had bid EUR 116,135, to be awarded the contract. No complaints were filed against this announcement, paving the way for the Municipality of Gjakovë/Djakovica to sign the contract on 02/15/2023. Ideal Kushumlia, an economist by trade, was appointed contract manager under this tender.⁵⁰

The same company had also won the previous two contracts for the same supply. Based on monitoring, it turns out that the company in question has signed another two contracts, one in 2019 and the other in 2021.

⁴⁹ Tender “Supply of printed office material – Two-year contract”, Procurement No.632-22-13150-1-1-1

⁵⁰ BIRN and D+ attempted several times to conduct an interview with the contract manager, Ideal Kushumlia, but he did not accept.

In the 2019 contract, the Municipality of Gjakovë/ Djakovica requested bids for 107 positions. After analyzing the orders that they made based on that contract, it turns out that out of 107 positions in total that were in the contract, the Municipality of Gjakovë/ Djakovica placed orders on only 45. In comparison, 62 positions that were typically at abnormally low prices were not ordered at all. Of the 62 positions without any orders, 32 of them were contracted at the price of just 1 cent.

The company “Erpo - Print” committed to performing the “Carpet installation” service for only 1 cent per square meter or EUR 6 per 600 square meters, which is the amount required by the contract. “Erpo-Print” was contracted to supply the Municipality of Gjakovë/ Djakovica with “A3 format folders, plastic, weighing 350gr” for only 1 cent. No orders were placed under this position by the Municipality of Gjakovë/ Djakovica. Unlike the A3 format folders, where the bid was 1 cent, for the product “A4 format folders, plastic, weighing 350 gr,” the company “Erpo-Print” bid 50 cents each. The municipality contracted 1,000 such folders but ordered 4,450 items worth EUR 2,275. So, in this position alone, they spent EUR 1,275 more than was forecast. Abnormally low-price tenders for positions were also contracted in the 2021 contract. BIRN and D+ also examined the contract signed on February 15, 2023.

Positions with a price of 1 cent were also observed in the current contract concluded on February 15, 2023. In positions #12 and #13, Photocopy, A4, black and white, and Photocopy, A4, color, are contracted at 1 cent. At the same time, those of A3 format are contracted at 2 cents. At prices of 1 cent, A4 forms and business cards, envelopes with logos of A4, A5, and A3 format are also contracted.

10 of the 119 positions were contracted for 1 cent, eight positions were contracted at 2 cents, two at 3 cents, and 6 at 5 cents. So, 28 requested positions are contracted at 5 cents or cheaper. One of the positions with an abnormally low-price tender is “Design and printing of the magazine Gjakova Press, A4, interior 44

pages in black and white, cover in color (130gr).”⁵¹ A circulation of 9,500 magazine issues were contracted for EUR 950 or 10 cents each.

BIRN and D+ received records of the orders and payments from the contract’s signing until April 04, 2023. Based on the invoices, out of 119 contracted positions, it was established that office supplies were ordered in 13 positions for a total value of EUR 7,919.

Although the contract is for two years, the estimated value has been fully met according to the invoices, positions #117, #118, and #119, which are related to the supply of gold and silver color cups and medals. In position #117, 84 cups for school sports competitions are provided at EUR 20 each. Until 03/03/2023, based on the invoices, 84 cups worth EUR 1,680 were ordered. While in positions #118 and #119, the purchase of 1,380 medals is provided at EUR 2 each. Until 03/03/2023, there were 1,380 medals ordered, totaling EUR 2,760.

In position #12, “Photocopy, A4, black and white” out of 50,000 that were contracted at 1 cent for two years, 3,000 pieces, or 6 percent of them, were ordered. Under position #14, “Photocopy, A3, color” - 4,500 or 90% of the 5,000 contracted at 2 cents were ordered, while in position #15, “Photocopy, A3, black and white” - out of 10,000 contracted at 2 cents, 4,500 or 45% of the contracted quantity were ordered.

The 52nd position in the Bill of Quantities, for forms of A4 format, is at a fulfillment rate of 50%, where out of the 40 thousand that were contracted, a total of 20 thousand were supplied at a price of 1 cent each.

There was an excess of the purchased quantity about the contracted quantity under position #55 of the Bill of Quantities - Notepad, A4, NCR, with different colors, four colors (100 sheets), at EUR 3 each, where a total count of 100 was contracted, while 145 were purchased.

⁵¹ Tender “[Supply of printed office material – Two-year contract](#)”, Procurement No.632-22-13150-1-1-1

5. Complaints Process

The LPP allows economic operators to complain in two instances, first through a request for reconsideration to the CA and then to the PRB. EOs usually exercise their right to complain whenever they believe that the law may have been broken in the procurement process.

Out of 27 tenders, in 15 tenders, there were corrections of errors. In some of the tenders, there was more than one correction, and even up to six corrections were made. Such corrections were made after the questions and clarifications requested by the EOs, the identification of errors by the CAs themselves, and the requests for reconsideration. The many corrections indicate that some CAs prevent a complaint referral to the PRB by approving the requests for reconsideration. Nevertheless, the number of complaints filed with the PRB is still high, especially for alleged violations in bid evaluation.

On 13 of the 27 monitored tenders, or 48%, complaints were filed to the PRB. Of the 13 tenders under review at the PRB, in 8 of them, there were two or more complaints filed. Up to six complaints were made in one tender alone. Some tenders went to the PRB more than twice, and there were cases where an operator on the same tender filed two complaints with the PRB at two different times. 32 complaints were made about these 13 tenders that the PRB reviewed.

Of the 32 complaints received, 15 were rejected as unfounded, untimely, or unpermissible. Whereas, in 13 of them, the claims of the economic operators were granted, and the tenders were remanded to reevaluation or correction of the Tender Dossier. Four tenders are under review, so four complaints are pending at the PRB.

In 13 cases, legal violations were found in the decisions issued by the contracting authorities, remanding the tenders to reevaluation or re-tendering. An examination of the complaints process reveals that the contracting authorities have begun to take into account the Requests for Review made in the pre-tendering phase, i.e., related to the required technical or professional criteria.

Contracting authorities have prevented complaints to the PRB by approving Requests for Review and by making corrections to the Tender Dossier and relevant notices.

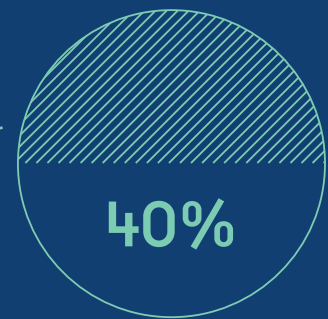
However, the contracting authorities are far more rigid when reviewing complaints made after the evaluation of bids, since those that have rejected requests for reconsideration have allowed 32 complaints to be made for the 13 monitored tenders.

An examination of the decisions of the PRB found that the contracting authorities commit the largest number of legal violations during the evaluation of bids submitted by economic operators. Of the 13 cases where the “Court of Tenders” found legal violations, 12 of them were in the process of bid evaluation. In only one of its decisions, the PRB found that legal violations were committed during the pre-tendering phase, compelling the CA to modify the Tender Dossier.

Number of complaints reviewed by the PRB



In 40% of complaints, PRB has found legal violations by the contracting authorities



13

EO complaints are approved

15

EO complaints are rejected as unfounded, untimely or not permissible

4

Complaints in process

6. Ministry of Health

6.1. Maintenance of 70% of the Health Information System (HIS) – Pre-tendering Phase

On March 7, 2023, the MoH published the Contract Notice for the tender “Maintenance of 70% of the HIS HW for Health Care Facilities,”⁵² with Procurement No. 206-23-1650-2-1-1. Under the tender monitoring project that BIRN is conducting jointly with D+, this project has been selected for monitoring the pre-tendering process.

This tender is part of the 2023 Procurement Forecast of the MoH. The anticipated value of the tender, as stated in the procurement plan, is 720 thousand euros, and on February 27, 2023, the Chief Financial Officer confirmed the availability of funds. The MoH is among the few authorities that have revealed the names of the people who prepared the technical specifications for this tender.

Through this tender, the MoH aims to secure a 3-year contract for hardware and service maintenance of the Health Information System (HIS), both active and passive, spanning 70% of healthcare facilities. Hardware and service maintenance, according to the MoH, should ensure the smooth and uninterrupted operation of the equipment in use.

The tender announced in 2023 foresees the maintenance of the HIS infrastructure implemented in previous years by the company that was recommended for the contract. Through another tender, “Expansion of the existing HIS Infrastructure”⁵³ in 2018, the MoH purchased the equipment for the Health Information System. The tender had a value of EUR 4.6 million, and equipment designated “Zero Clients” had been pur-

chased. According to the Ministry, that equipment had been distributed to most of the foreseen facilities, except for The University Clinical Centre of Kosovo (UCCK).

Since the equipment was not put into operation, lacking the software, and after the warranty period had passed, the MoH announced the 2023 tender, according to the Head of IT, Zenel Hisenaj, to develop the software, obtain the warranty for the equipment from the distributor, as well as putting it into operation. The 2018 tender was awarded to the same company that got the award in the 2023 tender, the “Infosoft Systems” company.

The deadline for bid submission by economic operators was April 17, 2023, respecting the legal deadline of 40 days. The estimated value of this tender was EUR 720 thousand.

Although 49 economic operators downloaded the tender dossier, in the end, only one of them bid. The same operator, i.e., the only one that bid, was recommended by the Evaluation Committee to be awarded the contract. EO “InfoSoft” bid with a price of EUR 715,999, or only EUR 4,001 cheaper than the price forecast by the Ministry.

2023 Tender

In the specifications of the tender announced on April 17, 2023, the MoH required the economic operator to have at least partner status in “VMware, DellEmc, and CISCO” because, according to the Ministry⁵⁴, all equipment purchased in 2018 are of this technology.

⁵² Tender “Maintenance of 70% of the HIS HW for Health Care Facilities”, Procurement No. 206-23-1650-2-1-1

⁵³ Tender “Expansion of Existing HIS Infrastructure”

⁵⁴ Interview conducted at the Procurement Office of the Ministry of Health with Berat Marmullaku - Head of Procurement at the Ministry of Health, Zenel Hisenaj - Head of IT at the Ministry of Health, and Gjylferije Zabeli from the Media Office. 7 July 2023, at 10:00 hrs.

It also required that in the last three years, from the date of publication of the contract notice, the economic operator has implemented at least two projects of a complex nature with “Cisco, VMware, and DellEms,” omitting the wording ‘equivalent’ required by law. Due to the equipment being of designated brands, in one of the specifications, the Ministry required the staff to be certified in Cisco and VMware, which is also referenced without the wording ‘equivalent.’

BIRN and D+, by request for access to public documents, obtained the request, the clarification questions, and the names of the economic operators who made them for this procurement process.

Among the questions/requests, the economic operator “Techbase” also asks the MoH to remove the citation of brands from the tender dossier and allow other brands equally specialized in technology and the required field. However, the Ministry did not grant such a request. Subsequently, the same company did not bid on this tender.

Another dilemma raised during the tendering phase was whether the manufacturer must offer any warranty for the equipment or if the economic operator alone is sufficient. In their request, one of the economic operators, “Ntp Online,” explained that manufacturers do not offer such a warranty for Kosovo. Despite explanations from “Ntp Online” and from two other economic operators (“Techbase” and “Cactus”), the MoH stated that the manufacturer should provide a warranty.

BIRN and D+ had access to the bid submitted to the MoH by the “Infosoft Systems” company. This company did not submit any reference for the “Expansion of the Existing HIS Infrastructure” project, which it had implemented at the MoH. The project in question was implemented in 2018, while in 2023, they applied in a tender to maintain the equipment installed. For the “Expansion of the Existing HIS Infrastructure” project, the company “Infosoft Systems” submitted only acceptance records for the completed works without any reference.

Even in the Tender Dossier, the MoH did not only ask for references as proof that the EO has completed at least two (2) projects of a complex nature with Cisco, VMware, and dellEMC Zero Clients.

“A list of completed contracts, where contract title, amount, start and end date, and beneficiary must be specified, with attached references or certificates for the performance of services,” provides the contract notice for this tender.

One of the requirements was also that the warranty for the already purchased equipment be proven directly by the manufacturer (MAF). Later, it was allowed to provide the warranty through the authorized distributor (DAF). The IT and procurement officers said that the possibility of securing the warranty through DAF opened the competition field, but still, the MoH received only one bid.

BIRN and D+ contacted economic operators regarding the possibility of applying with DAF. Still, economic operators stated that the price bid by authorized distributors differs from one economic operator to another. According to them, they usually get higher prices from distributors. Thus, the distributor decides in the end who wins a tender, especially in cases where the tender criteria are restrictive.⁵⁵

The notice of contract award to the company “Infosoft Systems” was published on June 2, 2023. But on August 16, 2023, the CA announced that it had canceled⁵⁶ the procurement activity. The reason for canceling this procurement activity is that an expert report by the World Bank found that some requirements were unnecessarily restrictive. The reasoning also notes that there was only one bidder in the tender, while many economic operators had downloaded the tender dossier.

55 Interview with the manager of one of the companies that downloaded the tender dossier but, in the end, did not bid in this tender of the Ministry of Health.

56 [Tender “Maintenance of 70% of the HIS HW for Health Care Facilities”](#), Procurement No. 206-23-1650-2-1-1

In the reasoning for the request to cancel the procurement activity, the Secretary of the Ministry of Health, Naim Bardiqi, citing the expert report of the World Bank, referenced the requirement that “the company must prove that in the last three years, starting from the date of publication of the contract notice, it has implemented at least two projects of complex nature with Cisco, Vmware, dellEMC Zero Clients,” which has been found to violate the LPP.

However, based on Article 26.8 of the Public Procurement Regulation, the CA can determine the number of references, including setting the minimum number of references the EO must submit in a procurement activity.

In addition, the Secretary of the MoH also referenced the requirement for staff, where the tender dossier required CCNP-certified engineers by Cisco and VMware, and according to him, citing the expert report, this was not in compliance with the 2018 contract procedures. Another unusual requirement, according to the Secretary, was the request for the warranty extension, considering that such a requirement is not standard in procurement procedures because it is particularly difficult for an economic operator other than the one who delivered the supply initially.

On August 17, 2023, BIRN and D+ requested access to the expert report of the World Bank and the decision of the secretary of the Ministry of Health. In their response, the MoH stated that the WB report is internal and that they must get permission from the World Bank to allow third parties access to this report. BIRN and D+ have not yet received the requested report.

PRB-blocked tender

After the cancellation of the tender, the company recommended for the award (“Infosoft”) complained to the PRB. This company, *inter alia*, claimed that the Ministry of Health unlawfully canceled this tender, since the LPP does not allow cancellation after completing all stages of the procurement activity.



The PRB expert said that the Ministry of Health should have been alerted immediately after bid opening, due to the fact that it had received only one bid despite the fact that 49 EOs had expressed interest in this tender.

“Infosoft” in their complaint, claimed they had already started preparations for contract implementation since they were recommended for the award and there were no complaints, only the formal signing of the contract remained. The review expert assigned to this case by the PRB found that the Secretary of the MoH is entitled not to sign a contract if he successfully argues that the basic principles of the Procurement Law have been violated, as was the case in this tender. The PRB expert said that the MoH should have been alerted immediately after the bid opening because it had received only one bid, even though 49 EOs had expressed interest in this tender. Finally, he recommended “to the review panel that the complaint of the complainant EO be rejected as unfounded, and the decision of the CA be affirmed.” The PRB Review Panel has not yet decided on the complaint of the “Infosoft” company.

Violations in the tender with one responsive bidder

On February 6, 2022, the MoH announced the tender for “BHIS System Maintenance and Upgrade,”⁵⁷ with Procurement No. 206-23-571-1-1-1. The deadline for bid submission by companies interested in this tender was until March 10, 2023, at 14:00, reducing the legal time limit for bid submission from 40 to 20 days. An

⁵⁷ Tender “[BHIS Maintenance and Upgrade – Retender](#),” Procurement No. 206-23-571-2-1-1

indicative notice was published for the same procurement activity on January 26, 2023. Article 45 of the Public Procurement Regulation allows reducing time limits in cases where an indicative notice has been published, but 40 days must pass from the date of publication of the indicative notice to the date of publication of the contract notice. In the case in point, only 11 days have passed from the indicative notice's publication to the contract notice's publication.

Therefore, the MoH provided a justification for the reduced time limit. The MoH stated that the same tender had failed in 2021 and that there was an urgent need to announce the tendering of this project since all services at the primary level, and with some additions at the secondary and tertiary levels, are crucial for the development of the Health Insurance Information System, as a national project for the health care sector.

The estimated value of this contract was EUR 1 million and 80 thousand, while it was a framework contract for three years or 36 months. Four economic operators submitted bids in this call to tender. At the same time, the PBC was recommended for contract award with the offered price of EUR 1 million and 64 thousand, i.e., only EUR 16 thousand cheaper than the estimated contract value, while submitting the highest bid price.

Three other economic operators also bid on this tender. EO "Oni" bid EUR 870,840, GEO "TechVison shpk" bid EUR 822,240, and "GOE Botek & Edusoft & Teched Consulting Sevice" bid EUR 533,124. All other EOs were eliminated because, *inter alia*, their portfolio did not have any project implementation of the Health Information System (HIS) with at least one of the health-care levels.

One company ("Logistics"), on February 13, 2023, filed a request under the "request for clarification" option to be allowed to prove successfully implemented projects with contracts only and not with references issued by the relevant institution. The CA accepted this request, even though the initial requirement in the tender dossier was the production of a reference or certificate for the performance of services. Subsequently, the

same company did not bid on this tender. However, a signed contract can never prove that the EO has completed it. There are many cases where a signed contract is not finalized, there are delays, or the CA or the EO even completely terminates it.

However, PBC was recommended for the award in the bid submitted for the "Health Information System Patient Registration Application" project with the MoH, for EUR 129,576, which did not produce any reference for this project, but only the contract and some invoices.

The MoH has also confirmed that the PBC has not requested to be provided with a reference for this project, even though the IT officer at the Ministry of Health, Zenel Hisenaj, claims that they have completed it.⁵⁸

So, the "PBC" company recommended for the award had developed the system for the primary health care in 2018, i.e., the software platform, while with the new award per ministry's recommendation, it would develop and maintain the same system for the secondary and tertiary health care.

Unlike the 2021 tender, where the economic operator was required to have experience in the development and implementation of at least one "Health Information System" project at the national level for at least one of the healthcare levels, in the 2023 tender, the "national level" requirement was removed. The Ministry stated that this was provided in mitigation to foster greater competition.

There was a complaint against the notice of the MoH, filed by the "Botek" company to the PRB, claiming legal violations in the process. "Botek" had bid EUR 533,240 in this tender, i.e., half of the bid price recommended for contract award, submitted by the "PBC" company.

The company's main claim was that the reference for the completed project with the Health Insurance Fund for the patient information system is directly related to the Health Information System. However, the

58 Meeting with the head of procurement at the Ministry of Health, Berat Marmullaku, and the media officer, Gjylferije Zabeli, on July 7, 2023, at 10:00 hrs.

MoH, as the CA, rejected this reference because the project referred by “Botek” is related to managing budget reimbursement and internal processes of the Insurance Fund. In contrast, the reference required by the Ministry applies to the healthcare part.

The PRB decided to cancel the decision of the Ministry of Health, recommending awarding the PBC the EUR 1 million and 64 thousand contract and re-mand the tender for reconsideration. The Review Panel asked the MoH to examine all the claims the complaining economic operator raised during the re-evaluation process.

Challenges with the contract for the supply of medicine from the List of Essential Medicines

On March 14, 2022, the MoH announced the tender for ‘Supply of medicine from the List of Essential Medicines,’ with Procurement No. 206-22-1860-1-1-1.⁵⁹ The time limit for bid submission for companies interested in participating in this tender was April 25, 2022, following the regular legal deadlines. The estimated value of this tender was EUR 350,232.

In the contract notice, the ministry restricted the number of applicants that would be invited to submit a bid to only 6. According to the notice, if more than six suitable candidates meet the selection criteria, the relevant strengths and weaknesses of the applications will be reexamined to identify the best six applications for the tender procedure.

The tender is divided into 16 lots, but five lots were canceled due to the lack of bidders.

Economic operator ‘Imed’ won lot #4 of the tender. Operator ‘Promed’ won lots #7, #8, and #9.

Operator ‘Brupharm’ won lots #3 and #12 of the tender. Economic operator ‘Gentipharm’ won lot #16 of the tender. Operator “Lirimed” won lot #11 of the tender, and economic operator ‘Rona Farm’ won lot #14.

Based on the analysis conducted by BIRN and D+, looking at orders made by the ministry on the one hand and the delivery of products by companies on the other hand, it was observed that there were delays in product delivery in at least eight orders.

All contracts were signed under the condition that the deadline for delivery of the goods would be a maximum of 30 days from the time the ministry issued a purchase order. In monitoring the contract management of this tender, BIRN and D+ found delays ranging from a minimum of one day to a maximum of 21 days.

According to the records provided by the MoH while BIRN and D+ monitored the tender, the economic operator ‘Brupharm’ was late in product delivery in two cases. The first time, delivery was delayed for 21 days for the product ‘Ibuprofen’ with an invoice value of EUR 16,170. For this delay, the ministry imposed a fine of EUR 849.93. The second time, delivery was delayed for 15 days for the same product. The invoice was EUR 3,921, and the operator was fined EUR 152.78 cents.

The operator ‘Lirimed’ also caused delays twice. Once it delayed the invoice of EUR 1,257 for the product ‘Paracetamol’ for 12 days and was subsequently fined EUR 50. While the second time, the operator was late by one day for the same product and, on the invoice amount of EUR 41.89, was fined 11 cents.

‘Rona Farm’ was late in the delivery of products on two occasions. Once, they delayed the delivery of ‘Desloratidine’ for six days and were fined EUR 19.16, and another time, they were late in the delivery of the same product for 20 days and were fined EUR 38.12. The invoice for the first fine was EUR 1,257, while for the second fine, was EUR 724.

Likewise, the economic operator ‘Promed’ also caused delays in two instances. The first time, the operator was six days late in the delivery of the product ‘Paracetamol’ and fined EUR 9.37, while the second time, the delay was 25 days for the product ‘Morphine’ and was fined EUR 31.45.

⁵⁹ Ministry of Health Tender: [Supply of medicine from the List of Essential Medicines, with Procurement No. 206-22-1860-1-1-1.](#)

According to the MoH, the penalties are determined based on the LPP, whereby for one day of delay, the penalty amount is 0.25% of the invoice.

In case of successive delays, the ministry stated they could issue negative references to the economic operator or even terminate the contract.

An invoice from the economic operator 'Lirimed' is also subject to a fine imposition procedure. Since the operator has failed to deliver the product even after two reminders, according to the contract manager, there is a request dated September 11, 2023,⁶⁰ addressed to the operator that if the delivery is not made in the required time, a negative reference will be issued to the operator in question, in addition to a fine.

One lot of this tender was canceled because one economic operator recommended for the award was found to have bid paracetamol of a smaller quantity but at a higher price compared to another economic operator recommended for another lot. So, in Lot #10, an EO bid 94 cents for 'Paracetamol 500 mg.' While, in Lot #11, an EO bid 84 cents for 'Paracetamol 1000mg.' Lot #10 of this tender with the economic operator 'Liri-Med' was canceled because the CA found that concerning the product 'Paracetamol Injection 500 mg' quantity 150 thousand 780, there is a price discrepancy between Lot #11 'Paracetamol 1000 mg' where the bid price was 84 cents, while in Lot #10 'Paracetamol 500 mg' the bid price was 94 cents.

So, the smaller volume of 500 mg was higher by 10 cents.

While for lots #1, #2, #6, #13, and #15, there were no bids at all. Also, for these products, representatives of the MoH stated that they expect to have a tender this year.

"We currently have two ongoing procurement activities, in one of the lots there may be products from these lots that have failed in this tender, but I do not know exactly the products by name."⁶¹

⁶⁰ Interview with the three contract managers, Fatbardha Murtezi, Arbnore Beka, Burbuqe Salihu, and the deputy head of the pharmacy division, Mentor Sylja, on September 18, 2022.

⁶¹ Interview with Berat Marmullaku, procurement officer at the Ministry of Health, on 7 July 2023.

Recommendations

Pre-tendering phase

- 1 The PPRC is recommended to regulate the process of appointing committees to prepare technical specifications. Committees must be appointed by decision.
- 2 PPRC is recommended to introduce as mandatory the practice initiated by the MoH has the team assigned to prepare technical specifications and sign a sworn statement.
- 3 PPRC is recommended to monitor the tenders that the CAs publish with reduced time limits for bid submission. Since reduced time limits can directly affect the number of bids, it is necessary to have greater control over this practice.
- 4 Contracting Authorities, especially municipalities, are recommended to avoid reduced time limit tenders in cases where a tender is not urgent.
- 5 Contracting Authorities are recommended to hold accountable the committees appointed to prepare technical specifications if it is established that they have drafted discriminatory or favorable criteria for any economic operator.

Tendering phase

- 1 Contracting Authorities are recommended to cancel tenders where files have undergone several corrections of errors substantially altering tender dossier requirements to avoid further delays with complaints to the PRB.
- 2 Contracting Authorities are recommended to approach each request for review with the utmost seriousness and to respond accordingly to each claim raised.
- 3 Contracting Authorities are recommended to hold accountable the members of evaluation committees if it is established that they have failed to perform any task under their purview such as checking each document submitted by EOs, comparison of tenders and alike.
- 4 Contracting Authorities must review the lists of products they intend to purchase in a tender for supply and remove any frivolous or seldom used products. If the scoring method is used, products that are needed less should be clustered.

Post-tendering phase

- 1 Contracting Authorities must ensure that they complete all preliminary preparatory works before a project starts in such a way that transformers and electric poles are removed, and expropriations are done so that the works are not stalled after the start of contract implementation.
- 2 Contracting Authorities should issue negative references to companies that are late in delivering medicine on an ongoing basis.

Ministry of Health

- 1 The MoH should conduct a feasibility study to see if the “Health Information System (HIS)” and other electronic systems can be maintained by other specialized companies besides the one that originally developed that system. This is vital considering that this system is new and will need to be constantly maintained and upgraded.
- 2 The PPRC should allow the penalties for delays in the delivery of medicine to be higher, considering the direct harm to patients.

Annex 1. List of examined tenders

1	Repair of dams and irrigation canals in rural areas – Two-year contract	Link	632-22-14081-5-2-1	Pre-tendering	Gjakovë/Djakovica	Works
2	Construction of Social Housing – Second Phase	Link	632-23-1544-5-2-1	Tendering	Gjakovë/Djakovica	Works
3	Supply of printed office material – Two-year contract	Link	632-22-13150-1-1-1	Contract Management	Gjakovë/Djakovica	Supply
4	Cleaning of school facilities – Secondary schools and preschool facilities in the Municipality of Prishtina	Link	616-23-781-2-1-1	Pre-tendering	Prishtina	Services
5	Construction of Wastewater Collection System in Hajvali	Link	616-22-5630-5-1-1	Tendering	Prishtina	Works
6	Supply of agricultural equipment for farmers of the Municipality of Prishtina	Link	616-22-7955-1-2-1	Contract Management	Prishtina	Supply
7	Construction of irrigation canals for agricultural lands	Link	635-23-1756-5-2-1	Pre-tendering	Pejë/Peć	Works
8	Construction and pavement of roads in Rugovë	Link	635-22-11435-5-1-1	Tendering	Pejë/Peć	Works
9	Supply of hygienic material and food for schools and kindergartens not covered by CPA	Link	635-22-11129-1-1-1	Contract Management	Pejë/Peć	Supply
10	Horizontal and vertical traffic signals and road equipment in the Municipality of Gjilan/Gnjilane	Link	651-22-10313-2-1-1	Pre-tendering	Gjilan/Gnjilane	Services
11	Sports Hall floor refurbishment at Zenel Hajdini School – Re-Retender	Link	651-22-7819-5-2-1	Tendering	Gjilan/Gnjilane	Works
12	Construction of Baja Park – Retender	Link	651-22-11519-5-2-1	Contract Management	Gjilan/Gnjilane	Works

13	CONSTRUCTION AND SETUP OF SEWER SYSTEM (SEPTIC TANK) IN THE MUNICIPALITY OF RAHOVEC	Link	623-23-179-5-1-1/	Pre-tendering	Rahovec/Orahovac	Works
14	ACQUISITION OF TWO AMBULANCE VEHICLES	Link	623-23-162-1-2-1	Tendering	Rahovec/Orahovac	Supply
15	CONSTRUCTION OF CENTRAL TOWN SQUARE – RETENDER	Link	623-22-6778-5-1-1	Contract Management	Rahovec/Orahovac	Works
16	Construction and operationalization of FMC-Studençan, FMC-Duhël, and FMC- Gjinoc	Link	624-23-1039-5-2-1	Pre-tendering	Suharekë/Suva Reka	Works
17	Construction and setup of Wastewater Collection System on Skenderbeu Street - Suharekë/Suva Reka – Retender,” Procurement No. 624-22-8920-5-1-1	Link	624-22-8920-5-1-1	Tendering	Suharekë/Suva Reka	Works
18	Construction and maintenance of riverbeds	Link	624-22-3252-5-2-1	Contract Management	Suharekë/Suva Reka	Works
19	Project Design	Link	644-23-455-2-1-1	Pre-tendering	Vushtrri/Vuçitrn	Services
20	Maintenance of fourth-order roads.	Link	644-22-8608-5-2-1	Tendering	Vushtrri/Vuçitrn	Works
21	Vehicle service and maintenance	Link	644-22-9414-2-2-1	Contract Management	Vushtrri/Vuçitrn	Services
22	Cemetery cleaning and tombstone repair in the Municipality of Lipjan/ Lipljan	Link	613-23-1238-5-2-1	Pre-tendering	Lipjan/Lipljan	Services
23	Construction of roads in the neighborhoods of Sllovi, Gadime, Smallushë, Gumnasellë, Llugaxhi, and Babush	Link	613-22-7225-5-1-1	Tendering	Lipjan/Lipljan	Works
24	Renovation of FMC in Shalë and Magurë Phase-II	Link	613-22-4778-5-2-1	Contract Management	Lipjan/Lipljan	Works
25	Maintenance of 70% of the HIS HW for Health Care Facilities	Link	206-23-1650-2-1-1	Pre-tendering	Ministry of Health	Services
26	RETENDER “BHIS System Maintenance and Upgrade”	Link	206-23-571-2-1-1	Tendering	Ministry of Health	Services
27	Supply of medicine from L.E	Link	206-22-1860-1-1-1	Contract Management	Ministry of Health	Supply

