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# Misuse of Special Service Agreements in the Central Level

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# GOOD GOVERNANCE

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# List of abbreviations:

<b>CA</b> →	Contracting Authority
<b>KAS</b> →	Kosovo Agency of Statistics
<b>ANSA</b> →	Air Navigation Services Agency
<b>AAD</b> →	Agency for Agricultural Development
<b>PMMD</b> →	Project Management and Monitoring Department
<b>PPAD</b> →	Policy Planning and Analysis Department
<b>TD</b> →	Tender Dossier
<b>PTD</b> →	Property Tax Department
<b>GEO</b> →	Group of Economic Operators
<b>KOSTT</b> →	Kosovo System, Transmission and Market Operator
<b>LPP</b> →	Law on Public Procurement
<b>MAFRD</b> →	Ministry of Agriculture, Forestry and Rural Development
<b>MJ</b> →	Ministry of Justice
<b>ME</b> →	Ministry of Economy
<b>MFLT</b> →	Ministry of Finance, Labor and Transfers
<b>MCR</b> →	Ministry of Communities and Returns
<b>MESPI</b> →	Ministry of Environment, Spatial Planning and Infrastructure
<b>SSA</b> →	Special Service Agreements
<b>MRD</b> →	Ministry of Regional Development
<b>EO</b> →	Economic Operator
<b>PRB</b> →	Procurement Review Body
<b>NAO</b> →	National Audit Office

# Introduction

The conclusion of Special Service Agreements (SSA), namely their abuse, has been addressed in this report, as a follow-up of the 2022 report<sup>1</sup>. SSAs continue to be widely misused by central and local level institutions. The National Audit Office (NAO) has also made reports on the misuse of SSAs, but there are not enough actions to fix this issue and, as a result, the same violations are repeated.

The most frequent misuse and violation involves filling regular positions in the civil service through SSAs, as well as failures to use the correct recruitment procedures. In addition to the risk of hiring underqualified staff, this practice can lead to subpar performance in carrying out tasks and meeting the institution's objectives.

In its 2022 report, Democracy Plus (D+) released the inaugural research report on SSAs, providing a comprehensive examination of the SSA concept, the legal framework, and specific instances of such agreements. The report highlights that in a significant number of SSAs, the lowest price was employed as the criterion for contract award. D+ has recommended applying the economically most favorable tender criterion, as mandated by law. In the second year of monitoring (2023), there is an observable trend where the economically most favorable criterion was predominantly used in the majority of cases. Moreover, in the 2022 report, D+ recommended restricting the use of the negotiated procedures without publication of the contract notice. However, this year, most activities were conducted through an open procedure. This indicates an improvement between the two years, although there is still considerable work to be done.

This report encompasses two types of contracts or SSAs.

The first category of contracts pertains to services contracted on behalf of consultants/experts/advisors. In reality, the work for which they are contracted involves routine administrative tasks, falling under the responsibility of the institution's employed staff. The second category of contracts is related to legal representation of institutions. In these instances, despite having an in-house legal office/department/directorate, institutions continue to hire external companies for legal representation, performing the same tasks but with significantly higher monthly remuneration.

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<sup>1</sup> Democracy Plus. Misuse of special service agreements in municipalities and ministries 2022. ([https://dplus.org/wp-content/uploads/2022/12/26-12-22\\_Keqperdorimi-i-marreshjeve-per-sherbime-te-vecanta-ne-komuna-dhe-ministri.pdf](https://dplus.org/wp-content/uploads/2022/12/26-12-22_Keqperdorimi-i-marreshjeve-per-sherbime-te-vecanta-ne-komuna-dhe-ministri.pdf)).

# Summary of findings

## General:

- Institutions fill their vacant positions using SSAs rather than applying regular recruitment procedures;
- SSAs are used to extend the working term for consultants contracted through procurement for special services;
- For the contracting of experts/consultants/advisors, institutions include in the tender dossier minimum requirements for qualifications and work experience, indicating that the purpose is not to hire an expert for the provision of expertise but rather for regular administrative work.
- MFLT has applied procurement procedures for special services, as a recruitment opportunity for unsuccessful recruitments;
- The Ministry of Environment, Spatial Planning and Infrastructure (MESPI) has requested to hire experts with one year of experiences, for regular positions;
- The Ministry of Economy (ME) has initiated a new procurement activity through a negotiated procedure with no publication of the contract notice and applying the lowest price criterion for contract award;
- The Air Navigation Services Agency (ANSA) unjustifiably canceled a procurement activity after additional clarifications were provided for the same activity;

## Specific:

- The Ministry of Agriculture, Forestry, and Rural Development (MAFDR) has listed minimum requirements for work experience to recruit of experts/consultants;
- The Ministry of Regional Development (MRD) contracts the same consultant for the third year in a row;
- The Ministry of Finance, Labor, and Transfers (MFLT), lacking the legal basis, used a negotiated procedure without publishing the contract notice for the contracting of a consultant;
- During the period when the activity was pending review in the PRB, MFLT initiated a new activity on the same subject without awaiting a decision;
- Post of Kosovo contracted a legal company for similar works as those described for the Directorate of Legal Affairs in that company.



# Consultancy Services

Each institution covers specific areas with its trained staff. However, in cases of specific services beyond the institution's capacity one or more experts/consultants can be contracted to achieve such objective, depending on the need. These services only address the institution's needs that cannot be met through recruitment of public officials according to the law<sup>2</sup>. In no case is the use of provisions regulating consultancy services allowed for regular positions in an institution, as per the catalog of jobs in the civil service. Nevertheless, in practice, as evident in the specific cases detailed below, these procedures are predominantly used by institutions justifying their use due to a lack of staff.

These contracts are concluded for a definite period, no longer than 36 months<sup>3</sup>. However, in practice, when such agreements expire, a new activity is initiated, in some cases with a negotiated procedure without publication of the contract notice, to continue the contract with the consultant whose previous contract has expired.

To some experts/consultants, hiring through SSAs is a primary job and for others a secondary one. Despite this, they are required to fulfill their tax obligations. However, this is a matter that varies from one institution to another. In some cases, the institution withholds the taxes, and the consultant receives a net salary, while in others they receive gross salaries. In the latter situation, it is unclear if the taxes are paid. In addition to such issues, staff members contracted are mostly unqualified in certain fields, resulting in poor performance of the office/department/directorate.

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<sup>2</sup> Law No. 08/L-197 on Public Officials (<https://gzk.rks-gov.net/ActDetail.aspx?ActID=81430>).









<sup>3</sup> Public Procurement Regulatory Commission. REGULATION NO. 001/ 2022 on Public Procurement, Article 57.8. ([https://e-prokurimi.rks-gov.net/HOME/Documents/Legislation/Rregulloret/shq/Rregulloret%20Nr.001\\_2022%20p%C3%ABr%20prokurimin%20publik.pdf](https://e-prokurimi.rks-gov.net/HOME/Documents/Legislation/Rregulloret/shq/Rregulloret%20Nr.001_2022%20p%C3%ABr%20prokurimin%20publik.pdf)).

## Ministry of Agriculture, Forestry and Rural Development

On March 2, 2023, the Ministry of Agriculture, Forestry and Rural Development (MAFRD) published a

contract notice for consulting services for the needs of the Agricultural Development Agency (ADA). The contract award notice was published two months later (April 21, 2023). This tender had an estimated value of 210,712.32 Euros, where 13 consultants were contracted for a duration of 36 months.

TABLE 01 - Number of consultancy positions required for contracting by MAFRD

Position	Number of consultants for this position
Legal consultant	 2
Consultant for the implementation of the direct payments program	 5
Consultant for general services management	 1
Consultant for the advancement of the archival documentation management system	 1
Consultant for the implementation of the agriculture and rural development program in Peja	 1
Consultant for the implementation of the agriculture and rural development program in Gjakova	 1
Consultant for the implementation of the agriculture and rural development program in Gjilan	 1
Consultant for the implementation of the agriculture and rural development program in Prishtina	 1

The data sheet in the MAFRD tender dossier fails to specify the evidence required to demonstrate compliance with the requirements, to evaluate the responsive economic operators. This lack of definitions hampers the process, raises uncertainties for both the bidders and the evaluation committee, and leads to unequal treatment of bidders as different evidence is evaluated for the same request. To avoid possible mistakes, MAFRD must define the evidence for the specific request in the tender dossier in any case. The consequences of not defining the evidence required is reflected in the bids submitted, with some submitting irrelevant documentation.

MAFRD has listed conflicting minimum requirements in the tender dossier and ended up contracting people with no expertise in the field. E.g., MAFRD has requested that the bidders have a thorough knowledge in a given field but failed to request proof of any working experience. In this case, persons interested in bidding can claim to have deep knowledge of the given field, but MAFRD is unable to ask for proof of such claims.

The requirement for this tender for two legal consultants was the University Degree in Law, knowledge in the field of legislation and the drafting of legal casts, knowledge of applicable laws and regulations, research, analytical and evaluation skills and formulation of recommendations and professional advise, computer skills, flexibility and skills to face new situations, flexibility and ability to face new situations, and knowledge of a foreign language is desirable. Neither request specifies the proof to be submitted in order to allow for evaluation of skills. What is noticeable in the requirements for this position is that MAFRD failed to consider the important role played by the legal office within the institution and listed no minimum requirements for work experience.

Two bidders were awarded contracts for this position. The first bidder awarded a contract submitted no proof of deep knowledge in the field of legislation and drafting of legal acts, knowledge of laws, etc. The only experience the bidder claimed to have is a three-month internship at the Ministry of Justice (MOJ) and working experience of one year in the same institution for the same position.<sup>4</sup> The consultant's term had expired in February 2023, and a new contract was signed in April 2023. In addition, the other consultant contracted for the same position submitted no proof for the requirements in the tender dossier, and the CV only includes internships in public institutions and organizations<sup>5</sup>.

Five consultants for the implementation of the direct payments program were also contracted with this tender. The tender dossier for this position required a university degree in agriculture, food technology, economy, law, social science and technical science, knowledge of standard administrative/technical procedures in a known technical or administrative field, communication skills, coordination staff oversight skills in the administrative and technical levels, etc. Two of the persons contracted for this position were already providing services for the same positions in ADA, whose contracts expired in February 2023. The three other consultants had completed internships in the institution.

One consultant was contracted for general services management. according to the submitted documents, the contracted consultant has no working experience relevant to the requirements in the listed position<sup>6</sup>. It was similar for the consultant for the advancement of the archival documentation management system, which position listed the requirement of specific professional knowledge in the field of archiving. However, the person contracted submitted no evidence for this requirement<sup>7</sup>.

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<sup>4</sup> Provision of access to public documents, following a request filed on 13.09.2023.

<sup>5</sup> Provision of access to public documents, following a request filed on 13.09.2023.

<sup>6</sup> Provision of access to public documents, following a request filed on 13.09.2023.

<sup>7</sup> Provision of access to public documents, following a request filed on 13.09.2023.

## Ministry of Regional Development

For the contracting of a consultant for capital investments, the Ministry of Regional Development (MRD) signed a contract in the amount of 6,000.00 Euros, for a duration of 12 months. The same consultant contracted in 2023 was also contracted in 2022, for the same subject. Also, in 2020, MRD contracted the same consultant to develop and manage projects. So, this is the third tender that the same consultant is awarded a contract.

The tender dossier for the 2023 activity had no changes from the tender dossier for the 2022 activity. As in the tender dossier of the previous activity, education in the field of engineering, environment and similar sciences was requested. This request is restrictive and does not prove the relation with the tender activity. It is detrimental to competitiveness because in both years, regardless that it was an open procedure, the only bid submitted was that of the winning consultant.

The fact that the tender dossier required the consultant to have at least two years of working experience, with no obligation to submit proof of trainings and the English knowledge, indicates that, in reality, it is not a request for an expert/consultant in a field, but rather additional regular staff. Moreover, the duties required to complete are those of regular staff of the ministry. Hence, this tender was only an extension of the previous contract.

## Ministry of Finance, Labor, and Transfers

The Ministry of Finance, Labor, and Transfers (MFLT) has conducted two procurement activities for the contracting of consultants for property tax collection and enforced collection.

### 1 First activity

The consultant for the first initiated activity was contracted on May 30, 2023, and the consultant for the second procurement activity was contracted on January 30, 2023. This delay is because the MFLT decision for the first activity was appealed to the Procurement Review Body (PRB). During the time this activity was suspended pending review at PRB, MFLT initiated another, identical, procurement activity through a negotiated procedure, without publication of the contract notice.

Despite the fact that decision-making in PRB takes time, MFLT cannot initiate a new procedure for the same contracting purpose. The appeal of the procedure was on procedural errors of MFLT, initially with the drafting of the requirements, and with the evaluation of the received bids.

Three bids were received for the first tender. MFLT issued a decision declaring as winner the bidder who applied with his business, whereas the special service rules clearly stipulate that they are for the hiring of individuals, and only natural persons with no registered business can bid<sup>8</sup>. This was the reason for the dispute in the procedure and why the PRB review panel decided in favor of the complainant and was also ultimately awarded the contract.

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<sup>8</sup> Public Procurement Regulatory Commission. REGULATION NO. 001/ 2022 on Public Procurement, Article 57.5. ([https://e-prokurimi.rks-gov.net/HOME/Documents/Legislation/Rregulloret/shq/Rregullore%20Nr.001\\_2022%20p%C3%ABr%20prokurimin%20publik.pdf](https://e-prokurimi.rks-gov.net/HOME/Documents/Legislation/Rregulloret/shq/Rregullore%20Nr.001_2022%20p%C3%ABr%20prokurimin%20publik.pdf)).

The consultant was contracted to perform tasks such as: analyze the current legal framework in relation to the tax assessment process and tax collection, draft the practical guidelines for the Property Tax Department, provide answers for the municipalities' questions and uncertainties in relation to taxation and collection, analyze the situation of municipalities regarding liabilities, collect data, draft performance reports at the end of the month, etc. This work consists of duties and responsibilities of the Property Tax Department officials in MFLT, and special services should not have been applied for this purpose.

## 2 Second activity

The second activity was used to contract a consultant which MFLT initially declared as winner with the first tender. This time, MFLT conducted a negotiated procedure activity, thus considering only one bid, which was then awarded a contract. This activity listed the same requirements and the same selection criteria. MFLT again contracted the consultant for duties and responsibilities which should be carried out by PTD officials, again in violation of the consultancy service rules.

In the notice sent to PPRC<sup>9</sup> on the use of negotiated procedure, MFLT stated that "...contracting is a necessity due to the urgent need for such services, due to the volume of works and activities, as PTD is in a phase of mass billing for property tax for 2023...", which implies that they needed a staff member of the administration rather than professional services which the contracting authority needs but cannot meet with the current staff<sup>10</sup>. That this method was applied for additional staff is also confirmed with the fact that, according to MFLT<sup>11</sup>, they had already published an internal vacancy announcement for this position, which had failed, whereas the external vacancy process is pending. Hence, until they can make a recruitment through regular procedures they

utilized the procurement procedures and hired two consultants, although, as stated by MFLT, they only needed one.

The use of the negotiated procedure without publication of the contract notice, in this case, does not meet any of the criteria defined by Article 35 of the Law on Public Procurement (LPP). This is because this is not an extreme emergency which could not be foreseen, nor with an exclusive right. The document "Statement of Needs and Determination of Availability of Funds" confirms that this activity was planned with a procurement plan<sup>12</sup>. This means that such contracting was planned to take place, and the delays in the initiation of the activity can only be attributed to the negligence of the MFLT. Hence, the provisions of Article 35 of the LPP do not apply in cases of negligence of the contracting authority<sup>13</sup>. Invoicing and preparing property tax invoices is not a task that DTP cannot foresee.

Therefore, MFLT has not failed to correctly use the provisions on consulting services, but also used the negotiated procedure without publication of the contract notice without a legal basis.

According to the submitted bid, the consultant contracted with a negotiated procedure was working as a property tax consultant in the ministry from November 1, 2021 until October 31, 2022, contracted with the tender with procurement number MF201-21-7686-2 -3-6. In the new initiated procedure, the deadline for the submission of bids was December 2023, namely after the end of the consultant's preliminary contract. The contract was valid until April 2023.

9 Provision of access to public documents, following a request filed on 12.09.2023.

10 Public Procurement Regulatory Commission. REGULATION NO. 001/ 2022 on Public Procurement, Article 57.3. ([https://e-prokurimi.rks-gov.net/HOME/Documents/Legislation/Rregulloret/shq/Rregulloret%20Nr.001\\_2022%20p%C3%ABr%20prokurimin%20publik.pdf](https://e-prokurimi.rks-gov.net/HOME/Documents/Legislation/Rregulloret/shq/Rregulloret%20Nr.001_2022%20p%C3%ABr%20prokurimin%20publik.pdf)).

11 Document provided by the Ministry of Finance, Labor and Transfers, following a request for access on September 12, 2023.

12 Provision of access to public documents, following a request filed on 12.09.2023.

13 Official Gazette. Law No. 04/L-042 on Public Procurement, Article 35.2.1. (III).

### 3 Third activity

In addition to these two activities, MFLT conducted another procedure to contract an expert for mass appraisals of immovable agricultural properties. The contract was awarded to the same consultant who was hired through the negotiated procedure without publication of the contract notice, for property tax, collection and enforced collection. The contract was concluded on May 31, 2023, valid until March 31, 2024 (10 months), in the amount of 7,900.00 Euros or 790.00 Euros per month. The contract with the same consultant was concluded one month after the end of the previous contract<sup>14</sup>, which ended in April 2023.

The consultant's contribution will be in the same department, namely PTD, which also does immovable property appraisals, including agricultural and forest properties. With regards to immovable property appraisals, the Law on Property Tax states that the Ministry of Finance, through the relevant department for property tax, shall carry out the appraisal once every three years or once every five years<sup>15</sup>. This means that it is a direct competence of the PTD officials. Thus, the department must have staff to fulfill this obligation, as a key obligation and responsibility. Notwithstanding, MFLT contracted the consultant for the department on the grounds that there is a lack of capacity, and they need additional resources. Consequently, this goes to show it was not a process for consultancy services as provided by law, but rather about contracting a person to perform ordinary work, which is the responsibility of the officials employed in this department.

According to the CA<sup>16</sup>, internal recruitment procedures were conducted for this position, but they failed. Now they are waiting for the opening of the next vacancy for this position. Meanwhile, until a solution is found, they continued contracting through special services. The procurement officer explained the legal basis for this case, but the requesting unit continued with the request, justifying it with the needs of the department in question.

In the notice sent to PPRC on the use of negotiated procedure, MFLT stated that "...contracting is a necessity due to the urgent need for such services, due to the volume of works and activities, as PTD is in a phase of mass billing for property tax for 2023...", which implies that they needed a staff member of the administration rather than professional services which the contracting authority needs but cannot meet with the current staff.

## Ministry for Communities and Returns

### 1 First activity

In May 2023, the Ministry of Communities and Returns (MCR) published a contract notice for the activity for the hiring of four consultants. This activity was divided into four (4) lots, where three consultants will be hired for projects in economic development projects in three different lots, and the other consultant is required to have expertise in agriculture and livestock and will be hired in the first lot. The estimated value for this tender was defined at 28,800.00 Euros with a duration of 12 months. The contract was awarded to only two consultants, for lots 2 and 3 for economic development projects, with a value of 14,400.00 Euros, 7,200.00 Euros per contract respectively. The lot for the agriculture - livestock expert was re-tendered.

<sup>14</sup> Procurement number for this activity is 201-23-128-2-3-5.

<sup>15</sup> Official Gazette of the Republic of Kosovo. Law No. 006/L-005 on Immovable Property Tax, Article 18.1.

<sup>16</sup> Provision of access to public documents, following a request filed on 12.09.2023.

MCR stated in the tender dossier that the activity is divided into four lots and that the bidders can bid in all parts, but it did not specify what is the maximum number of lots with which a bidder can be awarded. According to the Public Procurement Guide, the contracting authority must determine the number of lots a bidder can be awarded, if the activity is divided into lots<sup>17</sup>. Specifying how many lots a bidder can be awarded is a legal obligation, and failure to comply with this rule leads to confusion for the bid evaluation committee, but also in the implementation of the contract.

Consultants are required to have a minimum of five years of work experience, a university degree in economy or social sciences (priority will be given to specialized training), and are expected to submit a CV, financial offer, and work methodology. Regarding the CV, the tender dossier specifies that each position presented must be substantiated with a reference.

In lot 2, the contracted candidate's CV lists more than five working experiences, but the accompanying documentation shows the submission of only three references for three job positions<sup>18</sup>. This indicates a failure to fulfill the tender dossier's requirement, and MCR has not sought additional clarifications on this issue. Similarly, the candidate awarded lot 3 presented three different previous jobs in the CV, but the documentation includes only two references and a certificate confirming employment in one position. However, certificates are not considered references in this context. In addition, the working experience must be relevant to the works required by the tender dossier, while the proven experience of the contracted consultant with lot 3 is not relevant to the tender dossier requirements.

Also, the applicants have been asked to assist in the design and development of criteria for application, implementation, and monitoring of projects, organize the monitoring and reporting process, hold information sessions, and assess the needs of communities in the municipalities of Kosovo, maintain contact between project monitors, and work as needed. The description of the tasks implies that rather than consultancy or

expertise with qualification in certain fields, but rather tasks and responsibilities of the Project Management and Monitoring Department (PMMD), while the responsibility for designing projects for economic development is of Policy Planning and Analysis Department (PPAD) of the ministry.

Therefore, this procedure was used in contradiction with the legal provisions on the procurement of special services.

## 2 Second activity

The activity with procurement number 211-23-8364-2-3-6, was re-tendering of the first lot for an expert in agriculture and livestock. This lot initially failed after the only bid was not responsive, as it lacked work experience references, methodology of work and cover letter.

The bidder, who was declared irresponsible in the first activity, was awarded the contract in the second activity as the only bidder. According to the tender dossier, for every position applied the CV must document supporting references issued by the employer. The examination of the consultant's CV indicates that he was employed in five different positions, however, only two references for a position held between 2006-2008 were provided. Hence, even in the retendered activity, this requirement was not met.

In addition, the activity itself was in violation of the public procurement rules. The consultant contracted with this activity, according to the tender dossier, is tasked with works that are in the responsibility of the departments within the MCR and must be completed by the staff in the ministry.

<sup>17</sup> Public Procurement Regulatory Commission. Guide No. 001/2023 on Public Procurement.

<sup>18</sup> The consultant's bid was received following a request for access to public documents submitted on September 12, 2023.

## Ministry of Environment, Spatial Planning, and Infrastructure

MESPI allocated 70.060.00 Euros to contract experts for certain issues through SSAs, for the needs of the Ministry, for a duration of 36 months.

This procedure was divided into seven lots, where a certain amount is allocated for each lot and the technical and professional criteria were defined.

As seen from the table, the required work experience is one (1) year, indicating it is not for an expert, as it is titled. In its title, MESPI indicated that the contract will take place in accordance with the rules for special services. However, this has not happened, as the only rule observed was the use of the criterion for the economically favorable tender.

That these positions are not special services is also confirmed in the terms of reference for lot 4 - Expert for special - restricted areas in DANP Accursed Mountains, which state that this position should be extended with a special contract for at least three years, or until this position is filled with a permanent contract<sup>19</sup>.

TABLE 02. - Required positions and requirements for work experience and university degree

Title of position	Work experience	Degree required
1. Support expert in the position of the Secretariat of the Ministerial Commission for the establishment of the Chamber of Architects and Engineers in the field of construction	One (1) year of work experience	Economist
2. Support expert in the position of the Secretariat of the Ministerial Commission for the establishment of the Chamber of Architects and Engineers in the field of construction	One (1) year of work experience	Economist
3. Thematic expert to support the working group in the drafting of the Administrative Instruction for Denatured Ethyl Alcohol	Not defined	Law/Technology/ Engineering/ Medicine/ Natural Sciences
4. Expert for special-restricted areas in DANP Accursed Mountains	Not defined	University degree related to the environment or nature in general
5. Professional photographer and editor	To have worked as a professional photographer in the last five (5) years	Professional certificate for photography
6. Expert for judicial procedures	One (1) year of work experience	Law
7. Property expert	One (1) year of work experience	Law

<sup>19</sup> E-procurement. Tender with procurement number 210-23-2266-2-2-1. Document: Terms of Reference from Lot 1 -7.



## Ministry of Economy

The Ministry of Economy (MOE) has used a negotiated procedure without publication of a contract notice to hire a workforce development consultant.

This activity had been also previously initiated but canceled. Likewise, the previous activity was also initiated with a negotiated procedure. The tender dossier was published on August 7, 2023, the deadline for submission of bids was August 9, 2023, and the procedure was canceled on August 10, 2023. As the activity was developed with this procedure, the deadlines were not respected, which resulted in the cancellation of the activity as no offer was submitted. However, the e-procurement platform does not indicate the number of requests to bid that have been issued or whether an invitation has been sent. However, the activity was initiated again, with some issues.

To contract an individual expert/consultant, the legal criterion for contract award is the most economically favorable bid<sup>20</sup>. However, according to the tender dossier and the decision notice of the ME, the lowest price was the defined criterion for this procedure.

Several legal requirements must be met in order to use a negotiated procedure without the publication of a contract notice. As this is not an issue of extreme emergencies that could not have been foreseen, issue related to intellectual or industrial property rights, nor objective and mandatory technical or artistic reasons, the implication is that the use of this procedure was without a legal basis.

There are many other similar projects, thus the contracting of the needed staff is not an urgency. The use of the negotiated procedure has limited competition, and only one bid was submitted as a result. The consultant contracted in this tender was already working on similar projects in MFLT. His contract expired on August 3, 2023, and the new contract was signed only a few days after, on August 24, 2023. The job description in the new tender is the same as for the previous work of the consultant.

In addition to being associated with procedural issues, it seems that this activity was initiated to extend the contract of the consultant who was already working in the ministry.

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20 Public Procurement Regulatory Commission. REGULATION NO. 001/ 2022 on Public Procurement, Article 57.7.

# Legal representation

As in the 2022 report, a significant number of legal companies contracted to represent public institutions was also observed this year. The nature of these contracts is more complex than contracting for an individual consultant/expert/advisor. These contracts are used by ministries, municipalities, and public enterprises. Consultancies should only be used for the services which cannot be provided by the institution, and every institution has a legal office or a municipal advocate. Hence, these procedures should not be used by the institutions.

The main purpose of the legal office or the institution's representative is to represent and protect the interests of the institution. Despite this, according to the tender files, legal companies are contracted for the same purposes. In this case, a double structure is created with the same purpose.

Moreover, lawyers or officials employed in legal offices of institutions are public officials and are compensated for the work performed according to the wage law. There is also a Regulation on Lawyers' Fees<sup>21</sup>, which determines the price of legal services. Estimated values for these services indicate that the compensation is much greater than the monthly compensation of officials employed in the legal offices of institutions.

This has certainly discouraged legal office staff and reduced their interest in working and fulfill their obligations. Consequently, there is a poor performance of these officials and the institution.

The high number of court cases is a major problem and burden for the responsible officials. However, the use of consulting services, in addition to not being in accordance with the legal provisions governing these services, does not represent a long-term solution to the situation.

## Electricity System, Transmission and Market Operator

Kosovo Electricity System, Transmission and Market Operator - KOSTT, has an in-house legal office. Despite this, KOSTT has opened a tender to contract special professional legal services, responsible for legal representation, counseling, and protection of the company's interest in court cases. These are also the responsibilities of KOSTT's legal office.













30,000.00 Euros were allocated for this purpose, which was also the value of the contract, with a duration of 12 months.

This is the third consecutive year that KOSTT, through procurement activities, expressed the need to contract individuals or companies for legal representation. Out of six initiated activities, only two were successful.

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21 Kosovo Bar Association. Regulation on Lawyers' Fees, 2017. ([https://www.oak-ks.org/assets/cms/uploads/files/Tarifat/Tarifa\\_e\\_Avokateve\\_e\\_dates\\_18\\_mars\\_2017\\_271533.pdf](https://www.oak-ks.org/assets/cms/uploads/files/Tarifat/Tarifa_e_Avokateve_e_dates_18_mars_2017_271533.pdf)).

TABLE 03 - KOSTT activities conducted in the period 2021-2023 for the contracting of consultants for legal services

	Procurement subject	Estimated value	Status	Reason for cancellation
2021	Hiring of Legal Consultant	 9,900.00	 Canceled	Objective event and/or reason beyond the control of the contracting authority
2021	Hiring of Specialized Legal Counsel	 9,900.00	 Canceled	Technical errors of the contracting authority
2021	Hiring of Specialized Legal Counsel	 9,900.00	 Contracted	
2022	Special professional legal services	 15,000.00	 Canceled	No contract cancellation notice has been published
2022	Special professional legal services	 15,000.00	 Canceled	No bids have been received for this procurement activity
2023	Special professional legal services	 30,000.00	 Contracted	

The reasons for the cancellation of activities vary, but it is observed that the estimated value for these services has increased every year.

The total value of the contract is 30,000.00 Euro means the contracted company, for the services provided, will be paid around 2,500.00 Euros per month. Meaning a payment of 103.00 Euro per hour only for consultation, provision of advice on commercial matters, arbitration, expropriations, etc.<sup>22</sup>

On the other hand, officials who work in the legal office run a cost of 4,800.00 to 6,000.00 Euro a year, or about 80% less. In this case, KOSTT is paying for both its in-house legal office and 30 thousand Euro for legal representation.

<sup>22</sup> The price defined in the bill of quantities completed by the winning economic operator.

## Air Navigation Services Agency

the Air Navigation Services Agency (ANSA), which operates as an executive agency, has a legal department with two staff<sup>23</sup>, according to its work report. Despite this, the agency initiated a tender procedure to contract legal services. This is not the first procedure that this agency has initiated for the same purpose.

The first procedure for the provision of legal services was initiated in 2022. This activity was canceled after the opening of the tenders because, as it was noticed that the technical specifications in the tender dossier needed revision as they contradicted the content and lead to the signing of an unenforceable contract.

If we compare the tender dossier of 2022 with that of 2023, we see that only one change has been made in the technical and professional capacities.

The procedure shouldn't have been cancelled, as one economic operator had sent a request for clarification on the matter, and ANSA replied that a list of contracts must be submitted, and evidence is required that it has represented (defended) persons/parties who are eligible to the right of representation legal abroad<sup>24</sup>.

With the answer to this question, all necessary clarifications have been provided, and if a bidding economic operator submits a different document, the contracting authority has grounds to reject the bid based on the clarifications given. Therefore, the action invoking article 43.5.i<sup>25</sup>, does not hold.

In this case, ANSA would have to correct the procedure by publishing the notification for additional information or correction of the error (form B54) and extend the deadline for submission of bids<sup>26</sup>. This would have saved time for ANSA, and it would contract a cheaper economic operator, as defined in the tender dossier.

Two economic operators submitted bids in the first activity, and only one in the second, which was also awarded with a contract. The operator awarded the contract submitted bids in both the first and the second activities, reducing the bid in the second from 4,694.00 Euro per unit to 3,180.00 Euro.

Technical specifications must be clear, accurate, and precise and must not present unreasonable restrictions or create ambiguity about the nature of the services requested. In this case, this change was not clear, so it resulted in the bidding of only one economic operator.

TABLE 04 - Change in the tender dossier of the activities for the same services.

Tender Dossier	Technical and professional capacity - Requirement 3
2022	... at least one international contract of the same nature (legal services), in the last three years from the date of contract notification.
2023	...at least one international contract of the same nature where proof is required for representation of parties who enjoy the right of legal representation abroad in the last three years from the date of publication of the contract notice.

23 Air Navigation Services Agency. Work Report 2019, page 71. (<https://www.ashna-ks.org/wp-content/uploads/2021/05/ASHNA-RVJ-2019-shq.pdf>).

24 E-procurement. B47 Standard Letter Response to the tender clarification request. Published on November 11, 2022.

25 ...a violation of the law has occurred or will occur and cannot be corrected or prevented through an amendment.

26 Public Procurement Regulatory Commission. Regulation No. 001/2022 on Public Procurement, Article 24.7.

## Post of Kosovo

In 2023, the Post of Kosovo contracted a legal company with a duration of 24 months, to protect the interests of the company. The same tender initiated this year failed, as no bid was submitted.

In the newly initiated activity, Post of Kosovo received two bids, and the winner was declared the cheapest bid of 590.00 Euro per unit, while the total value of the activity is 15,00.00 Euros.

Post of Kosovo has a legal directorate, responsible to represent the Post in court and prosecution, to defend the interests of the Post. The job description in the tender dossier is the same as that in Regulation for the Systematization of Jobs at the Central Level for PK Employees<sup>27</sup>, except that in the tender dossier the requirements are more detailed, but nothing beyond the duties and responsibilities of the legal officer described in the Regulation.

Since the contracted consulting company will not perform any task beyond the internal capacities of the Legal Directorate within the Post of Kosovo, it can be concluded that the contracting of this service is not in accordance with the legal provisions governing consulting services.

The fact that the Legal Directorate may have insufficient staff is not grounds for the use of consultancy services, as such services should be applied for positions which can be covered through regular recruitment procedures.

Annual work plans of the Post of Kosovo indicate that the re-systematization and filling of vacant positions in the institution is regular. Moreover, a new staffing plan has been proposed, including positions such as legal officers<sup>28</sup>. Since the contracting of legal services was done using consulting services, it means that this completion did not occur.

**TABLE 05** - Some of the duties and responsibilities described in the tender dossier compared with the duties and responsibilities defined by the Regulation for the Systematization of Jobs in the Post of Kosovo.

Tender Dossier	Regulation on the Systematization of Jobs
<ul style="list-style-type: none"> <li>Representation in hearings in all courts in the Republic of Kosovo and other administrative institutions.</li> </ul>	<ul style="list-style-type: none"> <li>Representation of the Post of Kosovo in the judicial, prosecution and administrative bodies.</li> </ul>
<ul style="list-style-type: none"> <li>Drafting lawsuits, responses to lawsuits, compiling complaints and various submissions.</li> </ul>	<ul style="list-style-type: none"> <li>Undertake actions for the exercise of all lawsuits, complaints, submissions, and other acts in accordance with applicable laws.</li> </ul>
<ul style="list-style-type: none"> <li>Exercise of extraordinary legal remedies at the relevant institutions in administrative, civil, and criminal proceedings.</li> </ul>	<ul style="list-style-type: none"> <li>Use all regular and extraordinary legal remedies until the end of the proceedings, in line with judicial and administrative disputes.</li> </ul>

27 Regulation Amending the Regulation for the Systematization of Jobs at the Central Level for PK Employees, No. 01.1974 Dated July 27, 2017, Article 3.2 (<https://postakosoves.com/publikime/legjislacioni/statusi-dhe-rregloret/#>).

28 Post of Kosovo. Annual Report 2020, page. 24. (<https://postakosoves.com/publikime/legjislacioni/raportet/#>).

# Findings of the National Audit Office

The National Audit Office (NAO), through its audit reports, identified the number of hirings through SSAs. In addition to the number being high, annual audit reports indicate that the same findings are repeated every year. The violations found in the auditor's annual reports include:

1. Hiring of staff through SSAs without observing the recruitment procedures<sup>29</sup>.
2. The hiring period is longer than the period defined by the rules<sup>30</sup>.
3. Contracts concluded for these positions are for regular positions rather than for experts of respective fields<sup>31</sup>.
4. Extension of the working term for officials hired in previous years, through SSAs<sup>32</sup>.

The number of contracts concluded through SSAs is different from year to year, but not all SSAs listed in the following table constitute misuses. Some institutions do hire services through SSAs for specific tasks for definite periods which they cannot perform with their current staff. For example, in 2019 and 2021, CEC hired several people through SSAs throughout the election process, mainly in the voting and counting center. Kosovo Agency of Statistics (KAS) has hired 357 people as surveyors to collect field data for statistical purposes.

Therefore, the focus of the report is only on SSAs which are related to ordinary needs, rather than special ones, and which are regular administrative works and should be covered by current staff.

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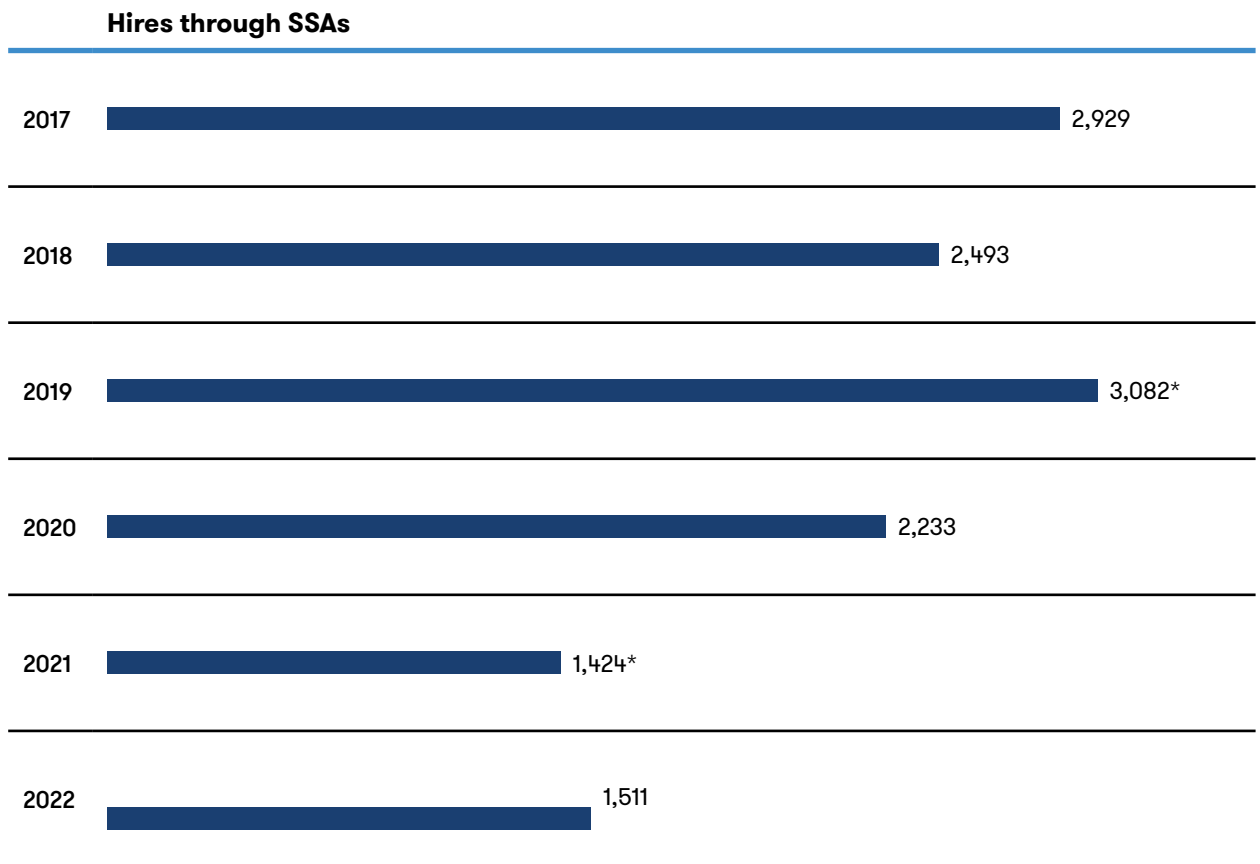
29 National Audit Office. Annual Report 2019, fq.70. ([https://zka-rks.org/wp-content/uploads/2020/09/RaportiVjetor\\_ALB\\_FINAL\\_PRESS\\_01.pdf](https://zka-rks.org/wp-content/uploads/2020/09/RaportiVjetor_ALB_FINAL_PRESS_01.pdf)).

30 National Audit Office. Annual Report 2018, fq.59. (<https://zka-rks.org/wp-content/uploads/2019/08/RVA-2018-Shqip-2.pdf>).

31 National Audit Office. Annual Report 2019, fq.70. ([https://zka-rks.org/wp-content/uploads/2020/09/RaportiVjetor\\_ALB\\_FINAL\\_PRESS\\_01.pdf](https://zka-rks.org/wp-content/uploads/2020/09/RaportiVjetor_ALB_FINAL_PRESS_01.pdf)).

32 Ibidem.

TABLE 06 - The number of people hired through SSAs during the period 2017-2022



\*from the total value, people hired for the needs of CEC during the elections are removed

Source: Annual Reports of the National Audit Office 2017- 2022

As can be seen from Table No. 1, there is a decrease in the number of people engaged through the Ministry of Internal Affairs, but the number remains high. In addition to the number remaining high, the same irregularities are repeated every year. Therefore, rather than lowering the number, the primary objective should be to increase the fair application of legal provisions in all services through SSAs.

The NAO report for 2022 lists the same findings as in previous years, such as hiring of consultants for regular positions, procedures for their hire was not applied, etc.

At the local level, the Municipality of Pristina has hired 201 employees without applying regular recruitment procedures, and the agreements were extended for a few more months for the contracts that expired. The Municipality of Deçan has hired 103 employees in various departments and used procurement procedures to fill regular positions. The Municipality of Vitia has neither developed procurement nor regular recruitment procedures to fill positions in various directorates<sup>33</sup>.

33 National Audit Office. Annual Report 2019, fq.51. (<https://zka-rks.org/wp-content/uploads/2023/08/Raporti-Vjetor-i-Auditimit-2022-shqip.pdf>).

# Recommendations

CONSIDERING THE SITUATION IN INSTITUTIONS, AS OUTLINED ABOVE, THAT HAVE CONTRACTED CONSULTING SERVICES WHICH WERE NOT NEEDED AND CONTRARY TO RULES, D+ RECOMMENDS AS FOLLOWS:

- 1** The lack of staff in institutions should be addressed to the Ministry of Internal Affairs, which is responsible for public administration, including staff recruitment, in order to recruit competent persons through regular recruitment procedures.
- 2** To conduct a resystematization of jobs in institutions, assessing the needs for additional staff in line with their responsibilities.
- 3** Contracting authorities must also publish their calls for contracting on their respective platforms to ensure that all interested parties receive timely notifications.
- 4** Institutions hiring consulting services must coordinate with the Tax Administration of Kosovo (ATK) to establish a standardized method for payment of taxes by contracted consultants.
- 5** Institutions must stop hiring people for routine work in offices/departments/directorates, disguised as consultants or experts of specific jobs.
- 6** Institutions should avoid using other hiring procedures through SSAs, except the procedure regulated by the public procurement legislation.
- 7** Specify technical and/or professional capability requirements with precision to avoid ambiguity during bid evaluation and ensure fair treatment among bidders.
- 8** Identify municipalities that require additional internal resources for legal representation and propose sustainable, long-term solutions.
- 9** Enhance PPRC's oversight over institutions regarding the utilization of SSAs and actively advise institutions on reducing the reliance on SSAs.
- 10** PPRC to provide trainings for procurement officials regarding the use of SSAs and reduce the legal violations.







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