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Monitoring of Public Procurement in Public Enterprises: “Termokos”, RWC “Bifurkacioni”, “Trafiku Urban” and Pallati i Rinisë”

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GOOD GOVERNANCE

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List of Acronyms

CA ↗ Contracting Authority

TD ↗ Tender Dossier

GEO ↗ Group of Economic Operators

ISO ↗ International Organization for Standardization

RWC ↗ Regional Waste Company

LPP ↗ Law on Public Procurement

PE ↗ Public Enterprise

LPE ↗ Local Public Enterprise

EO ↗ Economic Operator

PRB ↗ Procurement Review Body

JSC ↗ Joint Stock Company

Background

Democracy Plus (D+) has published its third report for 2023, following the monitoring of public procurement in public enterprises. This report encompasses four public enterprises - three local and one regional. These enterprises play crucial roles in public services such as local district heating, urban public transport, drinking water supply, and wastewater collection.

The Law on Public Procurement (LPP) governs all budgetary organizations, including public enterprises. Therefore, the procurement activities of these enterprises are researched based on the obligations and rules set forth by this law.

The report scrutinizes four tenders from these public enterprises: the construction and renovation project of “Termokos”, the water loss reduction and service digitization by “Bifurkacioni”, the computer supply for “Trafiku Urban”, and the renovation of the Fountain in the Palace of Youth.

These tenders, diverse in nature, collectively amount to 2,670,117.60 Euros. Violations of the LPP were identified in all these tenders, such as:

- PE “Termokos” demanded that bidding economic operators possess the OHSAS 18001 certificate, which has been obsolete since 2021. This enterprise also shortened the bid submission deadline and signed a contract exceeding the estimated value by 233,753.60 Euros.
- RWC “Bifurkacioni” shortened the bid submission deadline and requested the development of a mobile application without owning the billing system’s source code, which can only be done by the code’s owner.
- PE “Trafiku Urban” specified technical requirements for the purchase of iPhone 14 Pro Max and iPad 14, which is prohibited by the LPP.
- PE “Pallati i Rinisë” failed to evaluate bids according to the Tender Dossier, recommending a contract to an economic operator who did not meet the tender requirements.

Methodology

The report is drafted based on tender data published on the e-Procurement electronic platform, selecting a number of tenders from public enterprises. The selection was made based on several risk indicators such as: a) deadline shortening; b) use of the negotiated procedure without contract notice publication; c) contract price exceeding the estimated value; and d) presence of only one responsive bidder.

The research focuses on tenders developed in the second half of the year, particularly those with multiple complaints from economic operators.

To gather the necessary research documents, D+ sent requests for public document access to the selected enterprises, as per Law no. 06/L-081 for Access to Public Documents, and collected the necessary monitoring documents.

The report was finalized after analyzing such documents. Prior to publication, the report was also sent to the contracting authorities included in the report for review.

1. “Termokos”

1.1. Construction of the New Administrative Building and Renovation of the Accompanying Premises

The public enterprise “Termokos”, responsible for providing local district heating in Pristina, initiated procedures in 2019 for constructing a new administrative staff building. The existing building was deemed unfit for work. The project was planned to be financed by the company’s own funds, and the implementing project¹ planned for a new building with an area of 3,913.20m².

During 2020-2021, “Termokos” began procurement procedures for two tenders: “Supervision of the Construction of the Building and Renovation of the Accompanying Premises” and “Construction of the Building and Renovation of the Accompanying Premises”. However, contracts were not signed due to numerous complaints about the two tenders that were escalated to the Procurement Review Body (PRB).

The first tender for Construction of the Building and Renovation of the Accompanying Premises was opened at the end of 2020 but was canceled in August 2022 because PRB decision called for cancellation of this activity. In fact, case no. 372/21 involved a complaint from an economic operator against “Termokos”. The reviewing expert handled the case and concluded that the Contracting Authority (CA) had not evaluated the bids according to LPP. The case did not receive a meritorious decision from the PRB because the board was vacant at the time of the complaint filing, and the new board dismissed the complaint due to its age.

In March 2023, “Termokos” reopened the tender for the Construction of the Building and Renovation of the Accompanying Premises². The Tender Dossier contained discriminatory criteria, requiring economic operators to possess a certificate that has been invalid since 2021. Initially, the CA set a 20-day deadline for bid submission. This shortened deadline, down from the minimum 40 days for high-value public contracts, was justified by the case being blocked in the PRB for over two years and the contract representing a re-tendering urgency for the CA.

Despite the LPP’s special rules allowing deadline shortening in urgent cases, the CA should have considered the procurement’s complexity (the bill of quantities had over 600 items) and the high number of technical/professional requirements. As a high-value works contract, it should have allowed economic operators sufficient time to prepare bids.

The legal bid submission deadline’s reduction to 20 days, despite the contract’s expected 18-month completion time, may have affected the low number of interested bidders, with only three operators submitting bids.

1 The implementing project was designed by the “Sigma Construction” design studio. N.P. Termokos Development Plan 2022 - 2031 Available at https://www.ero-ks.org/zrre/sites/default/files/Publikimet/Pjesemarresit%20ne%20Treg/Draft%20-%20Plani%20%20Zhvillimor%20%202022-2031%20NO%20Termokos_Kons.%20Publik.pdf (last accessed on 23.10.2023).

2 Procurement no. NP Termokos.sha-23-1791-5-1-1

During the bidding phase, an economic operator requested the CA to extend this deadline, considering it too short for analyzing and preparing the technical specification given the tender's volume. The operator referred to Article 44.2 of the LPP, which states:

In a procurement using open procedures, the contracting authority shall set a time limit for the receipt of tenders that is:

- 2.1 if the concerned contract is a large value public contract, not less than forty (40) days; and.**
- 2.2. if the concerned contract is not a large value public contract, not less than twenty (20) days.**

In response to the request for clarification of the Tender Dossier, the CA justified the shortened deadline with the urgent need for this activity, citing delays in the PRB. The CA also received two other requests regarding the Tender Dossier: the removal of the OHSAS 18001 certificate requirement and an increase in the budget planned for this procurement activity. The latter was requested due to the unchanged budget from 2021, which did not account for changes in circumstances and price increases over the past two years.

The CA refused to remove the OHSAS 18001 certificate requirement from the Tender Dossier, arguing that all companies, except service ones, could be equipped with this certificate. It was particularly recommended for construction sector companies; hence the requirement remained that companies should have at least one staff member trained and certified with this standard.

The CA also rejected the request for a budget increase for this contract. The CA stated that an external professional expert had been engaged for the technical specification preparation, who had conducted current market research for the bill of quantities. Therefore, the CA considered the value allocated for this procurement activity as a realistic value that corresponded to market circumstances.

By providing the answer for clarifying or additional information, the CA disclosed the name of the economic operator, violating Article 45.11 of the Public Procurement Regulation, which stipulates that the contracting authority will not disclose the identity of the economic operator who has requested the clarifying information.

The CA's requirement that interested economic operators have a person for occupational safety and health, trained and certified with OHSAS 18001, represents a limitation of competition and unequal treatment of economic operators as determined by Article 7 of the LPP.

OHSAS 18001³, an international standard for occupational health and safety management systems, was drafted and published entirely outside the International Organization for Standardization (ISO) framework in 1999 and was later adopted as a British standard. The newer version of this standard was published in 2007⁴. However, from 2018, this standard has been completely replaced by ISO 45001:2018. Companies certified according to OHSAS 18001 had time until the end of March 2021 to migrate to ISO 45001⁵. Therefore, the OHSAS 18001 standard is no longer valid from September 2021, and no economic operator has been able to equip with this certificate since 2021⁶.

In this way, the CA violated the principles of public procurement by requiring a professional certificate, which was mandatory for all bidders to be responsive, but this certificate is not valid and no one can equip with it from 2021. The setting of this requirement, the fulfillment of which was impossible, has limited competition and equality of economic operators as fundamental principles of public procurement. D+ requested access to the bid of the winning economic operator to see how this requirement was fulfilled, but the CA refused to provide access to the accepted bid.

1.2. Exceeding the Budget

In the final procurement plan for 2023, “Termokos” allocated 1,250,000.00 Euros for the construction of a new administrative building and renovation of the accompanying premises. In the statement of needs and determination of fund availability, a document needed for approval of the initiation of procurement activity, the Contracting Authority (CA) refers to code 77 in the procurement plan, which provides for 1,250,000.00 Euros for the construction of the facility.

This amount was budgeted for the year 2023, while the remaining part was left for the following year, although this project was not written as a multi-year project in the statement of requirements needs and the determination of the availability of funds.

■ PICTURE 1. Availability of funds

II.2 DISPONUSHMËRIA E FONDEVE

II.2.1 Deklarata mbi disponueshmërinë e fondeve:

Zyrtari Kryesor Financiar “ZKF” duhet formalisht të sigurojë që fondet janë të disponueshme për prokurimin në fjalë.

[në rast të një autoriteti publik apo një organizate buxhetor]

Zyrtari Kryesor Financiar “ZKF” duhet formalisht të sigurojë që janë përvetësuar mjetet për prokurimin në fjalë në një shumë të mjaftueshme për të përmbushur obligimet financiare që mund të rrjedhin gjatë periudhës së vitit të tanishëm fiskal si rezultat i këtij prokurimi.

A është ky projekt shumë-vjeçar?

Po

Jo

3 OHSAS 18001: Occupational Health and Safety Management Systems. Available at <https://isoupdate.com/standards/ohsas18001/> (last accessed on 01.11.2023).

4 OHSAS 18001: What is it, how does it work and why use it? Available at <https://advisera.com/45001academy/what-is-ohsas-18001/> (last accessed on 01.11.2023).

5 OHSAS 18001 has been withdrawn and replaced by ISO 45001. Available at <https://www.bsigroup.com/en-IN/BS-OHSAS-18001/> (last accessed on 01.11.2023).

6 Will OHSAS 18001 Still be Valid after 2021? Available at <https://safetyculture.com/topics/ohsas-18001/> (last accessed on 01.11.2023).

Three economic operators participated in this procurement activity, and the contract was recommended to the Group of Economic Operators (GEO) comprising LimitProject Sh.P.K., Delta - CCD Sh.P.K., Rinesa Sh.P.K., and Ilea - Gr Sh.P.K.

TABLE 1. Economic operators and total bid value

No.	Name of the Economic Operator	Total Bid Value
1.	GEO LimitProject Sh.P.K.; Delta – CCD Sh.P.K.; Rinesa Sh.P.K.; Ilea – Gr Sh.P.K.	2,433,753.60 euros
2.	GEO Nika Pro Ing Sh.P.K.; Pro & Co Group Sh.P.K.; Engineering RK Sh.P.K.	EUR 2,186,327.20
3.	GEO Standard Beton Sh.P.K.; Monting Sh.P.K.; Dardaniaa Sh.P.K.	EUR 2,169,297.64

In the response for clarification, despite the company’s assessment that the estimated contract value was a realistic market price, “Termokos” did not receive any responsive bid within the estimated price. The winning GEO’s bid exceeded the estimated contract value by 233,753.60 Euros but was recommended for the contract as the other two bidding operators were declared non-responsive.

Previously, the CA had sought an interpretation from the Public Procurement Regulatory Commission (PPRC), explaining the situation where the accepted bid had a price higher than the allocated funds for this procurement activity.

The PPRC’s response quoted Article 62 of the LPP, which states that the contracting authority may conclude a procurement activity that will not result in a contract award when all responsive tenders contain prices exceeding the contracting authority’s budget for the procurement activity. The response emphasized that the LPP uses the verb “may” and not “shall”. Therefore, if the CA finds that the prices offered in the lowest bid are real market prices and can provide additional funds by securing written evidence from the Chief Financial Officer (CFO) and the Chief Administrative Officer (CAO), then the activity’s cancellation is not required.

The CA decided to proceed with the contract signing, pledging to provide additional funds amounting to 233,753.60 euros from the board of directors. These funds will be included in the budget planning for 2024.

“Termokos” should have made a more accurate market assessment, ensuring sufficient funds for initiating this procurement activity following market circumstances, to enable competition and bidding from more interested economic operators. This is evidenced by the fact that the company that requested an increase in the budget for this tender did not submit any bid at all after the authority replied that the amount allocated for this project was sufficient. This gives rise to the suspicion that the authority deliberately restricted competition by first setting an estimated value that was not in line with market prices, thus reducing the number of bidders, and then, after the bids were closed, increasing the amount for this tender for the successful economic operator. The high level of interest in this tender is evidenced by the fact that 99 economic operators downloaded the Tender Dossier, while the low number of bidders (only 3), indicates that competition was blocked by the quoted price and the technical requirements which were outdated.

Besides the negative impact on competition, which is the mechanism that ensures lower price contracting, the exceeding of the planned amount is expected to affect other planned projects for 2024, from which the funds pledged for this project will be removed.

2. “Bifurkacioni”

2.1. Reduction of Water Losses and Digitization of Services

“Bifurkacioni”, a regional water and sewerage company, provides drinking water supply services and wastewater collection for the municipalities of Ferizaj and Kaçanik.

In late October 2023, the company opened a tender for reducing water losses and digitizing services. The tender was divided into two lots: LOT 1 - Supply and installation of water meter manhole covers and water meter supply, and LOT 2 - Digitization of services, with an estimated contract value of 111,500.00 Euros.

The company shortened the tender submission deadline to 11 days from the expected 20 days for open procedures applied to public contracts not of high value. The justification given in the Contract Notice stated that this shortening was requested by the requesting unit to implement the accelerated procedure because the project had to be completed during the fiscal year 2023.


The Law on Public Procurement (LPP) in Article 46 provides specific rules allowing the shortening of time limits for tender submissions, if there are circumstances that require the implementation of a procurement activity in urgent cases⁷. However, regardless of the tender acceptance deadline, it should allow interested economic operators sufficient time to prepare bids against the Tender Dossier. The company’s Procurement Office, in a response to D+, emphasized that the reason for shortening the tender submission deadline was the financing/donation of this activity by the Government of Kosovo, necessitating its implementation before the end of the calendar year.

For this procurement activity, the Contracting Authority (CA) provided additional information four times and published the standard form for correcting errors on 06.11.2023, also announcing the extension of the tender submission deadline by four days.

Although the tender submission deadline was extended by four days after the publication of clarifying information, it was published on the date initially expected to be the final deadline for tender submission. In this situation, the CA was obliged to extend the tender submission deadline by at least 10 days from the day when the clarifying information was given. This is determined in the LPP⁸ and Public Procurement Regulation, which states:

7 Law no. 04/L-042 on Public Procurement of Kosovo. Article 46: Special Rules Permitting the Reduction of Time Limits Available at <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772> (last accessed on 14.11.2023).

8 Law no. 04/L-042 on Public Procurement of Kosovo. Article 53.7: Providing Additional Information to Candidates and Tenderers Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772> (last accessed on 14.11.2023).



“If, during an open, restricted or competitive negotiated procedure, additional or clarifying information is provided to the EOs, and the date on which such information is provided is less than ten (10) days from the deadline of the tender submission, the CA shall extend the deadline to give the opportunity to EOs at least 10 days for tender submission by preparing and publishing the notice for procedure correction.”⁹

The shortening of the additional deadline for the preparation and submission of tenders to only four days contradicts the LPP and the Public Procurement Regulation. This shortening limits competition among economic operators, who do not have sufficient time for tender submission.

In the Tender Dossier, the CA requested the implementation, development, and provision of a solution for a Mobile Application (an application that should allow online payments, contain a general overview of the consumer, the card of expenses, notifications, complaints, and requests), and the development of a solution for the interconnection of the payment system and real-time billing with other institutions (e-Kosova, budgetary institutions, banking institutions, financial agencies).

In response to a query on November 2, 2023, the Contracting Authority (CA) clarified that they do not own the source code of the current billing system, which was received as a donation, and other systems linked to this digitization.

The source code of the billing system, a crucial component of the program, is considered intellectual property and was developed by a company. The copyright holder, either the code’s creator or the entity that owns it, has exclusive rights to reproduce, distribute, or modify the code. Given that the CA has acknowledged not owning the source code, fulfilling this request becomes unfeasible. No one else has access to the code, and it would be unlawful for anyone other than the program’s creator to use it.

The available alternatives are to either build a new system from scratch or contract the company that owns the code through a negotiation process, bypassing the need to publish a contract notice. However, this approach by the Contracting Authority (CA) effectively excludes any potential economic operators who do not possess this specific code.

⁹ Regulation no. 001/2022 on Public Procurement. Art. 24.5. Provision of additional or clarifying information and time extensions. Available at https://e-prokurimi.rks-gov.net/HOME/Documents/Legislation/Rregulloret/shq/Rregulloret%20Nr.001_2022%20p%C3%ABr%20prokurimin%20publik.pdf (last accessed on 21.11.2023).

3. “Trafiku Urban”

3.1. Supply with computers

The public municipal enterprise “Trafiku Urban”, which provides public transport services, initiated a tender for computer supplies (procurement no. TU-23-1560-1-2-1). The goal was to purchase various electronic equipment, including computers, laptops, tablets, mobile phones, etc.

The estimated value of this procurement was €30,100.00. However, the contract was finalized at €29,861.00 with the economic operator AXA Sh.P.K., as the Contracting Authority (CA) prioritized the lowest price. This procurement was carried out through an open procedure. Despite a high number of requests for the withdrawal of the Tender File (40 in total), only two economic operators submitted bids.

■ TABLE 2. Economic Operators and Bid Value

No.	Name of the Economic Operator	Total Bid Value
1.	AXA Sh.P.K.	EUR 29,861.00
2.	Aritech Sh.P.K	EUR 25,337.00

The other bidding operator, Aritech Sh.P.K., had a cheaper bid but was eliminated as administratively non-responsive. It failed to meet the requirements for technical/professional capabilities, did not submit MAF (Manufacturer Authorization Form)/DAF (Dealer Authorization Form), and did not provide the tender guarantee of 1000 Euros valid for 90 days.

The Tender Dossier specified that MAF or DAF were required only for items one to four of the bill of quantities.

■ TABLE 3. Bill of Quantities Items for Which MAF or DAF Was Required

No.	Product Description	Quantity
1.	All in One PC 24”	32 pieces
2.	Laptop Brand Name	1 piece
3.	Mobile Phone	1 piece
4.	Tablet	1 piece

In the mandatory technical specifications found in Annex 1 of the Tender Dossier, “Trafiku Urban” requested technical specifications that refer to certain products. This is prohibited by the LPP¹⁰, as technical specifications should be drafted to provide as easy access as possible for all interested economic operators for bidding.

In the first item, where 32 All in One PC 24” were requested, the CA set technical specifications that are specific only to the HP brand, specifically the product HP All-in-One 24-cb1341nh All-in-One PC¹¹. Although the brand name or type is not mentioned, the detailing of these specifications corresponds to only this product, which was offered by the winning economic operator. Therefore, all the specifications requested for this item are found in this product, for the fact that these specifications are taken from this product. The CA is specifically prohibited from drafting technical specifications that favor or discriminate against one or more economic operators¹², which in this case are the companies that do not have representation/authorization of this brand.

The same issue with the HP brand is also evident in the second item where a laptop was requested. In items three and four, where a mobile phone and a tablet were requested, the Contracting Authority (CA) presented the technical specifications of iPhone 14 Pro Max and iPad 10th gen products. Even though the model isn’t mentioned, it’s clear that the description of their unique specifications has been made.

The Public Procurement Guideline clearly states that determining technical specifications that refer to a specific product, source, process, trademark, patent, specific type, or origin of products is prohibited¹³. The Law on Public Procurement (LPP) allows the CA to draft technical specifications in exceptional circumstances if it can confirm that it’s not possible to compile a sufficiently accurate and understandable specification of the contract subject matter. However, any such reference must be accompanied by the words “or equivalent”¹⁴.

In this case, even this option wouldn’t be possible, as the CA referred to a technology of a brand in the technical specifications. For example, the specification of the processor in the third item required an A14 Bionic chip¹⁵, which is a chip produced by Apple Inc. in September 2020 and is used only by the models of this company, in this case, iPad 10.9 (10th generation).

The request for certain products that belong only to one brand, combined with the request that bids have the manufacturer’s or dealer’s authorization for these products, favors one or more economic operators who have exclusive representation for these products. This discriminates against other interested operators and raises suspicion of tender rigging.

“Trafiku Urban”, by drafting these specifications, has violated the LPP, which accurately defines how to draft technical specifications. In cases like this, when the contracting authority wants to choose the bid that offers the best value for money (which implies a combination between quality and price), the CA may authorize the use of variants in the Tender Dossier, using the criterion of the most economically advantageous bid. However, in each case, it must remove the reference to a specific product/brand.

10 Law no. 04/L-042 on Public Procurement of Republic of Kosovo. Art. 28. Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772> (last accessed on 20.10.2023).

11 HP Customer Support – Knowledge Base: Available at: <https://support.hp.com/lv-en/document/c08450622> (ast accessed on 20.10.2023).

12 Law no. 04/L-042 on Public Procurement of Republic of Kosovo. Article 28 point 2. Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772> (ast accessed on 20.10.2023).

13 Guideline no. 001/2023 for Public Procurement. Art. 5.5. Available at https://e-prokurimi.rks-gov.net/HOME/Documents/Legislation/SecondaryLegislation/shq/A02_Udhezues%20Nr-001_2023%20per%20prokurimin%20publik.pdf (last accessed on 20.10.2023).

14 Law no. 04/L-042 on Public Procurement of Republic of Kosovo. Art. 28. Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772> (last accessed on 20.10.2023).

15 All-new iPad Air with advanced A14 Bionic chip available to order starting today. Available at <https://www.apple.com/pl/newsroom/2020/10/all-new-ipad-air-with-advanced-a14-bionic-chip-available-to-order-starting-today/> (last accessed on 20.10.2023).

4. “Pallati i Rinisë” (Palace of Youth)

4.1. Renovation and Functionalization of the Fountain in the “Pallati i Rinisë”

The local public enterprise “Pallati i Rinisë”, a multifunctional center, initiated a tender in July 2023. The project involved the renovation and functionalization of the fountain at “Pallati i Rinisë”.

The estimated value of the contract was €95,000.00. Four economic operators bid in this open procedure tender for work.

■ TABLE 4. Economic Operators and Bid Value

No.	Name of the Economic Operator	Total Bid Value
1.	Limitproject Sh.P.K.	EUR 94,988.21
2.	Eing Com Sh.P.K.	EUR 123,878.78
3.	Termo Solar Ingineering Sh.P.K.	EUR 84,790.39
4.	A& F Construction Sh.P.K	EUR 92,947.11

After the tender evaluation, “Pallati i Rinisë” recommended the contract to Termo Solar Ingineering Sh.P.K., with a total contract value of 84,790.39 Euros, as the responsive tender with the lowest price.

Eing Com Sh.P.K. was disqualified because their total bid value exceeded the estimated contract value, while A& F Construction Sh.P.K. was eliminated due to their absence at the mandatory site visit, as specified in the Tender Dossier.

“On July 20, 2023, “Pallati i Rinisë” organized a site visit for all interested economic operators, and attendance was recorded. We inform all participants that failure to attend the site visit would result in their offer being rejected.”

Limitproject Sh.P.K. filed a reconsideration request against the decision of the Youth Palace, alleging that several provisions of the Public Procurement Law (LPP) were violated when recommending the contract to Termo Solar Ingineering Sh.P.K.

“Pallati i Rinisë” partially approved the request, stating that the Tender Evaluation Commission did not comply with the Contracting Authority’s (CA) requirements outlined in the Contract Notice, specifically the requirement for technical/professional capacity, recommending the operator that did not meet the qualification requirements for award. “Pallati i Rinisë” returned the matter for re-evaluation and asked Termo Solar Ingineering Sh.P.K. to complete the documentation through the standard request for tender clarification.

- Declaration on the fulfillment of technical specifications by requirement 1.
- List of professional staff including all staff requirements in point 4 of the request.
- CV for the machine technician as well as other evidence related to the possession of professional staff.

After re-evaluation, “Pallati i Rinisë” once again recommended a contract to Termo Solar Engineering Sh.P.K., while it dismissed Limitproject Sh.P.K.’s second reconsideration request as unfounded.

Following the request for clarification, the economic operator recommended for the contract attached the document “Declaration of compliance with technical specifications from Annex 1 and the delivery time of the items”.

Given that the Tender Dossier required signed and stamped written declarations on compliance with technical specifications, as well as a declaration for the dynamic plan for carrying out the works, “Pallati i Rinisë” should not have requested additional clarification for the lack of a declaration for technical specifications. According to Article 10.1 of the Public Procurement Guideline¹⁶, the tender should have been rejected without requesting further information in this situation.

“Pallati i Rinisë” did not comply with the requirements of the Tender Dossier as it involved significant changes from the submitted offer.

This matter was appealed to the Procurement Review Body, which annulled the decision of “Pallati i Rinisë” for recommending the contract to Termo Solar Engineering Sh.P.K., and returning the matter for re-evaluation.

¹⁶ Guideline no. 001/2023 for Public Procurement. Available at: https://e-prokurimi.rks-gov.net/HOME/Documents/Legislation/SecondaryLegislation/shq/A02_Udhezues%20Nr-001_2023%20per%20prokurimin%20publik.pdf (last accessed on 20.10.2023).

Findings

Termokos:

- The public enterprise “Termokos” shortened the tender submission deadline, which is against the law that sets a minimum period for economic operators to prepare their tenders.
- Additionally, “Termokos” required the OHSAS 18001 certificate, even though it has been invalid since 2018 and since September 2021, making it impossible for economic operators to acquire it.
- Despite warnings from economic operators that the estimated price was not aligned with the market, the company signed a contract exceeding the estimated value by 233,753.60 Euros.
- Moreover, they breached Article 45.11 of the Public Procurement Regulation by disclosing the name of an economic operator during a clarification response.

Bifurkacioni:

- “Bifurkacioni” shortened the tender submission period to 11 days, down from the expected 20 days, when applying the open procedure for non-high-value public contracts.
- Following the publication of clarifying information, they extended the tender submission deadline by only four days. However, the extension should have been at least 10 days.
- Furthermore, “Bifurkacioni” requested changes to the billing system. This request is unfeasible for economic operators as the Contracting Authority (CA) owns the source code of the current system.

Trafiku Urban:

- “Trafiku Urban” requested computers with specifications specific to a particular brand, thereby excluding variants or equivalent products from other brands.
- This approach can be seen as favoring or discriminating against certain economic operators, specifically those companies that do not have representation or authorization of the requested brand.
- In addition, “Trafiku Urban” requested a tablet and phone specific to the Apple brand, citing specifications that are only available for models produced by Apple.

Pallati i Rinisë (Palace of Youth):

- “Pallati i Rinisë” asked for additional documents from a bidder through a standard clarification request. This bidder should have been disqualified immediately without needing further clarifications.
- However, the public enterprise did not process the reconsideration claim according to the Public Procurement Guideline. This guideline explicitly states the procedures for handling substantial modifications to the bid.

Recommendations

1. Public enterprises, acting as contracting authorities, should adhere to the legal deadlines for tender submissions as stated in the Law on Public Procurement (LPP). They should strive to avoid reducing these deadlines to ensure fair competition by giving economic operators ample time to prepare their documents.
2. They should not ask for discriminatory or preferential certificates that are outdated or not relevant to the nature of the tender, as this obstructs free competition among economic operators.
3. Contracting authorities should ensure that their contract value estimates are in line with market prices and avoid entering into contracts that exceed their budget.
4. They should not specify technical specifications for a particular product or model, as this is not only prohibited by the LPP but also harmful to free competition among economic operators.
5. They should avoid disclosing the names of economic operators when providing clarifications for tenders.
6. When they release information clarifying the tender, they should extend the final deadline for tender submissions. This allows economic operators enough time to modify their bids in response to changes in the Tender Dossier.



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