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Monitoring of Public Procurement in Public Enterprises (October – December 2023):

December, 2023

- LPOE Central Kitchen
- RWC Bifurkacioni
- RWC Hidromorava
- RWC Mitrovica





GOOD GOVERNANCE

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List of abbreviations

CA ➤ Contracting Authority

TAK ➤ Tax Administration of Kosovo

TD ➤ Tender Dossier

GOE ➤ Group of economic operators

RWC ➤ Regional Water-supply Company

LPP ➤ Law on Public Procurement

PE ➤ Public Enterprise

LPOE ➤ Local Publicly Owned Enterprise

EO ➤ Economic Operator

Introduction

Democracy Plus (D+) is continuously monitoring public procurement of local and regional publicly owned enterprises. These enterprises, likewise other budget organizations, operate under the Law of Public Procurement (LPP) applicable to engaging economic operators for work, services, and supplies. Consequently, tender analyses are conducted based on this law and its associated by-laws.

This document represents the fourth monitoring report of public enterprises' public procurement, covering a reporting period from October to December 2023. The report includes four enterprises: local publicly owned enterprise (LPOE) Central Kitchen, Regional Water Company (RWC) Bifurkacioni, RWC Hidromorava, and RWC Mitrovica. Monitoring these enterprises' activities is crucial, given their role in delivering public services to citizens. Predominantly, these enterprises provide drinking water and meals for children, businesses, and citizens.

The report includes four tenders: 1) Supply and installation of solar panels in the "Central Kitchen"; 2) Construction of the administration facility and warehouse of RWC Bifurkacioni; 3) Supply of chemicals (gaseous and liquid chlorine) and potassium permanganate; and 4) Physical security of two facilities of RWC Mitrovica.

Methodology

The research for this report commenced with the selection of procurement activities via the E-procurement platform. The selection was predicated on several indicators such as the estimated value for the tender, the subject to be procured, the repetition of the activity, and the procedure by which the procurement activity is executed.

Subsequently, D+ forwarded requests for access to public documents to the contracting authorities selected for inclusion in the report. These requests were made in accordance with the Law on Access to Public Documents.

These documents were analysed against the public procurement rules defined by this field's legislation.

LPOE Central Kitchen – Supply and installation of solar panels in the Central Kitchen – Retender

Central Kitchen initiated a second procurement activity related to the supply and installation of solar panels. The first activity was canceled due to issues in the evaluation of bids and the appeal procedure in the Procurement Review Body (PRB). Shortly after the cancellation, a notice for a new contract with the same procurement subject was published. In the second activity, three economic operators submitted bids, all of whom had also bid in the first activity but at significantly lower prices. The estimated value remained unchanged at 36,000.00 Euros.

■ TABLE 1. Bidding Economic Operators and Bid Value

No.	Bidding economic operators	Bid value
1.	Jaha Solar P.N.	22,472.04 €
2.	RA-TA Sh.P.K.	24,345.90 €
3.	N.T.Sh. Elen	26,984.22 €
4.	Unisolar L.L.C.	28,999.10 €

The economic operator ‘Jaha Solar P.N.’ submitted the lowest bid for this activity. However, this operator was disqualified because the catalogue did not contain the specifications required by the contracting authorities for solar panels.

The winning operator of the second activity, N.T.Sh. Elen, had offered a bid in the first tender at a price of 35,478.65 Euros, nearly 9,000.00 Euros more expensive for products with the same specifications. In the first activity, N.T.Sh. Elen was disqualified because it did not meet the technical requirements regarding the inverter (item 2.1). In the notice for the contracting authority’s decision, it was said that the model submitted by the operator did not meet the technical specifications. However, in this notice, another model that meets the criteria was suggested, and a link for the same was attached.

■ **PHOTO 1:** Notice on the decision of the CA dated 17.08.2023 for the tender with procurement number KQ-22-14687-1-2-1

The evaluation committee, during the re-evaluation of the procurement activity by researching the official website of SOLAXPOWER, has found that the model X3-MEGA-G2 (official link: <https://www.solaxpower.com/wp-content/uploads/2022/12/X3-MEGA-G2.pdf>) does not meet the technical specification, therefore by researching other models of SOLAXPOWER X3-Mega, the evaluation commission has found that the X3-MEGA-TL model (official link: <https://www.solaxpower.com/wp-content/uploads/2020/07/X3-Mega-50-60kW-datasheet.pdf>) fulfils the technical specification according to the preliminary measure which the EO did not submit to the offer.

For this reason, bidding with the model suggested by the contracting authority, the economic operator was awarded a contract in the second tender held for the supply of solar panels. With the notice in the first activity, the contracting authority favoured the product, and consequently the bidder, by showing which product it would accept, thus violating the principles of public procurement. The contracting authority specified the model named X3-50K-TL in the notice for decision. The contracting authority cannot discriminate against one or several economic operators in any aspect of the procurement activity¹. Since the winning economic operator is familiar with the company and its products, it is questionable why it did not bid with this model from the beginning, but the contracting authority had to suggest and refine the model so that the operator won the tender.

This is contrary to the purpose of the document “Notice of the CA’s Decision”, because through this document, it only shows the results from the evaluation of the bids and the only advice that can be given in this document is the right to appeal and the legal basis for this action. Therefore, the contracting authority cannot overstep its powers and tell the tenderer the brand/model to tender. It is worth noting that such an action is unprecedented because it has not been encountered so far in the monitoring of public procurement by D+.

In this case, a shortcoming of the tender dossier was highlighted because the contracting authority had to request authorisation from the manufacturer, which proves that the EO has and can deliver the solar panels and inverters. The catalogue submitted by the EO is accessible online² and does not necessarily prove that the EO has these devices.

Furthermore, the tender dossier did not require the engaged staff to provide proof of their employment or engagement in the project by the employer. Despite this, the economic operator submitted contracts for the staff to be engaged in the project. All these contracts had the date of contract conclusion but lacked the contract expiration date. In the same bid, the economic operator also included the salary list issued by the Tax Administration of Kosovo (TAK). Upon referring to this document, it is observed that the workers declared to be engaged in this project were only paid for the months of January and February 2023. This implies that they did not receive salaries for the subsequent months³, raising questions about their engagement with the company. Consequently, the contracting authority accepted the bid without ensuring the fulfilment of the staff requirement.

1 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on Public Procurement in the Republic of Kosovo, article 7.2.

2 Model X3-50K-TL. <https://cdn.ensolar.com/z/pp/ykl60d538673cc0a/34-SOLAX-X3-MEGA.pdf>

3 The months of March and April, because the payroll was issued in April.

RWC Bifurkacioni – Construction of the Administration Facility and Warehouse of RWC Bifurkacioni

RWC Bifurkacioni allocated a budget of 160,000.00 Euros to construct a new administration and warehouse facility. The contract, however, was signed for an amount of 151,906.20 Euros with the economic operator Pro & Co Group Sh.P.K. This contract entered into force on 23.10.2023 and must end on 30.01.2024, i.e., about three months' duration. Pro & Co Group Sh.P.K. was the sole bidder in this tender.

■ TABLE 2. Bidding Economic Operator and Bid Value

No.	The bidding economic operator	Bid Price
1.	Pro & Co Group Ltd	€151,906.20

The tender's requirements, which condition the execution of the works, pertain to staff and work equipment. The contracting authority merely stipulated that the economic operator must demonstrate that it employs a minimum of eight (8) workers. However, the contracting authority did not request employment contracts with the company, evidence from the Tax Administration of Kosovo (TAK), or proof of the workers' engagement to this activity. This oversight by the contracting authority jeopardizes the contract implementation process as it allows the economic operator to merely list names, who may not be actual employees of the company.

Despite the contracting authority not making such a request, the economic operator still submitted contracts with the listed workers. However, all these contracts end in December 2023, while the contract with RWC Bifurkacioni is valid until the end of January 2024. According to the dynamic plan, the administrative works are expected to be completed exactly now, and the works for the RWC Bifurkacioni warehouse are to commence. Therefore, the absence of this requirement undermines the entire activity because the contract cannot be implemented without staff regularly engaged in these works. This has been corroborated by the contract manager, who reported that the progress of the works is quite slow, and the completion date remains uncertain⁴.

As per the e-procurement platform, the winning economic operator has 17 active contracts, 11 of which require the engagement of workers to perform the work. According to the tender dossier, the economic operator appears to have around 263 workers working on the ground. However, according to the documents submitted, 45

⁴ Answer received via e-mail dated 21.12.2023.

workers were presented in the staff list, while 48 workers engaged in the company were presented in the Kosovo Businesses Registration Agency (KBRA)⁵. This indicates that the winning economic operator has failed to prove that it will engage the required staff for this project because it was not requested by the contracting authority. Therefore, the authority should consider the importance of these requirements when drafting them and ensure they align with the needs and purpose of the project. In such a situation, the contracting authority should request the completion of the bid, a right guaranteed by the Law on Public Procurement (LPP). The contracting authority should view this situation as incomplete information in the application and ask the economic operator to provide additional information or documents⁶.

In the tender dossier, it was stipulated that the geodesy engineer must be licensed. However, according to the documentation submitted by the economic operator, the surveyor engaged in this tender, identified as F.E., provided the license of a licensed company, i.e., a legal entity, not a natural person. As per the license issued on October 15, 2020, this company is represented by F.E. and A.Sh., but it does not validate that F.E. is licensed. As per the Guidelines for the Licensing of Surveying Companies and Surveyors⁷, a distinction is made between a licensed surveyor and a company of surveyors. According to these guidelines, the prerequisites for the licensing of surveying companies include having at least one licensed surveyor and one individual who fulfils the educational requirements⁸. However, as long as the company is represented by two surveyors in the license, it does not confirm which one of them is licensed. Based on the staff list, F.E. is designated as a geodesy engineer, not a licensed surveyor, while another individual, T.N., is identified as a licensed surveyor. Consequently, the economic operator has failed to demonstrate that it meets the contracting authority's requirement. Therefore, it should have sought clarifying information, as permitted by the public procurement guide⁹. However, the contracting authority had grounds to reject the entire bid based on the engineer's position in the company, where it was not stated that he was a licensed surveyor.

5 Business Registry Agency. <https://arbk.rks-gov.net/TableDetails>

6 Regulatory Commission of the Republic of Kosovo. Regulation 001/2022 on Public Procurement, Article 38.3.

7 Official Gazette of the Republic of Kosovo. Administrative Instruction (MESP) No. 13/2019 on the Licensing of Surveying Companies and Surveyors, Article 3 at:

8 Official Gazette of the Republic of Kosovo. Administrative Instruction (MESP) No. 13/2019 on the Licensing of Surveying Companies and Surveyors. Amended by the Administrative Instruction (MESPI) no. 06/2021 for the Licensing of Surveying Companies and Surveyors, article 4.1.2.

9 Public Procurement Regulatory Commission. Instruction 001/2023 on Public Procurement, Article 10.1.

RWC Hidromorava – Supply of chemicals (gaseous and liquid chlorine) and potassium permanganate

In July 2023, the Regional Water-supply Company (RWC) Hidromorava issued a contract notice to supply chemicals (gaseous and liquid clots) and potassium permanganate. This procedure's estimated value was 93,960.00 Euros, and three economic operators submitted bids for this activity.

■ **TABLE 3.** Bidding Economic Operators and Bid Value

No.	Bidding economic operators	Bid value
1.	Afrim Sadriu BI	€77,875.00
2.	Seykos Sh.P.K.	€79,615.00
3.	GOE Infinitt Sh.P.K. & Light House & E-Logistics L.L.C.	€82,370.00

The lowest bid for this tender was disqualified because the economic operator failed to provide the Tax Administration of Kosovo (TAK) verification within the timeframe stipulated by the contracting authority. Consequently, the contract was awarded to the second-lowest bidder, Seykos Sh.P.K.. This award decision was appealed by a group of economic operators, "Infinitt Sh.P.K. & Light House & E-Logistics LLC," leading to a suspension of the activity until a decision was made by the PRB.

According to the tender dossier, the contracting authority had requested, among other things, that the economic operator demonstrate that they have a licensed driver for transporting dangerous goods according to the European Agreement for the International Carriage of Dangerous Goods by Road (ADR). Additionally, the economic operator was required to provide the necessary technical data by submitting catalogues, manuals, or brochures. The winning economic operator, however, failed to meet these two requirements, leading to an appeal. This non-compliance was confirmed by an expert assigned by the Public Prosecution Service, G.N., in case no. 662/23. The contracting authority itself acknowledged this non-compliance, agreeing with the expert's assessment from the Public Prosecution Service, leading to the approval of the complaint and a re-evaluation of the bids.

The group of complaining economic operators was declared the winner after the re-evaluation. In contrast, the economic operator initially declared the winner was now deemed irresponsible for not meeting the contracting authority's requirements. The procurement officer and the chief administrative officer are obligated to form a committee for the evaluation of bids, comprising members with the necessary skills, knowledge, and experience relevant

to procurement requirements¹⁰. In this case, the contracting authority did not implement this legal requirement, resulting in improper evaluation of bids, unnecessary delays, and ultimately, the contract was not signed.

The commission, during the evaluation, examination, and comparison of tenders, must respect the basic principles of public procurement¹¹. These principles include the obligation of the contracting authority to treat the economic operators equally and non-discriminatorily¹², and the bids must be evaluated accurately based on the criteria defined in the tender dossier. However, in this case, the bids were not evaluated based on these legal criteria, resulting in the commission failing to perform the work for which it was appointed.

Therefore, contracting authorities should always remember that the evaluation commission selection should be done carefully. This is because, through this commission, the economic operator who will implement the contract is chosen, which means that the entire process from here on depends on the commission's decision. The importance of this commission's role is underscored by the legal regulation, which allows the contracting authorities to engage external experts when special knowledge and expertise are required for more specific cases¹³.

This is not an isolated incident where the lack of professionalism of the evaluation commission has led to delays and failure of the entire activity. The contracting authority must remember that each commission member must sign an affidavit pledging to perform the evaluation task with full responsibility per the Law on Public Procurement (LPP). In such cases, the contracting authority should hold the commission accountable. The failure to take such actions contributes to the deterioration of the situation and encourages the commissions to not evaluate the bids according to their duty because they are not penalised.

The announcement of the group of economic operators Infinit Sh.P.K. & Light House & E-Logistics LLC as the winners was not the end of this activity. The economic operator Seykos submitted a complaint to the Procurement Review Body (PRB) against this decision. The complaint was submitted on December 14, 2023, and only a few days later, the contracting authority initiated a new procurement activity with the same subject, i.e., the supply of chemicals (gaseous and liquid chlorine) and potassium permanganate. However, this time, the activity was carried out through a negotiated procedure without the publication of the contract notice¹⁴. The contract notice was published on December 20, 2023, awarding the economic operator Seykos Sh.P.K., the only bidder in this activity. The value of the contract is 29,936.50 Euros, with a duration of two months.

In this case, the contracting authority conflicted with the LPP and the public procurement regulation because the complaint had a suspensive effect¹⁵. Therefore, the contracting authority is prohibited from acting until the PRB decides. Also, to use a negotiated procedure without the publication of the contract notice, the circumstances foreseen by the LPP must exist. This case did not involve any objective and mandatory technical or artistic reason, intellectual or industrial property rights, or any extreme emergency caused by unforeseeable events by the contracting authority¹⁶.

The blocking of the activity in the PRB does not constitute a valid circumstance to use this procedure because it is well known that if the bids are not evaluated against the criteria, the decision will be appealed. Also, the LPP excludes the use of this procedure for extreme circumstances that are created by negligent or intentional actions or omissions of the contracting authority¹⁷. Therefore, the contracting authority had no legal basis for using this procedure.

10 Public Procurement Regulatory Commission. Regulation no. 001/2022 on Public Procurement, Article 39.5.

11 Public Procurement Regulatory Commission. Regulation no. 001/2022 on Public Procurement, Article 40.1.

12 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on Public Procurement in the Republic of Kosovo, article 7.1.

13 Public Procurement Regulatory Commission. Regulation no. 001/2022 on Public Procurement, Article 39.9.

14 The procurement number for this activity is no-23-14048-1-2-5.

15 Public Procurement Regulatory Commission. Regulation no. 001/2022 on Public Procurement, Article 66.1.

16 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on Public Procurement in the Republic of Kosovo, article 35.2.1.

17 Ibid.

RWC Mitrovica – Physical security of two facilities of RWC Mitrovica Mitrovica

In early 2023, the Mitrovica Regional Water-supply Company issued a contract notice for the physical security of two facilities: the central facility of RWC Mitrovica (located at Str. Liqeni - Suhodoll, Mitrovica) and the central warehouse of RWC Mitrovica (located at neighbourhood Tavnik in Mitrovica). The contract in this procurement activity¹⁸, valued at 35,000.00 euros, aimed to secure these two facilities 24 hours a day, 7 days a week, for a period of one year.

Following requests from several economic operators, the contracting authority revised the estimated value of the contract, increasing it by 11,500.00 Euros to a total of 46,500.00 Euros. However, the contracting authority rejected requests regarding the price description table. The economic operators had requested separate categories such as night hours, daytime hours, working hours during public holidays, and working hours during weekends and holidays to complete the required financial analysis with the tender dossier. Besides adding the categories, economic operators also requested the creation of a financial analysis template to simplify its completion and avoid potential disqualification due to incorrect completion.

■ TABLE 4. Price Description

No.	Description	Unit of Measurement	Total hours	Unit Price without VAT	Total Price with VAT
1.	Physical security of the administration building of RWC “Mitrovica” Sh.A	Man hours	8760		
2.	Physical security of the warehouse facility of RWC “Mitrovica” Sh.A	Man hours	8760		

The change in the estimated value of the contract was made through the standard form for the correction of errors in published notices, which was published nine days before the deadline for the submission of bids. In this form, the deadline for submitting bids was not extended, although this is required by the Public Procurement Regulation. According to the regulation, in cases where additional or clarifying information is provided less than 10 days from the deadline for submitting bids, the deadline shall be postponed to give economic operators at least 10 days to prepare and submit bids.

¹⁸ Procurement activity number: KURM-23-250-2-2-1

Six economic operators participated in this procurement activity, and the contracting authority awarded the contract to the group of economic operators Jaguar Security Sh.P.K.; Skyfterat - LIVE Sh.P.K., as the lowest bid with a total value of 40,296.00 Euros.

TABLE 5. The bidding economic operator and the bid value

No.	Name of the economic operator	Value total contract
1.	Physical security company 'Scorpion'	44,500.80 euros
2.	GEO Jaguar Security Ltd.; Skyfterat LIVE Sh.P.K.	40,296.00 euros
3.	MEB LLC	39,972.80 euros
4.	M-GR Security LLC	45,552.00 euros
5.	Security Code	45,552.00 euros
6.	Internat Security Association Ltd.	42,275.18 euros

In relation to the decision of the contracting authority to award the contract to the group of economic operators Jaguar Security Sh.P.K.; Skyfterat - LIVE Sh.P.K., two requests for re-examination were raised by MEB L.L.C. and M-Gr Security Sh.P.K. These were rejected by the contracting authority as unfounded. The complaints from the two economic operators were based on the following points:

- The group of economic operators recommended for the contract had not met the conditions stipulated in the tender dossier. It was required to have a minimum of eight workers with 176 working hours according to the Administrative Instruction for Setting the Minimum Wage¹⁹, where the minimum wage determined by the Contracting Authority (CA) was 250.00 Euros net. Official hours were from 08:00 to 16:00, and physical security had to be provided 24 hours a day, seven days a week, in shifts where allowances had to be paid for night work, weekends, and public holidays, respecting the Labor Law,²⁰ which included annual holidays, medical leave, night work, overtime work as well as the Law on Private Security Services²¹.
- MEB L.L.C. was unfairly eliminated due to the lack of Financial Analysis, which this economic operator claimed to have submitted along with the price description.

¹⁹ Official Gazette of the Republic of Kosovo. Administrative Instruction (MLSW) no. 09/2017 Setting the Minimum Wage in the Republic of Kosovo.

²⁰ Official Gazette of the Republic of Kosovo. Law No. 03/L-212 on Labor.

²¹ Official Gazette of the Republic of Kosovo. Law No. 04/L-004 on Private Security Services.

The failure to compile a financial analysis template, where the number of working hours could have been correctly determined (regular hours, night hours, weekend hours, holiday hours), resulted in RWC Mitrovica violating the Law on Public Procurement (LPP). The LPP stipulates that contracting authorities must prepare tender dossiers that provide relevant information about the contract, including all its material terms and conditions, applicable procurement procedures, applicable eligibility requirements, and material conditions.

After appealing the decision to the PRB, this contract remained blocked for three months. The PRB had to engage two review experts. However, the first expertise was rejected as the review expert did not make a real assessment of the situation due to improper calculations for the financial analysis. Even the second professional review expert, who had the duty to compile a financial analysis in accordance with the requirements of the tender dossier and, as a result, to come to an accurate and fair conclusion on the claims of the complainants, did not yield results as the indicators were not measurable based on the requirements presented in the tender dossier.

The decision of the contracting authority to proceed with this tender in its current form, specifically in the description of the prices in Table 5, where there were only two columns for the price of working hours, represents gross negligence of the request unit and the procurement office of RWC Mitrovica. This led to the failure of the tender.

In addition to the main harm, which is the tender cancellation (because the PRB issued a decision on cancellation due to the inability to decide on the claims), RWC Mitrovica caused unnecessary expenses to the economic operators. These operators spent time and financial resources in preparing the bidding documents, bid insurance, and submitting a complaint to the PRB.

Findings

- LPOE Central Kitchen awarded a contract to the economic operator who, in the same canceled preliminary tender, had suggested which model fulfills the specifications required by the contracting authority.
- RWC Bifurkacioni jeopardized the process of implementing the contract by not requesting valid work contracts or agreements for engagement in this project for the required workers. Given the nature of the contract, the workers play an essential role in its implementation.
- RWC Bifurkacioni received a license as a legal entity, contrary to its own requirements. In the tender dossier, the request was for a license of a natural person (a licensed surveyor and not a licensed surveyor company).
- RWC Hidromorava initiated a new procurement activity with a negotiated procedure for the same subject, which has been appealed to the PRB and for which the PRB decision is still pending.
- RWC Hidromorava failed to evaluate the bids of economic operators according to the requirements. Initially, it declared the economic operator's bid as the winner, but in the second decision, it declared it non-responsive for the same bid.
- Due to the lack of clarification of the requirements, RWC Mitrovica made it impossible to evaluate the bids and led to the blocking of the procurement activity until the cancellation by the PRB.

Recommendations

- Contracting authorities (public enterprises in this case) must be careful in drafting the requirements in the tender dossier. The requirements must ensure the authority that the winning economic operator has the necessary capacities to execute the contract.
- Contracting authorities should strictly follow the criteria in the tender dossier, which they have decided on in advance.
- Contracting authorities should not award contracts to economic operators who have not fulfilled the requirements that the authority has placed in the tender dossier.
- Contracting authorities should not overstep their powers by giving tips that in any way favor a certain economic operator.
- The Public Procurement Regulatory Commission (PPRC) should provide legal measures in secondary legislation specifically for evaluation commissions that do not fulfil their obligation according to the legal requirement.
- Contracting authorities should appoint responsible and professional persons in evaluation commissions and take measures against those who act against the affidavit.
- Contracting authorities should not use the negotiated procedure without publication of the contract notice if no circumstances are foreseen by the Law on Public Procurement (LPP).



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