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Monitoring Public Procurement at the Ministerial and Local Levels

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- Ministry of Industry, Entrepreneurship, and Trade;
- Ministry of Environment, Spatial Planning, and Infrastructure;
- Ministry of Internal Affairs;
- Municipality of Pejë/Peć and
- Municipality of Gjiilan/Gnjilane.





GOOD GOVERNANCE

AUTHORS:

Egzona Kozhani & Ardit Dragusha



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Our Offices:

Street Bajram Kelmendi, Nr. 92, Kati V
Prishtina, 10000
Kosovo

+383 (0) 38 749 288
info@dplus.org

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List of abbreviations

AoJ	↗ Academy of Justice
CA	↗ Contracting Authority
TAK	↗ Tax Administration of Kosovo
TD	↗ Tender Dossier
GEO	↗ Group of Economic Operators
IRK	↗ Institutions of the Republic of Kosovo
KIESA	↗ Kosovo Investment and Enterprise Support Agency
PPRC	↗ Public Procurement Regulatory Commission
MIET	↗ Ministry of Industry, Entrepreneurship and Trade
MCYS	↗ Ministry of Culture, Youth, and Sports
MESPI	↗ Ministry of Environment, Spatial Planning and Infrastructure
MIA	↗ Ministry of Interior Affairs
EO	↗ Economic Operator
PRB	↗ Procurement Review Body
QVS	↗ Evaluation and Standards Center
Sh.P.K.	↗ Limited Liability Company

Introduction

Democracy Plus (D+) has monitored public procurement at both central and local levels, focusing on six contracting authorities: the Ministry of Environment, Spatial Planning, and Infrastructure (MESPI), the Ministry of Industry, Entrepreneurship, and Trade (MIET), the Ministry of Internal Affairs (MIA), the Municipality of Pejë/Peć and the Municipality of Gjiilan/Gnjilane. These contracting authorities, akin to other budget organizations, operate under the Public Procurement Law (PPL) to engage 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 first monitoring report of public procurement for 2024, encompassing the reporting period from January to June 2024.

The report includes an analysis of nine different tenders, with a total estimated contract value of €72,751,258.09.

The findings of the monitoring reveal that public institutions continue to award single-source contracts without justifying the use of this procedure, which eliminates competition among economic operators. Additionally, they persist in awarding contracts to economic operators who do not meet the requirements set out in the Tender Dossiers, and they make erroneous evaluations that lead to delays and cancellations of tenders.

Methodology

The research commenced with the selection of procurement activities via the e-Procurement platform.

The selection was based on several indicators: the estimated value of the tender, the subject matter being procured, the frequency of the activity, the procedure by which the procurement activity is conducted, timeframes, contract prices close to the estimated value, and unusually low prices.

After selecting tenders, 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. The documents were then analyzed against public procurement rules set by the legislation in this field.

TENDER 1

MIET - Physical Security for MIET Facilities (2 months) - 204-23-9190-2-2-5

For several years, the Ministry of Industry, Entrepreneurship, and Trade (MIET) has contracted companies to provide physical security services for its facilities.

The last three procurement activities for this service were conducted using a negotiated procedure without prior publication of a contract notice, and all three contracts were awarded to the same economic operator, with a total value of €75,723.00.

■ **TABLE 1.** Tenders for Physical Security of MIET Facilities Conducted Using Negotiated Procedure

No.	Subject of Procurement	Procurement Number	Estimated Value (€)	Contracted Economic Operator	Contract Value (€)	Contract Date
1	Physical Security for MIET Facilities (2 months)	204-23-9190-2-2-5	22,000.00	Defence Security Sh.P.K.	21,500.00	12.09.2023
2	Physical Security for MIET Facilities for additional 2 months	204-23-12201-2-2-5	27,500.00	Defence Security Sh.P.K.	27,111.50	20.11.2023
3	Physical Security for MIET Facilities	204-24-122-2-2-5	27,111.50	Defence Security Sh.P.K.	27,111.50	01.03.2024

The activity preceding the first negotiated contract (listed as number 1 in Table 1) was the procurement activity number 204-23-7170-2-1-1, for which “Rojet e Nderit” Sh.P.K. was recommended for the contract with an offer of €305,601.00. However, the procedure ended in the Procurement Review Body (PRB)¹.

¹ The appeal to the PRB was number 972/23.

This activity began on 14.07.2023 with the publication of the contract notice, and on 17.11.2023, the contracting authority's decision notice was published. According to the e-Procurement platform, before the contracting authority's decision was made, MIET signed a contract for the same subject matter (contract number 1 in Table 1) using a negotiated procedure, thereby conducting two parallel procedures. This action constitutes the first violation concerning the contracting of this service. In addition to disregarding the timeframes required by the open procedure, this action also contradicts one of the most important principles in public procurement: the principle of economy and efficiency, which obliges all contracting authorities to ensure that public funds and resources are used economically.² It cannot be considered an economical use of public funds to conduct three parallel procedures for the same subject matter within the same year.

The violation in question involves the use of a negotiated procedure without prior publication of a contract notice, which did not meet the conditions stipulated by the Public Procurement Law (PPL). In this case, there was no exclusive right or extreme emergency caused by unforeseeable events, making the use of such a procedure an abuse of these provisions³, therefore use of such procedure presents violation of provisions.

After completing this contract, exactly two months later, the Ministry of Innovation and Technology (MIET) issued a decision for an open tender procedure (17.11.2023). According to this decision, the contract was awarded to EO "Rojet e Nderit" Sh.P.K. with an offer of €305,601.00, while Defence Security Sh.P.K., which had submitted the lower bid (€303,940.00), was disqualified for not meeting the financial turnover requirement and failing to submit reference contracts. Three days later, on 20.11.2023, another contract was signed with EO "Defence Security" Sh.P.K. for physical security services, valued at €27,111.50. Similar to the previous case, the negotiated procedure was used to extend the contract for an additional two months. The economic operator deemed non-responsive in the open procedure was awarded the second single-source contract.

Against the decision notice dated 17.11.2023, the disgruntled economic operator filed a complaint with the Procurement Review Body (PRB) on 04.12.2023, thus suspending the activity. However, before the PRB review panel made a decision, MIET again signed a single-source contract with the same economic operator, Defence Security Sh.P.K., in January 2024, valued at €27,111.50.

MIET unlawfully signed single-source contracts with the same economic operator in three instances, while the same activity was being conducted through an open procedure. This resulted in approximately €75,723.00 being spent through procedures that circumvent the fundamental principles of procurement, particularly transparency and competition.

Despite the service being the same and the ministry's needs remaining unchanged, whether the service is contracted through an open or negotiated procedure, the tender dossier differed between the open and negotiated procedures.

In the tender dossier for the open procedure, it was required that the economic operator demonstrate a turnover of no less than €750,000.00 in the last three years and have completed similar work valued at €550,000.00 in the last three years, with references to prove it.

These requirements were removed in the activities conducted through the negotiated procedure without prior publication of a contract notice. Moreover, the company awarded the three single-source contracts was registered in February 2023, meaning it could not have met such criteria.

2 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on Public Procurement (Article 6).

3 Official Gazette of the Republic of Kosovo. Law No. 04/L-042 on Public Procurement (Article 35).

The use of the negotiated procedure without prior publication does not imply obtaining services that do not provide value for money. Therefore, if these criteria were deemed necessary to demonstrate the suitability of the economic operator, they should not have been entirely removed from the tender dossier. Such a case raises suspicions of adjusting conditions and criteria.

The use of the negotiated procedure for an activity that should have been suspended because the matter was before the PRB and the removal of requirements from the tender dossier are not the only issues.

The activity “Physical Security for MIET Buildings” conducted through an open procedure was accompanied by irregularities. As previously mentioned, EO “Rojet e Nderit” Sh.P.K. was declared the winner with an offer of €305,601.00. This winning bid appears significantly lower than the estimated value of €380,000.00, approximately €75,000.00 less. In such cases, two issues need to be considered: first, whether the Contracting Authority (CA) did not properly assess the market price by setting a very high value, or second, whether the winning economic operator (EO) can fulfill the contract with the given offer. The Procurement Review Body (PRB) ruled in favor of the CA, awarding the contract to OE “Rojet e Nderit” Sh.P.K. However, this decision seems to have been made without thoroughly analyzing all the facts and evidence.

The CA required, among other things, that the EO pay workers a net salary of €350.00, with the number of workers/guards required to be 28. If the net salary for one worker is €350.00, the gross salary would be €404.63⁴, including €19.27 from the 5% pension contribution paid by the employer. If the gross expense for one worker is €404.63 per month, then for 28 workers, it would be €11,329.64 per month. For 24 months, the duration of the tender, the total expense, including 18% VAT for the service, would be €320,855.40.

If the total expenses for compensating workers for the duration of this tender are €320,855.40, excluding other expenses, the winning company, which bid €305,601.00, will not be able to cover even the workers’ salaries. Consequently, the workers will not be paid the required minimum, taxes for the engaged workers will not be paid, or the required 28 workers will not be engaged. With this amount, the company will not be able to meet the ministry’s requirements and is not expected to operate at a loss.

In this case, the CA not only ignored the fact that the contract value differs by approximately €75,000.00 from the estimated value but also disregarded its own requirements set in the tender dossier. Thus, it awarded a contract to an economic operator that does not meet the mandatory requirements set by the CA in the tender dossier and will not be able to execute the contract in accordance with the specified conditions.

⁴ Tax Administration of Kosovo Gross/net salary calculation. <https://www.atk-ks.org/kalkulatori-i-pagave-nga-neto-ne-bruto/>. Clarification: According to the Kosovo Tax Administration’s salary calculator, the gross salary is €385.36 because the 5% employer pension contribution is not included. Adding this 5% (€19.27) to €385.35 gives us €404.62. This €19.27 is considered a company expense and is therefore included in the calculation.

TENDER 2

MIET – Business Internship 2023 – Re-tender I - 204-23-9414-2-2-1

The “Business Internship 2023” program is implemented by the Kosovo Investment and Enterprise Support Agency (KIESA), which operates under MIET. This program aims to shape new cadres and create employment opportunities for young people.

To operationalize this program, MIET issued a public call for micro, small, and medium enterprises to present their human resource needs to allocate interns to these enterprises. Simultaneously, in July 2023, MIET also issued a public call for interns to apply for this program, planning to engage 100 interns.

In addition to public calls, the Ministry of Industry, Entrepreneurship, and Trade (MIET) initiated four procurement activities directly related to the implementation of this program. Three activities were initiated in 2023, with only one being successful, while another activity with the same procurement subject was initiated and contracted in 2022.⁵

In 2023, the successful activity awarded a contract to Global Consulting & Development Associates Sh.P.K. for €89,200.00.

According to the tender dossier, the contracted economic operator is required to act as an intermediary between the ministry, interns, and enterprises. Specifically, they are to perform the tasks listed in Table 2 below.

⁵ The tender number for this procurement was 204-22-8049-2-2-1.

TABLE 2. Some of the tasks of the Economic Operator and price to be paid by MIET

No.	Description	Quantity	Unit Price	Total
1.	Aligning enterprise requirements with those of interns and placing them	100	€ 5.00	€ 500.00
2.	Printing and arranging the signing of tripartite agreements (MIET/KIESA, intern, and enterprises)	400	€ 5.00	€ 2,000.00
3.	Preparing attendance lists for interns to be submitted to companies for record-keeping	50	€ 20.00	€ 1,000.00
4.	Preparing a detailed report on tripartite agreements and the placement of interns in enterprises	1	€ 100.00	€ 100.00
5.	Preparing reports for interns who have completed their internships and processing payments of €250.00 (gross) to be verified through the bank	100	€ 250.00	€ 25,000.00
6.	Creating and designing certificates for interns and acknowledgments for businesses	150	€ 3.00	€ 450.00
7	Organizing the certificate award ceremony	100	€ 60.00	€ 6,000.00
8	Preparing the final project implementation report	1	€ 300.00	€ 300.00

In addition to the activities listed in Table 2, the economic operator was tasked with other activities, totaling €89,200.00, the contract value. However, MIET was unclear in drafting the requirements, and the winning operator failed to execute the contract as per the predetermined conditions. Issues with this tender include:

- I. In three positions, two services were combined into one price. For example, in Table 2, position five states that an intern will receive a payment of €250.00, which also covers the cost of preparing the report for interns completing their internships for the specified month. Given that interns receive a monthly gross compensation of €250.00, it implies that the report preparation service would be provided for free by the company, as there is no other budget source for this expense. Such actions create confusion and contradict the PPL, as items, services, or works attempted to be offered for free should lead to the tender being rejected. This is considered

unacceptable⁶ and violates the principles of objectivity and integrity.⁷ MIET stated that the €250.00 amount is solely for the gross payment to interns, not for other expenses. However, they did not clarify which budget would cover the report preparation service.⁸

- II. According to payment reports⁹, the contracted company, Global Consulting & Development Associates Sh.P.K., made payments to interns over three months. The company was obligated to engage 100 interns, but according to the submitted invoices, only 30 interns were engaged over the three months. Specifically, in the first month, payments were made on December 8, 2023, for 31 interns; in the second month, payments were made on December 22, 2023, for 30 interns; and in the third month, payments were made on January 31, 2024, for 27 interns. The engagement and payment for 100 interns were also stipulated in the preliminary agreement, but the company failed to meet this contractual requirement.

In addition to the company's failure to fulfill this obligation, the contract manager did not report this issue in his reports, despite the situation being consistent for three months. This constitutes a breach of the contract between MIET and Global Consulting & Development Associates Sh.P.K., specifically Article 11, which obligates the service provider to perform services with care, efficiency, and diligence, in accordance with best professional practices.¹⁰ Furthermore, the contract manager did not report this deficiency, despite being responsible for contract implementation according to the specified terms and conditions.¹¹ Regarding this issue, MIET justified the non-fulfillment of this requirement by stating that there was a lack of interest from interns, hence only 31 interns were engaged.¹² This point represents a failure in contract execution, as it implies that this requirement was not met even by 50%. This should have indicated to MIET that the winning company was not executing the contract according to the conditions, and they should have terminated this activity to avoid further expenses, as the tender's objective was not being achieved.

- III. In addition to not engaging the required number of interns, there are also activities with very high values and discrepancies between the invoice price and the preliminary estimate. According to the invoices received by MIET from the contracted economic operator, there are eight invoices¹³ totaling approximately €31,077.00. However, for the three-month duration of the contract, €89,200.00 should have been spent, meaning only about 34% of the contract was realized, leaving €58,123.00 unspent. This highlights a significant issue, demonstrating MIET's irresponsibility in planning procurement activities, poor contract management, and mismanagement of public funds. On the other hand, it also shows the lack of seriousness from economic operators towards public contracts, as such a contract should not have ended with such a low realization, despite the special conditions of the contract allowing for the reduction of unfulfilled positions. According to MIET, the low execution value of the contract was due to a lack of interest from interns.

Additionally, there were positions with very high, unrealistic values. For example, position number three listed in Table 2, the list of participants, which is just a sheet of any format with a table for recording the intern, the day, and the time of the internship, was to be paid €20.00. Regarding the discrepancy between the paid prices and the preliminary estimates, for example, position seven listed in Table 2, the organization of the certificate distribution ceremony, was supposed to cost €6,000.00 for 100 interns. However, according to invoice No. 9200 dated

6 Public Procurement Regulatory Commission. Regulation no. 001/2022 on Public Procurement, Article 40.16.

7 Public Procurement Regulatory Commission. Regulation 001/2022 on Public Procurement, Article 4.3, item d.

8 Response by MIET dated 07.06.2024.

9 Documents obtained following a request for access to public documents submitted on March 29, 2024, confirm this.

10 The contract was signed on October 25, 2023, between MIET and Global Consulting & Development Associates Sh.P.K.

11 Public Procurement Regulatory Commission. Regulation no. 001/2022 on Public Procurement, Article 70.23.

12 Response by MIET dated 07.06.2024.

13 Invoice 1 – 11.12.2023/ No. 8966; Invoice 2 – 11.12.2023/ No. 8967; Invoice 3 – 22.12.2023/ No. 9010; Invoice 4 – 22.12.2023/ No. 9011; Invoice 5 – 12.02.2024/ No. 9097; Invoice 6 – 12.02.2024/ No. 9098; Invoice 7 – 12.02.2023/ No. 9098; Invoice 8 – 12.04.2024/ No. 9200.

12.04.2024, the economic operator spent €2,542.37 for this position, covering around 42 people, while in the last month of the internship, there were only 27 interns. This could be justified by the presence of company or ministry participants, but the expenses for these two parties were not foreseen according to the price descriptions.

All the issues listed above indicate that MIET did not conduct serious contracting and did not aim to train young people in specific fields. Moreover, due to the lack of reporting and seriousness from the ministry, the economic operator also did not make efforts to execute the contract according to the stipulated conditions.

This was not the only contract MIET had for this matter. The same contract with the same economic operator was also signed in 2022, valued at €68,410.00, or €20,790.00 less.¹⁴

¹⁴ Activity number for this procurement was 204-22-8049-2-2-1.

TENDER 3

MESPI - Re-tender - Contracting a Company for Demolition of Illegal Structures and Other Needs of the MESPI Inspectorate - 210-23-9000-2-2-1

The Ministry of Environment, Spatial Planning, and Infrastructure (MESPI) has signed a framework contract, lasting 36 months, with the group of economic operators GOE Company Murseli Sh.P.K. & Grand Construction Sh.P.K., to carry out the demolition of illegal structures and other needs of the ministry's inspectorate.

Since this is a framework contract, interested economic operators have bid with unit prices, while the total value of the work execution is up to €30,000.00, with an allowed deviation of $\pm 30\%$ of the total value of the work execution.

Four companies bid for this tender, with the winning GOE offering the lowest price.

■ TABLE 3. Bidding Companies and Their Bid Values

No.	Bidding EO	Bid Value/Unit Price
1	GOE Company Murseli Sh.P.K. & Grand Construction Sh.P.K.	€ 289.00
2	Brahim S. Tahiri B.I.	€ 656.00
3	A-Z Group Sh.P.K.	€ 2,190.00
4	Dardaniaa Sh.P.K.	€ 2,245.00

From these bids, we can see significant differences in the unit prices offered by the bidding companies, with the winning GEO bid being much lower than even the second-lowest bid. In such cases, the possibility of abnormally low tenders should be eliminated. An abnormally low tender refers to a bid that appears unreliable to the contracting authority (CA) and may negatively impact contract implementation.

According to public procurement rules, three conditions must be met for a tender to be considered abnormally low:

1. At least three bids must be submitted for the tender.
2. The price offered is more than 30% lower than the average price of the responsive tenders;
3. The price offered is more than 10% lower than the price or costs of the second lowest tender.¹⁵

The first condition is met as there are four bids for this tender. The second condition is also met because, according to the evaluation report, all bids are responsive, and the price of €289.00 is more than 30% lower than the average tender price. This is calculated as follows:

$$289+656+2190+2245= 5380/4[\text{bids}] = 1345$$

Thus, the average bid price for this tender is €1,345.00. If the lowest bid is €289.00 and the average price is €1,345.00, then the lowest bid is approximately 78% lower than the average bid price:

$$\frac{1345-289}{1345} = \frac{1056}{1345} = 0.7851 \times 100 = 78.5\%$$

The third condition is also met, as the lowest bid of €289.00 is more than 10% lower than the second-lowest bid:

$$\frac{656-289}{656} = \frac{367}{656} = 0.559 \times 100 = 55\%$$

This means the lowest bid is about 55% lower than the second-lowest bid.

In this case, the CA should have performed this calculation and followed the legally prescribed procedures for abnormally low tenders. Based on the documentation for this activity¹⁶, no inter-partes procedure¹⁷ was conducted with this operator to further review the bid and the feasibility of the contract at these prices. The CA is obligated to request an explanation from the economic operator when the three conditions for an abnormally low price are met.¹⁸ Despite this obligation, such a procedure was not conducted, thus neglecting its responsibilities and ignoring the possibility that such a tender, at these prices, may not be feasible.

The fact that we are dealing with abnormally low prices is evident when comparing the prices for specific positions submitted by the four bidders for this tender.

¹⁵ Public Procurement Regulatory Commission. Regulation no. 001/2022 on Public Procurement, Article 41.3.

¹⁶ Providing access to public documents, following the submission of the request on 29.03.2024.

¹⁷ A legal term from Latin meaning "between the parties."

¹⁸ Public Procurement Regulatory Commission. Regulation no. 001/2022 on Public Procurement, Article 41.3.

TABLE 4. Prices of the Four Bidders for Specific Positions in the Preliminary Estimate

Position No.	Position Description	Price per Hour by Winning GOE	Price per Hour by Second Lowest Bidder	Price per Hour by Third Bidder	Price per Hour by Fourth Bidder	Total
1	Welding Work	€ 1	€ 20	€ 75	€ 50	500.00 €
2	Drilling Work	€ 1	€ 10	€ 50	€ 20	2,000.00 €
3	Water Pump Work	€ 1	€ 20	€ 50	€ 100	1,000.00 €
4	Jack Hammer Work	€ 5	€ 10	€ 150	€ 50	100.00 €
5	Electrical, Plumber, Heating Specialist, etc. for cutting power during execution	€ 1	€ 30	€ 50	€ 100	25,000.00 €
6	Environmental Damage Assessment from illegal actions	€ 1	€ 50	€ 250	€ 300	450.00 €

As seen from the winning GEO bid, many positions are priced at just one Euro per hour. Comparing these prices with the second-lowest bid reveals significant discrepancies for the same work. In this case, not only has the Public Procurement Law (PPL) been violated, but other legal issues such as minimum wage and tax payments for workers engaged in this contract have also been breached.

MESPI has contracted a company that set abnormally low prices in its financial offer, solely to be the lowest bidder. This company does not comply with public procurement legislation.

In such cases, the contracting authority (CA) should have conducted a procedure to clarify the prices set by the winning GEO. If the GEO could not justify or convince the CA that it could fulfill the contract at these prices, the CA should have rejected the GEO's bid.¹⁹

This was not the only tender that MESPI awarded for the same subject matter. In 2020, MESPI signed a contract with the same economic operator, Company Murseli Sh.P.K., with a unit price of €176.50 and a total contract value of €30,000.00. This contract was scheduled to be completed by October 2023, and a new contract was signed in the same month, on October 4, 2023.

¹⁹ Public Procurement Regulatory Commission. Regulation No. 001/2022 on Public Procurement, Article 41.7 and 41.10.

TENDER 4

Ministry of Infrastructure – Construction of the Prizren - North Macedonia (Tetovo) Border Road - 205-23-11598-2-1-1

On December 12, 2023, the Ministry of Infrastructure announced a contract titled “Construction of the Prizren - North Macedonia (Tetovo) Border Road, segment Struzhë - Connection to Dr. Ibrahim Rugova Highway in Prizren - South, L=20.350 km; Lot 1 - L= 6+913.73 km; Lot 2 = L= 6+525.00 km; Lot 3 = L= 6+911.27 km,” with an estimated value of €35,000,000.00.

For Lot 2, on February 8, 2024, the Ministry of Infrastructure requested the consortium “Damastion Project” & “Companya Eskavatori” SH.P.K. & “B Famis” SH.P.K. & “Eskavatori MK” L.L.C. to submit evidence of compliance (certificates from ATK, Court) and the original tender security by February 12, 2024, and original tender insurance, required for winner of tender.

In the notification of the contracting authority’s decision, the Ministry of Infrastructure recommended another bidder for the contract after conducting a second evaluation report. In this re-evaluation report, it is stated that based on the decisions of the Secretary-General with protocol number 2012, the commission for the reassessment of bids, after examining, comparing, evaluating, and clarifying the bids, recommended the economic operators group “Pricom” SH.P.K. & “Metag Insaat Ticaret” A.S. & “FS C ING” SH.P.K. & “Jaha Solar” SH.P.K for the contract.

According to the Public Procurement Regulation, the final decision on awarding the contract is the responsibility of the Procurement Officer. The Procurement Officer can accept or reject the commission’s recommendation. If the recommendation is rejected, the Procurement Officer must provide written reasons. In such cases, the Procurement Officer can make the final decision or form a new commission for re-evaluation. This explanation will be included in the procurement activity minutes. The CA’s CAO will be immediately informed of this rejection.²⁰

Although the Procurement Officer can approve or reject the evaluation commission’s recommendation, the PPL and secondary legislation do not recognize such responsibility for the secretary or any other public institution official. Therefore, decision no. 2012 mentioned in the re-evaluation report represents a procedural violation and interference in the exclusive responsibilities of the Procurement Officer.

²⁰ Public Procurement Regulatory Commission. Regulation No. 001/2022 on Public Procurement, Article 39.11.

In response to the Ministry of Infrastructure's decision, the consortium initially recommended for the contract filed an application for reconsideration, which the ministry rejected without reviewing or justifying any of the ten claims raised.

In doing so, the Ministry of Infrastructure, as the contracting authority, violated the PPL provisions²¹, which state that approved decisions must be justified and communicated in writing to the complainant and all interested parties, if any.

The consortium that filed an application for re-evaluation also made a request for access to official documents, seeking access to the compliance evidence of the bidder who was declared the winner. This request was denied by the contracting authority. The contracting authority, upon receiving a request for access to public documents, is obligated to provide access to any interested party, limiting only those documents for which a justified request has been made to deem them as business secrets, provided that these requests have been accepted as such by the contracting authority. This case has been appealed again to the Procurement Review Body (PRB).

21 Public Procurement Regulatory Commission. Regulation No. 001/2022 on Public Procurement, Article 108/A.

TENDER 5

Ministry of Internal Affairs – Emergency Supply of Vehicle Registration Plates - 214-23-12148-1-1-5

For several years, the Ministry of Internal Affairs (MIA) has been awarding contracts through open procedures and negotiated procedures without prior publication of a contract notice, to supply vehicle registration plates. From 2018 to 2023, six procurement activities were conducted: two through open procedures and four through negotiated procedures. What stands out about these contracts is that for the sixth consecutive year, the same economic operators have been awarded the contracts for the same activity. The total value of the contracts awarded by MIA to these operators amounts to approximately €5,364,148.42.

TABLE 5. Procurement Activities for Vehicle Registration Plates, Contract Value, and Winning Economic Operators

No.	Subject of Procurement	Procurement No.	Estimated Value	Winning EO	Contract Value	Contract Date
1	Supply of vehicle registration plates	214-22-12927-1-1-1	2,632,297.70	GOE G.S.G. Sh.P.K. & KIG d.d.	2,144,204.00	05.06.2024
2	Emergency supply of vehicle registration plates	214-23-12148-1-1-5	315,600.00	G.S.G. Sh.P.K. & KIG d.d. & KIG KGA d.o.o.	273,000.00	08.12.2023
3	Supply of vehicle registration plates - Retender	214-18-9663-1-1-1	1,685,009.28	GOE G.S.G. Sh.P.K. & KIG d.d. & KIG KGA d.o.o.	1,447,714.00	04.02.2021
4	Emergency supply of vehicle registration plates	214-20-746-1-1-5	339,541.24	GOE G.S.G. Sh.P.K. & KIG d.d. & KIG KGA d.o.o.	338 172,48	10.06.2020
5	Emergency supply of vehicle registration plates	214-19-5566-1-1-5	144,700.20	GOE G.S.G. Sh.P.K. & KIG d.d. & KIG KGA d.o.o.	137,545.58	07.08.2019
6	Emergency supply of vehicle registration plates	214-19-8348-1-1-5	247,000.00	GOE G.S.G. Sh.P.K. & KIG d.d. & KIG KGA d.o.o.	246,620.00	22.11.2019

The two open procedures ended up at the Procurement Review Body (PRB), where each activity conducted through open procedures received nine complaints. Despite the appeals being deemed valid by PRB, it still allowed the contracting authority (CA) to proceed with its decision due to the prolonged process.²² This represents a contradictory decision by the PRB review panel, as it cannot simultaneously uphold the rights of both the appealing economic operator and the contracting authority against which the appeal is filed.

Despite several complaints where the Procurement Review Body (PRB) requested a re-evaluation due to the approval of economic operators' complaints, the Contracting Authority (CA) ignored this decision and continued to contract the same economic operator. Eventually, PRB was forced to stop sending the case back for re-evaluation.

Procurement activity number one in Table 5 shows the activity linked to the latest contract for these supplies. This activity began in 2022, but due to continuous complaints to PRB, the contract was signed two years later, in June 2024. During the time this activity was with PRB, CA acted against the Public Procurement Law (PPL) by initiating a new activity with a negotiated procedure for the same case (activity number two in the table).

Filing a complaint to PRB obliges CA to suspend the procurement activity unless there is another decision from PRB.²³ This does not create a basis for using the negotiated procedure without publishing a contract notice. To use this procedure, the conditions outlined in Article 35 of the PPL must be met.

In the justification sent to the Public Procurement Regulatory Commission (PPRC) for using the negotiated procedure, CA based its action on Article 35.2.1 (i), which allows contracting through a negotiated procedure if “for objective and compelling technical or artistic reasons, the contract must be awarded to a specific economic operator,” and Article 35.2.1. (iii), which allows awarding the contract through a negotiated procedure if “extreme urgency brought about by objectively verifiable events that were not reasonably foreseeable by the concerned contracting authority... that if the circumstances creating the situation of extreme urgency can be attributed to the negligent or purposeful acts or omissions of a contracting authority, this provision may not be invoked.”

Initially, the first provision used as a legal basis does not apply in this case because there are no compelling technical or artistic circumstances requiring the contract to be awarded to a specific economic operator. The company in question does not have a monopoly or any exclusive right to supply license plates. The fact that this company has been supplying such items for several years does not make it a compelling reason for CA to invite only this company to negotiate, especially considering that nine offers were submitted in an open procedure, with 16 economic operators participating, some as sole bidders and some in consortiums.

Similarly, the second provision used as a legal basis does not apply because the submission of complaints to PRB and the suspension of the activity do not constitute extreme circumstances or events that could not have been foreseen by the contracting authority.

In this case, CA acted against the PPL, specifically Article 35, which outlines the circumstances that must exist to allow the use of this procedure. From Table 5, we see that this is not the first time this procedure has been used to procure license plates. There have been four such activities where the same group of economic operators was contracted. This further undermines CA's justification for using the negotiated procedure.

²² PRB decision number 227/24.

²³ Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement, Article 112.1.

The use of the negotiated procedure allows for the bypassing of certain rules set by the PPL, such as various time limits. However, it requires that principles, whenever possible, be respected, such as the principle of competition and equal treatment/non-discrimination.²⁴ Public procurement rules require inviting suitable economic operators to negotiations without the intent to discriminate against or favor any particular operator²⁵. While the rules do not limit the number of operators invited, it is recommended to invite at least three to ensure competition. Negotiations can be conducted with a single economic operator only when there is no alternative supplier.²⁶ Although this procedure should ideally not be used, if the legal requirements for a negotiated procedure are met, the Contracting Authority (CA) should always invite more than one operator, especially in cases like this where multiple suppliers can fulfill the contract. Based on CA's actions, there are suspicions of favoritism towards the company in question, which contradicts the Public Procurement Law (PPL).

In the tender dossier for the open activity, the Contracting Authority (CA) required that, to be eligible, the Economic Operator (EO) must demonstrate an annual turnover of €3,000,000.00, similar contracts worth no less than €500,000.00, a test report from an authorized laboratory or institute in accordance with ISO 7591, a valid copy of the ISO 7591 certificate, a valid copy of the ISO 9001 certificate, a valid copy of the ISO 14001 certificate, and a valid copy of the ISO 27001 certificate.

However, in the tender dossier for the negotiated procedure, these requirements were not presented, nor were the copies of the aforementioned ISO certificates requested. In this case, it was required that the tables be submitted according to the ISO 7591/1982 standard and that the quality be according to the ISO 19001, 14001, and 27001 standards, but the EO was not required to prove that they possessed and had valid these ISO certificates. Consequently, the EO did not submit any ISO certificates in their offer but merely declared that they met this requirement. This further strengthens the suspicion that the CA drafts specifications and acts in favor of the company in question so that it is awarded contracts.

24 Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement, Article 7.2.

25 Public Procurement Regulatory Commission. Regulation No. 001/2022 on Public Procurement, Article 50.6.

26 Public Procurement Regulatory Commission. Regulation No. 001/2022 on Public Procurement, Article 50.7.

TENDER 6

Ministry of Internal Affairs (MIA) - Supply of Microsoft licenses for IRK and education - 214-22-13725-1-1-5

On March 30, 2023, the MIA published the contract signing notice for the supply of Microsoft licenses for IRK and education worth €14,988,509.87, or 99.9% of the estimated contract value.

For this procurement activity, the MIA used the negotiated procedure without prior publication of a contract notice, inviting only one company to bid, with which it signed the contract. In the notice sent to the Public Procurement Regulatory Commission (PPRC), the MIA justified the use of this procedure, which limits free competition among economic operators, by stating that this activity, initially initiated with an open procedure, was canceled in 2022 and that re-initiating it through an open procedure “could produce the same situation as the canceled activity, not guaranteeing the contract award.”

As a second reason for limiting competition, the MIA stated that there are only two authorized Microsoft suppliers/partners for the Republic of Kosovo as Licensing Solution Providers, one based in Albania (InfoSoft System) and the other based in Serbia (Komtrejd Distribucija DOOEL). The notice stated that “considering the circumstances created in recent years between the two states, Kosovo and Serbia, and considering that the economic operator, in addition to supplying licensed software, will also provide technical support in solving problems that require access to important systems, which could endanger national security as foreseen by the applicable legislation, we recommend the Procurement Division to invite InfoSoft System as the authorized Microsoft supplier/partner for the Republic of Kosovo as a Licensing Solution Provider.”

First justification for using the negotiated procedure without prior publication of a contract notice

The first failure of this public procurement activity, mentioned as one of the two reasons for using the negotiated procedure without prior publication of a contract notice, occurred in April 2022, with the MIA publishing a decision stating that “a provision of the Public Procurement Law (PPL) required the cancellation of this activity.” In the additional information on the cancellation form, the MIA does not mention any specific provision of the PPL that required the cancellation of this procurement activity but bases this cancellation on the Law on General Administrative Procedure, specifically Article 135, which speaks about the deadline for resolving an administrative complaint.²⁷

²⁷ Law no. 05/L-031 on General Administrative Procedure.

The Public Procurement Law (PPL) outlines several reasons for which a procurement procedure can be canceled after the opening of bids. However, the Ministry of Internal Affairs (MIA) did not invoke any of these reasons nor provide factual grounds for such a cancellation, despite this being required by the Public Procurement Regulation.²⁸

During the open procedure for this tender, which had an estimated contract value of €12,000,000.00 (or €3,000,000.00 less than the re-tendered amount), four companies submitted bids. The MIA recommended awarding the contract to Infosoft System Sh.P.K.

TABLE 6. Bidding Companies in the Open Procedure and Their Bid Values

No.	Name of the economic operators	Total Bid Value
1.	Infosystem Sh.P.K.	10,295,243.94 Euros
2.	GEO Komtrjd Distribucija DOOEL; Comtrade System Integration d.o.o	9,26,994.60 euro
3.	GEO Botek Sh.P.K., Semos d.o.o, King ICT DOO; King ICT dooel	11,564,088.44 Euros
4.	Cactuss Sh.A	9,405,993.00 Euros

Regarding the administration of this procurement activity by the Ministry of Internal Affairs (MIA), seven different complaints were submitted to the Procurement Review Body (PRB). The PRB ruled in favor of two complaining economic operators (GEO Botek and Cactuss), canceling the contract award notice and returning the case for re-evaluation, as it found that the contracting authority had not acted in accordance with the requirements of the Tender Dossier and Article 57 of the Public Procurement Law (PPL).²⁹

Upon re-evaluation, the MIA again decided to award the contract to Infosystem Sh.P.K. This decision was also appealed by the two economic operators, but these appeals were dismissed on 12.08.2022 as they were submitted outside the review period. The PRB had been without a board until June 2022, preventing it from making a timely merit-based assessment of these requests.

The PPL, specifically Article 35, which outlines the cases when the negotiated procedure without prior publication of a contract notice can be used, does not address potential delays or cancellations of procurement activities due to complaints. It explicitly states that this provision cannot be used if the circumstances creating the extreme emergency can be attributed to negligent or intentional actions or omissions by the contracting authority. In this case, the delay in awarding the initial contract occurred because the MIA made an incorrect evaluation, as

²⁸ Public Procurement Regulatory Commission. Regulation No. 001/2022 on Public Procurement. Article 43 Point 1. In the event of a decision to cancel the procurement procedure, the Contracting Authority (CA) must immediately prepare and publish Form B58, "Notice on the Decision of the Contracting Authority," which outlines the factual reasons and legal basis for such a cancellation.

²⁹ Decision No. 55/21 of the Public Procurement Review Body, published on 23.03.2021.

confirmed by the PRB's decision to cancel the contract award and return the case for re-evaluation. The justification that re-initiating the process through an open procedure could produce the same situation as the canceled activity, which was blocked in the PRB due to the lack of a board, does not hold. At the time of opening this tender on 30.12.2022, the new PRB board had been operational for six months, so any potential complaints could have been resolved by this functional body within the legal deadlines.

Second justification for using the negotiated procedure without prior publication of a contract notice

The second justification provided by the MIA for limiting competition was that there are only two authorized Microsoft suppliers/partners for the Republic of Kosovo as Licensing Solution Providers (LSP), one based in Albania (Infosoft System Sh.P.K) and the other in Serbia (Komtrejd Distribucija DOOEL).

An LSP is authorized by Microsoft to sell licensed software to medium and large organizations.³⁰ This requirement, which the MIA used to justify the negotiated procedure without prior publication of a contract notice, was not a requirement in the open procedure for this tender, which was canceled due to delays in the PRB. In fact, the technical and/or professional capability requirements were completely changed, adding the LSP requirement and removing the manufacturer authorization for the territory of Kosovo and the evidence of successful completion of similar contracts.

TABLE 7. Differences in Technical and/or Professional Capability Requirements in the Tender Dossier for the Supply of Microsoft Licenses

First Tender with Open Procedure (2020)	Second tender using the negotiated procedure without prior publication of a contract notice (2022)
1. The Economic Operator (EO) or group of economic operators must possess Manufacturer Authorization (MAF) for the territory of the Republic of Kosovo for the products included in this contract.	The EO or group of economic operators must possess authorization from Microsoft to offer products and services under the Microsoft Enterprise Agreement and Microsoft Enterprise Subscription Agreement. The EO must have LSP (Licensing Solutions Partners) status covering the Republic of Kosovo for the products included in this contract.
The EO or group of economic operators must provide evidence of successfully completing at least three (3) similar projects, with at least one project involving the implementation of Microsoft licenses in the field of education (Contract Notice for the past three years).	N/A

30 Licensing options for service providers. Available at: <https://www.microsoft.com/en-us/licensing/licensing-programs/spla-program>

The PPL mandates that contracting authorities treat all economic operators equally and prohibits them from:
(i) requiring an economic operator to employ or use, or not employ or use, any specific person or company for executing any aspect of a public contract.

(ii) requiring an economic operator to supply or procure, or not supply or procure, products or services from any specific person, company, or geographical region.³¹

The modification of this criterion has eliminated free competition among economic operators, favoring only Infrosoft System Sh.P.K. The purpose of technical and professional criteria is to ensure a certain quality, but they should never be used to eliminate free competition, which leads to lower contract prices.

Cactus Sh.P.K., which had previously won the “Supply of Microsoft Licenses” framework contract twice with the Ministry of Internal Affairs (MIA) as a partner of SoftwerON (the largest global partner authorized for LSP supply by Microsoft), requested a review from the MIA. They claimed that the equality of economic operators was not being respected and that the use of the negotiated procedure without prior publication of a contract notice had hindered free competition and damaged the public budget by at least one million Euros.

The MIA rejected the review request, stating that the claims were unfounded as there was no valid evidence that the economic operator qualified as an “interested party” as defined in Article 4, paragraph 1.26 of the Public Procurement Law (PPL):

Interested party - *a person who can demonstrate a specific material interest in the outcome of a procurement activity conducted by a contracting authority and relating to a specific public contract or design contest including any person who has been or risks being harmed by an alleged infringement.*

Although this article does not specify how material interest can be demonstrated, being an economic operator that had at least twice contracted for the same service with the same contracting authority should qualify them as an interested party.

31 Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement. Article 7, point 5.

TENDER 7

MIA - Continuation of Works at the Academy of Justice (AD) – 214-23-6442-5-1-1

In June 2023, the Ministry of Internal Affairs (MIA) announced the continuation of works in the second phase at the Center for Evaluation and Standards (QVS) – Lot 1, and the continuation of works in the second phase at the Academy of Justice (AD) – Lot 2.

This procurement activity had an estimated contract value of €4,169,269.11 and a work duration of 24 months from the contract award.

On October 19, 2023, the MIA, as the contracting authority, published a notice canceling Lot 2 of this procurement activity. This decision was appealed by two economic operators, Astraplan Sh.P.K. and EBK Sh.P.K. Both review requests were rejected by the MIA as unfounded, prompting the operators to file complaints with the Procurement Review Body (PRB).

The PRB annulled the MIA's decision to cancel the activity and returned the case for re-evaluation. The PRB found that the contracting authority had not detailed which parts of Astraplan Sh.P.K.'s offer did not meet the criteria and had not precisely argued the reasons for elimination in both the initial rejection and the review request denial.

After the case was sent back for re-evaluation, the MIA awarded the contract to Astraplan, which had initially been eliminated because the list of projects in the field of high construction presented by the bidder totaled €2,231,885.00, whereas the Tender Dossier required a value of €3,000,000.00.

■ **TABLE 8.** Bidding Companies and Their Bid Values

No.	Name of the economic operators	Total Value
1.	GEO EBK Sh.P.K & Pro Ark Construction Sh.P.K & N.P.N Univers MI	2,070,800.92 Euros
2.	GEO Limit Project Sh.P.K., & Rinesa Sh.P.K.,	2,182,852.32 Euros
3.	GEO Astraplan Sh.P.K., & u Unique Sh.P.K & Inet Sh.P.K	2,177,777.77 Euros
4.	Nika Pro-Ing Sh.P.K., & Pro & Co Group Sh.P.K.,	2,168,903.73 Euros
5.	GEO AC Ing Sh.P.K., & Top Projekt Sh.P.K., & Decon Sh.P.K	1,971,761.80 Euros

After the case was sent back for re-evaluation, the Contracting Authority (CA) declared GEO EBK Sh.P.K. and others administratively non-responsive. This operator had submitted a bid that was €106,976.85 lower than the recommended bidder but was disqualified for not extending the tender insurance.

Given that this tender was delayed due to review requests and complaints to the Procurement Review Body (PRB), the Ministry of Internal Affairs (MIA) should have proactively requested all economic operators to extend the validity of their bids and tender securities.

The public procurement regulation stipulates that in justifiable and/or special situations where unexpected delays occur, implying that the evaluation process cannot be completed within the tender validity period due to complex technical details, the CA must request the EOs to extend the validity of their tenders. This request must be made in writing before the expiration date and uploaded to the system. It is crucial to verify that all bidders accept the request to extend the tender validity. In accordance with these circumstances, all bidders should also be required to extend the validity of their tender insurance.³²

The annulment of the MIA's decision by the PRB and the repeated appeals by economic operators after re-evaluation have resulted in the project works not commencing for more than a year from the date of the contract award announcement.

32 Public Procurement Regulatory Commission. Regulation 001/2022 on Public Procurement, Article 30.4.

TENDER 8

Municipality of Gjilan/Gnjilane – Renovation of Gjilan Stadium - 651- 23-13546-5-1-1

On December 8, 2023, the Municipality of Gjilan/Gnjilane published a contract notice for the renovation of the Gjilan City Stadium, with an estimated contract value of €15,000,000.00. This procurement activity was not included in the final annual procurement plan of the Municipality of Gjilan/Gnjilane, as the Ministry of Culture, Youth, and Sports (MCYS) handled the project planning procedures. According to a cooperation memorandum, the MCYS would secure the €15,000,000.00 funding, while the Municipality of Gjilan/Gnjilane would lead all legal procedures, including public procurement.

For this major project, the Municipality of Gjilan/Gnjilane, as the contracting authority, used an open procedure with the award criterion set as the lowest price.

The Municipality published the Tender Dossier, which was amended on December 29, 2023, following clarification requests and recommendations from the Public Procurement Regulatory Commission (PPRC). However, even after the publication of the revised Tender Dossier, economic operators submitted complaints regarding the required technical and/or professional capabilities.

Operators “LimitProject Sh.P.K,” “Kuota Sh.P.K,” and “Pro & Co Group Sh.P.K.” submitted individual review requests, which were collectively rejected by the Municipality of Gjilan/Gnjilane on January 12, 2024.

The rejection decision of the Municipality of Gjilan/Gnjilane stated only that the contracting authority found the claims of the economic operators to be unfounded, without providing any reasoning for the raised claims. This decision violated Article 108/A of the Public Procurement Law (PPL), which stipulates that rejections of review requests must be justified. In this case, the contracting authority grouped all claims together and rejected them as a package without providing justifications for any of them.

Contracting authorities are required to respond to each economic operator with a decision for each claim, providing written responses in accordance with the law to the complainants and all interested parties.

The Municipality of Gjilan/Gnjilane, specifically the Directorate for Culture and Sports, drafted several requirements that, after the rejection of the review requests, were appealed to the PRB. Specifically, for technical and professional capacities, the CA required a site manager – a graduate engineer or master of architecture, certified with FIDIC and certified for energy auditing in buildings according to DIN EN 16247, with a minimum of five years of work experience from the date of graduation.

The FIDIC certificate is a certification program from the International Federation of Consulting Engineers (FIDIC),³³ a global organization that sets standards and guidelines for consulting engineers. Although CAs have the right to set technical specifications by referring to international standards³⁴, the requirement for the site manager to hold this type of certification, without specifying the program type, combined with the fact that the same person, the site manager, was also required to be certified for energy auditing in buildings according to DIN EN 16247, constitutes a restriction of competition. In fact, the CA did not specify which FIDIC program was required, as this organization offers five different types of certifications (Certified Adjudicator, Certified Contract Manager, Certified Consulting Engineer, Certified Consulting Professional, and Certified Trainer)³⁵, making the certification requirement practically ineffective.

The Procurement Review Body (PRB) partially upheld the complaint from the economic operator “Pro & Co Group” Sh.P.K. regarding technical and professional capacities. The PRB found that the requirement set by the Municipality of Gjilan/Gnjilane, which mandated that the site manager be certified with both FIDIC and DIN EN 16247 standards, restricted free market competition and discriminated against potential economic operators who could apply for this procurement activity. The PRB requested the contracting authority to remove one of the required certifications from the Tender Dossier. The PRB’s decision also noted that the Public Procurement Regulatory Commission (PPRC) had raised concerns about this point in the Tender Dossier during their monitoring of the procurement activity.

Since the technical specifications were not drafted in a way that aligned with the procurement’s purpose and ensured the best access for all interested economic operators, the PRB decided to return this activity for improvement of the Tender Dossier. The Municipality of Gjilan/Gnjilane published the standard form for correcting errors in the published notices on March 5, 2024, three months after the initial contract notice.

With the improvement of the Tender Dossier, the Municipality extended the deadline for tender submissions to March 14, nine days after the publication of this notice. The Public Procurement Regulation³⁶ specifies that this deadline should be extended by at least 10 days to provide economic operators sufficient time to prepare their bids in response to changes in the Tender Dossier.

The Municipality of Gjilan/Gnjilane committed another violation of the Public Procurement Regulation when it published a clarification of the Tender Dossier on March 8. The Regulation³⁷ clearly states that contracting authorities must not disclose the identity of the economic operator requesting additional clarifications.

33 International Federation of Consulting Engineers. Available at <https://fidic.org/> (last accessed on 06.05.2024).

34 Public Procurement Regulatory Commission. Regulation No. 001/2022 on Public Procurement, Article 5.

35 FIDIC programmes. Available at <https://fcl.fidic.org/programmes/> (last accessed on 06.05.2024).

36 Public Procurement Regulatory Commission. Regulation No. 001/2022 on Public Procurement, Article 24.5

37 Public Procurement Regulatory Commission. Regulation No. 001/2022 on Public Procurement, Article 45.11.

In this procurement activity, three bidders participated as a group of economic operators:

TABLE 9. Bids from the economic operators participating in this tender

No.	Name of the economic operators	Total bid value
1.	GEO Pro & Co Group Sh.P.K.; Companya Eskavatori Sh.P.K.; Palma	14,404,578.30 Euros
2.	GEO N.N.P. Euro Construction; Beni Construction Sh.P.K.; 2T Sh.P.K.; 2A Group Sh.P.K.; Domid Sh.P.K.;	13,274,752.02 Euros
3.	GEO Demiri Gartenbau GmbH; El-Bau Sh.P.K.; Bujar Shabani B.I.; Kosova Asfalt Sh.P.K.; K.N.T.Sh. Teuta – M Sh.P.K	14,997,804.00 Euros

The bid opening record was published on March 14, 2024. The notice of the contracting authority's decision, in which the Municipality of Gjilan/Gnjilane recommended awarding the contract to the group of economic operators Demiri Gartenbau GmbH, El-Bau Sh.P.K., Bujar Shabani B.I., Kosova Asfalt Sh.P.K., and K.N.T.Sh. Teuta – M Sh.P.K., who bid €14,997,804.00 (99.98% of the estimated value), was published on May 31, 2024, 50 working days after the bid opening.

Contracting authorities are required to publish the decision notice within the shortest possible time and no later than 30 days from the bid opening. This period can be extended in exceptional and justified cases for an additional 20 days, but no such justification was published in the decision notice.

TENDER 9

Construction of the New ‘Bedri Pejani’ Science High School Building – 635-23-10843-5-1-1

On October 6, 2023, the Municipality of Pejë/Peć, as the contracting authority, published a contract notice titled “Construction of the New Bedri Pejani Science High School Building – re-tender,” with an estimated contract value of €3,070,665.98.

In this procurement activity, the Municipality of Pejë/Peć used an open procedure with the award criterion set as the most economically advantageous tender.

■ **TABLE 10.** Bids from the economic operators participating in this tender

No.	Name of the economic operator	Total bid value
1.	Group of Economic Operators DAJTING SH.P.K.; N.N.P. ATC COM SH.P.K	2,555,752.00 Euros
2.	Group of Economic Operators AAG PROJEKT; Shkempi Sh.p.k.; Enggroup SH.P.K.; N.N.SH. WORLD MEDIUM,	2,981,010.38 Euros
3.	Group of Economic Operators “Raf II sh.p.k.; Benita Company	3,030,380.00 Euros
4.	Group of Economic Operators “Menti Sh.p.k.; Asfalti SH.P.K.	2.641.692.50 euro
5.	Olti Trasing SH.P.K.	2.640.000.00 euro

On December 7, 2023, the Municipality of Pejë/Peć recommended awarding the contract to the group of economic operators “Dajting Sh.P.K.” and “NNP AT Com Sh.P.K.” This decision was appealed by the group of economic operators AAG Projekt, Shkempi Sh.P.K., Enggroup SH.P.K., and N.N.SH. World Medium through a request for reconsideration.

The Municipality of Pejë/Peć rejected this reconsideration request, failing to address the appeal claims. The rejection was based on the fact that the request was submitted only by the leader of the group, AAG Projekt, and was not signed and sealed by all group members.

In this case, the Municipality of Pejë/Peć violated the Public Procurement Regulation, which stipulates that group members authorize a lead partner to act on behalf of the group.³⁸ Since AAG Projekt was the group leader, the contracting authority also failed to address the appeal claims as required by the regulation. In addition to the incorrect justification and the failure to address the appeal claims, the rejection of the request for reconsideration is not recorded anywhere in the electronic procurement system, even though this is required by the Regulation.

“The decision on the rejection will be justified and published in the electronic procurement system by the Responsible Procurement Officer.”³⁹

Dissatisfied with the contracting authority’s decision, AAG Projekt filed a complaint with the Procurement Review Body (PRB), reiterating the same claims presented in the review request, which had been dismissed by the Municipality of Pejë/Peć.

The PRB did not rule on this complaint because both parties, AAG Projekt and the Municipality of Pejë/Peć, agreed with the review expert’s report, which recommended that the complaint be upheld, the contract award decision be annulled, and the case be sent back for re-evaluation.⁴⁰

Despite agreeing with the findings of the review expert’s report and returning the case for re-evaluation, the Municipality of Pejë/Peć, on February 9, published the notice of the contracting authority’s decision, again recommending the contract to the same group of economic operators. Against this decision, AAG Projekt submitted another review request, which was again rejected by the contracting authority.

The recommended group of economic operators, Dajting Sh.P.K. and N.N.P. ATC Com Sh.P.K., had submitted two cooperation agreements in their bid, forming a consortium. Initially, Dajting Sh.P.K. was designated as the project leader, authorized to sign all documents related to the tender. In the declaration between Dajting Sh.P.K. and ATC Com Sh.P.K., it was stated that the parties agreed that ATC Com Sh.P.K. would be the project leader.

During the re-evaluation, the Municipality of Pejë/Peć requested clarification from the consortium through the Standard Letter for Tender Clarification. This action by the Municipality of Pejë/Peć at this stage is prohibited, as contracting authorities are allowed to request written clarifications from a bidder on any aspect of their tender to facilitate examination, evaluation, or comparison of tenders, but no material changes or new aspects of the tender can be requested or offered.⁴¹

In the Tender Dossier, under economic and financial capacities, the Municipality of Pejë/Peć required sufficient capital for contract execution, available funds in the account, or a credit limit of €300,000.00. For this, a bank statement not older than six months was required, proving available funds in the bank or an approved credit line of the required amount.

The bidder recommended for the contract by the Municipality of Pejë/Peć submitted a document stating, “The bank will consider financial support based on its financial capacities and if the conditions set by the bank for the financing in question are met.” This statement did not meet the requirements set by the contracting authority and should not have been accepted.

38 Public Procurement Regulatory Commission. Regulation No. 001/2022 on Public Procurement, Article 26, point c.

39 Public Procurement Regulatory Commission. Regulation No. 001/2022 on Public Procurement, Article 62.2.

40 Decision of the Procurement Review Body. Decision No. 1032/23.

41 Official Gazette of the Republic of Kosovo. Law no. 04/L-042 on Public Procurement. Article 59 Paragraph 2.

On February 23, 2024, the economic operator AAG Projekt filed another complaint with the Procurement Review Body (PRB), reiterating the same claims, as the Municipality of Pejë/Peć, despite agreeing with the review expert's report during the first complaint, again recommended the contract to the group Dajting Sh.P.K. and N.N.P. ATC Com Sh.P.K., which the review expert had found to be non-compliant.

Regarding the second complaint to the PRB, the review panel decided that the Municipality of Pejë/Peć had not acted in accordance with the legal provisions for public procurement and the requirements of the Tender Dossier, which it had itself prepared. The panel upheld the claims of the complaining economic operator AAG Projekt and annulled the contract award notice.

On June 3, 2024, the Municipality of Pejë/Peć published the notice for the contract signing with the economic operator AAG Projekt, as the most economically advantageous tender.

Findings:

- 1** Despite the open procedure being under review by the Procurement Review Body (PRB), the Ministry of Innovation and Technology (MIET) conducted a negotiated procedure for the same matter and contracted the economic operator previously declared the winner in the open procedure.
- 2** MIET awarded a contract to an economic operator who did not meet the contracting authority's requirements because they bid lower than the amount needed to execute the contract.
- 3** MIET failed to identify and manage contract issues, not reporting or acting against the economic operator who failed to fulfill the contract for three consecutive months.
- 4** The Ministry of Environment and Spatial Planning (MESPI) contracted an economic operator who bid abnormally low prices without seeking clarifications from the operator.
- 5** For the sixth consecutive year, the Ministry of Internal Affairs (MIA) contracted the same group of economic operators for license plate supply, despite many aluminum businesses in Kosovo and the group having no exclusive rights to this supply.
- 6** MIA signed a single-source contract worth €14,988,509.87, inviting only one economic operator for negotiation, thus eliminating free competition among other economic operators.
- 7** The Ministry of Infrastructure formed a re-evaluation commission following the secretary's decision, violating the Public Procurement Law (PPL), as only the responsible procurement officer can make such a decision.

Recommendations:

- 1** MIET should not conduct two parallel procedures for the same matter, as such actions violate the PPL and lead to duplication of work/services/supplies.
- 2** MIET should not use the negotiated procedure without prior publication of a contract notice unless the legal conditions outlined in Article 35 of the PPL are met.
- 3** MESPI should conduct inter-partes procedures whenever there are suspicions of abnormally low prices to ensure the contract can be executed at those prices.
- 4** MIA should use the open procedure to ensure free competition among economic operators.
- 5** The Ministry of Infrastructure should not form re-evaluation commissions for tender procedures based on the secretary's decisions, as this is the responsibility of the responsible procurement officer.
- 6** The Municipality of Gjilan/Gnjilane should justify and argue decisions regarding review requests, responding to all claims raised by economic operators.

