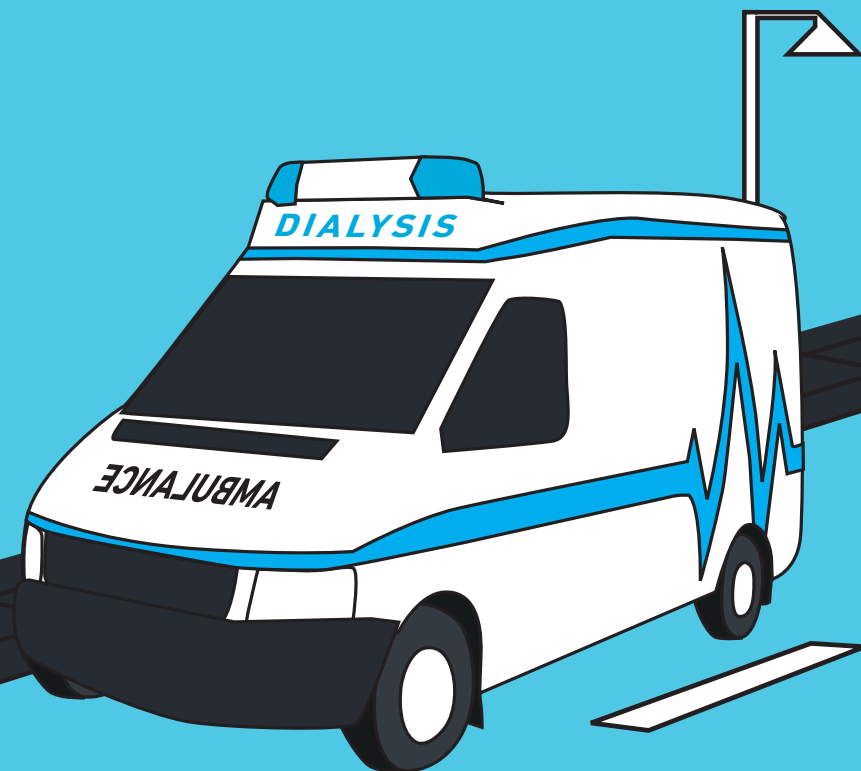


REPORT ON PUBLIC PROCUREMENT MONITORING AT THE MINISTRY OF HEALTH

SUPPLY OF CONSUMABLES FOR HAEMODIALYSIS

MARCH 2019



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Author: Liridona Behrami

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LIST OF ACRONYMS

CA	Contracting Authority
EU	European Union
TD	Tender Dossier
HIF	Health Insurance Fund
KDI	Kosovo Democratic Institute
RPPC	Regulatory Public Procurement Committee
ELM	Essential List of Medicines
LOT	A number of units of an article, a single article, or of a package of articles offered as an article
PPL	Public Procurement Law
MoH	Ministry of Health
WHO	World Health Organization
EO	Economic Operator
PRB	Procurement Review Board
UCCK	University Clinical Center of Kosovo
HUCSK	Hospital University Clinical Service of Kosovo
TI	Transparency International
AI	Administrative Instruction
PO	Procurement Officer



INTRODUCTION

Health is considered as one of the most important public services to citizens. Today, Kosovo's citizen, despite the fact that he pays taxes at different levels, in the absence of a public health service, he has to pay medicines and private health services from his own pocket. This raises the need for better management, reform and oversight of this sector.

In 2018, from the state budget of EUR 2.08 billion, only 3% (or EUR 65.5 million) was allocated for all health expenditures, including the supply of medicines¹. This policy in addition of being unfavourable, it is also considered paradoxical, for the fact that the citizens of Kosovo have the shortest life expectancy in the region, with an average of 71 years (compared to that of Albania - 78, Bosnia - 77, Macedonia - 76 and Serbia - 75)², adding also here the growing number of people affected by serious diseases due to living factors, such as food and air³.

For nearly 20 years, this primary sector for the well-being of citizens has been subject of rumours for many misuses and monopolies in supplies with medicines and consumables under the pretext of patents and equipment received on behalf of donations⁴. This was greatly evident in the haemodialysis sector, where the supply of consumables was made by the same Economic Operator at an unusually high price and using closed procedures with a justification that the equipment in use does not support other options⁵.

FOR THE COMPILATION OF THIS REPORT, KDI has analysed over 50 documents and publications, with over 300 pages. It had dozens of meetings and phone conversations, dozens of e-mail communications. It has organized a focus group with stakeholders of this field, has submitted 2 requests for access to public documents, etc.

Nevertheless, in 2018, the Ministry of Health had initiated several initiatives with the aim at improving the above-mentioned problems.

¹ Law No. 06/L-020 on the Budget of the Republic of Kosovo for year 2018, p. 18, accessible at: <https://mf.rks-gov.net/desk/inc/media/668E7D87-490C-4229-881B-E66CE614F4C1.pdf>

² World Bank, "World Development Indicators" Accessible at: <https://data.worldbank.org/indicator/SP.DYN.LE00.IN?locations=XK&view=chart>

³ The number of people affected by cancer increases, oncologists put the blame on food and air, KOHA, 27 May 2018, accessible at: <https://www.koha.net/arberi/95681/rritet-numri-i-te-prekurve-nga-kanceri-onkologet-gjejne-shkaktare-ushqimin-e-ajrin/>; The number of people affected by cancer increases, oncologists put the blame on food and air, KOHA, 27 May 2018, accessible at: <https://www.koha.net/arberi/95681/rritet-numri-i-te-prekurve-nga-kanceri-onkologet-gjejne-shkaktare-ushqimin-e-ajrin/>; The number of people affected by kidney diseases increases in Kosovo, KOHA 9 March 2017, accessible at: <https://www.koha.net/arberi/4624/ne-kosove-rritet-numri-i-personave-te-semure-nga-veshkat/>

⁴ Millions that were misused on expensive medicines, Zri Newspaper, 18 October 2018; accessible at: <https://zeri.info/ekonomia/221433/milionat-qe-u-keqperdoren-me-barnat-e-shtrenjta/>

⁵ The Ministry of Health violates the law upon awarding the tender worth of millions, accessible at: <https://www.koha.net/arberi/73328/ministria-e-shendetesise-shkel-ligjin-ne-tenderin-milionesh/>



In April 2018, MoH had begun the process of drafting the secondary legislation, which addressed the price ceilings of medicines⁶, the revision of the Essential List of Medicines⁷, and the opportunities for opening the tenders, which had historically have been conducted by single-source closed procedures, as well as initiated punitive proceedings for conflict of interest and misuse of official duty within the ministry⁸.

In order to measure the success and to present the challenges of these reform initiatives at the Ministry of Health, KDI has chosen to address in this report the tender for supply of consumables for haemodialysis.

This report analyses the procedures used for this supply, in order to assess observing of the public procurement basic principles, of the efficient, cost-effective, transparent and fair use of funds and public resources, whilst strictly complying with the procedures and essential conditions⁹.

6 DRAFT Administrative Instruction dated 02 May 2018, accessible at: <http://konsultimet.rks-gov.net/viewConsult.php?ConsultationID=40359>
7 Procedures started on 06 August 2018
8 MoH suspends the officials arrested for misusing over EUR 1 million, 16 November 2018, accessible at: <https://www.koha.net/arberi/129274/msh-ja-pezullon-zyrtaret-e-arrestuar-per-keqperdorim-te-mbi-1-milion-eurove/>
9 Law no. 04/L-042 on Public Procurement, as amended and supplemented by Law no. 04/L-237, Law no. 05/L-068 and the Law no. 05/L-092, Article 1, Purpose



EXECUTIVE SUMMARY

In Kosovo, every year, there are over 800 patients¹⁰ being treated in the department of haemodialysis, and the procedure performed in patients whose kidneys have temporarily or permanently stopped functioning, is of particular importance¹¹. Given the importance of this service, the costs and monopoly in the supply of consumables, for more than a decade this is the first time that the tender for this supply was open to the market. The following report indicates the benefits and challenges for this supply, for the procedures developed during 2018.

With the aim at increasing transparency and accountability in the public procurement process at the Ministry of Health (MoH), in October 2018, KDI has signed a cooperation agreement with this institution in order to enable the exchange of information and good practices that would contribute to the advancement of the public procurement process.

In this report, three Public Contracts, related to the supply of consumables for haemodialysis, were analysed, which were carried out during 2018. For the contracts analysed, the Ministry of Health had used one open procedure¹² and two negotiated procedures without publishing the contract notice¹³.

The public framework-contract with open procedure¹⁴ was characterized by multiple delays all the way to the award of contracts for all Lots. Although the contract notice was announced on 19 April 2018, due to complaints of Economic Operators¹⁵ in the PRB¹⁶, the last notice for signing the contract had occurred on 13 December 2018.¹⁷

As a consequence of the delays in awarding the contract for the supply of consumables for haemodialysis, the Ministry of Health, in order to meet the needs of the Department of Haemodialysis, had signed two Contracts¹⁸ through a negotiated procedure without publication¹⁹. The total value for these supplies was EUR 1,449,307.00, of which EUR 1,060,620.00 was the value of contracts signed for open procedure tender and EUR 388,687.00 for closed procedure supplies²⁰ (206-18-6370-115 dhe 206-18-8748-115).

During the analysis of these contracts, KDI found that, by the decision of the PRB²¹, for the first time after more than a decade, the supply of consumables for haemodialysis was being conducted by open procedures. This was a positive step towards meeting the principles of the Law on Public Procurement²².

MoH had started tendering procedures about two months before the expiry of the existing contract for this supply. Taking into account the mandatory timeframes for carrying out these procedures, the time foreseen for initiating the procurement was

10 Information received by the MoH on 21 November 2018

11 Acibadem SISTINA Hospital: "What is dialysis?", accessible at: <https://acibademsistina.mk/health/al/index.php/urologija-bubrezi/352-cfare-esh-te-dializa.html>

12 Tender with procurement number: 206-18-2512-111 (dated 19.04.2018)

13 Tenders with procurement number: 206-18-6370-115 (dated 03 September 2018) and 206-18-8748-115 (dated 12 November 2018)

14 Tender with procurement number: 206-18-2512-111

15 Complaints of Economic Operators (EOs) were related to the technical specifications and criteria of the Tender Dossier (TD) from the MoH and the decisions of the MoH for contracts awarding. Failure to properly prepare the technical specifications resulted with dissatisfaction of the EO who had submitted a complaint in the PRB regarding the specifications in TD.

16 Decision number 348/18 of the PRB, dated 17 August 2018, and Decision number 581/18, 606/18, dated 23 November 2018

17 Notice on Contract Signing, accessible in: https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=311438

18 Notice on Contract Award: https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=231506 dhe https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=288224

19 Pursuant to Law no. 04/L-042 on Public Procurement, as amended and supplemented by Law no. 04/L-237, Law no. 05/L-068 and Law no. 05/L-092, Article 35.2.1 (iii)

20 € 284,040.00 value of contract 206-18-6370-115 dated 03.09.2018 and; € 104,607.00 value of contract 206-18-8748-115 dated 12.11.2018

21 Decision number 504/17 of the PRB, dated 02.02.2018

22 Pursuant to Law no. 04/L-042 on Public Procurement, as amended and supplemented by Law no. 04/L-237, Law no. 05/L-068 and Law no. 05/L-092 (principles)



insufficient²³. The tendering process and awarding of this contract lasted eight months, respectively from 19 April 2018 to 13 December 2018. The tender in question resulted in two contracts, where the first contract²⁴ was for the supply of consumables for haemodialysis, namely for supply of liquid bicarbonate concentrate, liquid acid concentrate and A-V lines in the amount of EUR 284,040.00 and was signed on 3 September 2018, and the second contract²⁵ was for the supply of consumables for haemodialysis, namely for supply of liquid bicarbonate concentrate and A-V lines in the amount of EUR 104,607.00 and was signed on 12 November 2018. This open procedure had also resulted in the addition of two new products, concentrates of the same components but in liquid state (bicarbonate and acid concentrate), which according to the Quality Assurance Office of the Haemodialysis Centres in Kosovo²⁶, were easily admitted by the equipment in use. The introduction of these two products into use has resulted in a price saving of around 64% percent for bicarbonate concentrate, A-V lines, and disinfectant solution, while 97% in the price for the supply with acid concentrate.

The first emergency supply contract²⁷ faced some challenges in itself. Although it emerged as a need to meet the emergency needs of the Department of Haemodialysis for the treatment of patients, the procedure for awarding this contract did not exhaust all opportunities provided by the Law on Public Procurement in order to achieve the efficiency and economicity of using public money through these procedures. Due to delays in the open procedure, as a result of the complaints by the EO regarding the specifications of the tender²⁸, the deadline for the opening of bids was set for 03 September 2018. The first contract negotiated without publication²⁹, was signed on 03 September 2018. This contract was signed with a new EO in the public market for the supply of liquid bicarbonate concentrate, liquid acid concentrates and A-V lines. The Law on Public Procurement for emergency procedures³⁰ foresees the possibility for the Contracting Authority to negotiate with one or more Economic Operators³¹. Since the bids received in response to the open procedure were not opened until 7 September 2018, from the documents received by the MoH, KDI failed to prove the knowledge of MoH regarding the execution capacities and qualifications of a new EO in supplying the abovementioned products, and reasons for excluding the performing EO from this procedure. Notwithstanding the abovementioned challenges, due to initiatives to quench the monopoly in the supply of consumables for haemodialysis, this contract saves to consumers an average of 36% of historically paid unit prices for bicarbonate concentrates and A-V lines, and an average of 95 % for supply with acid concentrate.

Also, due to lack of knowledge on the offered prices in response to the open procedure, MoH had used, as the basis for negotiation, the prices of the pre-contract (contract concluded with the EO, which for more than ten years had supplied the Department of Haemodialysis with these products), which after analysing the prices, KDI noticed that the contracted prices in the emergency supply contract were up to 209% (EUR 229,039.60) higher than the prices that the same EO had offered in the open procedure only three months later.

23 Deadlines for tendering procedures based on possible values and complaints see page 21, table of legal deadlines.
 24 Contract with number: 206-18-6370-115
 25 Contract with number: 206-18-8748-115
 26 Document received by MoH: Communication via e-mail dated 05 September 2018 by the National Quality Coordinator of the Haemodialysis Centres of Kosovo.
 27 Contract with number: 206-18-6370-115
 28 Tender with procurement number: 206-18-2512-111 (open procedure)
 29 Contract with number: 206-18-6370-115
 30 Law no. 04/L-042 on Public Procurement, as amended and supplemented by Law no. 04/L-237, Law no. 05/L-068 and the Law no. 05/L-092, Article 35.2.1 (iii)
 31 Rules and Operational Guidelines for Public Procurement, Article 50 Cases of extreme emergency: 50.2 For cases of extreme emergency – the possibility exists to use negotiated procedure without publication of a contract notice, Article 35.2.1(iii) of the PPL. This procedure may be conducted with one or more Economic Operators selected by the contracting authority. There are no minimum time limits connected with the conduct of such procedure.





METHODOLOGY

For the compilation of this report, quantitative and qualitative analyses were used to present the situation in the most correct way possible regarding procurement activities for the supply of consumables for haemodialysis at the MoH. This research aims to measure the implementation of public procurement legislation by the MoH, through reviewing of the contract award process for the supply of medical consumables for haemodialysis for 2018.

Depending on which procurement phase were the contracts at the time when the survey was conducted, in general, procurement phases in each of the selected contracts were analysed in terms of needs assessment and planning, preparation of technical specifications, evaluation of bids and contract awarding. In addition, the level of transparency, proportionality, equal treatment and non-discrimination of Economic Operators, as well as complaints filed with the Procurement Review Board (PRB) and decisions taken by this board were also analysed.

This research and monitoring methodology in public procurement is based on the guidelines and practices of organizations - Transparency International branches across different countries.



TRANSPARENCY

On 03 October 2018, the Minister of Health, Mr. Uran Ismajli, signed a memorandum of cooperation with KDI, whereby committed to transparency and cooperation during the monitoring of the public procurement process in this institution.

By 11 December 2018, relating to the contracts in question, KDI has sent two requests for access to public documents, one at the procurement division and one at the HUCSK.

In both cases, KDI has received all requested documents and within the legal deadline of seven days⁴⁰. A large number of documents have been obtained from the official website of the Ministry of Health and the e-procurement platform. MoH officials responded to numerous KDI questions by e-mail, telephone and in meetings carried out with them.

On 03 September 2018, the amendment in public procurement legislation⁴¹ made the publication of contracts in the e-Procurement platform obligatory for all Contracting Authorities. During the analysis of the contracts selected for this report, KDI found that the contracts awarded in response to the open procedure tender⁴² as well as the first negotiated contract without publication⁴³ were not published in e-Procurement two days after their signing⁴⁴. Due to the concern raised by KDI, the Ministry of Health, on 19 February 2019⁴⁵, has published these contracts.

⁴⁰ Law no. 03/L-215 on Access to Public Documents <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2724>

⁴¹ A01 AMENDING/SUPPLEMENTING of Rules and Operational Guidelines for Public Procurement, 03.09.2018, Article 22, paragraph f. Contract signing notice, item 4: In addition to the contract signing notice, the CA should publish the signed contract. The publication shall be done in the e-procurement platform, as an additional document through the function "add a new document". The term contract refers to the Contract, the General Conditions of Contract, the Special Conditions of the Contract, and the Pricing List.

⁴² Contract with procurement number: 206-18-2512-111, contract for Lot 5 and contract for Lot 1,2,3,4 dhe 6

⁴³ Contract with procurement number: 206-18-6370-115

⁴⁴ Rules and Operational Guidelines for Public Procurement, Neni 22, Publications; paragraph f, Contract signing notice, item 1: If the contracting authority has signed a public contract using open, restricted, competitive negotiated, negotiated without publication, price quotation procedures, or minimal value procedures within two (2) days after signing the PO prepares a contract signing notice regardless of the type or of the value.

⁴⁵ e-Procurement: http://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=143179;



ANALYSIS OF CONTRACTS

1. PRE-TENDER PHASE

a. PLANNING

On 20 December 2017, MoH had signed the contract on the tendering procedures without publication⁴⁶, with the aim to supply Departments of Haemodialysis with consumables for the treatment of patients. Historically, for almost 20 years, these materials were supplied by a single Economic Operator, with a justification that the equipment received as a donation from the clinic does not support other materials. However, on 12 December 2017, an Economic Operator had filed a complaint⁴⁷ with the PRB regarding the closed procedure, with the reasoning that there are several different options of world-known consumables in the market that can be used for the same function. In the decision of PRB, dated 02 February 2018⁴⁸, from the Ministry of Health was required that, due to the urgency, this be the last tender with closed procedure, until the open procedures are conducted.

b. MARKET RESEARCH

The decision of the PRB, dated 02 February 2018, is one of the main bases of the market research, where after this decision the tender was opened to the market. Moreover, according to the Tender Dossier (TD), MoH had conducted market research and professionals of this field and concluded that there was an extensive competition for the supply concerned⁴⁹.

c. TENDER DOSSIER

Tender dossier "Supply of Consumables for Haemodialysis from the Essential List for HIF", with procurement number 206-18-2512-1-1-1, was prepared on 15 April 2018 and contained the request for the supply of the following:

⁴⁶ Tender with procurement number: 206/17/5226/115
⁴⁷ PRB, Complaint number: 504/17 dated 12 December 2017
⁴⁸ Decision number 504/17 of PRB dated 02 February 2018
⁴⁹ Tender with procurement number: 206-18-2512-1-1-1, Tender Dossier, p. 16: "Deadline for submission is shortened": Reasoning: "Given the importance and sensitivity of these haemodialysis articles, it was necessary to conduct a preliminary research on the practical aspect of the functioning of haemodialysis as a sector in order to find the solution and opportunity for a wider competition, where the professionals of this field have conducted a research on the functioning in the region".



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Pjesa A: Tender procedures containing instructions how to prepare tenders;

Part B: Draft Contract containing the contractual terms which must be accepted by the tenderer awarded the contract; and

Part C: The Tender Form, i.e. documents that tenderers must submit.

The total value of the tender was EUR 2,119,898.00, for a contract with duration of 12 months, and it was divided into six Lots as follows:

#	Estimated value in EURO
LOT 1	€ 682,528.00
LOT 2	€ 359,424.00
LOT 3	€ 39,936.00
LOT 4	€ 780,000.00
LOT 5	€ 180,000.00
LOT 6	€ 78,000.00
Estimated value	€ 2,119,888.00

Based on the reasoning of deadlines for supply⁵⁰, the regular deadline of 40 days for the submission/receipt of bids has been reduced to 20 days.



The Ministry of Health had requested assurance of the tender for 120 months in the following amounts.

Lot 1 20,000.00 €	Lot 2 10,000.00 €	Lot 3 1,000.00 €
Lot 4 20,000.00 €	Lot 5 5,000.00 €	Lot 6 2,000.00 €

⁵⁰ Tender with Procurement Number: 206-18-2512-1-1-1, Tender Dossier, p. 16; "The deadline for the submission is shortened": Answer YES, Reasoning: "Potential EO recognize this field and are prepared in advance for this activity taking into account the preliminary proceeding that has been made and since it is very important for CA to contract the necessary material as soon as possible, shortening deadline for tendering in 20 days is quite reasonable and it does not restrict the competition".

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Indicative amounts for the 12 month period were:

No. Lot	Specific name	Dose/Unit	Annual orientation amount Secondary/Tertiary level Allowed discrepancies +/- 30%
LOT 1	- Bicarbonate concentrates powder in 650gr bags Compatible to the existing equipment/system 4008S+. or	650 g	156,000 pieces
	- Liquid bicarbonate concentrates 8.4% in Canisters Compatible to the existing equipment/system 4008S.	canister	780,000 litres
LOT 2	- Dry acid concentrates Composition of ready to use dialysis fluid Na mmol/L=138-140 Ca mmol/L=1.25-1.50 K mmol/L=2 Glucoze-1gr/L Acetate mmol/L=3-6 (provide 5-liter canisters for one time use) or	litres of conc/box 100	702,000 litres
	- Liquid acid concentrate with the following contents: Na mmol/L=138-140 Ca mmol/L=1.25-1.50 Kmmol/L=2 Glucoze-1gr/L Acetati mmol/L=3-6	canister	702,000 litres
LOT 3	- Dry acid concentrates Composition of ready to use dialysis fluid Na mmol/L=138-140 Ca mmol/L=1.25-1.50 Kmmol/L=3 Glucoze-0 gr/L Acetate mmol/L=3-6 (provide 5-liter canisters for one time use) or	litres of conc/box	78,000 litres
	- Liquid acid concentrates with the following contents: Na mmol/L=138-140 Ca mmol/L=1.25-1.50 K mmol/L=3 Glucoze-0gr/L Acetate mmol/L=3-6	100 canister	78,000 litres
LOT 4	- A-V lines compatible to the equipment/system The diameter of the venous compartment 18-22 mm, Segment of the pump with diameter 8 mm and length over 32 cm Compatible to the existing equipment/system 4008S.	pieces	156,000 pieces
LOT 5	- Polysulfone fluid filter, compatible with the machinen (endotoxine retention capacity > 1.000.000, effective surface area 2.2 m2	pieces	1,500 pieces
LOT 6	- Disinfectant solution pfor 20% citric acid-based haemodialysis equipment/system maximum packing 10L (hot disinfection)	canister	15,600 litres
	- Disinfectant solution for peracetic acid-based haemodialysis equipment/system with hydrogen peroxide, with maximum concentration of 4%, maximum packing 5L (cold disinfection) or	canister	15,600 litres
	- Disinfectant solution for 10% sodium hypochlorite-based haemodialysis equipment / system. with maximum packing of 10L (cold disinfection).	canister	15,600 litres

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(b)(1)(C)(b)(7)(D)(b)(7)(F)

2. TENDERING

For the purpose of supplying the Department of Haemodialysis with the necessary material for the treatment of patients, the Ministry of Health, on 19 April 2018, published a Contract Notice⁵¹, number 206-18-2512-1-1-1. The estimated value of this contract was EUR 2,119,898.00, which was divided into 6 Lots for a period of 12 months. The deadline for submitting/accepting bids was 10 July 2018, while explanations regarding the Tender Dossier were to be provided by 29.06.2018 at 12:00.

Against the contract notice, regarding this procurement activity, one Economic Operator has submitted a request to the Contracting Authority (CA) for reviewing. The CA did not respond to the complaining EO within the mandatory deadline and did not postpone the deadline for bidding, so the EO, as a dissatisfied party, on 16 July 2018, filed a complaint to the PRB for Lot 1 and 6, expressing his complaints regarding the content of the technical specifications in the tender dossier, claiming that the tender dossier for the supply of consumables for haemodialysis creates grounds for abuse by companies that offer liquid concentrates, claiming also that technical specifications are discriminatory, with medical errors that endanger the health of the patients. The claimant requested changing of technical specifications for Lot 1, because two different products were offered as equivalent products. These two products differ from one another, both in quality and quantity specifications, and are not comparable, therefore should be separate and not treated as equivalent products. According to the opinion of the technical review expert, who was engaged in the claim assessment process, the Contracting Authority shall choose one type of bicarbonate product, either powder or liquid.

The review panel, after reviewing the case file, complaining claims and recommendations of the PRB review experts, issued a decision that the CA shall choose one type of bicarbonate product, as regards to Lot 1, and the EO shall bid with only one type of bicarbonate product.⁵²

Following the decision of the PRB, CA has modified the Tender Dossier to include clarification that the EO may bid with only one type of bicarbonate product (as powder or liquid). Also, following this clarification, the date for the receipt of bids was postponed until 03.09.2018.

3. TENDER EVALUATION AND CONTRACT AWARD

In response to the open tender for 6 Lots, the Ministry of Health had received 6 bids from different economic operators, after the delays and postponing of the deadline due to the filed complaints, requesting to change the tender specifications, the bid opening was done on 03.09.2018. On 31 August 2018, the MoH had sent a notice to all the competitive EOs, that the bid opening would take place on 07 September 2018, due to the complaint of an EO submitted to the CA requesting tender reviewing⁵³. The contract award notices were published on 22 October 2018 for Lot 5 and on 27 November 2018 for Lots 1,2,3,4 and 6.

Under contract award notice of 22 October 2018, Lot 5 was awarded to the EO Meditech, while according to the notice of 27 November, the winner of Lots 1, 2, 3, 4 and 6 was OE Pharma Leader. Two applying EOs have filed complaints to the PRB for

51 E- Procurement: https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=143179

52 Decision of the PRB, number 348/18, dated 17 August 2018

53 Documents received by MoH: Request of the EO submitted to the CA for tender review, dated 27 August 2018, and Decision of CA of 4 September 2018

(b)(1)(C)(b)(7)(D)(b)(7)(F)

Lot 1, 2, 3, 4 and Lot 6, claiming that the MoH had violated the Law on Public Procurement,⁵⁴ respectively Articles 7⁵⁵, 27⁵⁶, 59⁵⁷, 66⁵⁸, 69⁵⁹ and 108⁶⁰ and selected an irresponsible EO as a winner.

The same Economic Operators filed their complaints to the first instance, namely with the Ministry of Health, which after reviewing the complaints, they considered the claims as ungrounded. In one of the decisions (No. 05-6796, dated 18.10.2018), MoH rejected as ungrounded the claim of the EO, who was claiming that the recommended EO for contract award by MoH did not meet the requirements of the Tender Dossier (TD). Specifically, in his claim this EO claimed that the bidding products of the recommended EO are not products with specifications as requested in the TD.

The MoH's reasoning for rejecting this claim, among other things, was that even in the prior contract these products were supplied by the same EO, which were used in Haemodialysis Centres and operated in order⁶¹. MoH, in this case, referred to the Emergency Supply Contract that was awarded when the claims related to regularity of the process were being reviewed by the PRB.

Following the decision by the MoH, two EOs have filed complaints with the PRB, decisions⁶² of which were published on 23 November 2018.

According to the second decision on 23 November 2018, the PRB⁶³ took a decision on two complaints of the EO (of 19.10.2018 and 29.10.2018) and qualified them as partly grounded, and decided to remain in power the contract award notice by the Contracting Authority. Following this decision, MoH on 13 December 2018 proceeded with the signing of the contract for lots 1,2,3,4 and 6.

The contract for Lot 5 had no complaints, and was signed on 31 October 2018.

The breaking of the monopoly that existed for nearly 20 years resulted in saving of around 80% of the value these products were paid before and prices of the contract conducted through an open procedure.

LOT	Contract No. 5226	Amount	Unit	Price for packing	Contract No.	Amount	Unit	Total price	Difference in price	Difference %
2512	Bicarbonate concentrate powder	60,940.00	650gr	€ 5.60	Liquid bicarbonate concentrates	156,000	canister 5L	€ 1.65	€ 3.95	70.54%
%	Dry acid concentrates	2,520.00	gr	€ 65.00	Liquid acid concentrates	156,000	canister 5L	€ 1.70	€ 63.30	97.38%
4	A-V lines	59,750.00	piece	€ 5.00	A-V lines	156,000	piece	€ 2.09	€ 2.91	58.20%
6	Disinfectant solution	1,358	litre	€ 25.00	Disinfectant solution	15,600	litre	€ 2.05	€ 22.95	91.80%

54 Law No. 04/L-042 on Public Procurement of the Republic of Kosovo, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092 (<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772>)

55 Documents received by MoH: Request of the EO submitted to the CA for tender review, dated 27 August 2018, and Decision of CA of 4 September 2018

56 Law No. 04/L-042 on Public Procurement, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092, Article 27, Tender Dossier

57 Law No. 04/L-042 on Public Procurement, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092, Article 59, Examination, Evaluation and Comparison of Tenders

58 Law No. 04/L-042 on Public Procurement, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092, Article 66, Professional Suitability

59 Law No. 04/L-042 on Public Procurement, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092, Article 69 Technical and/or Professional Capability

60 Law No. 04/L-042 on Public Procurement, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092, Article 108, Confidentiality

61 Decision of 18.10.2018 with No. 05-6796, (e-Procurement, Tender Dossier with procurement number: 260-18-2512-1-1-1)

62 62 Decision No.348 / 18, Decision No. 581/18,606/18 (<https://oshp.rks-gov.net/?cid=1,71>)

63 63 Decision Number 581/18, 606/18 Available in: file:///C:/Users/Asus/OneDrive%20-%20Transparency%20International/Desktop/Ankesat%20dhe%20vendimet%20Hemodializes/581-606-18vend%20perfundimtare.pdf



CONTRACT WITH A NEGOTIATED PROCEDURE WITHOUT PUBLICATION OF THE CONTRACT NOTICE WITH PROCUREMENT NUMBER 206-18-6370-115

1. PRE-TENDERING PHASE

In the notice of the Ministry of Health sent to the RPPC are clarified the reasons for the use of closed tendering procedures, according to which the delays in the review of complaints by PRB, respectively signing of the contract through a regular procedure for Lots 1, 2, 3, 4, 5 and 6 for the supply of medical consumables for hemodialysis⁶⁴ had threatened the Haemodialysis Centers to run out of these products, and consequently to jeopardise vital services for patients treated in Haemodialysis. Therefore, in order to meet the urgent needs, a negotiated procurement procedure has been initiated.

On 31 August 2018, the MoH initiated the tender for Emergency Supply of Medical Consumables from the Essential List of Medicines for Haemodialysis for HIF (Health Insurance Fund) with Procurement No. 206-18-6370-1-1-5, according to the negotiated procedure, without publication of the contract notice. The tender was divided according to the products that were planned to be supplied, in three Lots (Lot 1 - Liquid bicarbonate concentrates, Lot 2- Liquid acid concentrates and Lot 3- A-V Lines).

In the absence of sufficient stocks in pharmacies of general hospitals, MoH was obliged to use this procedure, which according to the Law on Public Procurement⁶⁵ applies to cases of extreme emergencies. According to the PPL, the extreme emergency should be used in cases where the situation cannot be predicted.

The legal deadlines for the conduct of procurement procedures are approximately 168 days from the announcement, addressing of complaints and tendering and pre-tendering decisions, until the contract award.

⁶⁴ Notice to the Regulatory Public Procurement Committee, dated 27 August 2018

⁶⁵ Article 35.2.1 (iii) of the Law on Public Procurement



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Approximate calendar:

Phase	Description	Unit (day)
	Bidding deadline (accelerated procedure)	20
	Complaint with the CA for TD	5
Contract Notice	CA's Decision	5
	Complaint with the PRB	10
	PRB's Decision	34
	Beginning of the evaluation process after opening the bids	5
	Deadline for Examination, Evaluation and Comparison of Tenders	30
	Request for additional documentation	5
Contract Award Notice	Complaint with the CA for contract award	5
	CA's Decision	5
	Complaint with the PRB	10
	PRB's Decision	34
Approximate total		168

To avoid the need to use emergency procedures, MoH in the future should have planned to start the tendering procedures at least in accordance with the abovementioned deadlines (6 months before the contract expiry). In the concrete case, even if the tendering open procedure started immediately after the PRB's decision, dated 02 February 2018, again at the expense of the complaints and reviewing, there would not be sufficient time for the award of a new contract before the expiration of the existing contract.

2. TENDERING

According to rules of the PPL⁶⁶, during the selection of EOs for contract award, in cases where the open procedure cannot be used, and where the negotiated procedure is necessary, CA should make sure that a competitive process is carried out, to receive an optimal number of bids from as many EOs as possible. CA should investigate the market for potential suppliers and conclude contracts with prices that should not be higher than market prices. Before the selection of the economic operator for contract award, the CA should invite for negotiation EOs who provide these supplies in order to obtain the same prices with market prices. The MoH did not act in accordance with these instructions, inviting for negotiation only one EO for all three Lots, and not using market competition, thus eliminating the possibility of providing the most affordable prices.

⁶⁶ 67 Rules and Operational Guidelines for Public Procurement, Point 52.6

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3. TENDER EVALUATION AND CONTRACT AWARD

On 3 September 2018, the MoH decided to award the contract to a single Economic Operator for all the tree Lots, in the total amount of EUR 284,040.00.

At the time of the award of this contract through emergency procedures, due to delays as a result of complaints with the PRB, the MoH as negotiating basis took the prices from the existing contract with procurement No. 206-17-5226-115, dated 20 December 2017.

Since bids received in response to the open procedure were not opened until 07 September 2018, from the documents received by the MoH, KDI failed to prove the knowledge of MoH regarding the delivering capacities and qualifications of a new EO in supplying the abovementioned products, as well as the reasons for excluding other EOs from this emergency procedure.

Notwithstanding the abovementioned challenges, this contract, because of the initiatives to break the monopoly in the supply of consumables for Haemodialysis, to citizen was saved on average 7% of the historically paid unit prices for bicarbonate concentrates and A-V lines, and around 95% for the supply of acid concentrate.

Contract No. 5226	Amount	Unit (dose)	price per packing	Contract Nr. 6370	Amount	Unit (dose)	price per packing	Difference in price	%
Bicarbonate concentrate powder	60,940	650gr	5.60€	Liquid bicarbonate concentrates	780,000	canister 5L	5.10€	0.5€	9%
Dry acid concentrates	2520	gr	65.00€	Liquid acid concentrates	780,000	canister 5L	3.30€	61.7€	95%
A-V lines	59,750	cop	5.00€	A-V lines	156,000	piece	4.80€	0.2€	4%

Among the three Lots tendered for this contract, the MoH was also supplied with liquid acid concentrate, which is not part of the Essential List of Medicines. The total contracted value of this product is EUR 62,700.00.

Further, although the tender was divided into three Lots, these Lots were included as three components of a single contract, where under the legislation on public procurement, the total value of all Lots is the estimated value of the contract⁶⁷. Based on this legal definition, according to the same legislation, the Ministry of Health should not have considered the value of the contract as a separate value as forecasted by Lot⁶⁸; whereby this contract should have been signed by the Chief Administrative Officer,⁶⁹ authorized for the signing of high value contracts⁷⁰, and not only by the Responsible Procurement Officer⁷¹.

67 68 Rules and Operational Guidelines for Public Procurement, Article 13, Estimating the value and classifying the contract; If the procurement activity is divided into several Lots, and each one is a subject of a separate contract, the aggregate estimated value of all such Lots shall be the "estimated contract value".

68 69 Rules and Operational Guidelines for Public Procurement, Article 13, Estimating the value and classifying the contract; 13.4..."In any case, the division into lots does not imply division of contract value or avoidance from the value thresholds, since it consist of the total value of all lots".

69 70 Rules and Operational Guidelines for Public Procurement, Article 9, Functions of the Chief Administrative Officer; paragraph 9.1.h. of signing large value contracts (From this rule are exempted the President, the President of the Assembly, the Prime Minister and the Minister of Finance when the Government or the Ministry of Finance designates CPA to conduct a procurement activity, pursuant Article 95 of the PPL);

70 71 Rules and Operational Guidelines for Public Procurement, Article 13 Forecasting Value and Classification of Contract; 13.14 The thresholds for different procurement activities are as follows: From the table: Supply - Large value ≥ EUR 125,000. The total value of the contract 206-18-6370-115 is EUR 284,040.00.

71 Law No.04/L-042 on Public Procurement, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092, Article 26, paragraph 2: "besides the signature of the responsible procurement officer as mentioned in paragraph 1 of this Article contracts of large value of contracting authorities shall also be signed on behalf of such contracting authority by the Chief Administrative Officer, as well as the Minister or other relevant public authority concerned".





CONTRACT WITH A NEGOTIATED PROCEDURE WITHOUT PUBLICATION OF THE CONTRACT NOTICE WITH PROCUREMENT NUMBER 206-18-8748-115

1. PRE-TENDERING PHASE

Same as the previous contract, this emerged as a need for emergency supply caused by the delay in awarding the contract through open procedure⁷².

2. TENDERING

Pr dallim nga kontrata emergjente paraprake me numr 206-18-6370-115 , pr kontratn e dyt, MSH u kishte drguar krkes pr ofert gjasht kompanive. Nga kto kompani vetm OE performues n kontratn paraprake kishte dorzuar ofert. Gjat intervistave t KDI-s me OE, t mbajtura me datn 29 nntor dhe 7 dhjetor 2018, OE-t ishin deklaruar se afati pr ofertim ishte shum i shkurtr (m pak se 4 or pune), pr produkte q nuk jan t konsumit t gjer.

3. TENDER EVALUATION AND CONTRACT AWARD

The Ministry of Health had also entered into a contract with negotiated procedure without publishing the contract notice with procurement No. 206-18-8748-115. This contract was signed on 12 November 2018 in the amount of EUR 104,607.00. In this case also, the Ministry of Health has awarded the contract to the EO who implemented the previous emergency contract.

Although the contracted prices in this contract were approximately 55% higher than those offered by the same EO through open procedure (attributed to the quantities and deadlines for delivery), these prices were lower than the previous emergency supply contract, for approximately 12%.

⁷² Contract with procurement number: 206-18-2512-1-1-1



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1. Comparison with the prices of the same products from the contract with procurement number 206-18-2512-1-1-1, through an open procedure:

Description	Price of the second negotiated contract	Price of contract through open procedure	Difference in price	Difference in value
Liquid bicarbonate concentrates	0.9	0.33	0.57	63%
A-V lines	4.2	2.09	2.11	50%

2. Comparison with the prices of the same products from the contract with procurement number 206-18-6370-115, through a negotiated procedure without publication:

Description	Price of the second negotiated contract	Price of contract through open procedure	Difference in price	Difference in value
Liquid bicarbonate concentrates	1.02€	0.9€	0.12€	12%
A-V lines	4.8€	4.2€	0.6€	13%

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CONCLUSIONS

- By breaking the nearly 20-year monopoly of supply of consumables for Haemodialysis, MoH saved nearly 80% of the price that had been paid before for the 5 out of 6 tendered Lots.
- Signing of contracts for the supply of consumables for Haemodialysis was delayed for over 8 months from the date of publication of the contract notice, as a result of claims filed by the economic operators. Given the legal deadlines for each procedure, including claims, the MoH had not started the tendering process at a sufficient time to avoid emergency needs.
- In the first emergency supply contract with procurement No. 206-18-6370-115, the Ministry of Health did not use all provisions allowed by law to increase the competition and to ensure the best price by stimulating market competition, but by entering in a direct contract with one Economic Operator.
- The contracted prices in the first emergency supply contract, with procurement number 206-18-6370-115, were about 12% higher than the prices of the following emergency supply contract, with procurement number 206-18-8748-115, with the same Economic Operator, for smaller amounts and approximate delivery deadlines.
- The first emergency supply contract with procurement number 206-18-6370-115, the total value of which was EUR 284,040.00, was signed only by the Procurement Officer in charge.
- For the second emergency supply contract, MoH had provided better product prices and invited 6 Economic Operators. Nevertheless, the response time was very short, which resulted in bidding only by the EO who implemented the first emergency supply contract with procurement number 206-18-6370-115.
- After analysing and comparing the contract awarded based on an open procedure tendering, KDI noted that the contracted prices for the emergency supply contract were up to 209% higher than the prices that same EO had bid, which makes us understand the importance of open competition, given the lack of business sincerity in the conduct of closed procedures.



RECOMMENDATIONS

- The Ministry of Health should ensure that procurement procedures are initiated in sufficient time to envisage the fulfilment of all deadlines set forth by the law on public procurement, in order to avoid the use of negotiated procedures.
- The Ministry of Health should conduct a market analysis of all single source purchases, to make sure that we are not dealing with a similar monopoly situation, as it was the case for the supply of consumables for Haemodialysis.
- When using negotiated procedures, KDI recommends that the Ministry of Health should comply with the Rules and the Operational Guidelines for Public Procurement. According to the rules of PPL, during the selection of EOs for contract award, in cases where open procedure cannot be used, and where negotiated procedure is necessary, CA should make sure that is carried out a competitive process, to receive optimal number of bids from as many EOs as possible.
- The Regulatory Public Procurement Committee should initiate procedures for supplementing the current legislation, to categorize and define the deadlines for reviewing claims by PRB based on priorities.
- PRB should prioritize the complaints handling emerging from tenders related to the supply of drugs and materials of vital importance for the health of citizens



KDI is a Non-Government Organization (NGO) engaged to support development of democracy through inclusion of citizens in public policy-making and empowering civil society sector with the goal to influence increase of transparency and accountability among public institutions.

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