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PROCUREMENT MONITORING REPORT

**For the municipalities of Prizren,
Suharekë/Suva Reka, Ferizaj/Uroševac,
Lipjan/Ljipljan, Podujevë/Podujevo, and Istog/Istok**

April 2020



TRANSPARENCY AND
ANTI-CORRUPTION



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TABLE OF CONTENTS

LIST OF ACRONYMS:	6
INTRODUCTION	7
KEY FINDINGS	8
METHODOLOGY	10
TENDER ANALYSIS	12
MUNICIPALITY OF PRIZREN	12
Tender for Road Infrastructure Construction in the village of Gjonaj in Prizren.....	12
Tender for Gravel Supply for Unpaved Roads in the Municipality of Prizren	13
MUNICIPALITY OF SUHAREKË/SUVA REKA	15
Tender for Local Road Construction in the Municipality of Suharekë/Suva Reka.....	15
Tender for Maintenance and Town Cleaning in the Municipality of Suharekë/Suva Reka.....	17
MUNICIPALITY OF FERIZAJ/UROŠEVAC.....	18
Tender for Paving the Side Roads in the village of Tërn in the Municipality of Ferizaj/Uroševac.....	19
Tender for Security facilities at the Municipality Building and other premises operating under the Municipality of Ferizaj/Uroševac	20
MUNICIPALITY OF LIPJAN/LJIPLAN	22
Tender for the Gadime e Epërme – Gllavicë Road Paving in the Municipality of Lipjan/Ljipljan.....	23
Tender for Facility Security at municipal institutions, administration buildings, the Center for Social Work, the town archive, Culture House, and Community House in the Municipality of Lipjan/Ljipljan.....	24
MUNICIPALITY OF PODUJEVË/PODUJEVO	30
Tender for Paving the Roads in the villages of Shajkovc, Batllava, Svegël, Ballovç, Lladovc, Livadica and Surkish in the Municipality of Podujevë/Podujevo	30
Tender for Farmer Green House Construction in the Municipality of Podujevë/Podujevo	32
MUNICIPALITY OF ISTOG/ISTOK.....	33
Tender for Road Construction of Hul Huli (Istog i Poshtëm) road, Ibrahim Salihu Tomoc Kovrage road, and paving the roads in the Dekaj neighborhood (Istog i Poshtëm) in the Municipality of Istog/Istok.....	33
Tender for Local Road (4th Order) Maintenance in the Municipality of Istog/Istok	35
CONCLUSION	36
RECOMMENDATIONS	38

LIST OF ACRONYMS:

CA - Contracting Authority

EO - Economic Operator

EV - Ekovizioni

ISDY - Institute for Sustainability and Development of Youth

KDI - Kosova Democratic Institute

LPP - The Law on Public Procurement

MA - Municipal Assembly

NGO - Non-Governmental Organization

PPRC - Public Procurement Regulatory Commission

PRB - Procurement Review Body

ROGPP - Rules and Operational Guidelines for Public Procurement

SV - Syri i Vizionit

TD - Tender Dossier

Yahr - Youth Association for Human Rights

INTRODUCTION

Public procurement accounts for 40% of budget spending in Kosovo. This process, among the most talked about sectors of public administration, refers to the acquisition of goods, services and works by governments at the local and central level, and public enterprises. Numerous reports of misuse and mismanagement of public funds make this matter of utmost importance to the public, as well as to the country's governing structures and the donor community. Despite these problems in the procurement process leading to the sector being closely monitored at the central level, this has resulted in poorer oversight at the local level.

Due to the complexity of procurement activity, which is closely linked to the Kosovo's ever-changing economic environment, the policies pursued by various pieces of legislation at local, European and global level have caused this sector to carry a great deal of pressure on municipal level governance bodies to improve current practices.

Throughout 2019, this process has been monitored with the aim of assessing the level of legislative compliance in the process of issuing of municipal level tenders. 12 tenders announced by the municipalities of Prizren, Suharekë/Suva Reka, Ferizaj/Uroševac, Lipjan/Ljipljan, Podujevë/Podujevo and Istog/Istok have been monitored by the Coalition of Non-Governmental Organizations (NGOs), consisting of the Youth Association for Human Rights (YAHR), the Institute for Sustainability and Development of Youth (ISDY), Syri i Vizionit, Ekovizioni (EV), and the Kosova Democratic Institute (KDI). The following report presents the findings from the tendering process in these six municipalities, with a focus on their compliance with the relevant law and the good practices observed during this monitoring process.

KEY FINDINGS

1 The Rules and Operational Guidelines for Public Procurement do not provide sufficient guidance on how bidders can be in compliance with Article 65 of LPP. The law provides that bidders should present two certificates, issued by two different courts that deal with matters of solvency and corruption separately. In absence of clear guidance¹, companies would only bring certificates on bankruptcy related claims², while not proving certificates declaring that the economic operator, and any executive, manager or director thereof, has in the past ten years been determined by a court of competent jurisdiction has or has not committed a criminal or civil offense involving corrupt practices, money laundering, bribery, kickbacks or any similar activities.

2 Research found that there is a conflict between the Law on Public Procurement (Article 108/A), and the Rules and Operational Guidelines for Public Procurement (Article 43).

Article 108/A of LPP provides: Preliminary Resolution of Disputes

3 The request for review must be submitted to the contracting authority, by mail or by any other means of communication permitted by the Law, within the following time limits:

3.2 if the alleged violation relates to the decision to award a contract or design contest, within five (5) days after the date of notification of the CONTRACT AWARD NOTICE or the design contest results are sent to the complainant.

According to Article 43 of ROGPP, however, this term starts running from the date of publication of Form B58 - Notice on the Decision of CA.

3 There is an absence of proper guidance from the PPRC regarding tenders for services. For example, it is not clear how to address the obligations in the Bill of Quantities of the Tender Dossier under the labor law, as well as administrative costs, logistics and profit. As a result, the Municipality of Ferizaj/Uroševac accepted a bid that would cost the municipality EUR 224 for every worker who would be paid a gross amount of EUR 270, without defining what elements of the contract would be covered by this amount. Furthermore, the Municipality of Lipjan/

¹ Article 65. Eligibility of the Candidate or Tenderer, Paragraph 3 evidence of a clear criminal record (under the jurisdiction of the Basic Court, Department of Serious Crimes), and Paragraph 4 on bankruptcy (Basic Court in Prishtinë, Department of Commercial Matters).

² Issued by the Basic Court of Prishtinë, Department of Commercial Matters.



Ljipljan accepted a bid that covered only the salaries of the workers carrying out the service, did not provide accurate definitions in the contract that are required for it to be in compliance with obligations under the labor law, nor did it detail any of the accompanying (indirect) costs related to the rendered service in question. In addition, in this municipal tender, Lipjan/Ljipljan made errors in calculating the necessary staff for the tendered hours, with a noted difference of **360** hours less in the latter. Consequently, the municipality would be at risk of either the services not being completed, or the contracted company would have to take on liabilities not covered by the contract value.

4 In the absence of standardized requirements for defining separate categories of public procurement activity, the Municipality of Podujevë/Podujevo in the tender for paving the roads in Shajkofc and Batllavë, Sfeqël and Ballofc, and Livadicë, Lladofc and Surkish in the Municipality of Podujevë/Podujevo did not define the required motor pool capacity for the contract's implementation, running the risk that the contract would be awarded to companies which did not have sufficient capacity, respectively risking both the quality and the envisaged time frame of the works.

5 In the Municipality of Ferizaj/Uroševac, due to the lack of proper market research, the value of the contract for road construction in Tërn awarded in 2017 was 30.86% lower than the value estimated. Additionally, some roads that needed to be paved remained outside the scope of the contract. In 2019, the municipality signed an additional contract annex costing about 8.9% of the base contract value. Had the municipality conducted any market research and carried out a thorough needs assessment, this contract annex could have been accommodated within the amount of money that was left between the fore-

cast and contract value of the contract.

6 Various problems were identified in the tender for gravel supply in the Municipality of Prizren. The budgeted value for this service was EUR 250,000.00. However, in the procurement forecast, the municipality increased this value to EUR 1.5 million, which was publicized through the announcement of a 36-month framework contract. Compared to the same tenders issued in the municipalities of Prishtinë, Ferizaj/Uroševac and Gjilan, the municipality included criteria in the tender dossier which did not match that in the dossiers of the abovementioned municipalities. The criteria outlined by the Municipality of Prizren required the inclusion of (1) a large number of workers (at least 20 employees of different profiles necessary for contract performance) accounting for the hiring seasonal workers for the construction works, (2) two wheel loaders of medium tonnage, and (3) one large tonnage cylinder (10+ tons).

7 For almost a decade, the contract for road cleaning and maintenance in the Municipality of Suharekë/Suva Reka has been implemented by the regional Company "Ekoregjioni". After conversations with economic operators who had downloaded the tender dossier but opted not to apply, it seems that the value of such services for the operator is extremely low, and not high enough to justify an operator investing in the machinery needed to implement the contract. As a result, no company other than "Ekoregjioni" has ever expressed interest in the tender.









METHODOLOGY

In order to provide an accurate portrayal of municipal performance, KDI and its implementing partners engaged in a detailed examination of the legislation on public procurement in Kosovo. As this project is focused around two main activities (the training of local CSOs and the monitoring of municipal budget planning), KDI took several actions toward establishing the best tools to present a fair reflection of municipal performance. KDI provided in-depth training to consortium members regarding procurement forecasting in addition to ongoing training throughout the monitoring process. Concerning the selection of tenders to be monitored, consortium members used various sources such as media, citizen complaints published on social networks and communicated through local media, complaints to the PRB and consultations with members of civil society. Local CSOs then engaged in consultations with the municipal leadership and the procurement offices in the municipalities of Prizren, Suharekë/Suva Reka, Ferizaj/Uroševac, Lipjan/Ljipljan, Podujevë/Podujevo and Istog/Istok regarding the procedures and actions taken related to the selected tenders.

The results of this report detail the performance of municipalities in accordance with the legal requirements and the real needs of municipalities, analyzing two tenders per municipality, both of which were announced by the municipality during the period of January–June 2019.

In summary, this research included data collection and analysis as follows:

- Monitoring of 194 Contract Notices³ announced by the municipalities in the period January–June 2019

FERIZAJ/UROŠEVAC		32
ISTOG/ISTOK		44
LIPJAN/LJIPLJAN		57
PODUJEVË/PODUJEVO		45
PRIZREN		95
SUHAREKË/SUVA REKA		43

- Analysis of six procurement planning⁴ for 2019
- Analysis of 220 PRB Decisions⁵ concerning tenders in the six municipalities for the period 2018–2019
- Analysis of 12 Tender Dossiers⁶

³ **Explanation:** When a Contracting Authority intends to carry out a procurement activity using an open, limited procedure, the procurement office will prepare the Contract Notice regardless of the type of tender or its value. This is otherwise known as a tender call.

⁴ **Explanation:** Procurement planning is the first step and is a process undertaken by contracting authorities to plan activities for a period of 12 months.

⁵ **Explanation:** PRB decisions are decisions made by the Procurement Review Body, otherwise known as the Tender Court, on claims of irregularities in the process, submitted by stakeholders.

⁶ **Explanation:** A Tender Dossier is an official document prepared by contracting authorities for all tender calls, except for purchases of minimal value, and defines the scope of work and the terms and conditions that must be met by offerors for that procurement activity.

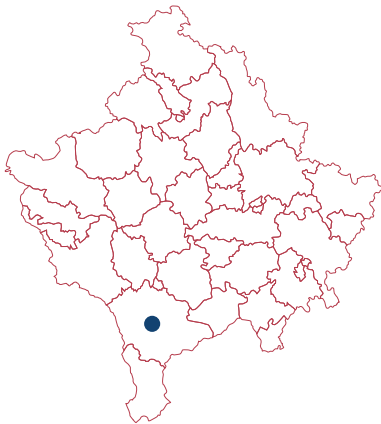
- Analysis of 12 Tender Evaluation Reports and relevant documents including notices of contracting authority decisions
- Analysis of 68 bids in response to 12 Contract Notices:

MUNICIPALITY	TENDER 1	TENDER 2	TOTAL
FERIZAJ/UROŠEVAC	1	2	3
ISTOG/ISTOK	4	4	8
LIPJAN/LJIBLAN	3	7	10
PODUJEVË/PODUJEVO	10	5	15
PRIZREN	10	6	16
SUHAREKË/SUVA REKA	15	1	16

- Six meetings with procurement officers in the six municipalities
- Analysis of three tenders in the municipalities of Prishtinë, Ferizaj/Uroševac and Gjiilan for comparative purposes
- Consultations with CSOs, journalists and over 40 media items
- 18 consultations with the Economic Operators participating in the selected tendering procedures.

TENDER ANALYSIS

MUNICIPALITY OF PRIZREN



Two tenders were analyzed that were carried out through the Municipality of Prizren. Among the conditions for participation listed in both Tender Dossiers, the Municipality required the submission of a document issued by the Court as evidence of compliance with the eligibility requirements according to the Law on Public Procurement.⁷ This document was required to provide evidence that the company was not undergoing bankruptcy proceedings or that neither its owners nor its execu-

tives had been found guilty of fraud by a court of competent jurisdiction. The Coalition found that the Rules and Operational Guidelines for Public Procurement do not provide sufficient guidance on compliance with Article 65 of LPP. Adequate guidance concerning these requirements would provide that bidders should present two certificates, issued by two different courts, and also dealing separately with the two different matters. In the absence of such guidance⁸, companies that responded to the bid brought certificates detailing any bankruptcy related issues⁹, while not providing certificates showing whether the economic operator, including any executive, manager or director thereof, has been determined to have committed a criminal or civil offense in the last ten years involving corrupt practices, money laundering, bribery, kickbacks or any similar activities by a court of competent jurisdiction.

A noteworthy challenge that the Coalition encountered while analyzing these tenders is that the municipality does not accept any applications by e-mail. The documents must be sent and received in hard copy.

⁷ Law No. 04/L-042 on Public Procurement in Republic of Kosovo, as amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092; Article 65. Eligibility of the Candidate or Tenderer.

⁸ Article 65. Eligibility of the Candidate or Tenderer, Paragraph 3 evidence of a clear criminal record (under the jurisdiction of the Basic Court, Department of Serious Crimes), and Paragraph 4 on bankruptcy (Basic Court in Prishtinë, Department of Commercial Matters).

⁹ Issued by the Basic Court of Prishtinë, Department of Commercial Matters.



The budgeted cost for Gravel Supply for Unpaved Roads in the Municipality of Prizren was EUR 250,000.00 for one year. However, in the procurement forecast, the municipality increased this cost to EUR 1.5 million, an increase of 100% for the period of three years.

Tender for Road Infrastructure Construction in the village of Gjonaj in Prizren¹⁰

The estimated value of this tender was EUR 250,000.00, with a contract duration and deadline for the completion of works set at 200 days. The Municipality of Prizren announced the tender for road infrastructure construction in the village of Gjonaj on 22 October 2018¹¹. This medium-value tender was open for application for only 15 days,¹² a timeframe which does not meet the legal requirements of the Law on Public Procurement, which state that applications must be open for at least 20 days¹³.

The tender was awarded to the Company considered responsible with the lowest price bid, "G Project SHPK" from Prizren, bidding at EUR 217,133.24.

10 companies had applied to be contracted for this tender, and five of them were declared irresponsible. There were no complaints filed with the Contracting Authority or the

Procurement Review Body regarding the decision made by the commission. The Municipality then signed the contract just one day after the Contract Award Notice¹⁴.

In terms of good practices, it was noted that in this tender the Municipality did not use discriminatory criteria, which could harm competition. Concerning the supervision of works, the Municipality included criteria that the Company must have a graduate engineer of architecture with at least five years of work experience.

Tender for Gravel Supply for Unpaved Roads in the Municipality of Prizren¹⁵

The budgeted cost this service to the municipality was EUR 250,000.00. However, in the procurement forecast, the municipality increased this cost to EUR 1.5 million, which was in the value of the tender included in the an-

¹⁰ 622-18-8161-5-2-1.

¹¹ Date of publication on e-Procurement was 29 October 2018, while date of preparation of the Tender Dossier was 22 October 2018, respectively 7 days earlier.

¹² Deadline for receipt of bids 13 November 2018.

¹³ Law No. 04/L-042 on Public Procurement in Republic of Kosovo, as amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092; Article 44 - General Rules for Setting a Time Limit for the Receipt of Tenders or Requests to Participate; paragraph 2: In a procurement using open procedures, the contracting authority shall set a time limit for the receipt of tenders that is: (2.2) if the concerned contract is a large value public contract, not less than twenty (20) days.

¹⁴ The Municipality had not complied with the legal deadline of 5 days from the Contract Award Notice until the date for signing the contract, in case of complaints by interested parties (Article 108/A of LPP).

¹⁵ 622-19-1256-1-1-1

nouncement of the 36-month framework contract.

The Municipality of Prizren announced the tender for gravel supply for the unpaved roads of the Municipality on 25 February 2019¹⁶. This high-value tender was open to receive applications from companies for 40 days¹⁷ in accordance with the legal requirements under the Law on Public Procurement¹⁸.

In order to determine whether any criteria that could be considered preferential was included in the Tender Dossier, three other public contracts were reviewed¹⁹ that involved works of a similar nature that took place in towns of relative size. Following this comparative review, three criteria were identified that had been included in the Prizren tender, but were missing from the tenders in the other towns: (1) a large number of workers (at least 20 employees of different profiles necessary for contract performance) accounting for the hiring of seasonal workers for the construction works, (2) two-wheel loaders of medium tonnage, and (3) one large tonnage cylinder (10+ tons). The Municipality had initially required that the EOs have ownership of or cooperation agreements with quarries existing at a distance not exceeding 15 km from the town of Prizren, however a correction to the Tender Dossier was issued on 25 April 2019 that removed this requirement.

Six companies had applied for this tender, and the Municipality of Prizren awarded it to "EUROVIA" LLC from Prizren, who submitted a bid of EUR 20.05 per unit. This award was followed by complaints from disqualified operators. On 3 June 2019, the tender was suspended following complaints submitted by the two economic operators with the cheapest bids. After the response from the Municipality of Prizren²⁰ that the decision remained the same even after the request for re-consideration, both parties filed complaints²¹ against the decision of the Municipality of Prizren with the Procurement Review Body. After review by a subject matter expert, the PRB rendered a decision²² partially in favor of the complainants, and requested that the Municipality cancel its decision to award the contract²³, and return the matter for re-evaluation. However, even after its re-evaluation, the Municipality's decisions²⁴ concerning the two complaining parties remained the same.

16 Date of publication on e-Procurement was 21 March 2019, while date of preparation of the Tender Dossier was 18 March 2019, respectively 3 days earlier.

17 Deadline for receipt of bids 30 April 2019

18 Law No. 04/L-042 on Public Procurement in Republic of Kosovo, as amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092; Article 44 - General Rules for Setting a Time Limit for the Receipt of Tenders or Requests to Participate; paragraph 2: In a procurement using open procedures, the contracting authority shall set a time limit for the receipt of tenders that is: (2.2) if the concerned contract is a large value public contract, not less than twenty (20) days.

19 Ferizaj: 656-19-6368-5-2-1; Gjakovë: 632-19-601-5-2-1, and (3) Prishtinë: 616-18-8757-5-2-1

20 On 6 June 2019, a response was sent to the two complainants

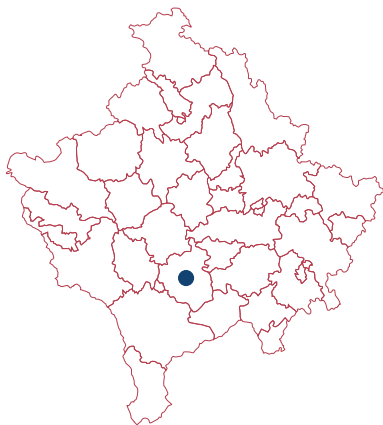
21 Complaint by "Renelual Tahiti" LLC of 13 June 2019, Protocol No. 307/19 and Complaint by "G SOLUTIONS LLC; G-PROJECT LLC; JOOS & KRASNIQI - BAZE LLC", of 17 June 2019, Protocol No. 321/19.

22 PRB Decision of 14 August 2019, Protocol No. 307, 321/19

23 As of 23 October 2019, the Contract Award Notice has not been published by the Municipality on e-Procurement.

24 Decision of 8 October 2019 in the matter brought by "Renelual Tahiti" LLC and Decision of 9 October 2019 in the matter brought by "G SOLUTIONS LLC; G-PROJECT LLC; JOOS & KRASNIQI - BAZE LLC"

MUNICIPALITY OF SUHAREKË/SUVA REKA



Two tenders involving the Municipality of Suharekë/Suva Reka were analyzed: one concerning local road construction in the villages of Bllacë, Bukosh, Grejkoc, Reshtan, Studenqan and Samadraxhë, and another concerning the cleaning and maintenance in the town of Suharekë/Suva Reka. As with the above municipality, in both Tender Dossiers, the Municipality of Suharekë/Suva Reka required the only one document issued by the Court to be submitted as evidence of compliance with the eligibility requirements set out in the Law on Public Procurement²⁵ proving that the company was not undergoing bankruptcy proceedings or that neither its owners nor its executives had been found guilty of fraud by a court of competent jurisdiction. The Consortium found that the Rules and Operational Guidelines for Public Procurement do not provide sufficient guidance on compliance with Article

65 of LPP, providing that bidders should present two certificates, issued by two different courts, each addressing the two requirements separately. In the absence of such guidance²⁶, companies only brought certificates on bankruptcy-related claims²⁷ and did not provide certificates detailing whether the economic operator, any executive, manager or director thereof had been determined by a court of competent jurisdiction to have committed a criminal or civil offense involving corrupt practices, money laundering, bribery, kickbacks or any similar activities in the last ten years.

One positive example was noted regarding the observance of legal deadlines for publications and evaluation by the municipality. Further, the Municipality published all the documents required by Law on the e-Procurement platform and granted access to all documents, respecting the deadlines set out in the law. Additionally, both tendering processes were conducted without any complaints from interested parties.

Tender for Local Road Construction in the Municipality of Suharekë/Suva Reka²⁸

This tender was divided into six lots and concerned the construction of secondary roads in the villages of Bllacë, Bukosh, Grejkoc, Reshtan, Studenqan and Samadraxhë in the Municipality of Suharekë/Suva Reka.

²⁵ Law No. 04/L-042 on Public Procurement in Republic of Kosovo, as amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092; Article 65. Eligibility of the Candidate or Tenderer

²⁶ Article 65. Eligibility of the Candidate or Tenderer, Paragraph 3 evidence of a clear criminal record (under the jurisdiction of the Basic Court, Department of Serious Crimes), and Paragraph 4 on bankruptcy (Basic Court in Prishtinë, Department of Commercial Matters).

²⁷ Issued by the Basic Court of Prishtinë, Department of Commercial Matters

²⁸ 624-19-802-5-2-1



LOT NO.	DESCRIPTION
LOT 1	Construction of Sylë Duhla, Sadri Guraziu, Ushtria e Kosovës and other roads in Bllacë.
LOT 2	Construction of Murat Prena, Kadojt, Baki Izlami and local roads in Bukosh
LOT 3	Construction of local roads in Grejkoc – Përparimi, Liman Brahimi, Haxhi Isufi, Shaban Azmoni, Jakup Kurtishaj, Ali Shaqiri, Jemin Zeqiri, Brahë Zeqiri, Smajl Hyseni
LOT 4	Construction of local roads in Reshtan – Rifat Krasniqi, Mehmet Bytyqi segment, Mulliri, Milaim Gashi, Kryezive, Kadri and Selman Morina, etc.
LOT 5	Construction of Tumat e Gurrës, Kosova, Shqiptari, Rrethojat, arat arari, Drini and local roads in Studenqan
LOT 6	Construction of local roads in the village of Samadraxhë, Qershija e Cufes, Avni Hoda road axis, Jeton Kabashi, Shkupi and Pojatishtë, etc.

According the budget estimation made in 2019, the cost of this tender was valued at EUR 335,000.00²⁹, with a deadline of 60 days set for the completion of the works. Under the conditions laid out in the Tender Dossier, each economic operator could be awarded only one of the lots in this tender, subject to having bid responsibly at the cheapest price.

For the purposes of analyzing the tendering process, researchers selected Lot 1, which had an estimated value of EUR 73,000.00. The tender was open for 22 days after its

publication on the e-Procurement platform³⁰, which shows that the Municipality complied with the legal requirements that open calls for medium-value tender applications be publicized for a minimum of 20 days³¹. Furthermore, the Municipality evidenced good time management, respecting the deadlines for the preparation of the Tender Dossier and its publication on the e-Procurement platform³², without shortening the deadline for receiving bids.

A particular financial capacity for the economic operator was another requirement included in the tender. For Lot 1,

29 Law No. 06/L-133 on the Budget Appropriations for the Budget of the Republic of Kosovo for Year 2019: Bllacë – EUR 73,000, Bukosh – EUR 37,000, Grejkoc – EUR 62,000, Reshtan – EUR 37,000, Studenqan – EUR 56,000, Samadraxhë – EUR 70,000

30 Date of publication on e-Procurement 04 March 2019

31 Law No. 04/L-042 on Public Procurement in Republic of Kosovo, as amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092; Article 44 - General Rules for Setting a Time Limit for the Receipt of Tenders or Requests to Participate; paragraph 2: In a procurement using open procedures, the contracting authority shall set a time limit for the receipt of tenders that is: (2.2) if the concerned contract is a large value public contract, not less than twenty (20) days.

32 The Tender Dossier was prepared on 28 February 2019 and published on e-Procurement on 4 March 2019.



the Municipality required evidence that the company had a turnover of no less than EUR 140,000.00.

The tender was awarded to the responsible Company with the lowest price, "NPT "Bamirs" from Suharekë/Suva Reka, having bid EUR 59,351.00.

15 companies applied for this tender, and three of them were deemed "irresponsible". There were no complaints filed with either the Contracting Authority or the Procurement Review Body regarding the evaluation by the Commission. The Municipality signed the contract eight days after the announcement of Contract Award Notice, indicating good practice concerning enforcement of the requirements set by law³³.

In its technical specifications, the Municipality did not use any discriminatory criteria which could harm competition, while for the supervision of works, the Municipality had been more specific than is requested, requiring a qualified civil engineer with a major in construction or road infrastructure, with at least three years of work experience after graduation.

Tender for Maintenance and Town Cleaning in the Municipality of Suharekë/Suva Reka³⁴

For quite some time, the contract for road maintenance and cleaning of the town in Suharekë/Suva Reka has been implemented by the same economic operator, the Regional Company "Ekoregjioni". Although this is a high-value

tender, costing the Municipality EUR 145,000.00 over 12 months, and the Tender Dossier had been downloaded 30 times, there was one single company that applied in response to this call. Regional Waste Management Company "Ekoregjioni" JSC had bid the amount of EUR 136,295.01, and the Evaluation Commission found this bid to be responsible³⁵.

There were no complaints filed related to this tender, neither at the tender stage nor in the evaluation stage regarding the specifics of the tender and the decision of the Municipality. The Consortium contacted some of the companies that had downloaded the Dossier to ask why they had not applied for the tender.³⁶ The received responses were almost identical: This contract has long been implemented by "Ekoregjioni," who have the necessary machinery, and the investments required to enter the market were too high in comparison to the value of the contract. As such, there was little interest in responding to the call for applications.

³³ The Municipality had complied with the legal deadline of 5 days from the Contract Award Notice until the date for signing the contract, in case of complaints by interested parties (Article 108/A of LPP).

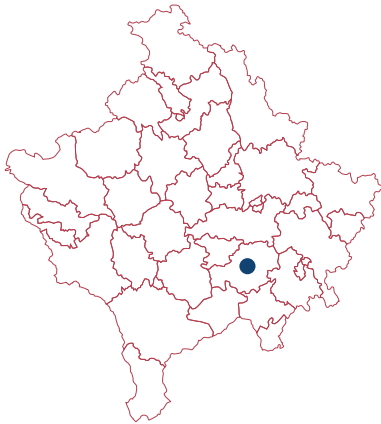
³⁴ 624-19-240-2-1-1.

³⁵ Evaluation Report of 25 February 2019.

³⁶ Communications conducted on 6 February 2020.



MUNICIPALITY OF FERIZAJ/UROŠEVAC



There were two tenders analyzed that took place in the Municipality of Ferizaj/Uroševac, one for paving the roads in the village of Tërn and the tender for security at the Municipality building. As with the two municipalities above, in both Tender Dossiers the Municipality of Ferizaj/Uroševac required the submission of only one document issued by the Court as evidence of compliance with the eligibility requirements according to the Law on Public Procurement³⁷ certifying that the company was not undergoing bankruptcy proceedings or that neither its owners nor its executives had been found guilty of fraud by a court of competent jurisdiction. The Consortium found that the Rules and Operational Guidelines for Public Procurement do not provide sufficient guidance concerning compliance with Article 65 of the LPP, providing that bidders should present two certificates, issued by two different courts,

dealing separately with the two different requirements. In absence of such guidance³⁸, companies only brought certificates related to the bankruptcy claims³⁹, while not providing certificates determining whether the economic operator, any executive, manager or director thereof has been determined by a court of competent jurisdiction to have committed a criminal or civil offense involving corrupt practices, money laundering, bribery, kickbacks or any similar activities in the past ten years.

In the tender for paving the roads and side roads, the Municipality had failed to properly analyze the on-site needs, which led to the need to add a contract annex for works that could have been part of the base contract. Additionally, on the contract for security at the Municipality building and other facilities operating under the Municipality of Ferizaj/Uroševac, the contract value was over 30% higher than the estimated value, which raises concerns about the lack of proper market research.

A good example was noted regarding the quick turnaround in handling complaints by Economic Operators, which the Municipality managed to address in just one day, and all complaints and decisions were published on the official Municipality website, as well as on the e-Procurement platform. The same approach was applied to requests for access to documents. In addition to quick responses, all documents were submitted electronically.

37 Law No. 04/L-042 on Public Procurement in Republic of Kosovo, as amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092; Article 65. Eligibility of the Candidate or Tenderer

38 Article 65. Eligibility of the Candidate or Tenderer, Paragraph 3 evidence of a clear criminal record (under the jurisdiction of the Basic Court, Department of Serious Crimes), and Paragraph 4 on bankruptcy (Basic Court in Prishtinë, Department of Commercial Matters).

39 Issued by the Basic Court of Prishtinë, Department of Commercial Matters





On the contract for security at the Municipality building and other facilities operating under the Municipality of Ferizaj/Uroševac, the contract value was over 30% higher than the estimated value, which raises concerns about the lack of proper market research.

Tender for Paving Side roads with Asphalt in the village of Tërn in the Municipality of Ferizaj/Uroševac⁴⁰

During the first six months of 2019, the Municipality of Ferizaj/Uroševac announced eight tenders for road infrastructure, each lasting for two- and three-year terms, including this contract for paving the side roads in the village of Tërn. Initially, the Municipality had budgeted only EUR 20,000 for this single contract from its own source revenues for 2017⁴¹, and EUR 60,000 for 2018 and 2019. However, during contract implementation, residents had expressed concern that not all the village roads were being included in this project, which led to the Municipality allocating EUR 20,000 from its own source revenues for 2019⁴² to meet demand.

The Municipality was fair in its assessment of deadlines required for publication of documents related to the procedure and the outcomes of complaints. Nevertheless, the Municipality failed to properly analyze market prices or

assess needs on-site, which led to the need to add a contract annex for additional works, and a difference of over 30% between estimated and actual contract value.

For the purposes of monitoring one of the Municipality's tenders to be implemented during 2019, researchers selected one contract annex⁴³ for the construction of several side roads in the village of Tërn in Ferizaj/Uroševac. The tender for the base contract for this activity was announced on 8 May 2017, with an estimated cost of EUR 282,363.30 over a two-year period. However, according to the Tender Dossier, the term set for the completion of works was noted as 70 days⁴⁴.

The tender was open for 20 days after its publication on the e-Procurement platform⁴⁵, which shows that the Municipality had complied with the legal requirement that calls for applications for medium-value tenders be open for a minimum of 20 days⁴⁶. The Municipality evidenced good time management and planning to accommodate the deadline, from the preparation of the Tender Dossier to

40 656-17-1873-5-2-1 and 656-19-4884-5-2-5

41 Law No. 05/L-125 on the Budget Appropriations for the Budget of the Republic of Kosovo for Year 2017

42 Law No. 06/L-133 on the Budget Appropriations for the Budget of the Republic of Kosovo for Year 2019

43 656-19-4884-5-2-5

44 After the change in leadership at the Municipality of Ferizaj, there was also a change in leadership in the procurement unit. The new leadership provided no explanation for the discrepancies in deadlines for the completion of works.

45 Date of publication on e-Procurement 08 May 2017.

46 Law No. 04/L-042 on Public Procurement in Republic of Kosovo, as amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092; Article 44 - General Rules for Setting a Time Limit for the Receipt of Tenders or Requests to Participate; paragraph 2: In a procurement using open procedures, the contracting authority shall set a time limit for the receipt of tenders that is: (2.2) if the concerned contract is a large value public contract, not less than twenty (20) days.

its publication on the e-Procurement platform⁴⁷, without shortening the deadline for receiving bids.

7 companies applied to this tender, and 1 of them was declared “irresponsible”. There were no complaints filed with either the Contracting Authority or the Procurement Review Body regarding the evaluation by the Commission. The Municipality signed the contract eight days after the announcement of Contract Award Notice, in compliance with the requirements set by law⁴⁸.

In the technical specifications, the Municipality set out requirements for a qualified civil engineer, with a major in construction or road infrastructure and holding at least three years of work experience after graduation. The specifications also required a surveyor, but did not specify any motor pool capacity that the company should possess for implementing the works. Poor technical specifications which do not even require a deployment plan for the necessary machinery create for the risk of companies applying that do not have the capacity to implement the project.

The tender was awarded to the company with the lowest bid, “Eskavatori” SHPK from Ferizaj/Uroševac, bidding at EUR 195,203.50. The difference between estimated and actual contract value was EUR 87,159.80 (30.86% lower than was estimated), indicating that the Municipality had failed to conduct proper market research. However, this was not the only problem with the planning of this tender. After the works began, residents of the village of Tërn had taken issue with a number of side roads that were not included in the contract to be paved. Consequently, on 20 May 2019, the implementing unit requested that the Pro-

curement Office add a contract annex to accommodate the demands of the residents. In response, on 11 July 2019, the Procurement Office signed a contract annex costing EUR 17,533.25 (respectively 8.98% of the base contract value) for paving “Misini” and one additional side road. The price per unit used when negotiating this contract was taken from the base contract.

Tender for Facility Security at the Municipality Building and other facilities operating under the Municipality of Ferizaj/Uroševac⁴⁹

In September 2018, the Municipality of Ferizaj/Uroševac announced the tender⁵⁰ for security services at the Municipality building and other facilities operating under the Municipality of Ferizaj/Uroševac. The estimated cost of this contract was EUR 300,000.00 over a period of 24 months, for 34 employees.

Following the publication of the Contract Notice, the Municipality was required to republish the notice twice in order to correct errors in the Tender Dossier⁵¹. The first correction was related to information about the manner of submission of tenders, as the original file did not specify the date and method of application required. The second correction introduced additional eligibility requirements, namely professional suitability, financial capacity, and technical and professional capacity. The second correction came after a complaint filed by “KS Besa Security” LLC which noted that the conditions set out for professional

47 The Tender Dossier was prepared on 4 May 2017 and published on the e-Procurement platform on 8 May 2017.

48 The Municipality complied with the legal deadline of 5 days from the Contract Award Notice until the date for signing the contract, in case of complaints by interested parties (Article 108/A of LPP).

49 656-18-6854-2-1-1.

50 Date of publication on e-Procurement 17 September 2018.

51 Standard Templates for Correction of Errors in Published Notices of 27 September 2018 and 22 October 2018.

suitability should be amended to include a requirement evidencing that they had provided similar services before through licenses, reports and photos. In its response, however, the Municipality emphasized that such a requirement would not be included, as a basic license for physical security services issued by the Ministry of Interior would suffice.

Ultimately, two companies applied to this tender. After evaluation of both bids, the Municipality declared the company “Nazeri 2000” LLC to be “irresponsible”⁵². The economic operator then filed a complaint to the Municipality⁵³. One day later, the Municipality rejected the complaint⁵⁴ of “Nazeri 2000”, who in turn filed a complaint against this response with the PRB on 9 November 2018. The initial evaluation by the Municipality was supported by the subject matter expert, confirming that the EO had, contrary to the Law on Public Procurement, modified the Bill of Quantities and specification from the Tender Dossier, and had not met the suitability requirements. In this case, the PRB affirmed the decision of the Municipality⁵⁵, and recommended that it proceed with the signing of the contract. Furthermore, even during the analysis of the bids, it was found that the bid of “Nazeri 2000” did not meet the suitability requirements.

The contract between MA Ferizaj/Uroševac and the group of EOs that included “Skyfterat-Live” LLC and “Commando” LLC was concluded on 22 January 2019 at the amount of EUR 403,204.56 over a period of 24 months. When comparing the estimated value with the framework contract

value, we can see that the Municipality had failed to prepare a proper Bill of Quantities, since the value of the contract was about 30% higher than what was initially estimated⁵⁶.

In the Bill of Quantities published by the Municipality, in addition to prices per unit, it was required that the economic operator pay a minimum wage of EUR 270 to its staff, and account for all obligations arising from the Labor Law. In meeting such obligations, the winning company had bid a price of about EUR 494 per worker, which means that the company had projected about EUR 224 for administrative costs, logistics and profit per each employee.

(Total Contract Value 403,204.56 / 24 months under contract = 16,800.19 / 34 employees = 494.12 €/month)

The Municipality was fair in its assessment of deadlines required for all publications and tenders⁵⁷, as well as in handling complaints.

52 Standard Letter of Notification of 29 October 2018.

53 Complaint of 31 October 2018.

54 Municipality Decision of 1 November 2018.

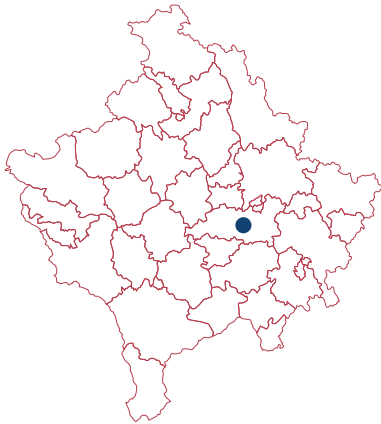
55 PRB Decision of 3 January 2019, Protocol No. 644/18.

56 According to the guidance by the Chief Financial Officer of 26 October 2018 that since they were dealing with a framework contract for 24 months, and the payment is conducted on a monthly basis, proceeding with signing the contract would be allowed without any new commitment of funds, adding that the rest of funds would be provided in the budget allocation for 2020.

57 Date of publication on the e-Procurement platform was 17 September 2018, and the deadline for receipt of bids was 24 October 2019, 40 days for large value procedures.



MUNICIPALITY OF LIPJAN/LJIPLJAN



Two tenders were analyzed for the Municipality of Lipjan/Ljipljan, one for paving the Gadime e Epërme – Gllavicë road with asphalt and the tender for security services at municipal institutions.

As with the three municipalities above, in both Tender Dossiers the Municipality of Lipjan/Ljipljan required the submission of only one document issued by the Court as evidence of compliance with the eligibility requirements set out in the Law on Public Procurement,⁵⁸ which requires the company to provide evidence certifying that it was not undergoing bankruptcy proceedings or that neither its owners nor its executives had been found guilty of fraud by a court of competent jurisdiction. The Consortium found that the Rules and Operational Guidelines for Public Procurement do not provide sufficient guidance on

compliance with Article 65 of LPP, providing that bidders should present two certificates, issued by two different courts, dealing with these two requirements separately. In absence of such guidance⁵⁹, companies only brought certificates related to the bankruptcy claims⁶⁰, and did not provide certificates evidencing whether the economic operator, any executive, manager or director thereof had been determined by a court of competent jurisdiction to have committed a criminal or civil offense involving corrupt practices, money laundering, bribery, kickbacks or any similar activities in the past ten years.

The tender for security services at municipal institutions, administration buildings, the Center for Social Work, the town archive, Culture House, and Community House was accompanied with various problems. There was a discrepancy between the number of required workers and hours of engagement, and the translation of such services into hours of labor. According to schedules and the number of workers required in II.1.5 of the Tender Dossier and the quantities described in the Bill of Quantities section, there was a notable difference of **360** hours of service less in the latter. As a result, either the municipality would run the risk of being left without services or the performing company would take on liabilities not covered by the contract value. Further, the Municipality did not provide for the fulfillment of obligations under the Labor Law regarding days off during the week, holidays, annual leave, and potential medical leave, logistics and operations costs, summer and winter uniforms, employee licensing costs, etc., which should be included in the bid under the category 'administrative costs by the economic operator.' Furthermore, the Municipality had not made an evalua-

58 Law No. 04/L-042 on Public Procurement in Republic of Kosovo, as amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092; Article 65. Eligibility of the Candidate or Tenderer.

59 Article 65. Eligibility of the Candidate or Tenderer, Paragraph 3 evidence of a clear criminal record (under the jurisdiction of the Basic Court, Department of Serious Crimes), and Paragraph 4 on bankruptcy (Basic Court in Prishtinë, Department of Commercial Matters).

60 Issued by the Basic Court of Prishtinë, Department of Commercial Matters.



tion of whether the tendered bids would meet the Tender Dossier requirement for a minimum wage of EUR 200.00 per month for staff, and decided to award the contract to the company that bid the cheapest price instead. Initially there were three complaints filed against this decision with the PRB. In the first case, the PRB expert failed to address the complaints made, namely that the offer that was selected was too low, and failed to meet the minimum requirements set out in the tender dossier. This case was referred twice back to the Municipality for re-evaluation by the PRB, and as a result it was canceled due to a lack of responsible bids.

Further, the Municipality had published all the documents required by Law on the e-Procurement platform, and granted access to the requested documents within the time limits.

Tender for the Gadime e Epërme – Gllavicë Road Asphalt Pavement in the Municipality of Lipjan/Ljipljan⁶¹

The estimated cost of this tender was EUR 59,000.00, it was budgeted for 2019⁶², with a deadline for the completion of works of 60 days.

The Municipality of Lipjan/Ljipljan announced the tender for paving the road Gadime e Epërme – Gllavicë with asphalt on 2 March 2019⁶³. This medium-value tender was open to companies for application for 20 days⁶⁴ and the Municipality observed the deadlines set out in the Law on Public Procurement⁶⁵.

Among the conditions for participation listed in the Tender Dossier, the Municipality had only required a certificate from the Commercial Court that the company was not undergoing bankruptcy proceedings. In this case, the Municipality did not require the two supporting documents⁶⁶ as provided by Law, one providing a clear criminal record, and the second on bankruptcy. The Municipality also did not require evidence of no outstanding tax obligations to the Municipality, which would help the Municipality in collecting on debt.

The tender was awarded to the responsible Company with the bid of the lowest price, “Berisha Company JSC” from Ferizaj/Uroševac, bidding at EUR 53,893.31.

Three companies had applied to this tender, and all three were found to be responsible. There were no complaints filed with the Contracting Authority or the Procurement Review Body regarding the evaluation by the commission. The Municipality signed the contract four days after the Contract Award Notice⁶⁷. In its technical specifications,

61 613-19-1259-5-2-1

62 Law No. 06/L-133 on the Budget Appropriations for the Budget of the Republic of Kosovo for Year 2019

63 Date of publication on e-Procurement was 2 March 2019, while date of preparation of the Tender Dossier was 15 March 2019, respectively 7 days earlier.

64 Deadline for receipt of bids 11 April 2019

65 Law No. 04/L-042 on Public Procurement in Republic of Kosovo, as amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092; Article 44 - General Rules for Setting a Time Limit for the Receipt of Tenders or Requests to Participate; paragraph 2: In a procurement using open procedures, the contracting authority shall set a time limit for the receipt of tenders that is: (2.1) if the concerned contract is a large value public contract, not less than forty (40) days.

66 Article 65. Eligibility of the Candidate or Tenderer, Paragraph 3 evidence of a clear criminal record (under the jurisdiction of the Basic Court, Department of Serious Crimes), and Paragraph 4 on bankruptcy (Basic Court in Prishtinë, Department of Commercial Matters).

67 The Municipality had not complied with the legal deadline of 5 days from the Contract Award Notice until the date for signing the contract, in case of complaints by interested parties (Article 108/A of LPP).

the Municipality required a qualified civil engineer with a major in construction or road infrastructure with at least three years of work experience after graduation, a surveyor, and at least five workers. As for the machinery, there were no requirements observed, something that could harm competition.

Tender for Facility Security at municipal institutions, administration buildings, the Center for Social Work, the town archive, Culture House, and Community House in the Municipality of Lipjan/Ljipljan⁶⁸

The estimated value for this tender was EUR 200,000.00, with a deadline for the completion of works of 36 months.

The Municipality of Lipjan/Ljipljan announced the tender for security services at municipal institutions, administration buildings, the Center for Social Work, the town archive, Recreation Center, and Community Center on 3 December 2018⁶⁹. This large-value tender was open for application for only for 36 days⁷⁰ and the Municipality did not adhere to the prescribed deadline under the Law on Public Procurement for the call for applications to be open for application for at least 40 days⁷¹.

Starting with its publication, there were various problems with this tender. In the brief description of the subject matter, the Municipality defined the number of workers and the schedules of their engagement in fulfilling this service.

II.1.5) Short description of the object of the contract

LOT 1

- 1** Security of the Municipality building with two workers during working hours, ie. from 8 a.m. to 4 p.m., every working day, two workers each.
- 1.1** Car park (yard) and the ramp 24 hours a day, seven days a week, 4 workers.
- 2** Municipal administration with five directorates located at the EUROKOS premises owned by the municipality, one checkpoint, for 24 hours a day 7 days a week, 4 employees.
- 3** Center for Social Work, one checkpoint for 24 hours a day, seven days a week, 4 workers.
- 4** Town Archive from 16 - 8 o'clock in the morning every working day, while on weekends and public holidays, 24-hour security, 3 workers
- 5** Recreation Center "Tahir Sinani" from 16 - 8 o'clock in the morning every working day, while on weekends and public holidays, 24-hour security, 3 workers

LOT 2

Community Center from 16 - 8 o'clock in the morning every working day, while on weekends and public holidays, 24-hour security, 3 workers

⁶⁸ 613-18-9147-2-1-1

⁶⁹ Date of publication on e-Procurement was 3 December 2019, while date of preparation of the Tender Dossier was 7 November 2018.

⁷⁰ Deadline for receipt of bids 11 April 2019

⁷¹ Law No. 04/L-042 on Public Procurement in Republic of Kosovo, as amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092; Article 44 - General Rules for Setting a Time Limit for the Receipt of Tenders or Requests to Participate; paragraph 2: In a procurement using open procedures, the contracting authority shall set a time limit for the receipt of tenders that is: (2.1) if the concerned contract is a large value public contract, not less than forty (40) days.

Further, in section II.2) of the TD, the Municipality had defined the necessary quantities in hours:

Total quantity or scope (including all lots and options if applicable)

Total working hours for 3 years

Municipal administration, municipal building
11,808

ADMINISTRATION 2 at the eurokos facility
26,280

CSW
26,280

Courtyard of the main administration at the ramp
26,280

Recreation center
20,352

Town Archive
20,352 lot 1

Community Center
20,352 lot 2

During the calculation of hours concerning daily engagement, it was noticed that the TD had inconsistencies in terms of requirements according to the number of workers and working hours.

LOT 1:

1) **Municipality Building:** 2 workers x 8 hours of work x (5 work days x 52 weeks x 3 years) = 2 workers x 8 hours of work x (261 work days/year x 3 years) = 2 workers x 8 hours of work x 783 days of work = **12,528 hours of work over three years**

1.1) **Car park and ramp:** 3 workers x 8 hours x 365 days x 3 years = **26,280 hours over three years.**

2) **Municipal Administration (EUROKOS):** 3 workers X 8 hours X 365 days X 3 years = **26,280 hours over three years.**

3) **Center for Social Work:** 3 workers x 8 hours x 365 days x 3 years = **26,280 hours over three years.**

4) **Town Archive:** 2 workers x ((8 hours of work x ((5 days of work x 52 weeks x years) - (11 days official holidays per year x 3 years)) + (24 hours of work x (104 days of weekends + 11 days of official holidays x 3 years))) = **20,232 hours of work over three years**

5) **Recreation Center:** 2 workers x ((8 hours of work x ((5 days of work x 52 weeks x 3 years) - (11 days official holidays per year x 3 years)) + (24 hours of work x (104 days of weekends + 11 days of official holidays x 3 years))) = **20,232 hours of work over three years**

LOT 2:

1) **Community Center:** 2 workers x ((8 hours of work x ((5 days of work x 52 weeks x years) - (11 days official holidays per year x 3 years)) + (24 hours of work x (104 days of weekends + 11 days of official holidays x 3 years))) = **20,232 hours of work over three years**

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The difference between requirements in terms of the number of workers and daily engagement, and the hours required by the Municipality according to the Bill of Quantities, is as follows:

#	SERVICE LOCATION	HOURS REQUIRED BY THE MUNICIPALITY ACCORDING TO THE TD AND BOQ	HOURS OF WORK BY NUMBER OF EMPLOYEES AND DAILY ENGAGEMENT (TD)	DIFFERENCE
LOT 1				
1	Municipality Building	11,808	12,528	-720
1.1	Car Park and Ramp	26,280	26,280	0
2	Municipal Administration (EUROKOS)	26,280	26,280	0
3	Center for Social Work:	26,280	26,280	0
4	Town Archive	20,352	20,232	120
5	Recreation Center	20,352	20,232	120
LOT 2				
1	Community Center	20,352	20,232	120
TOTAL		151,704	152,064	-360

In lines 1 – 3 of Lot 1, the Municipality had provided for one additional worker to meet the holiday obligations arising from the Labor Law. However, this 1 worker is a worker em-

ployee who during the year fills in for annual leave, holidays and other leave benefits, which is not enough to cover them. One worker considering only days off (about 20 days) and

|||||

holidays (12) can attend work for a maximum of 228 days (1,824 hours) (although they will be paid for 52 weeks x 5 days = 260 days). For 3 workers in 3 years this number of hours reaches $3 \times 1,824 = 16,416$; hence there are 9,846 hours left uncovered over 3 years or about 3,288 hours within the year which means about 1.8 backup workers. In lines 4 and 5 of Lot 1 and Lot 2, the Municipality did not provide for additional workers for the fulfillment of requirements under the Labor Law. However, the Municipality calculated 15 days of additional work on each of these three lines (120 additional hours/8 hours of work = 15 working days), which again do not meet the necessary hours to cover annual and medical leave as provided by Labor Law.

Furthermore, in the pricing section, the Municipality did not provide for the fulfillment of obligations under the

Labor Law regarding days off during the week, holidays, annual leave, and potential medical leave, logistics and operations costs, summer and winter uniforms, employee licensing costs, etc., which should be all be included in the bid under administrative costs from the economic operator.

Another shortcoming was that the pricing section required the base price and the amount of Value Added Tax (18%) to be set out, but did not require the bid to account for operating costs, did not address income tax or employer pension contributions, creating a window for additional liabilities for the contractor, which would jeopardize the quality of contract implementation.

On 17 December 2018, the Municipality published the Standard Template for Correction of Errors, whereby the Municipality had increased the projected values as follows:

LOCATION OF TEXT TO BE MODIFIED:	INSTEAD OF:	IT IS:
Estimated Contract Value	151,700.00	200,000.00
Estimated Value in Separate Lots for Lot 1	131,700.00	150,000.00
Estimated Value in Separate Lots for Lot 2	20,000.00	30,000.00

Even in this corrigendum, the Municipality had made a mistake, by not calculating the total projected value correctly (**LOT 1 - 150,000 + LOT 2 30,000 = 180,000**).

Seven economic operators applied to this tender, and upon bid evaluation, three were declared “irresponsible”⁷². According to the evaluation, the Municipality was to award Lot 1 to “Delta Security” LLC, it having bid the cheapest price with a total contract value of EUR 166,817.04, while Lot 2 was to be awarded to “Commando” LLC at the value of EUR 25,847.04.

Immediately after the decision of the Municipality⁷³, participants in the process reacted. “Alfa Private Security” LLC and “International Security Association” LLC complained to the contracting authority regarding the bid selected by the Municipality, and additionally, the latter filed a complaint against the decision of the Municipality to declare

it “irresponsible”⁷⁴. The Municipality rejected both complaints⁷⁵, resulting in both companies filing complaints with the PRB, with the same allegations. The PRB expert⁷⁶ failed to address the complaint by handling only the lowest price criterion and not the level of responsibility of the selected bid, the validity of which had been called into question. The expert supported the analysis made on the bidder’s statement of compliance with the requirement for a gross monthly salary of EUR 200.00.

According to a simple analysis, in a situation where the company makes no profit and does not account for administrative and operational costs, the minimum bid for Lot 1 should be as follows.

#	DESCRIPTION	UNIT
1	No. of workers	20
2	Monthly Salary	€ 200.00
3	Duration in months	36
4	Gross Salary (1*2*3)	€ 144,000.00
5	Employer Contributions @5%:	€ 7,200.00
6	VAT 18% (Company)	€ 27,216.00
TOTAL (4+5+6)		€ 178,416.00

72 1) “SFK” LLC, 2) “Rosa-security” LLC, and 3) “Internat Security Association” LLC.

73 Decision of 9 January 2019.

74 Complaints of 10 January 2019.

75 Municipality Decision of 30 January 2019.

76 PRB Decision of 3 March 2019, Protocol No. 46/19, 49/19.

The review panel decided to refer the tender in question back for re-evaluation, and asked the Contracting Authority to evaluate whether the bid of "Besa Security" LLC could meet the requirements for employees' minimum wage of EUR 200.00 per month.

Even after the re-evaluation, the Municipality maintained its decision, leading to another complaint filed by the International Security Association LLC with the PRB alleging that the Municipality had not complied with the request of the PRB to evaluate whether the selected bid could meet the minimum wage requirements of EUR 200.00. In reviewing the second complaint, the same expert recommended that the case be re-evaluated as the Municipality had not implemented the previous PRB decision. The review commission again decided to cancel the contract award notice, and send the case for re-evaluation⁷⁷.

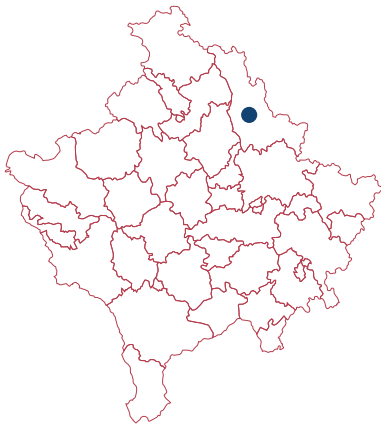
The Municipality then canceled the procurement activity for Lot 1 on the grounds that there were no responsible bidders. Three bidders did not meet the suitability criteria, while four other bidders failed to meet the requirement for a monthly salary of EUR 200.00 for their staff.

The Municipality also did not require evidence that the EO had no outstanding tax obligations to the Municipality, which would help the Municipality when collecting on debt.

⁷⁷ PRB Decision of 21 May 2019, Protocol No. 178/19.



MUNICIPALITY OF PODUJEVË/PODUJEVO



Two tenders were analyzed for the Municipality of Podujevë/Podujevo. In both cases the Municipality was fair in its assessment of deadlines required for publication of documents and responses to complaints. However, it was not so fair in its bid evaluation. In the contract for the construction of greenhouses for farmers, the Municipality completed the evaluation of bids with a delay of 21 days past the deadline of 30 days as defined by Law. In this case, the bid was opened for applications on 3 April 2019, while the evaluation of bids was conducted on 24 May 2019. Same as in the above municipalities, in the tender for paving the road with asphalt, the Municipality of Podujevë/Podujevo required the submission of only one document issued by the Court as evidence of compliance with the eligibility requirements according to the Law on Public Procurement⁷⁸ that the company was not undergoing bankruptcy proceedings or that neither its owners nor

its executives had been found guilty of fraud by a court of competent jurisdiction. The Consortium found that the Rules and Operational Guidelines for Public Procurement do not provide sufficient guidance on compliance with Article 65 of LPP, providing that bidders should present two certificates, issued by two different courts, dealing separately with the two different matters. In absence of such guidance⁷⁹, companies had only brought certificates on bankruptcy-related claims⁸⁰, while not providing certificates evidencing whether the economic operator, any executive, manager or director thereof has been determined by a court of competent jurisdiction to have committed a criminal or civil offense involving corrupt practices, money laundering, bribery, kickbacks or any similar activities in the past ten years.

The Municipality set a good example when it published all the documents required by Law on the e-Procurement platform, and in granting access to the requested documents within the time limits.

Tender for Paving the Roads in the villages of Shajkovc, Batllava, Svegël, Ballovc, Lladovc, Livadica and Surkish in the Municipality of Podujevë/Podujevo⁸¹

This tender was divided into three lots: the construction of connecting roads in the villages Shajkovc and Batllavë, Svegël and Ballovc, and Livadicë, Lladovc and Surkish in the Municipality of Podujevë/Podujevo.

⁷⁸ Law No. 04/L-042 on Public Procurement in the Republic of Kosovo, as amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092; Article 65. Eligibility of the Candidate or Tenderer.

⁷⁹ Article 65. Eligibility of the Candidate or Tenderer, Paragraph 3 evidence of a clear criminal record (under the jurisdiction of the Basic Court, Department of Serious Crimes), and Paragraph 4 on bankruptcy (Basic Court in Prishtinë, Department of Commercial Matters).

⁸⁰ Issued by the Basic Court of Prishtinë, Department of Commercial Matters.

⁸¹ 615-19-611-5-2-1.



LOT NO.	DESCRIPTION
LOT 1	Paving the roads in the villages of Shajkofc, Batllavë
LOT 2	Paving the roads in the villages of Sfeqël, Ballofc
LOT 3	Paving the roads in the villages of Livadicë, Lladofc and Surkish

The estimated cost of this contract was EUR 446,744.00, with a deadline for the completion of the works of 70 days. Under the conditions set out in the Tender Dossier, economic operators could be awarded only one of the lots in this tender, subject to having bid responsibly at the cheapest price.

For the purposes of analyzing the tendering process, researchers selected Lot 1, which has an estimated value of EUR 141,596.57. The tender was open for applications 21 days after its publication on the e-Procurement platform⁸², which shows that the Municipality complied with the legal requirements for the call to be open for a minimum of 20 days for medium-value tenders⁸³. Furthermore, the Municipality showed efficient planning when respecting the deadlines, from the preparation of the Tender Dossier to publication on the e-Procurement platform⁸⁴, without shortening the deadline for submitting bids.

The tender was awarded to the company deemed responsible that bid the lowest price bid, "Papenburg" from Ferizaj/Uroševac, bidding at EUR 136,626.38.

10 companies applied to this tender, three of which were declared "irresponsible". There were no complaints filed with the Contracting Authority or the Procurement Review Body regarding the evaluation by the commission. The Municipality signed the contract five days after the announcement of Contract Award Notice, adhering to the minimum requirements set by law⁸⁵.

In its technical specifications, the Municipality required the employment of a qualified civil engineer, with a major in construction or road infrastructure and at least three years of work experience after graduation, as well as a qualified engineer or an engineering surveyor with a Bachelor's degree, with at least one year of work experience. The Municipality failed to specify any motor pool capacity that the company should possess for implemen-

⁸² Date of publication on e-Procurement 04 March 2019.

⁸³ Law No. 04/L-042 on Public Procurement in Republic of Kosovo, as amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092; Article 44 - General Rules for Setting a Time Limit for the Receipt of Tenders or Requests to Participate; paragraph 2: In a procurement using open procedures, the contracting authority shall set a time limit for the receipt of tenders that is: (2.2) if the concerned contract is a large value public contract, not less than twenty (20) days.

⁸⁴ The Tender Dossier was prepared on 21 February 2019 and published on the e-Procurement platform on 4 February 2019.

⁸⁵ The Municipality complied with the legal deadline of 5 days from the Contract Award Notice until the date for signing the contract, in case of complaints by interested parties (Article 108/A of LPP).



tation of the works, requiring only that the company must possess the necessary means for their implementation. Poorly drafted requirements, which do not even cover a deployment plan for the necessary machinery, run the risk of application by companies that do not have the capacity to carry out the works.

Tender for Farmer Green House Construction in the Municipality of Podujevë/Podujevo⁸⁶

The estimated value of this tender was EUR 162,396.32, with a deadline for the completion of works of 45 days.

The Municipality of Podujevë/Podujevo announced the tender for the construction of 100 greenhouses for farmers on 11 March 2019⁸⁷. This medium-value tender was open for application for 22 days⁸⁸. The opening of bids was carried out on 3 April 2019, while the notice on the decision of the Municipality was published on 24 May 2019. The Municipality did not provide access to the first bid evaluation report, which made it impossible to verify whether or not the bid was evaluated 51 days after the application window for the bid was opened, respectively 21 days later than required by the Law on Public Procurement⁸⁹.

Five companies replied to the call for applications. According to the announcement of the contracting authority's decision, the cheapest bid was disqualified because the number of arithmetic errors exceeded the value of 2% of that allowed by Law. Of the remaining four bids, the

Municipality decided to award the contract to NTP "Liria" from Podujevë/Podujevo, having bid EUR 119,217.00. On 29 May 2019, the group of economic operators "PMC dhe Zauna Rrethoja" from Prishtinë submitted a request for re-evaluation to the Municipality on the grounds that the selected bid was "irresponsible". The Municipality rejected the request in question on 31 May 2019 as unfounded. Subsequently, the same group of operators filed a complaint with the PRB on 7 July 2019. During the evaluation conducted by the review expert, it was concluded that the selected bid fell short of meeting the conditions for economic and financial standing, as well as those for technical and financial capacity. Therefore, the PRB overturned the decision to award the contract, and referred back the case for re-evaluation⁹⁰. After re-evaluating the bids, the Evaluation Commission found that the bid submitted by the "Liria" company was irresponsible, and recommended that the contract be awarded to the responsible bid with the lowest price, namely that of the group of economic operators "PMC dhe Zauna Rrethoja" for EUR 132,826.70. The contract for these works was signed on 9 November 2019.

86 615-19-942-5-2-1.

87 Date of publication on e-Procurement was 11 March 2019, and date of preparation of the Tender Dossier was 7 March 2019.

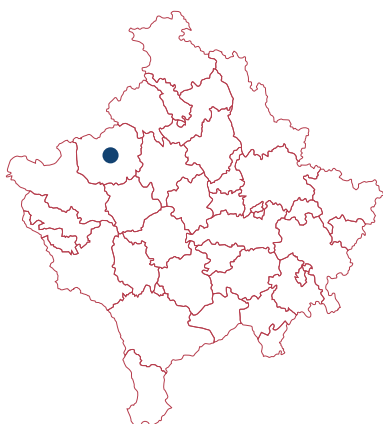
88 Deadline for receipt of bids 2 April 2019.

89 ROGPP, Article 41, Paragraph 2: "The procedure for examination, evaluation and comparison of tenders shall be completed by the CA within the shortest possible period of time and no more than 30 days from the opening of the tenders. Only in exceptional and well justified cases, in particular with the contracts of a complex nature, this period may be extended for additional term of 20 days."

90 PRB Decision of 23 July 2019, Protocol No. 289/19.



MUNICIPALITY OF ISTOG/ISTOK



Two tenders were analyzed for the Municipality of Istog/Istok. The Municipality adhered to the deadlines required for the publication of documents and response to complaints. As with the Municipality of Podujevë/Podujevo, in the Tender Dossier for road construction, the Municipality of Istog/Istok required the submission of only one document issued by the Court as evidence of compliance with the eligibility requirements according to the Law on Public Procurement⁹¹ that the company was not undergoing bankruptcy proceedings and whether its owners and executives had been found guilty of fraud by a court of competent jurisdiction. The Consortium found that the Rules and Operational Guidelines for Public Procurement do not provide sufficient guidance on compliance with Article 65 of LPP, providing that bidders should present two certificates, issued by two different courts that deal separately with these two matters. In absence of such guidance⁹², companies only brought certificates on claims related to bankruptcy⁹³, while not providing certificates that

the economic operator, any executive, manager or director thereof has been determined by a court of competent jurisdiction to have committed a criminal or civil offense involving corrupt practices, money laundering, bribery, kickbacks or any similar activities in the past ten years. Further, as part of the tender for the construction of the Hul Huli road, the Municipality failed to request evidence of the company's technical capacity, namely machinery, for the completion of works. Instead, the company was only required to prove that it possesses the necessary machinery for the implementation of works, and did not request a machinery deployment plan, running the risk of the tender awarded to a company which would not have the implementation capacity. Nevertheless, the biggest concern is related to the abnormally low price that was bid by the winning company for the implementation of Lot 1. The winning bid was 188.43% lower than the average of all bids for this Lot, a cost so low that it jeopardizes the quality of the works.

The Municipality had published all the documents required by Law on the e-Procurement platform and granted access to the requested documents within the specified time limits.

Tender for Road Construction of Hul Huli (Istog i Poshtëm/Donji Istok) roads, Ibrahim Salihu Tomoc Kovrage road, and road asphalt pavement in the Dekaj neighborhood (Istog i Poshtëm/Donji Istok) in the Municipality of Istog/Istok⁹⁴

This Tender was divided into three lots, including the construction of connecting roads in the villages Hul Huli (Istog

91 Law No. 04/L-042 on Public Procurement in Republic of Kosovo, as amended and supplemented by Law No. 04/L-237, Law No. 05/L-068, and Law No. 05/L-092; Article 65. Eligibility of the Candidate or Tenderer.

92 Article 65. Eligibility of the Candidate or Tenderer, Paragraph 3 evidence of a clear criminal record (under the jurisdiction of the Basic Court, Department of Serious Crimes), and Paragraph 4 on bankruptcy (Basic Court in Prishtinë, Department of Commercial Matters).

93 Issued by the Basic Court of Prishtinë, Department of Commercial Matters

94 633-19-2063-5-2-1

(Istog i Poshtëm/Donji Istok) in the Municipality of Istog/
Istok with asphalt.

The estimated cost of this contract was EUR 90,000.00, with a deadline for the completion of works of 60 days. Under the conditions determined in the Tender Dossier, economic operators could be awarded up to the three lots in this tender, subject to having bid responsibly at the cheapest price.

For the purposes of analyzing the tendering process, researchers selected Lot 1, with an estimated value of EUR 40,000.00. The tender was open for 20 days after its publication on the e-Procurement platform⁹⁵, which shows that the Municipality complied with the legal requirements for a call for applications to be open for a minimum of 20 days for medium-value tenders⁹⁶. The Municipality did not anticipate any delays related to its publication on the e-Procurement platform⁹⁷, thereby risking a contraction in the deadline for the receipt of bids.

The Municipality also did not require evidence that the company had no outstanding tax obligations to the Municipality, which would help the Municipality in collecting on debt. Additionally, the Municipality had not required that the bidders submit any evidence of economic and financial capacity.

Four companies applied to this tender, and all were declared “irresponsible.” The tender was awarded to the responsible Company with the bid of the lowest price, “Shkemi LLC” from Istog/Istok, having submitted a bid that was identical to the values projected in the tender

97 The tender dossier was prepared on 11 April 2019 and was published on the e-Procurement platform one day later, on 12 April 2019.

dossier. Moreover, the difference in price between the winning bid and the second cheapest bid for Lot 1 was 65.66%. The Municipality requested clarifications from the economic operator regarding the abnormally low price, in which case the bidder responded stating to have sufficient capacity to afford the contract implementation at the price in question. Nevertheless, such a price indicates that the Municipality had failed to properly forecast the value of the contract, and a contract with abnormally low prices jeopardizes the quality of works.

There were no complaints filed with the Contracting Authority nor the Procurement Review Body regarding the evaluation by the commission. The Municipality signed the contract five days after the announcement of Contract Award Notice, adhering to the minimum requirements set by law.⁹⁸

In its technical specifications, the Municipality required a qualified engineering surveyor with at least three years of work experience. The Municipality had failed to specify any motor pool or human capacity that the company should possess for the implementation of the works, requiring only that the company must possess the necessary means for the implementation of works. Poor technical specifications, which do not even set out the requirement for a deployment plan for the necessary machinery, create the opportunity for applications to be made by companies that do not have the capacity to implement the tender.

It is worth noting that the Municipality published all documents relevant to the tender in question on e-Procurement platform, including evaluation reports.

Tender for Local Road (4th Order) Maintenance in the Municipality of Istog/Istok⁹⁹

The estimated cost of this tender was EUR 65,000.00, with a deadline for the completion of works set at 24 months. The Municipality of Istog/Istok announced the tender for the maintenance of local roads (4th order) on 18 February 2019¹⁰⁰. This tender for services, of medium value, was open for applications for 21 days¹⁰¹. The opening of bids was conducted on 11 March 2019, while the notice on the decision of the Municipality was published on 23 April 2019. In its technical specifications, the Municipality did not use any discriminatory criteria which could harm competition.

Four companies applied to this tender, and three of them were declared irresponsible. As the only responsible bid, the contract was awarded to the company "Shkembi" LLC from Istog/Istok for the amount of EUR 48,010.00. There were no complaints filed with the Contracting Authority or the Procurement Review Body regarding the evaluation by the commission.

⁹⁸ The Municipality had complied with the legal deadline of 5 days from the Contract Award Notice until the date for signing the contract, in case of complaints by interested parties (Article 108/A of LPP).

⁹⁹ 633-19-451-1-2-1

¹⁰⁰ Date of publication on e-Procurement was 18 February 2019, while date of preparation of the Tender Dossier was 14 February 2019

¹⁰¹ Deadline for receipt of bids 11 March 2019

CONCLUSION

The above analysis shows that while the municipalities are willing to comply with the rules and guidelines issued by the Public Procurement Regulatory Commission, such rules, while amended with good intention, are in conflict with the Law on Public Procurement. For the purposes of expediting the procedures for signing contracts and avoiding multiple publications of the Contract Award Notice in case of complaints, the PPRC amended the secondary legislation in such a way that meant the deadline for complaints would start running from the date of publication of the contracting authority's decision. However, this is contrary to Article 108/A, which sets out that this deadline should start running from the date of publication of the Contract Award Notice. As a result, the Municipalities complied with the PPRC guidelines, thereby acting in violation of the provisions under the Law on Public Procurement.

Further, this analysis revealed that the Rules and Operational Guidelines for Public Procurement do not provide sufficient guidance for compliance with Article 65 of LPP, providing that bidders should present two certificates, issued by two different courts, each addressing the two requirements set out in the law separately. In the absence of such guidance¹⁰², companies only brought certificates related to the bankruptcy claims¹⁰³, and did not provide certificates evidencing whether any executive, manager or director of the economic operator has been determined by a court of competent jurisdiction to have committed a criminal or civil offense involving corrupt practices, money

laundering, bribery, kickbacks or any similar activities in the past ten years. This practice has proven to be damaging: in cooperation with the media, civil society revealed that one Municipality awarded a contract to an economic operator that had been convicted by a court of competent jurisdiction in an indictment brought by the Municipality itself¹⁰⁴.

The research has also led to concerns over the lack of standardized requirements for procurement categories. In the absence of proper guidance from the PPRC regarding tenders for services, namely how to address the tender dossier obligations in the Bill of Quantities of under the labor law, as well as administrative costs, logistics and profit, the Municipality of Ferizaj/Uroševac accepted a bid costing it EUR 224 for every worker who would be paid a gross amount of EUR 270, without defining what this amount would cover. Additionally, the Municipality of Lipjan/Ljipljan accepted a bid that only covered the salaries of the workers, and did not comply with obligations set out in the labor law and also failed to address all of the accompanying (indirect) costs related to the service in question. Furthermore, in this municipal tender, the Municipality of Lipjan/Ljipljan had made errors when calculating the number of staff necessary for the tendered hours, with a noted difference of **360** hours less contracted in the latter. Consequently, either the municipality would be at risk of being left without services or the performing company would take on liabilities not covered by the contract value. Also, in the absence of standard-

102 Article 65. Eligibility of the Candidate or Tenderer, Paragraph 3 evidence of a clear criminal record (under the jurisdiction of the Basic Court, Department of Serious Crimes), and Paragraph 4 on bankruptcy (Basic Court in Prishtinë, Department of Commercial Matters).

103 Issued by the Basic Court of Prishtinë, Department of Commercial Matters

104 Tenderi i kundërligjshëm i Komunës së Obiliqit, Preportr, Korrik 2019

ized requirements for public procurement categories, in the tender for paving the roads in Shajkofc and Batllavë, Sfaqël and Ballofc, and Livadicë, Lladofc and Surkish, the Municipality of Podujevë/Podujevo did not define the required motor pool capacity for contract implementation, running the risk that the contract would be awarded to companies which did not have sufficient capacity, respectively taking a risk with the both the quality of the works and their duration.

Additionally, the municipalities had problems with proper procurement forecasting. A lack of market research and needs assessment in the Municipality of Ferizaj/Uroševac resulted in a contract that cost 30.86% less than its estimated value, while some roads had been left out of the contract, for which a contract annex had to be drawn up. In the Municipality of Prizren, in its tender for gravel supply, the budgeted cost of this service was EUR 250,000.00. However, in the procurement forecast, the Municipality increased this amount to EUR 1.5 million, which led to the announcement of a framework contract lasting 36 months.

Further, in a comparison between a tender issued in the Municipality of Prizren and similar tenders in the municipalities of Prishtinë, Ferizaj/Uroševac and Gjilan, the Municipality had included criteria in the tender dossier which different from the criteria in the other municipalities. The different criteria were: (1) a large number of workers (at least 20 employees of different profiles necessary for contract performance) accounting for the hiring of seasonal workers for construction works, (2) two-wheel loaders of medium tonnage, and (3) one large tonnage cylinder (10+ tons).

The research revealed that in the Municipality of Suharekë/Suva Reka, a contract for road maintenance and cleaning has been implemented by the same economic operator, Regional Company "Ekoregioni", for almost a decade. From conversations with economic operators who had downloaded the tender dossier but opted not to apply, it seems that the value of such services for the operator is extremely low, and not high enough to justify an operator investing in the machinery needed to implement the contract. For this reason, there was no interest from other operators applying for the tender in question..

RECOMMENDATIONS

- 1** The Public Procurement Regulatory Commission should review the amendments to the secondary legislation to avoid conflicts with the Law on Public Procurement. While the same institution is working on the concept document for amending the Law, facilitating provisions should be provided for in the Law, and then transposed into the ROGPP.
- 2** The Public Procurement Regulatory Commission should clarify the obligations arising from Article 65 of the LPP. Considering the enforcement of the Declaration under Oath, the PPRC must provide a centralized and easily accessible platform to all Contracting Authorities, where they would be able to verify whether a company meets the eligibility requirements set out therein under the LPP. The Coalition recommends that the Debarment List be transferred to be under PPRC ownership, so that the PPRC could then establish an ongoing line of communication with the judiciary, namely the courts and the PRB, and the information received from these institutions, including the terms of sanctions, would be maintained and accessible to procurement officials through the e-Procurement platform.
- 3** In terms of legislation, the PPRC must make market research mandatory before announcing tenders. In terms of training, the Commission must ensure that the Contracting Authorities have the appropriate knowledge required to for the issued tenders to be economically sound.
- 4** The PPRC must categorize the minimum technical requirements according to procurement category. The Bill of Quantities for services should be the same in terms of demand and units, so that Contracting Authorities do not face potential omissions which could result in the violation of relevant laws, or overpayment for services. The Bill of Quantities for services should be divided into (1) price for the service and (2) indirect costs such as administration, operation, logistics, fulfillment of legislative obligations, and profit. To avoid errors in arithmetic, the Bill of Quantities should be generated on the e-Procurement electronic platform, or as a closed table that prohibits the modification of formulas.
- 5** The PPRC should engage in more thorough monitoring of Published Notices, and where preferential criteria are identified (whether over-estimating or under-estimating the extent of the criteria to be met undertake punitive action against the Contracting Authorities.
- 6** Municipalities should improve forecasting activities, both in terms of demand and finances, to avoid over or under-budgeting and prevent or mitigate the need to provide contract annexes.

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