

# PROBLEMATIC MAINTENANCE OF ROADS

## DELAYS AND FAVORITISM

2019





# **MONITORING REPORT OF THE CONTRACT FOR SUMMER AND WINTER MAINTENANCE OF KOSOVO NATIONAL AND REGIONAL ROADS 2017, 2018 AND 2019**

**2019**

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# LIST OF ABBREVIATIONS AND EXPLANATIONS

<b>TD</b>	Tender Dossier
<b>LPP</b>	Law on Public Procurement
<b>MI</b>	Ministry of Infrastructure
<b>CA</b>	Contracting Authority
<b>EO</b>	Economic Operator
<b>PRB</b>	Procurement Review Body
<b>ROGPP</b>	Rules and Operational Guidelines for Public Procurement
<b>Contract performer</b>	Economic operator rewarded with contract
<b>Ineligible EO</b>	Economic Operator that did not meet the criteria required in TD
<b>Unsuccessful tenderer</b>	Responsible economic operator but not awarded with a contract
<b>Unit</b>	Specific item or position for which a bid has been requested at individual price
<b>LOT</b>	A number of units of an item, a single item, or a package of items provided as a single item or service



# EXECUTIVE SUMMARY

The Kosovo Democratic Institute (KDI), in the light of its engagement in monitoring public procurement during the last seven years has monitored the process of awarding and overseeing contracts by the Ministry of Infrastructure (MI). According to the Law No. 2003/11 on roads, as amended and supplemented with the Law No. 03/L-120 and the Law No. 06/L-068, the Ministry of Infrastructure is responsible for the management, maintenance and construction of the highway, national roads and the regional ones.<sup>1</sup> KDI has monitored the Contract for summer and winter maintenance of national and regional road of 2014, for which it has come up with an evaluation report and recommendations in 2016<sup>2</sup>. With the purpose of monitoring whether our recommendations have been addressed by the MI in the coming years and for other contracts, and always with the aim of addressing public money expenditure as good as possible, KDI has also chosen to monitor the tendering process for the three year contract for the summer and winter maintenance of national and regional roads for 2017, 2018 and 2019. This report analyses the procurement process starting from the planning stage, the tendering stage - the criteria set out in the Tender Dossier (TD), the award phase as well as the complaints of operators, and the decisions of the Procurement Review Body (PRB) Also, this report addresses the emergency contract with negotiated procedure on the winter maintenance of roads (2017-2018) as well as previous summer and winter road maintenance contract (2014-2017) with the purpose of comparing to the current contract.

The contract for summer and winter maintenance of national and regional roads 2017, 2018 and 2019, with procurement number 205-17-4559-2-1-1, is a public framework contract with some operators for a period of 36 months.<sup>3</sup> The value of this contract is € 17,231,050.50 while its scope includes 1,795.23 km. This contract is divided into 14 LOTs that cover 7 regions divided in two parts<sup>4</sup>. The works that are planned to be carried out under this contract are divided into summer jobs (rehabilitation of holes, replacement of the new circulation layer - asphalt-concrete, benches, provision of forms and cleaning of drainage channels, cleaning of culverts, cutting of grass and shrubs to improvise visibility, removal of eroded material - stones and small slides) and winter works (snow protectors, traffic signalling, snow clearing, anti-ice measures, removal of fallen stones and waste from the road, supply and distribution of salt and quarry materials, system monitoring and reporting on conditions).<sup>5</sup>

The notice for this contract<sup>6</sup> was made on 29 September 2017 and the deadline for submission of bids was 26 January 2018<sup>7</sup>. This tendering process is prolonged due to numerous complaints of EOs about CA-MI decisions for the operators recommended for contract award, and as a result, contracts for all lots have been signed only after 15 months from the date of the announcement of the contract notice.

A total of 15 complaints were addressed to the PRB with regard to this procurement process. Despite the fact that the PRB's decisions are rendered with significant delays<sup>8</sup> and this is one of the reasons for the delay of this tendering process, the reason of concern is that **the decision of the PRB do not address the substance of the complaints allegations**<sup>9</sup>. In most of the decisions, the PRB requires the CA to clarify and verify the evidence, in the re-evaluation process, which are subject to allegations of the complaining EO (which the CA-MI disregards). The PRB justifies such action (or omission) with the fact that their duties are to verify whether there are any violations of the law, not to investigate the authenticity of documents, or make

1 Law no. 2003/11 on roads, as amended and supplemented by Law no. 03/L-120 and Law no. 06/L-068. Article 8.1. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2467>

2 KDI Report The Road to Money, <http://kdi-kosova.org/wp-content/uploads/publikime/54-2016-03-rruga-tek-parate-monitorimi-i-min-se-infrast-alb-isbn.pdf>

3 Contract Notice. [https://e-prokurimi.rks-gov.net/SPIN\\_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=80215](https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=80215) Prishtina 1 and 2, Prizren 1 and 2, Peja 1 and 2, Gjakova 1 and 2, Ferizaj 1 and 2, Gjilan 1 and 2 and Mitrovica 1 and 2.

5 [https://e-prokurimi.rks-gov.net/SPIN\\_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=80215](https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=80215)

6 E-Procurement, Contract Notice, [https://e-prokurimi.rks-gov.net/SPIN\\_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=80215](https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=80215)

7 The originally scheduled deadline for submitting bids was 23 October 2017, but it was subsequently postponed by the PRB's decision of 26 January 2018.

8 Delays in PRB are justified by the lack of staff in PRB. From the meeting with the Head of PRB, Blerim Dina, on 19.11.2018.

9 Often, the PRB does not give a verdict whether an allegation stands or not.

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pricing calculations, etc.<sup>10</sup>, an action which is in violation of their competences under the LPP.<sup>11</sup> What is noticed in the decisions of the PRB is the fact that **the recommendations of the review expert are not taken into account**. In an overwhelming majority of cases, the decisions of the review panel are contrary to the proposal of the review expert. Even more concerning is the fact that the PRB's decisions are not respected by CA-MI<sup>12</sup>, which has led to CA decisions being subject to complaints before the PRB, in more than one case and for the same reasons.

Based on the analysis of allegations made by the eliminated EOs regarding the decisions of CA-MI for contract award, one can be seen that the complaining allegations of eliminated EOs mainly relate to the failure to comply with TD criteria from the operators recommended for contract. The most frequent complaining allegations relate to discriminatory and favouring criteria in TD, various non-valid licenses, proof of work experience of engineers, lack of necessary equipment, then the inadequate method of notarizing the list of equipment, abnormally low prices, high prices<sup>13</sup>, the inadequacy of the EO due to unclear criminal record<sup>14</sup> etc.

The numerous delays in the tendering process have left many regional and national roads<sup>15</sup> without maintenance for a longer time. MI stated that on the roads where the conclusion of the contract has been delayed, only emergency interventions have been made, but it has not been clarified whether there is any annex contract or any agreement with the EOs assigned to these regions<sup>16</sup>. KDI received different answers from MI officials regarding this issue<sup>17</sup>, while access has not been granted to documents that would prove any contractual relationship for this period. Later, the KDI has learned that MI, at the end of December 2017 and early January 2018, has signed **emergency contracts** with 14 operators for 14 lots for the period until 31 March 2018. KDI considers the fact that MI mainly cooperates with the same operators with regard to road maintenance contract is concerning. This conclusion comes from analysing winning EOs from the previous contract (2014 - 2017), emergency contracts (January - March 2018) as well as current contracts (2017, 2018, 2019) where economic operators are the same<sup>18</sup>.

Problems that have been faced during this procurement process include delays in the beginning of the tendering process, discriminatory criteria in the TD, non-review of EO requests addressed to CA-MI, incorrect evaluation of bids, delays in the complaint review process by PRB, non-compliance with decisions of the PRB by MI, etc. During the analysing of contracts signed with the MI with 14 EO, KDI has found unusually low prices, different prices for the same work carried out by different EOs, higher prices for easier work, and low prices for heavy work.

In order to improve procurement practices in this ministry, KDI recommends that procurement planning should initially be done carefully and in compliance with the needs, procurement procedures should begin as early as possible in order to avoid delays or potential emergency contracts, complaints of EOs should be reviewed by the MI in order to avoid possible delays in the PRB, and in cases where MI decisions are judged by the PRB, these decisions should be compiled with by the MI.

10 Meeting with the Director of PRB, Mr. Blerim Dina, on 19.11.2018.  
 11 Competencies of the PRB, Article 105.2. Law No. 04/L-042 on the Public Procurement of the Republic of Kosovo, as amended and supplemented by the Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092.  
 12 Concrete cases addressed in the complaints section of the EO.  
 13 The complaining allegations of some operators that were eliminated by reason that they were not the cheapest bid, based on the fact that in TD, the value presented is just an indicative value.  
 14 One of the EOs recommended for the contract with a previous decision of the PRB has been declared as irresponsible due to the reason that the owner of this operator has been convicted for corruptive affairs, which according to Article 65 of the LPP, are reasons for declaring the operator as irresponsible.  
 15 Prishtina 1 and 2, Mitrovica 1 and 2, Gjakova 1, Peja 2, Gjilan 2, Ferizaj 1 and 2.  
 16 We have sent questions and we have requested from the Public Procurement Office within MI to grant us access to these annex contracts or agreements but we have not received any response.  
 17 In a meeting with the Manager of the Public Procurement Office, Mr. Nexhat Krasniqi, he said that in regions without maintenance, it is intervened only in emergency cases and this intervention is done by EOs of the nearest regions without any compensation, while at the meeting with Mr. Skenderi Gashi, Director of the Department for Road Management in MI, we were told that MI has annex contracts with EO performers of the nearest regions, who intervene in the regions without maintenance.  
 18 Except in Lot Mitrovica 2 where the winning EO has changed in the current contract.

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# INTRODUCTION

The Ministry of Infrastructure continues to be one of the institutions with the highest budget for capital investment<sup>19</sup>. Given that the road infrastructure remains one of the most important areas<sup>20</sup>, with numerous problems<sup>21</sup> and rumoured for corruption<sup>22</sup> and mismanagement of public money<sup>23</sup>, the Kosovo Democratic Institute, based on the seven-year public procurement monitoring experiences, has considered necessary to monitor the procurement activity in this ministry as one of the key processes in the spending of public money<sup>24</sup>. Earlier monitoring reports by KDI regarding public procurement in MI<sup>25</sup> have identified numerous irregularities. In 2016, KDI had found that out of EUR 9.1 million spent for maintenance of national and regional roads a total of EUR 1.9 million were "lost", with the cheaper economic operator (EO) eliminated under the pretext of being irresponsible, and the most expensive EO was selected who, after the inspection and before the commencement of works, also proved irresponsible. Various local reports from civil society and the media<sup>26</sup> reflect many different problems with regard to road maintenance. This is also supported by the National Audit Office<sup>27</sup> which according to its report has concluded that some of the key problems are related to delays in initiating procurement procedures - which caused extension of contract terms and additional work; merging of the summer maintenance and winter maintenance in a single tender - that has produced hardly achievable requirements for EO's to qualify, reduction of competition and endangering the achievement of the value for money; lack of technical specifications regarding the width of roads that has prevented accurate calculation of road maintenance costs; awarding contracts without publication of the tender; lack of proper reporting documentation and registration of works and expenditures realized.

This document analyses the procurement procedures related to the road maintenance contract for 2017, 2018 and 2019 to see if the recommendations addressed to this ministry by KDI, CAO and other NGOs have been considered and whether this new contract was developed in conformity with lawfulness and good procurement practices.

19 According to Law no. 06 / L-020 on the Budget of the Republic of Kosovo for year 2018, EUR 247,572,759 (13% of Kosovo's total budget for 2018), <https://mf.rks-gov.net/desk/inc/media/668E7D87-490C-4229-881B-E66CE614F4C1.pdf>

20 United Nations, Brussels Conference 21.05.2001: "The development of infrastructure networks is intimately connected with the process of economic growth". Among many other areas, it examines the impact of transport infrastructure on easing economic integration, the importance of the Internet in facilitating trade and the link between infrastructure and poverty reduction. (accessed on 26.11.2018 available at <https://www.un.org/press/en/2001/dev2328.doc.htm>)

21 Report of the National Audit Office for MI for the year 2017, [http://www.zka-rks.org/wp-content/uploads/2018/06/RaportiAuditimit\\_MINF\\_2017\\_Shqip.pdf](http://www.zka-rks.org/wp-content/uploads/2018/06/RaportiAuditimit_MINF_2017_Shqip.pdf)

22 <http://www.arbresh.info/lajmet/ekskluzive-hetime-per-korrupsion-ne-ministrine-e-infrastrukturen-nga-zyrtaret-e-dyshuar-per-korrupsion/>, <http://lajmi.net/zharku-pastron-infrastrukturen-nga-zyrtaret-e-dyshuar-per-korrupsion/>, <https://periskopi.com/denuari-burg-per-korrupsion-behet-drejtor-ne-ministrine-e-infrastrukturen-dok/>

23 Road to Money report, KDI 2016, available at: <http://kdi-kosova.org/publikimet/rruga-tek-parate/>

24 During 2017, 32% (EUR 641,298,561.48 out of EUR 2,001,020,477.00) of the Kosovo General Budget were spent through public procurement procedures, PPRC Annual Report for 2017, available at: <https://krpp.rks-gov.net/krpp/PageFiles/File/2018/06/sh-Raporti%20vjetor%202017%20Komplet.pdf>

25 Road to Money report, KDI 2016, available at: <http://kdi-kosova.org/publikimet/rruga-tek-parate/>

26 Over EUR 31 million were spent on road maintenance, ZERI June 19, 2018, available at: <https://zeri.info/ekonomia/148989/mbi-31-milione-euro-u-shpenzuan-per-mirembajtjen-e-rrugeve/>, DYING ON THE ROADS Kosovo 2.0, 10 gusht 2017, available at: <https://kosovotwopointzero.com/dying-on-the-roads/>

27 <http://www.zka-rks.org/wp-content/uploads/2017/07/ProcesiProkurimitPerMirembajtjenRrugeve.212588.pdf>



# METHODOLOGY

In the compilation of this report, quantitative and qualitative analysis were carried out in order to reflect a more accurate state of play regarding procurement activity for summer and winter maintenance services of the national and regional roads of Kosovo 2017/2018/2019 with procurement number: 205-17-4559-2-1-1. Some of the methods used are the analysis of data accessed through e-procurement,<sup>28</sup> documents received from the Ministry of Infrastructure<sup>29</sup> and PRB<sup>30</sup> through requests for access to public documents<sup>31</sup>, focus group with EO, communication with economic operators and meetings with institutional representatives from PRB and especially with those from the Ministry of Infrastructure.

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28 The documents accessed through e-procurement are: contract notice, error correction forms, contract award notice, cancellation notice of the contract award.  
29 Contracts signed with 11 EOs, Offers of EO.  
30 Complaints of operators, PRB Decisions.  
31 Request addressed to the MI (05.10.2018), Request addressed to the PRB (30.10.2018)



# TRANSPARENCY OF THE MINISTRY OF INFRASTRUCTURE IN PUBLIC PROCUREMENT

Transparency of the Ministry of Infrastructure in public procurement In the light of the public procurement monitoring project, KDI has signed a Memorandum of Understanding with the Ministry of Infrastructure, represented by the Minister Mr. Pal Lekaj, on 03 October 2018. By virtue of such memorandum, both parties have committed for cooperation, easier access to public documents, exchange of information, and advancement of the procurement process in general.

Acquiring access to necessary documents in this ministry has been a challenge of its own. The Ministry of Infrastructure did not respond to the request of KDI for access to public documents sent on 05 October 2018 until the last day of the legal deadline, and that only after a reminder by KDI. On this day, a meeting of KDI the Secretary-General and the Procurement Manager was arranged.

Although KDI in its request for access to documents addressed to this Ministry KDI has clearly listed all necessary documents, because of the lack of cooperation between the departments of the Ministry, KDI had to re-submit the request to all departments, which should have been done by the departments of the Ministry themselves, pursuant to the Law on Access to Public Documents<sup>32</sup>.

Despite the commitment made by the heads of all departments responsible<sup>33</sup> for granting access to documents, KDI has faced "administrative" barriers that resulted in delays with regard to the provision of documents. A total of seven requests for access to public documents were submitted to the relevant departments of the ministry. The MI has responded to four of them, whereas access was granted in the following requests:

- The Procurement Office has granted access to the required documents (except for the Procurement Plan and Annex Contracts).
- The Department of Road Management showed cooperation and sent documents in a timely manner.
- The Department of Inspectorate did not grant access to the requested documents, and consecutively KDI was unable to carry out analysis regarding the eligibility of the economic operators in compliance with the contracts signed and inspection

<sup>32</sup> Law No.03/L-215 on Acces to Public Documents, Article 7.2.

<sup>33</sup> Procurement Office, Department of Road Management, Inspectorate Department, Department of Finance.



reports on EOs capacities prior to commencement of works which presented the main finding of the last report of KDI for this Ministry<sup>34</sup>.

- The Finance Department did not grant access to the requested documents regarding the contract handled in this report, nonetheless, this department granted access to the financial reports of the previous contract.
- An unanswered request addressed to the Department for Public Communications (to be addressed to the relevant department - unknown to KDI) regarding possible fines imposed on EOs in relation to non-fulfilment of contractual obligations for maintenance by EOs<sup>35</sup>.

Compared to previous research, a very helpful element during this analysis was the functioning of the E-Procurement platform<sup>36</sup>, which has reduced possible delays in receiving documents necessary for analysis<sup>37</sup>. However, access to this platform is limited to the public and citizens in general since registration as a natural or legal person is required and, even after registration, natural persons do not have access to all documents published on this platform. KDI noted that there is no valid notice<sup>38</sup> on the e-procurement website regarding the signing of contract<sup>39</sup> in relation to this tendering activity while contracts for the implementation of 14 Lots have already been signed<sup>40</sup>.

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34 Road to Money Report, KDI 2016, accessible at: <http://kdi-kosova.org/publikimet/rruga-tek-parate/>  
35 In the TV debate "Road maintenance in Kosovo, and delays in the tendering process" PULS, KTV, December 3, 2018, among others, Rexhep Kadriu promises publicly that upon request for access to public documents we can obtain information from the ministry regarding the number of fines imposed on EOs. Accessible at: <https://www.youtube.com/watch?v=uKDhCK2te7k>.  
36 <https://e-prokurimi.rks-gov.net/Home/ClanakItemNew.aspx>  
37 Documents provided by e-procurement: Tender Dossier, Contract Notice, Error Correction Form, Contract Award Notice, Notice on Cancellation of Activity  
38 A contract signature notice was published on 20 December 2018 but the same is empty, accessible: [http://e-prokurimi.rks-gov.net/SPIN\\_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=314079](http://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=314079)  
39 [https://e-prokurimi.rks-gov.net/SPIN\\_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=239447](https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=239447) qasur më 13.12.2018.  
40 Conclusion dated:30 November 2018







Regions	Prizren 1	Prizren 2	Mitrovica 1	Mitrovica 2	Gjilan 1	Gjilan 2	Total
Km (winter)	149.46	106.58	157.28	112.77	145.14	111.58	1,953.17
Km (summer)	155.00	101.86	150.12	116.57	123.58	111.58	1,795.23
Estimated value	1,192,231.88	1,041,227.28	1,330,298.96	963,151.99	1,378,716.18	1,095,095.55	17,231,050.50

**ALTHOUGH THIS CONTRACT** is presented as a framework contract with several operators, with mini-concurrency, one winning EO was selected for each LOT and the mini competition process has not been implemented.

According to the contract notice, the Contract for the summer and winter maintenance of national and regional roads for 2017, 2018 and 2019 was initially a public framework contract with several operators, **with a mini-competition**, and for a time period of 36 months<sup>42</sup>.

The estimated value of this contract was EUR 17,178,672.10 and its scope covered 1,795.23 km. This contract is divided into 14 Lots, covering 7 regions divided in two parts<sup>43</sup> where a company could not win more than one Lot.

**THE CONTRACT NOTICE** did not include division of the activity into parts as opposed to the Tender Dossier (TD) where this activity was divided into 14 parts. This discrepancy between the DT and the Contract Notice created obscurity for potential bidders, however, the same was not corrected by the CA-MI since division into parts is not indicated in any of the published forms.

The tendering phase regarding the three year contract for the maintenance of national and regional roads was followed by numerous complaints of non-winning EOs which consequently affected the duration of this process thus extending it to 15 months from the start date. Given the importance of road maintenance, especially during winter, as well as the consequence the citizens might have in case of lack of road maintenance, MI had to pay extra importance to the tendering process regarding this contract in order to avoid delays which in practice translate into failure to repair potholes, clear the snow, clear the roads of falling stones etc. all of which are dangerous for the traffic. Delays in MI in procurement procedures regarding the maintenance contract were also one of the findings of the NAO Report.<sup>44</sup>

42 [https://e-prokurimi.rks-gov.net/SPIN\\_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=80215](https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=80215)

43 Prishtina 1 and 2, Prizren 1 and 2, Peja 1 and 2, Gjakova 1 and 2, Ferizaj 1 and 2, Gjilan 1 and 2 and Mitrovica 1 and 2.

44 <http://www.zka-rks.org/wp-content/uploads/2017/07/ProcesiProkurimitPerMirmbajtjenRrugeve.212588.pdf>



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## Tender specifications

The tender in question foresaw responsibility criteria for the bids as follows:

Suitability requirements for competing EOs related to Article 65 of the Law No.04/L-042 on Public Procurement. According to these requirements, the operator must prove that **it has fulfilled its obligations to TAK in a regular manner and that the same has not been subjected to any criminal offense adjudicated by our courts.**

*This criterion has been violated by CA-MI itself. In one of the LOTS, the EO recommended for contract by CA-MI was ineligible according to Article 65 of LPP. The same operator was only declared ineligible by CA-MI after three complaints addressed to the PRB and after three decisions rendered by the PRB on the ineligibility of this operator.*

Professional adequacy requirements, regarding evidence that **the business is registered with the relevant authority and is registered for VAT.**

Economic and financial suitability requirements, pertaining to the financial capabilities of the EO to carry out the work required (which may be **support from a financial institution), as well as financial audits of the last three years, audited.**

*Within the framework of these requirements, financial reports were required to be audited by a reputable audit firm or statutory auditor. The term «reputable» in this case is misleading for EOs.*

*These requirements included the requirement for contract realized in the amount of EUR 500.000 in the field of maintenance of national and regional roads for the last three years. This criterion can be considered favourable to those operators who had contracts with the MI in previous years. However, the responsible MI officer in PRB stated that this criterion is considered fulfilled even if the experience of the EO is in the field of maintenance of municipal roads. Furthermore, in the list of necessary equipment was also included the SCHMIDT equipment, but determining special brands is in contradiction with Article 28.2 and 28.7 of the LPP.*

## Tender Security

According to the Contract Notice, 10% of the bid value is required as tender security for a period of 90 days.

This requirement is in violation of Article 57.3 of the LPP which determines that the amount of the tender security must not be less than 1% and not more than 3% of the estimated value of the contract. Meanwhile, as we can see in one of the error correction forms published by MI in the e-procurement platform, the amount required for tender security has been changed to EUR 50,000 per Lot. In the meantime the TD indicated that the amount of tender security requested is EUR 20,000 for the valid 90-day period.

**REQUIREMENTS REGARDING TENDER** security are contradictory in the following: TD, contract notice and error correction form

## Performance security

*For the security of contract performance 10% of bid value is required for the duration of the period of 30 days after the end of the contract.*

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## Tender procedure/complaints

The contract notice was made on 29 September 2017, whereas the deadline for submission of bids<sup>45</sup> was set to 23 October 2017, but was later postponed, by means of a decision of the PRB<sup>46</sup>, to 26 January 2018 respectively three months after the initial date given by the CA.

Following the announcement of the Contract Notice, a complaint was submitted to the PRB regarding the criteria set out in the Tender Dossier. In the complaint addressed to the PRB regarding the criteria of TD, the EO claims that CA-MI violated the following articles: 1 (par. 1,2,3); 7 (par. 1,2,3,4,6); 28; 38; 51; 53 (par. 4.6); 57 (par. 3); 68 (par. 4); 108 / A and 4 (par. 4).

According to the contract notice published in the e-procurement platform, the MI was going to sign a public framework contract with more than one EO after a mini competition between the parties of the framework contract. The EO based its complaint precisely on the “discriminatory” nature of this contract form (mini-competition), which according to them restricted competition and should not have been applied in the field of services such as maintenance (but may be applied, for example, to flight tickets where prices are bound to change). However, regarding this claim of the operator, the MI representative says that it is not a mini-competition procedure, but that part was filled by the electronic standard document form and they could not change it.

The other complaint related to the Tender Dossier requirement for financial reports to be audited by a “reputable” licensed audit firm or “statutory” auditor, where the term “reputable” was considered misleading for the EOs.

This EO considered that the requirement placed in the TD for the EO to have implemented a EUR 500,000 contract in the field of maintenance of national and regional roads in the last three years was a discriminatory criterion. This was seen as favouring the EOs which had signed contracts with the CA in the past years.

Another point of the complaint was the requirement regarding the list of equipment, which stated that the EO must possess a snow blower (SCHMIDT). In this regard, the specification of brands is prohibited. In addition, it was also stated that the EO must possess snow removal equipment (not improvised trucks), which represents additional equipment.

Further, the requirement for tender security at 10% of the bid value for a validity period of 90 days constituted a violation considering that pursuant to Article 57.3 of the LPP the tender security shall range from 1% to 3% of the bid value. Finally, the tender security period of 90 days is invalid considering that this period should be at 150 days.

The PRB’s decision<sup>47</sup> regarding this claim was in favour of the complaining EO; this decision extended the bid submission deadline for three months. With regards to the concrete claims, the review panel decided to remove misleading terms such as “reputable” company; not to use brand names (such as SCHMIDT); to respect the law regarding tender security requirements (min 1% and max 3% of contract value); to remove the discriminatory requirement for having a contract signed in the last three years in the same field (but at this point the MI representative explained that municipal maintenance contracts were also accepted, which made it acceptable for operators). Worthy of note at this point is that it took the PRB two months from the date of receipt of the complaint to reach this decision.

It took the **PRB** two months to review a complaint

45 E-procurement, Contract Notice, [https://e-prokurimi.rks-gov.net/SPIN\\_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=80215](https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=80215)

46 E-procurement, Contract Notice, [https://e-prokurimi.rks-gov.net/SPIN\\_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=80215](https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=80215)

47 PRB, Decision 427/17, <https://oshp.rks-gov.net/repository/docs/vendimet/2018/427-17vendim.pdf>







## Emergency procedure without publication of a Contract Notice

According to a Contract Signing Notice dated 16 February 2018, the Ministry of Infrastructure has signed a Contract for **Winter Maintenance of National and Regional Roads for the Winter Season 2017/2018** with 14 EOs ending on 31 March 2018. For this tender, the MI applied a negotiated procedure without publication of a contract notice. The estimated value of this contract amounted to 4,700,000 Euros. The operators that signed contracts with the MI are the same operators that implemented maintenance contracts for the years 2014-2017. The MI signed the contracts with the 14 EOs at the end of December 2017 and early January 2018.

The Contract Award Notice and the Contract Signing Notice were not published on the e-procurement platform despite the legal obligation, while the Contract Signing Notice was published on the PPRC's website and can be found in archived notices.

## Evaluation procedure/complaint

The contract award notice was made on 26 March 2018<sup>48</sup>. A two-month delay from the CA/MI was also noted at this stage considering that the tenders were opened on 26 January 2018<sup>49</sup>, i.e. it took the CA two months from the tender opening date to issue the contract award notice. Regarding the decision of the CA/MI on the recommended EOs, six operators lodged complaints with the PRB for nine lots.

The complaining EOs claimed that the CA/MI had violated the following articles of the LPP in its decision: 1; 1 (par 36); 6; 7; 7 (par 1,2,3); 8; 9; 10; 11; 13; 27; 28; 52; 54; 59; 56; 60; 61; 65 (par 3.4); 66; 67; 68; 69; 70; 72.

Upon review and decision making by the PRB<sup>50</sup> (on all complaints of the EOs), the award of contracts for seven lots was upheld, while seven lots were submitted to re-evaluation. It should be pointed out that the PRB's decision was brought on 5 June 2018, while the complaints of the EOs were submitted from 10 to 13 April 2018, i.e. it took the PRB about two months to render this decision.

**IT TOOK THE CA** two months from the tender opening date to issue the contract award notice

Lots contracted	Lots submitted to re-evaluation
Prizreni 1 (05.04.2018)	Prishtina 2
Prizreni 2 (05.04.2018)	Gjakova 1
Gjakova 2 (05.04.2018)	Peja 2
Peja 1 (05.04.2018)	Gjilani 2
Gjilani 1 (05.04.2018)	Ferizaj 1
Prishtina 1 (06.06.2018)	Mitrovica 1
Ferizaj 2 (07.06.2018)	Mitrovica 2

48 E-procurement, Contract Award Notice, [https://e-prokurimi.rks-gov.net/SPIN\\_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=131565](https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=131565)

49 E-procurement, Standard Error Correction Form, which determined that the tender opening event would be held on 26 January 2018 starting from 14:00:00, [https://e-prokurimi.rks-gov.net/SPIN\\_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=101517](https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=101517)

50 PRB, Decision, <https://oshp.rks-gov.net/repository/docs/vendimet/2018/131-132-138-140-143-148-18-vend.pdf>



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**The second contract award notice was issued on 3 July 2018<sup>51</sup>.**

Even after the re-evaluation process, the CA/MI had recommended for contract the same EOs except for Lot Mitrovica 2, concerning which it amended the decision.

The EOs submitted five complaints to the PRB concerning this decision of the CA/MI. The complaining EOs claimed that the CA/MI had violated the following articles of the LPP in its decision: 1; 6; 7; 7 (par 1,2,3); 10; 38; 52; 54; 59 (par 1,2,4); 56; 60; 68; 69; 72.

Upon review and decision making by the PRB<sup>52</sup> (joint decision on all complaints), the award of contracts for four lots was upheld, while three lots were submitted to re-evaluation. Complaints were submitted between 11 and 19 July 2018, while the decision of the PRB was rendered on 31 August 2018 (it took the PRB six weeks to make the decision).

Lots contracted	Lots submitted to re-evaluation
Mitrovica 1 (04.09.2018)	Gjakova 2
Mitrovica 2 (12.07.2018)	Pejë 1
Gjilan 2 (04.09.2018)	Ferizaj 2
Prishtina 2 (12.07.2018)	

**The third contract award notice** was issued on 13 September 2018<sup>53</sup>. This was the third time a decision was made for the three lots that had not been awarded. Although the PRB had decided in favour of the complaining EOs, the CA/MI made the same decision again and recommended the same EOs. The EOs submitted three complaints to the PRB concerning this notice by the CA/MI.

The complaining EOs claimed that the CA/MI had violated the following Articles of the LPP in its decision: 1; 6; 7; 7 (par 1,2,3); 38; 59 (par1, 2,4); 56; 59; 60; 65; 69; 72; 105.

Complaints were filed between September 27 and 1 October 2018, while the Decision of the PRB was issued on 12 November 2018<sup>54</sup>. This decision upheld the contract award for two lots as this time the CA/MI had made some calculations (which could have been done after the first complaint from the CA/MI representative or the PRB experts) and provided evidence that the bids of the complaining EOs were more expensive (which was the reason for their elimination) than the EOs recommended for contract. This time, with the decision of the PRB, one of the lots was returned for the re-evaluation.

Lots contracted	Lots submitted to re-evaluation
Ferizaj 1 (29.11.2018)	Peja 2
Gjakova 1 (29.11.2018)	

51 E-procurement, Contract Award Notice, [https://e-prokurimi.rks-gov.net/SPIN\\_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=196919](https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=196919)  
 52 PRB, Decisions, <https://oshp.rks-gov.net/repository/docs/vendimet/2018/131-132-138-140-143-148-18-vend.pdf>  
 53 E-procurement, Contract Award Notice, [https://e-prokurimi.rks-gov.net/SPIN\\_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=239465](https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=239465)  
 54 PRB, Decisions, <https://oshp.rks-gov.net/repository/docs/vendimet/2018/518%20520%20531-18vend.pdf>

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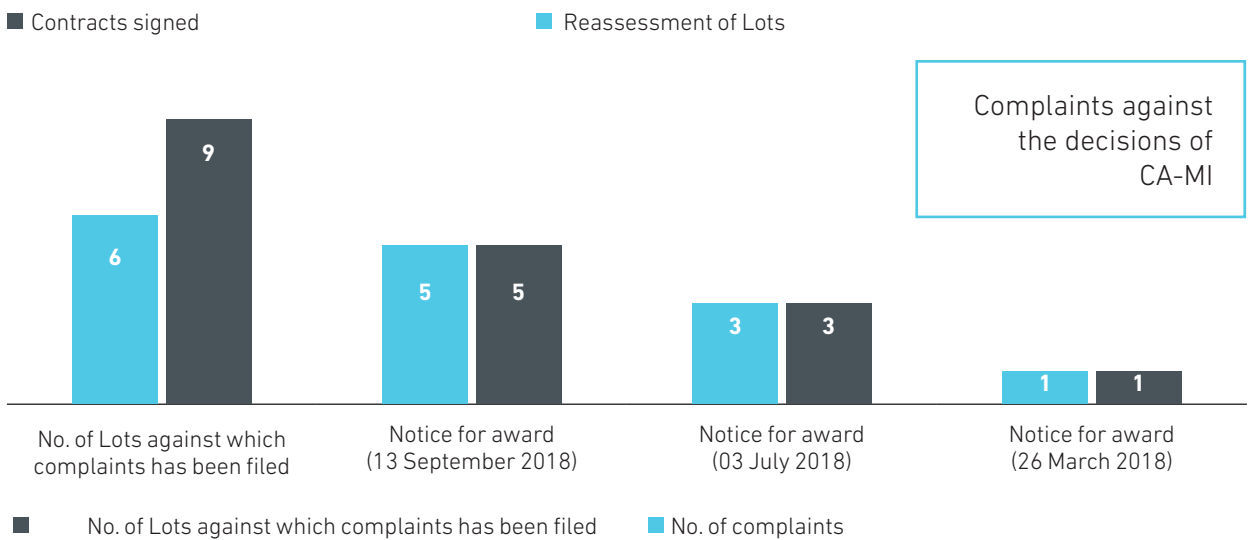
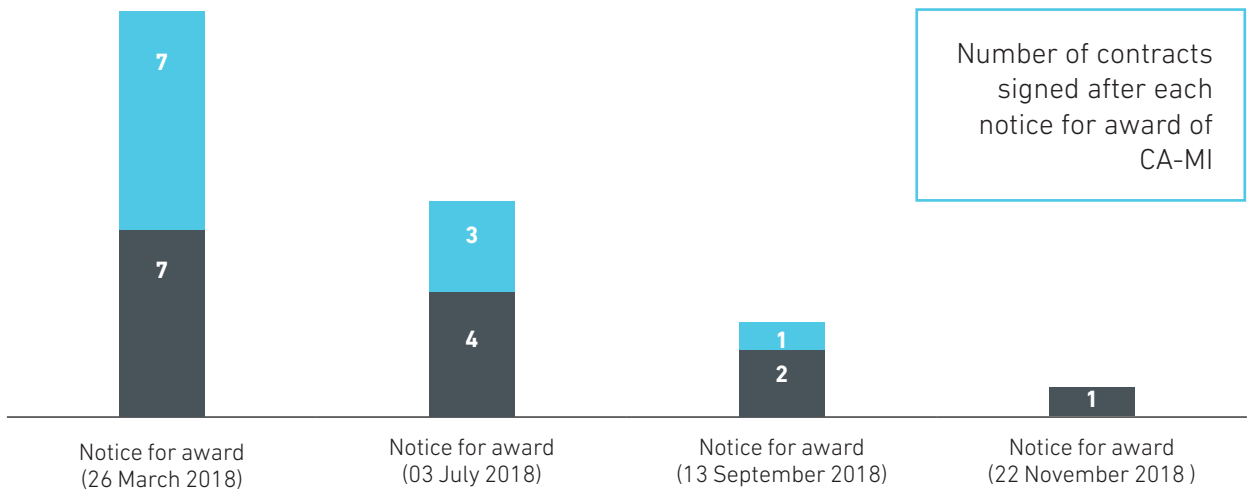
The fourth contract award notice was not published on the e-procurement platform but the decision of the CA/MI dated 22 November 2018 was published with regard to the recommended operator for Lot Peja 2. This was the fourth time that the CA/MI was rendering a decision on this lot. This time the MI recommended the EO which according to the PRB was the only eligible operator while eliminating as ineligible<sup>55</sup> the operator it had recommended for contract in the previous three cases.

This decision of the MI decision was also appealed with the PRB by the eliminated EO but this complaint was rejected by the PRB<sup>56</sup>, thus validating the decision of the CA/MI. This decision concluded this procurement proced.

**Lot contracted**

Peja 2

**THIS DECISION** of the PRB dated 13 December 2018 ended the tender process of this Framework initiated on 29 September 2017.



<sup>55</sup> According to Article 65 paragraph 3 point 4 of LPP  
<sup>56</sup> PRB Decision. <https://oshp.rks-gov.net/repository/docs/vendimet/2018/728-18vend.pdf>



From the initial Contract Notice to the last Contract Award Notice, the PRB has received a total of 15 complaints lodged by unsuccessful EOs in this process. The table below shows the number of complaints lodged to the PRB for each of the 14 lots.



57 There are a total of 15 complaints. In some cases, the same operator complained of more than one Lot within a complaint, hence the number of complaints on Lots differs from that of EOs.



PRB confirmed the EO's allegations, however, PRB's decision<sup>59</sup> was nonetheless in favour of CA-MI as this operator's bid had higher prices than the winning EO.

If the total contract's value is divided by the total per unit, there will be  $1,025,935.58/280.53=3,657.13$  units. Thus, the difference between bids would be as shown in the table.

**Table 2- Comparison of bids - Region Prishtina**

Economic Operator	Status	Unit price	Total units	Contract's indicative value
Arbotec	Contract winner	280.53	3,657.13	1,025,935.58
ViaEgnati&Milenium&Zhubi Group	Ineligible EO	290.87	3,657.13	1,063,749.40
Damastion	Winner in another region	341.34	3,657.13	1,248,324.75
Integral	Winner in another region	399.75	3,657.13	1,461,937.71

## Region Prishtina 2

MI has awarded a contract to the EO "Integral" for the region Prishtina 2 on 12.07.2018. The price of works per unit is EUR 444.72 and the total contract's value is EUR 993,741.61.

Eight EOs have submitted bids for this Lot. Five EOs that submitted bids for this region have been declared winners for other regions, one has been eliminated because of high prices and one operator has been considered ineligible.

The winner EO's bid was the third cheapest bid, but the operators with cheaper bids are winners of contracts in other Lots.

**Table 3- Comparison of financial bids in the region Prishtina 2**

Economic Operator	Status	Unit price
Integral	Winning EO	444.72
RSM	Winner in another region	134.23
Arbotec	Winner in another region	277.57
2A & 2T & Jubica shpk	Unsuccessful tenderer	748.90
Conex Group & El Bau	Unsuccessful tenderer	748.90
Alfa.l shpk&Vllaznia&Urban&Baageri	Unsuccessful tenderer	787.43
Tali	Unsuccessful tenderer	1,085.86
Zahiri & Beni	Ineligible EO	2,443.53

<sup>59</sup> PRB's Decision No. 131/132/138/140/143/148/18; <https://oshp.rks-gov.net/?cid=1,71>

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The EO "Alfa.i shpk & Vllaznia & Urban & Bageri" lodged a complaint against the decision of CA-MI on this Lot. This operator was eliminated as it did not have the lowest bid. This operator alleged that the EO recommended for the contract does not fulfil the technical and professional requirements, namely regarding the geodesy engineer who has finished studies abroad. This EO submitted references of works performed in 2010 and 2011, while the nostrification of this person's diploma is dated on 27 January 2015. Such practice conflicts Article 3 of MEST's Administrative Instruction, which stipulates that all diplomas acquired outside the country for employment purposes shall be subject to recognition/equivalence procedures in MEST. Consequently, this engineer has either falsified the data on experience or practised the profession unlawfully. In addition, the EO recommended for the contract, according to the complaining operator, did not either meet the criteria on technical possibilities as it lacks equipment.

The PRB's decision<sup>60</sup> is in favour of the complaining EO and the case returned for re-assessment. Even in the re-assessment process, CA-MI again selected the same operator for contract award, and this decision was validated by the PRB following the second complaint of the same complainant operator.

If the total contract's value is divided by the total per unit, there will be  $993,741.61/444.72=2,234.53$  units. Based on this, we can compare bids.

## **PRB TAKES** different decisions for the same case and for the same allegations.

**Table 4- Comparison of bids - Region Prishtina 2**

Economic Operator	Status	Unit price	Total units	Contract's indicative value
Integral	Winning EO	444.72	2,234.53	993,741.61
RSM	Winner in another region	134.23	2,234.53	299,940.96
Arbotec	Winner in another region	277.57	2,234.53	620,238.49
2A & 2T & Jubica shpk	Unsuccessful tenderer	748.90	2,234.53	1,673,439.51
Conec Group & El Bau	Unsuccessful tenderer	748.90	2,234.53	1,673,439.51
Alfa.I shpk&Vllaznia&Urban&Baageri	Unsuccessful tenderer	787.43	2,234.53	1,759,535.95
Tali	Unsuccessful tenderer	1,085.86	2,234.53	2,426,386.74
Zahiri&Beni	Ineligible EO	2,443.53	2,234.53	5,460,141.09

## Region Prizreni 1

MI has awarded a contract to the "Famis Co HC" JSC on 05.04.2018 for the region Prizreni 1, with a unit price of EUR 1,101.18. The total contract's value is EUR 944,889.00.

Four EOs have submitted bids for this region. The EO "Alko Impex" had the cheapest bid, but it was selected winner in another region, whereas the two other bidders had higher prices.

<sup>60</sup> PRB's Decision No.131/132/138/140/143/148/18; <https://oshp.rks-gov.net/?cid=1,71>

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There were no complaints regarding the award of this Lot

**Table 5- Comparison of financial bids - Region Prizreni 1**

Economic Operator	Status	Unit price
Famis Co HC	Winning EO	1,101.18
Alko Impex	Winner in another region	308.18
Drini Company	Winner in another region	3,149.81
Victoria Invest International	Winner in another region	5,251.09

If the total contract's value is divided by the total per unit, there will be  $944,889.00/1,101.1=858.13$  units. Based on this, we can compare bids.

**Table 6- Comparison of bids - Region Prizreni 1**

Economic Operator	Status	Unit price	Total units	Contract's indicative value
Famis Co HC	Winning EO	1,101.18	858.13	944,889.00
Alko Impex	Winner in another region	308.18	858.13	264,458.50
Drini Company	Winner in another region	3,149.81	858.13	2,702,946.45
Victoria Invest International	Winner in another region	5,251.09	858.13	4,506,117.86

## Region Prizreni 2

MI awarded a contract to the EO "Drini Company" for the region Prizreni 2. The contract was signed on 05.04.2018, with a unit price of EUR 195.21. The total contract's value is EUR 726,427.40.

Three EOs have submitted bids for this region<sup>61</sup>. The winning EO has the cheapest bid, whereas the two unsuccessful operators in this region were winners of other Lots. There were no complaints regarding the contract award for this region.

**Table 7- Comparing financial bids - Region of Prizreni 2**

Economic Operator	Status	Unit price
Drini Company	Winning EO	195.21
Alko Impex	Winner in another region	307.12
Famis Co	Winner in another region	2,532.64

If we divide the total value of the contract by the total per unit we will get  $726,427.40/195.21=3,721.26$  units. Based on this, we can compare the bids.

<sup>61</sup> There is no bid from Drini in the tender bid opening report



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**Table 8- Comparing the bids - Region Prizreni 2**

Economic Operator	Statuti	Unit price	Total units	Indicative value of the contract
Drini Company	Winning EO	195.21	3,721.26	726,427.40
Alko Impex	Winner in another region	307.12	3,721.26	1,142,873.37
Famis Co	Winner in another region	2,532.64	3,721.26	9,424,611.92

## Region Ferizaj 1

MI signed a contract with Euro Kos & Via on 29 November 2018, at a unit price of EUR 476.64. The total value of the contract is EUR 766,326.85. Finally, a decision on the Lot Ferizaj 1 was taken on 12 November 2018 by the PRB which certified the contract award for the operator recommended by CA-MI. This Lot was sent twice for re-evaluation, while the decision of CA-MI was challenged three times in a row at the PRB.

EO Eskavatori submitted a complaint to the PRB against the decision of the CA-MI regarding the operator recommended for this region. This operator was initially declared ineligible on grounds of lacking evidence of experience in a contract worth EUR 500,000 in the field of road maintenance. After the request for reconsideration, CA-MI considered this operator eligible and yet again the same was eliminated for offering a higher price than the winning operator.

This operator claimed that the EO recommended by CA-MI does not meet the technical professional requirements since: (a) it lacks the evidence issued from the Agency for Mines and Minerals which would prove that this operator is **a licensed quarry**; (b) the names of engineers declared as employees by this EO do not appear on the list of employees declared to **TAK**, which means they are not regular employees of that company; and (c) does not meet the criteria of the required equipment. This Lot was returned twice for re-evaluation by the PRB asking the CA-MI to clarify whether the evidence provided by the EO is valid. After two re-evaluation processes, the third decision of the CA-MI, although being the same, was confirmed by PRB and the complaining EO was eliminated due to the higher price.

**Table 9- Comparing financial bids - Region Ferizaj 1**

Economic Operator	Status	Price unit
Eurokos & Via	Winning EO	476.64
RSM	Winner in another region	114.54
Alko Impex	Winner in another region	349.78
2A Group & @T & Jubica shpk	Unsuccessful bidder	731.02
Conec Group & El Bau	Unsuccessful bidder	731.02
Eskavatori & Best Company	Ineligible EO	1,341.83
Papenburg & Adriani	Ineligible EO	1,588.30
Benita Company & Bes Group & Victory	Ineligible EO	14,930.36

If we divide the total value of the contract by the total per unit we will get  $766,326.85/476.64=1,607.57$  units. Based on this, we can compare the bids.

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**Table 10- Comparing the bids - Region Ferizaj 1**

Economic Operator	Status	Unit price	Total units	Indicative value of the contract
Eurokos&Via	Winning EO	476.64	1,607.57	766,326.85
RSM	Winner in another region	114.54	1,607.57	184,131.06
Alko Impex	Winner in another region	349.78	1,607.57	562,295.83
Eskavatori&Best Company	Ineligible EO	1,341.83	1,607.57	2,157,085.65

## Region Ferizaj 2

MI awarded a contract to the operator Damastion Project & Arkos on 07.06.2018, at a unit price of EUR 312.90. The total price of this contract is EUR 740,103.90.

12 operators submitted their bids for this region. Three bids were cheaper than the bid of the EO selected for the contract award, but two of these EOs were selected for contract award in other regions, while one of these bidders was ineligible.

One EO filed a complaint to the PRB regarding the decision of CA-MI for the EO recommended for this contract but the same complaint was later one withdrawn.

**Table 11- Comparing financial bids - Region Ferizaj 2**

Economic Operator	Status	Unit price
Damastion	Winning EO	312.90
RSM	Winner in another region	83.85
Benita Company&Bes Group& Victory	Ineligible EO	303.08
Alko Impex	Winner in another region	308.43
Jaha	Winner in another region	426.12
Tali	Winner in another region	689.73
2A Group & 2T & Jubica shpk	Unsuccessful bidder	882.71
Conec Group & El Bau	Unsuccessful bidder	882.71
Zuka comerc&Haziri shpk	Ineligible bidder	982.90
Eskavatori&Best Company	Unsuccessful bidder	1,341.80
Papenburg&Adriani	Ineligible bidder	1,778.93

If we divide the total value of the contract by the unit price we will get  $740,103.90/312.90=2,365.30$  units. Based on this, we can compare the bids.

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**Table 12- Comparing the bids - Region Ferizaj 2**

Economic Operator	Status	Unit price	Total units	Indicative value of the contract
Damastion	Winning EO	312.90	2,365.30	740,103.90
RSM	Winner in another region	83.85	2,365.30	198,330.40
Benita Company&Bes Group& Victory	Ineligible EO	303.08	2,365.30	761,875.12
Alko Impex	Winner in another region	308.43	2,365.30	131,433.73
Jaha	Winner in another region	426.12	2,365.30	1,007,901.63
Tali	Winner in another region	689.73	2,365.30	1,631,418.36
2A Group & 2T & Jubica shpk	Unsuccessful bidder	882.71	2,365.30	2,087,873.96
Conec Group & El Bau	Unsuccessful bidder	882.71	2,365.30	2,087,873.96
Zuka comerc&Haziri shpk	Ineligible bidder	982.90	2,365.30	2,324,853.37
Eskavatori&Best Company	Unsuccessful bidder	1,341.80	2,365.30	3,173,759.54
Papenburg&Adriani	Ineligible bidder	1,778.93	2,365.30	4,207,703.12

## Region Gjilani 1

MI awarded a contract to the EO Tali on 5 April 2018 at a unit price of EUR 498.97. The total value of the contract is EUR 1,151,582.75.

Three EOs submitted their bids for this region. The EO selected offered the cheapest price, while the other two operators are winners of other Lots.

**Table 13- Comparing financial bids - Region Gjilani 1**

Economic Operator	Status	Unit price
Tali <sup>62</sup>	Winning EO	498.97
Jaha	Winner in another region	540.07
Integral	Winner in another region	503.88

If we divide the total value of the contract by the unit price we get  $1,151,582.75/498.97=303.79$  units. The bids are compared in the table below.

<sup>62</sup> It does not appear in the tender opening report

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**Table 14- Comparing the bids - Region Gjilani 1**

Economic Operator	Status	Unit price	Total units	Indicative value of the contract
Tali	Winning EO	498.97	303.79	1,151,582.75
Jaha	Winner in another region	540.07	303.79	153,131.42
Integral	Winner in another region	503.88	303.79	153,073,70

## Region Gjilani 2

MI awarded a contract to the EO Jaha for the region Gjilani 2 on 4 September 2018, at a unit price of EUR 377.53. The total value of the contract is EUR 844,251.90. Eight EOs submitted their bids for this lot. One of the bidders offered a cheaper price than the OE recommended for the contract award but that EO was ineligible.

**Table 15- Comparing financial bids - Region Gjilan 2**

Economic Operator	Status	Unit price
Jaha	Winning EO	377.53
Via Egnatia&Milenium&Zhubi Group	Ineligible EO	338.21
2A Group & 2T & Jubica shpk	Unsuccessful bidder	762.06
Conec Group & El Bau	Unsuccessful bidder	762.06
Zuka comerc&Haziri shpk	Ineligible EO	924.98
Tali	Winner in another region	983.46
Papenburg&Adriani	Ineligible EO	1,365.85
Bejta Comerc	Ineligible EO	2,075.77

Regarding the CA-MI decision for this Lot, the EO "Via Egnati & Milenium & Zhubi Group" submitted a complaint to the PRB claiming that its bid was cheaper than the winning EO of the contract. This claim was confirmed by the PRB and the Lot was subjected to re-evaluation. Even after the re-evaluation process, the CA-MI decision was the same, and this EO was eliminated because it has submitted an invalid reference to the Project Manager, and the same did not appear as an employee of that company in the employee list submitted in TAK. The second decision of CA-MI was also confirmed by the PRB, following the complaint by the eliminated operator.

If we divide 844,251.90 with 377.53 then we get a total of 2,236.25 units. We can compare bids based on this.

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**Table 16- Comparison of bids –Gjilan 2 Region**

Economic Operator	Status	Unit price	Total units	Indicative amount of the contract
Jaha	Winning EO	377.53	2,236.25	844,251.90
Via Egnatia&Milenium&Zhubi Group	Ineligible EO	338.21	2,236.25	756,322.11
2A Group & 2T & Jubica shpk	Unsuccessful bidder	762.06	2,236.25	1,704,156.67
Conec Group & El Bau	Unsuccessful bidder	762.06	2,236.25	1,704,156.67
Zuka comerc&Haziri shpk	Ineligible EO	924.98	2,236.25	2,068,486.52
Tali	Winner in another region	983.46	2,236.25	2,199,262.42
Papenburg&Adriani	Ineligible EO	1,365.85	2,236.25	2,068,486.52
Bejta Comerc	Ineligible EO	2,075.77	2,236.25	4,641,940.66

## Region Mitrovica 1

MI signed a contract with the economic operator Alko Impex for Mitrovica 1 region, on 04.09.2018 with the unit price of 287.13 Euros. The total amount of this contract is 1,049,214.92 Euros. A total of eight (8) operators submitted their bids for this Lot. The winning bid for this region was not the lowest price, but it was selected because other EOs with lower bids was ineligible. Four of the bidding operators were winners in other Lots of this tender, whereas three others were found to be ineligible.

**Table 17- Comparison of financial bids - Mitrovica 1 Region**

Economic Operator	Status	Unit price
Alko Impex	Winning EO	287.13
Via Egnati&Milenium&Zhubi Group	Ineligible EO	278.79
Benita Company&Bes Group& Victory	Ineligible EO	303.08
2A Group & 2T & Jubica shpk	Unsuccessful bidder	721.11
Conec Group & El Bau	Unsuccessful bidder	721.11
Alfa.I shpk&Vllaznia&Urban&Bageri	Unsuccessful bidder	810.41
Tali	Winner in another region	1,069.12
Shkoza 07& Marsi	Ineligible EO	2,643.65

Regarding the CA-MI decision for this Lot, the EO "Via Egnati & Milenium & Zhubi Group" submitted a complaint to the PRB claiming that its bid was lower than the bid of the winning EO. This claim was confirmed by the PRB and the Lot was subjected to re-evaluation. Even after the re-evaluation process, the CA-MI decision was the same, and this EO was eliminated because it

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has submitted an invalid reference to the Project Manager, as the same did not appear as an employee of that company in the employee list submitted in TAK. The second decision of CA-MI was also confirmed by PRB.

Also, a complaint regarding this Lot was submitted by OE "Alfa.I & Vllaznia Ndërtim I.S &Urban & Bageri" claiming that the winner EO does not fulfil technical and professional requirements and they lack the equipment. Moreover, they claim that the diploma nostrification of the leader of the working site of the recommended EO is dated later than the evidence of the works performed. The PRB confirms the claims of this operator and sends the Lot for re-evaluation. Even after the re-evaluation process, the CA-MI decision was the same and the complaining EO Alfa.I & Vllaznia Ndërtim I.S &Urban & Bageri was eliminated due to the highest price. The OE Alfa.I & Vllaznia Ndërtim I.S &Urban & Bageri submits another complaint to the PRB, but this time around the PRB confirmed the decision of the CA-MI.

If we divide  $1,049,214.92 / 287.13 = 3,654.14$  we get units. We can compare bids based on this.

**Tabela 18- Krahasimi i ofertave- Regjioni Mitrovica 1**

Economic Operator	Status	Unit price	Total units	Indicative amount of the contract
Alko Impex	Winning EO	287.13	3,654.14	1,049,214.92
Via Egnati&Milenium&Zhubi Group	Ineligible EO	278.79	3,654.14	1,018,737.69
Benita Company&Bes Group& Victory	Ineligible EO	303.08	3,654.14	1,107,496.75
2A Group & 2T & Jubica shpk	Unsuccessful bidder	721.11	3,654.14	2,635,036.89
Conec Group & El Bau	Unsuccessful bidder	721.11	3,654.14	2,635,036.89
Alfa.I shpk&Vllaznia&Urban&Baageri	Unsuccessful bidder	810.41	3,654.14	530,121.59
Tali	Winner in another region	1,069.12	3,654.14	3,906,714.15
Shkoza 07& Marsi	Ineligible EO	2,643.65	3,654.14	9,660,267.21

## Region Mitrovica 2

The MI signed a contract with EO "RAD & ABC & Trans Company", on 12.07.2018 with a unit price of 1,095.21 Euros. The total amount of this contract is 760,654.00 Euros.

A total of eight (8) operators submitted their bids for this Lot. Three of the bidding EOs have submitted bids that had lower price than that of the winning EO.

It is worth mentioning that initially the CA-MI selected the EO "2A & 2T & Jubica" as winner of this Lot, but after the re-evaluation, it was found ineligible since it did not fulfil the required technical conditions, and therefore the ABC&RAD operator was awarded with the contract.

EO Jasen, which was eliminated on the grounds that they have not completed the form (part c), submitted a complaint in PRB, and the PRB confirmed grounds for eliminating this operator.

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**Table 19- Comparison of financial bids - Mitrovica 2 Region**

Economic operator	Status	Unit price
ABC & RAD	Winning EO	1,095.21
Jasen	Ineligible EO	278.94
2A & 2T & Jubica	Ineligible EO	307.17
Alko Impex	Winner in another region	309.36
Shkoza 07& Marsi	Ineligible EO	2,653.56

If we divide the total contract value with the unit price we get:  $760,654.00 / 1,095.21 = 694.52$  units. Then we can compare the bids as follows. As can be seen, the difference between the winning operator bid and the cheaper one is significant.

**Table 20- Comparison of financial bids - Mitrovica 2 Region**

Economic operator	Status	Unit price	Total units	Indicative amount of the contract
ABC & RAD	Winning EO	1,095.21	694.52	760,654.00
2A&2T&Jubica	Ineligible EO	307.17	694.52	231,335.70
Jasen	Winner in another region	278.94	694.52	193,729.40
Alko Impex	Winner in another region	309.36	694.52	214,856.70
Shkoza 07& Marsi	Unsuccessful bid-der	2,653.56	694.52	1,830,449.13

## Gjakova 1 Region

MI signed a contract with EO RSM on 29.11.2018 with a unit price of 106.62 Euro. A total of seven (7) operators submitted their bids for this Lot. Three of the bidders were considered ineligible, while the other three although weren't found ineligible, submitted more expensive bids than the EO recommended for contract by CA-MI.

Gjakova 1 Region was left without maintenance services contract even a year after the announcement of the tender. This Lot was sent twice for re-evaluation following the complaints of "EO Joos & Krasniqi Bazë". This EO was eliminated due to the equipment list submitted, which was not in compliance with the requirements, but also due to the higher price than the EO recommended for contract. Whereas, the "EO Joos&Krasniqi Bazë" claimed that it had the lowest bid and that the company fulfilled the other conditions for which the latter was eliminated.

CA-MI did not change the decision taken initially, and in the three other evaluation processes, announced the same winning operator. The final decision of the PRB regarding this Lot, following the third complaint of the eliminated EO was in favour of CA-MI, confirming the CA claim that the complaining operator submitted the highest price bid.

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**Table 21- Comparison of financial bids - Gjakova 1 Region**

Economic operator	Status	Unit price
RSM Company	Winning EO	106.62
Joos & Krasniqi Bazë	Unsuccessful bidder	168.22
Euroasphalt&Shprresa AL	Ineligible EO	202.01
Benita Company&Bes Group& Victory	Ineligible EO	303.08
Alko Impex	Winner in another region	339.63
Victoria Invest International	Winner in another region	835.42
Kag Asphalt&Florida	Unsuccessful bidder	1,794.67
Famis Co	Winner in another region	2,386.72

If we divide the total contract value with the unit price we get:  $1,152,064.88/106.62=10,805.33$  units. Then we can compare the bids as follows. As can be seen, the difference between the winning operator bid and the cheaper one is great.

**Table 22- Comparison of bids –Gjakova 1 Region**

Economic operator	Status	Unit price	Total units	Indicative amount of the contract
RSM Company	Winning EO	106.62	10,805.33	1,152,064.88
Joos&Krasniqi Bazë	Unsuccessful bid-der	168.22	10,805.33	1,817,673.55
Euroasphalt&Shprresa AL	Ineligible EO	202.01	10,805.33	2,182,784.71

## Region Gjakova 2

MI signed a contract with EO Victoria Invest International, on 05.04.2018, with a unit price of 835.42 Euros. The total value of this contract is 601,193.00 Euros. A total of two (2) operators submitted their bids for this Lot and the winning EO was not the lowest bid. EO Alko Impex submitted the lowest bid, but this operator was the winner of another Lot. There was no complaint submitted in PRB on this tender.

**Table 23- Comparison of financial bids - Gjakova 2 Region**

Economic operator	Status	Unit price
Victoria Invest International	Winning EO	835.42
Alko Impex		312.10

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If we divide the total contract value with the unit price we get:  $601,193.00/835.42=719.62$  units. Then we can compare the bids as follows.

**Table 24 - Comparison of bids - Gjakova 2 Region**

Economic operator	Status	Unit price	Total units	Indicative amount of the contract
Victoria Invest International	Winning EO	835.42	719.62	601,193.00
Alko Impex	Winner in another region	312.10	719.62	224,593.40

## Region Peja 1

MI signed a contract with EO "Lika Trade" for the Region Peja 1, on 05.04.2018 with a total unit price of 2,811.81 Euro. The total amount of this contract is 908,560.00 Euro. A total of two (2) operators submitted their bids for this Lot. The winning EO had the lowest bid, while the eliminated operator in this Lot was the winner in another Lot, whereas there was no complaint submitted for this Lot.

**Table 25- Comparison of financial bids - Peja 1 Region**

Operatori Ekonomik	Status	Unit price
Lika Trade	Winning EO	2,811.81
Victoria Invest International	Winner in another region	4,832.67

If we divide 908,560.00 with 2,811.81, we will get 323.12 units. If we compare the bids we will get:

**Table 26- Comparison of bids - Peja 1 Region**

Economic opera-tor	Status	Unit price	Total units	Indicative amount of the contract
Lika Trade	Winning EO	2,811.81	323.12	908,560.00
Victoria Invest International	Winner in another region	4,832.67	323.12	1,561,532.33

## Region Peja 2

Peja 2 Region is currently without a maintenance contract as a result of the ongoing complaints by an economic operator against the Decision of the CA-MI for recommending the operator for the contract. Ultimately, the CA-MI concluded a contract with EO Graniti in December 2018, with a unit price of € 2,887.09. The total amount of this contract reaches €1,636,035.00.

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In three consecutive decisions of CA-MI, EO Graniti lodged a complaint with the PRB. The allegations of this EO are that the EO recommended for the contract is ineligible and according to the provisions of the LPP<sup>63</sup> this EO cannot be awarded with a public contract for a period of 10 years. The complaining allegation of the complaining EO is also supported by the PRB in its decisions. However, failing to comply with the decisions of the PRB, the CA-MI continues to recommend the same EO for the contract. After three re-evaluation processes, on 22.11.2018, upon deciding for the fourth time on this lot, the CA-MI changed the decision, taking into account the recommendation of the PRB. It is worth noting that this decision of CA-MI was taken by the new procurement officer in this ministry.

The already eliminated operator had lodged a complaint with the PRB against this decision of the CA-MI. However, the PRB, with the decision<sup>64</sup> dated 13.12.2018 had dismissed the complaint as inadmissible, giving the CA-MI the right.

## **CHANGE OF THE PROCUREMENT** officer results in a change of the decision for the recommended contracted operator.

**Table 27- Comparison of Financial Bids - Peja Region 2**

Economic Operator	Statute	Unit Price
Graniti	Winning Operator	2,887.09
Conec Group & El Bau	Irresponsible EO	677.51
2A Group & 2T & Jubica shpk	Unsuccessful bidder	677.51
Kag Asphalt&Florida	Unsuccessful bidder	2,874.37

Taking into account that the road maintenance contract 2014-2017 expired in November 2017, while the contract for 2017/18/19 was signed with multiple delays in different regions, as a result many regions have remained without road maintenance for different periods. However, during this period of "no maintenance contract", MI had signed an Emergency Winter Maintenance Contract for February and March 2018. The table below shows the data for the time period that different regions were left without a road maintenance contract.

**Table. Data for the time period without maintenance contract for different regions.**

Regions	End of the contract of 2014-2017	Signing of the con-tract 2017-2018-2019	Emergency con-tract	Period without contract
Prishtina A	November 2017 <sup>65</sup>	06.06.2018	Feb-Mar2018	4 months
Prishtina B	November 2017	12.07.2018	Feb-Mar2018	5 months
Mitrovica A	November 2017	04.09.2018	Feb-Mar2018	7 months
Mitrovica B	November 2017	12.07.2018	Feb-Mar2018	5 months

<sup>63</sup> Article 65 of LPP

<sup>64</sup> <https://oshp.rks-gov.net/repository/docs/vendimet/2018/728-18vend.pdf>

<sup>65</sup> Auditor's Report on the Procurement Process for Road Maintenance. Page 11. <http://www.zka-rks.org/wp-content/uploads/2017/07/ProcesiProkurimitPerMirmbajtjenRrugeve.212588.pdf> and KDI Report "The Road to Money", according to which the contracts were concluded in November of the year 2014 for 36 months. Page.19. <http://kdi-kosova.org/wp-content/uploads/publikime/54-2016-03-rruga-tek-parate-monitorimi-i-min-se-infrast-alb-isbn.pdf>

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Prizreni A	November 2017	05.04.2018	Feb-Mar2018	2 months
Prizreni B	November 2017	05.04.2018	Feb-Mar2018	2 months
Gjakova A	November 2017	29.11.2018	Feb-Mar2018	9months
Gjakova B	November 2017	05.04.2018	Feb-Mar2018	2 months
Peja A	November 2017	05.04.2018	Feb-Mar2018	2 months
Pejë B	November 2017	Dhjetor 2018	Feb-Mar2018	10 months
Gjilan A	November 2017	05.04.2018	Feb-Mar2018	2 months
Gjilan B	November 2017	04.09.2018	Feb-Mar2018	7 months
Ferizaj A	November 2017	29.11.2018	Feb-Mar2018	9 months
Ferizaj B	November 2017	07.06.2018	Feb-Mar2018	4 months

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# CONTRACTS ANALYSIS

The contract for summer and winter maintenance of national and regional roads 2017/18/19 is a framework contract with several operators, divided into 14 lots and signed according to the unit prices for the indicative quantitative value one.

Having analysed the unit prices bidden by the winning bidders, there are significant differences between the different regions observed. These apparent differences in unit prices bidden by different operators may be justified by the fact that different regions have different configuration, the road conditions are not the same in all regions, and road use is not the same either. The table below will indicate the differences between unit prices contracted in different lots by different EOs.

**Table. Unit prices of implementing EOs for different lots**

Region	Winning operator	Unit price
Prishtina A	Arbotec	280.53
Prishtina B	Integral	444.72
Mitrovica A	Alko Impex	287.13
Mitrovica B	RAD & ABC	1,095.21
Prizreni A	Famis Co	1,101.18
Prizreni B	Drini Company	195.21
Gjakova A	RSM Company	106.62
Gjakova B	Victoria Invest Internacional	835.42
Peja A	Lika Trade	2,811.81
Pejë 2	Graniti	2,887.09
Gjilan A	Tali	498.98
Gjilan B	Jaha Company	377.53
Ferizaj A	Euro kosVia	476.64
Ferizaj B	Damastion Projekt & Arkos	321.9

In the course of analysing the prices bidden by the EO for different works, it was noticed that even abnormally low prices were used. The following table below shows that different prices have been set for works of the same nature, where for less demanding works there are higher prices set whereas for more demanding works there are lower prices set.



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**Table. Abnormally low prices and higher prices for less demanding works.**

			Quantity demand-ed	Unit price	Total
Gjakova 1	m2	Rehabilitation of potholes, traces, cracks on carriageway layer t = 5 cm.	7,700.00	8	61,600.00
	m2	Rehabilitation of potholes, traces, cracks on carriageway layer t= 5 - 10 cm.	5,630.00	0.01	56.3
	m2	Rehabilitation of considerable damages 35 - 40 cm thickness.	1,600.00	0.01	16
			Quantity demanded	Unit price	Total
Ferizaj 2	m2	Rehabilitation of potholes, traces, cracks on carriageway layer t= 5 cm.	1,200.00	60	72,000.00
	m2	Rehabilitation of potholes, traces, cracks on carriageway layer t= 5 - 10 cm.	800	0.2	160
	m2	Rehabilitation of considerable damages 35 - 40 cm thickness.	950	0.1	95

In the course of analysing the contracts, it was noticed that EOs are paid differently for the same works in different regions. Where in one region a work is paid € 14 while in another region the same work is paid € 0.20.

**Table. Comparison of the prices of different EOs for the same works.**

Description of works	Unit	Region	Indicative amount according to TD	Unit price	Total quantity price
1.3b2) Laying of a new carriageway layer, with asphalt concrete AB16 with an average thickness of 60 mm, excavation included, as well as mix for asphalt reinforcement with asphalt additive containing Aramid and Polyolefin polymer fibers.	m2	Prishtina 1	14,000.00	€ 0.95	13,300.00
		Prishtina 2	10,500.00	€ 9.00	94,500.00
		Prizreni 1	16,000.00	€ 9.00	144,000.00
		Prizreni 2	2,000.00	€ 14.00	28,000.00
		Ferizaj 1	3,200.00	€ 5.00	16,000.00
		Ferizaj 2	2,500.00	€ 0.20	500
		Gjilan 1	36,160.00	€ 8.00	289,280.00
		Gjilan 2	19,680.00	€ 8.50	167,280.00
		Mitrovica 1	30,450.00	€ 7.90	240,555.00
		Mitrovica 2	10,800.00	€ 6.00	64,800.00
		Gjakova 1	17,300.00	€ 8.00	138,400.00
		Gjakova 2	9,100.00	€ 8.00	72,800.00
		Peja 1	41,195.00	€ 7.50	308,962.50
		Peja 2	25,000.00	€ 9.00	225,000.00

The same phenomenon (where the price for the same works differs considerably amongst different EOs) was also noticed in another case shown in the table below. Also in this table it can be seen that the winning EO of Lot Gjakova 1 included the price per hour in his bid for workers with different qualifications at 0.01 euro.

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**Table. Comparison of the prices bidden by different EO.**

(PRICE PER HOUR FOR THE WORKERS)	6.1.1) WORKERS WITH HIGH SKILLS	6.1.2) WORKERS WITH MEDIUM SKILLS	6.1.3) UNSKILLED WORKERS
Prishtina 1	€ 1.20	€ 1.00	€ 1.00
Prishtina 2	€ 1.00	€ 1.00	€ 1.00
Prizreni 1	€ 2.50	€ 2.00	€ 2.00
Prizreni 2	€ 0.10	€ 0.10	€ 0.10
Ferizaj 1	€ 4.00	€ 2.50	€ 2.00
Ferizaj 2	€ 5.00	€ 3.50	€ 3.00
Gjilan 1	€ 2.00	€ 1.00	€ 2.00
Gjilan 2	€ 3.00	€ 2.80	€ 1.70
Mitrovica 1	€ 2.25	€ 1.80	€ 1.35
Mitrovica 2	€ 2.00	€ 2.00	€ 1.50
Gjakova 1	€ 0.01	€ 0.01	€ 0.01
Gjakova 2	€ 0.20	€ 0.10	€ 0.30
Peja 1	€ 2.50	€ 2.00	€ 1.50
Peja 2	€ 3.00	€ 2.50	€ 2.20

## Comparison between performing Operators in the Contract 2014-2017 and those of the Contract 2017/18/19

What one can easily notice is that the operators selected for this contract (with the exception of one) are the **same operators** that have carried out the previous maintenance contract 2014-2017.

One of the findings made by KDI in the Monitoring Report for the Contract of 2014<sup>66</sup> is that most of the operators awarded with a contract, according to inspection reports for inspections carried out in workshops after the signing of the contracts, do not in fact fulfil the different conditions of the TD. If such inspection would have been performed during the bid evaluation phase, these operators would have been found to be ineligible.

Although the CA has included a footnote in the TD of the previous contract that allows the CA to inspect the OE’s workshops during the bid evaluation phase for the purpose of verifying the possession of equipment and fulfilment of other requirements stipulated in the technical specifications, the CA has not used this right, whereas after the contract were already been granted, the inspectors reports indicated that most of the operators selected for the contract did not fulfil the specified requirements.<sup>67</sup>

66 Road to Money report, KDI 2016, <http://kdi-kosova.org/wp-content/uploads/publikime/54-2016-03-rruga-tek-parate-monitorimi-i-min-se-infrastalb-isbn.pdf>

67 Road to Money report, KDI 2016, <http://kdi-kosova.org/wp-content/uploads/publikime/54-2016-03-rruga-tek-parate-monitorimi-i-min-se-infrastalb-isbn.pdf>



Taking due account of this fact, we consider that CA-MI should have, based on such experience, included a similar clause in the tender dossier and adhere to it. Since we have not been granted access to the inspection reports on the winning operators of the current contract, we cannot conclude on whether these operators fulfil the TD requirements or not.

The table below contains the winning operators for the previous and current the contract, whereas the last column shows the operators of the previous contract which, according to reports on inspection conducted after the signing of the contract, resulted to have not fulfilled requirements regarding mandatory technical equipment and other requirements specified under the mandatory technical specification.

**Table: Comparison between performing operators of the Contract 2014-15-16 and 2017-18-19**

Regions	Winning operator in the previous contract	Winning operator in this contract	Comparison between 2014 and 2017	Inspection Reports for the 2014 contract
Prishtina 1	Arbotec	Arbotec	The same EO	Does not fulfil TD's conditions
Prishtina 2	Integral	Integral	The same EO	Does not fulfil TD's conditions
Mitrovica 1	Alko Impex	Alko Impex	Same EO	Does not fulfil TD's conditions
Mitrovica 2	Jasen	RAD & ABC	Different EO	-
Prizreni 1	Famis Co	Famis Co	Same EO	No remarks
Prizreni 2	Drini Company	Drini Company	Same EO	No remarks
Gjakova 1	Victoria Invest	RSM	Different EO	Does not fulfil TD's conditions
Gjakova 2	RSM	Victoria Invest Internacional	Different EO	Does not fulfil TD's conditions
Peja 1	Lika Trade	Lika Trade	Same EO	No remarks
Pejë 2	Graniti	Graniti	Same EO	No remarks
Gjilan 1	Tali	Tali	Same EO	No remarks
Gjilan 2	Jaha Company	Jaha Company	Same EO	Does not fulfil TD's conditions
Ferizaj 1	Euro KosVia	Euro Kosvia	Same EO	Does not fulfil TD's conditions
Ferizaj 2	Damastion Projekt & Arkos	Damastion Projekt & Arkos	Same EO	Does not fulfil TD's conditions

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## Emergency Contracts - negotiated procedures without publication of the Contract Notice

According to a Contract Signing Notice dated 16 February 2018 (published in PPRC website)<sup>68</sup>, the Ministry of Infrastructure has signed a contract on the **maintenance of national and regional roads during winter season 2017/2018** with 14 EO which was set to be concluded on 31<sup>st</sup> of March 2018. The envisaged value of the contract was EUR 4.700.000. The Operators with whom the MI signed the contracts were the same operators of the maintenance contract for the years 2014-2017. Based on the data included in the Contract Signing Notice, only 14 operators have submitted tenders for this contract, and all 14 of them are winners in one of the LOTS.

These contracts were signed in the end of December 2017 and early January 2018, whereas the contract's completion deadline was 31<sup>st</sup> of March 2018. The total amount of the contract was EUR 4,623,175.28.

**WHILE THE CONTRACTS** were signed at the end of December 2017 and at the beginning of January 2018, the Contract Signing Notice was dated 16 February 2016..

**Table: Total amount of the emergency contract**

Emergency Contract for winter maintenance 2017/18	Lot/Region	Winning EO	Total Contract Value
	Prishtina 1	Arbotec	€ 623,906.71
	Prishtina 2	Integral	€ 379,189.76
	Ferizaj 1	Eurokos Via	€ 393,966.60
	Ferizaj 2	Damastion Project	€ 361,445.80
	Gjilani 1	Tali	€ 290,559.07
	Gjilani 2	Jaha	€ 227,499.28
	Mitrovica 1	Alko Impex	€ 420,274.70
	Mitrovica 2	Jasen	€ 285,896.30
	Prizreni 1	Famis Co-HC	€ 309,207.20
	Prizreni 2	Drini Company	€ 335,167.20
	Peja 1	Lika Trade	€ 268,220.49
	Peja 2	Graniti	€ 346,235.60
	Gjakova 1	Victoria Invest International	€ 213,460.11
	Gjakova 2	RSM Company	€ 168,146.46
	<b>Total</b>		<b>€ 4,623,175.28</b>

Considering that the previous maintenance contract was set to expire in November 2017, the MI initiated the regular procure-

<sup>68</sup> <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&PCID=-1&CtlID=ViewNotices&ID=148946>, qasur më 17 janar 2019.

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ment procedure on the Road Maintenance Contract 2017/18/19 on 29th of September 2017, but due to complaints submitted by the EO before PRB, this process was delayed and MI with a negotiated procedure **without publication of contract notice** had concluded contracts with 14 EO for the period February-March 2018.

These contracts were concluded with operators of the previous expiring contract, which violates Article 52.6 of the ROGPP according to which the CA must invite the EO and select the winning bid among the eligible EO's.

**THE CONTRACT SIGNING** Notice for the emergency contract was not published in the e-procurement platform despite the legal obligation to do so.

The Contract Signing Notice for the emergency contract was not published in the e-procurement platform despite the legal obligation to do so, whereas this contract signing notice can be found in PPRC website, but only if you search the archive of 2014 documents.

Based on the data published in the Contract Signing Notice it is noted that contracts have been concluded with fixed price, which is different from regular procedure contracts that are concluded based on the price per unit, with the indicative value of one.

By comparing the prices for the indicative amounts of the emergency contract and the regular contracts, it is noticed that MI has paid **EUR 293,512.91** more on the emergency winter maintenance contract than it would have paid under a regular contract.

**MI HAS PAID** EURO 293,512.91 more for the emergency winter maintenance contract than it would have paid under a regular contract

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**Table: Price difference between regular and emergency contract**

	Contract 2017-2019	Emergency Contract	Difference
Prishtina 1	479,546.34	623,906.71	144,360.37
Prishtina 2	344,698.06	379,189.76	34,491.70
Ferizaj 1	279,049.41	379,189.76	100,140.35
Ferizaj 2	320,633.38	366,165.80	45,532.42
Gjilani 1	336,696.48	292,624.07	(44,072.41)
Gjilani 2	182,630.55	227,499.28	44,868.73
Mitrovica 1	400,773.02	424,050.70	23,277.68
Mitrovica 2	361,864.70	360,236.30	(1,628.40)
Prizreni 1	312,664.60	309,207.20	(3,457.40)
Prizreni 2	372,513.02	335,167.20	(37,345.82)
Peja 1	248,838.40	268,220.49	19,382.09
Peja 2	356,855.60	346,235.60	(10,620.00)
Gjakova 1	243,547.16	213,460.11	(30,087.05)
Gjakova 2	168,736.46	173,220.46	4,484.00
Total	4,409,047.17	4,698,373.44	289,326.27

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# CONCLUSIONS

- Road infrastructure is considered as the most important public asset that contributes to both economic and social development. Road maintenance should be treated as an unavoidable and essential activity that serves to the achievement of such purpose and to avoid the significant costs for repairing them. The procurement process for road maintenance should be done as early as possible in order to avoid situations when due to complaints and delays in tendering, roads remain without maintenance, thus violating the safety of citizens and goods in roads.
- The tendering process for this contract has lasted for more than a year due to the multiple complaints by the EO regarding the decisions rendered by the CA – MI for awarding the contract. Due to the inadequate review of complaints by the MI, these operators have lodged complaints before the PRB and thereby prolonged the procurement process and consequently roads have remained without maintenance. Many of the complaints rejected by the MI as ungrounded were approved by the PRB as grounded.
- The MI does not publish all notices for procurement in the e-procurement platform. With regard to the emergency contract, the Contract Award Notice has not been published, whereas the Contract Signing Notice was published in the PPRC website but was placed in the notice archives. Furthermore, with regard to the regular maintenance contract, the MI has not published any of the Contract Signing Notices or the Contracts, despite having signed 14 contracts.
- The procurement process for this contract, from its very beginning, was delayed for three months because the MI has applied discriminatory criteria in the Tender Dossier, which were latter considered as bias criteria under a Decision of the PRB and MI was obliged to remove them.
- The delays in the tendering procedures have obliged the MI to conclude emergency contracts for winter maintenance, whereby according to our calculations, they are paying a price that is EUR 289.326,27 higher compared to the price payable under a regular contract.
- The limitation made by MI stating that an EO can be the winner only for one of the Lots, has disallowed EOs with the lowest price to be selected as the winner for more than one Lot, therefore in different Lots, the MI has selected EOs that were more expensive. A more concrete example could be Lot Prizreni 1. The winner for this Lot was selected Famis Co HC with a unit price of **EUR 1,101.18**, whereas the bid of Alko Impex of **EUR 308.18** per unit was not selected as a winners as this EO was selected in a different Lot. Similar cases where the wining EO is not the one with lowest price are present in most of the Lots. In addition to the above, under such circumstances, there are possibilities of different agreements between the EO for the regions. If an EO could be the winner in more than one Lot, the possibility of agreements between EO regarding the division of regions would be reduced and we would save budget by choosing an EO with the lowest price in more regions than one.
- Since here we are dealing with contracts of price per unit, according to ROGPP, Article 56.11, the CA should determine the weight of the bid based on the importance of "each category of service or item" in order to determine the bid with the lowest price. In the specific case of the road maintenance contract, the MI has not used scoring method.

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- The Ministry of Infrastructure has not been sufficiently transparent with regard to the provision of access to documents related to this tender. Out of the seven requests for access to public documents submitted to the relevant departments, only four were given a response<sup>69</sup>. The Public Communication Office and the Department of Road Management are considered as more cooperative in granting access to information compared to the Finance Department<sup>70</sup> and the Inspection Department<sup>71</sup>, which have not provided the requested documents. A request was addressed to the Public Communication Department for further proceeding to the relevant department, but this request was not answered either.
- PRB decisions are not respected by the CA-MI. A specific case on this issue is when MI ignored the PRB's decision twice, and recommended the Operator which according to PRB's Decisions was found to be ineligible. Only after a third decision was rendered by the PRB, the MI decided as was requested under the PRB's decision.

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69 The Road Management Department responded to the request for access while the two requests for access to documents were sent to the Public Procurement Office, which responded and provided access to the required documents (except the Procurement Plan and Annex Contracts).  
70 The documents provided by this department were not the documents that KDI requested. Even after repeating the request, there was no response.  
71 This department did not respond to the request for access to documents.

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# RECOMMENDATIONS FOR THE MI

Based on the above findings, KDI makes the following recommendations:

- The planning of the road maintenance procurement process should be done with due care, and tendering procedures should start in due time in order to avoid situation where roads would remain unmaintained due to complaints or delays in tendering.
- Notices on procurement activities should be published in the e-procurement platform in accordance with legal requirements.
- The CA-MI should review the OEs complaints and approve them as grounded when the allegations are substantiated in order to avoid delays that may occur when such complaints are addressed to the PRB.
- The criteria of Tender Dossier should be determined based on legal norms<sup>72</sup>, so that there are no complaints which could affect the reliability and therefore delay the tendering procedures. Particularly, the contracting authority is prohibited from drafting technical specification that favour or discriminate one or more economic operators<sup>73</sup>.
- The MI should, in accordance with ROGPP, use the scoring method in contracts with prices per unit. According to Article 56.11 of the ROGPP, the CA should determine the weight based on the importance of “each category of service or item” in order to determine the lowest price bid.
- The MI should respect the PRB’s decisions and respond to PRB within the legal time limit when the latter has requests regarding documents in possession of MI<sup>74</sup>.
- The MI’s transparency should be increased in accordance with the obligations conferred by the Law on Access to Public Documents and the Law on Public Procurement, whereby the increase of cooperation between departments within the MI could also have an impact in this regard.

<sup>72</sup> Article 28.2, Law no. 04/L-042 on Public Procurement of the Republic of Kosovo as amended and supplemented by the Law no. 04/L-237, Law no. 05/L-068 and the Law no. 05/L-092

<sup>73</sup> Ibidem

<sup>74</sup> In the meeting with the Head of the PRB, Mr. Blerim Dina, on 19.11.2018, he expressed his concern regarding the lack of cooperation between MI and PRB. According to him, the decisions of the PRB are often delayed because the documents required by the MI are not brought in time to the PRB

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# RECOMMENDATIONS FOR PRB

- The PRB decisions should be rendered within shorter periods of times, and always in accordance with the legal provisions of the LPP.
- The review experts should perform detailed reviews of allegations made by EO and its final decisions should be as more specific as possible.
- The PRB should penalize or issue an order against the Contracting Authority that does not respect its decisions and does not cooperate during the time when an activity is under procedure in the PRB.





KDI është Organizatë Joqeveritare (OJQ) e angazhuar të mbështesë zhvillimin e demokracisë përmes përfshirjes së qytetarëve në bërjen e politikave publike dhe fuqizimin e sektorit të shoqërisë civile me synimin për të ndikuar në rritjen e transparencës dhe llogaridhënies nga ana e institucioneve publike.  
Për më shumë informata rreth KDI ju lutem vizitoni [www.kdi-kosova.org](http://www.kdi-kosova.org)

Me përkrahjen financiare të:



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