



HUCSK PURCHASED OXYGEN AT A HIGHER PRICE IN TWO PROCUREMENT ACTIVITIES





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OXYGEN

During the period of the COVID-19 pandemic, one of the products that has been used the most was oxygen (in gaseous and liquid form), which has been used to treat hospitalized patients. While before the pandemic the demand for oxygen was less, during the pandemic the demand increased by several times.



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Below are analysed two procurement procedures where the Hospital and University Clinical Service of Kosovo (HUCSK), through several decisions, purchased oxygen at a higher price.

At the onset of the pandemic, HUCSK concluded in 2020 a contract (with procurement number 00220-20-312-1-1-1) with the company Medical Group for the supply of oxygen for

inhalation for use in the management of hypoxia. The contract price per kilogram of oxygen was 1.68 Euros and in total the contract provided for 485,736 kg to be ordered. Since the contract was of the framework contract type, up to 30% more quantities were allowed to be ordered. The contract was signed on 6 May 2020. However, only two months later, on 23 July 2020, HUCSK signed another contract through the negotiated procedure (with procurement No. 00220-20-3783-1-1-5) with the company Medica, for the same supply, but this time at a price of 2.01 Euros per kg of oxygen. The quantity ordered through this contract was 44,250 kg. HUCSK paid 88,942.50 Euros for this quantity. However, it could have ordered the same quantity through the contract it had with the company Medical Group. The difference of 0.33 Euro



ros in price (2.01 – 1.68) means that for the ordered quantity there is a difference in price of 14,602.50 Euros. So, if HUCSK would have ordered the oxygen through the contract at a cheaper price, it would have saved 14,602.50 Euros.

The reasons why it happened that there were two identical contracts can be different, but one of the reasons could be that the company was not able to cope with the demand and another company had to cover this demand. KDI has seen several communications via email between regional hospitals and HUCSK, expressing great concern that they do not have sufficient supplies of oxygen, at a time when the number of cases with COVID-19 was very high. In the tender dossier of the tender with an open procedure, HUCSK set a delivery deadline of 3-5 days, but it did not stipulate the minimum quantity that must have been delivered within 24 hours or within a week (it had corrected this mistake in the tender with a negotiated procedure, specifying the minimum quantity that must have been delivered within a week). A mistake in the tender dossier, i.e. the non-specification of the minimum

quantity that must have been delivered within a certain period, has led to the conclusion of another contract for the same supply, but at a higher price. An example of how important it is to specify the minimum quantity is a contract for the production of civil status documents. The contracted company knew in advance in the tender dossier the required quantity, and the quantity that must be delivered every month. If the company did not have the production capacity for the required monthly quantity, then it would surely not bid.

While the other procurement activity analysed is about liquid oxygen. On 1 April 2021, HUCSK published the procurement activity "Supply of medical oxygen for the needs of HUCSK" with procurement number 00220-21-1709-1-1-1. HUCSK planned to purchase 5.2 million litres of oxygen, while the estimated value of the tender was 2.44 million Euros, while the estimated value for one litre of oxygen was 0.47 Euros. The previous contract was concluded at the same price of 0.47 Euros, with the company Medical Group. Three economic operators participated in the procurement activity:

Economic operator	Total price (in Euros)	Price per litre (in Euros)
Medical Group SH.PK	1,976,000	0.38
Liri – Med SH.PK	2,392,000	0.46
NPT Medica	1,924,000	0.37

The bids given in the tender 00220-21-1709-1-1-1

According to the evaluation report, the three economic operators were deemed responsive and the cheapest EO, NPT Medica, which bid 0.37 Euros per litre, was recommended for the contract. The evaluation report was signed by the three members of the committee, but not by the Responsible Procurement Officer (Director of the Procurement Office). According to the Rules and Operational Guideline for Public Procurement (ROGPP)¹, the Responsible Procurement Officer (RPO) takes the final decision regarding the award of the contract. The RPO can accept the evaluation committee's recommendation or reject it. If the recommendation is re-

jected, then the RPO must state in writing the reasons for the rejection. Since the RPO has not signed the evaluation report, it is understood that he has rejected the recommendation of the Evaluation Committee. But there is no document where RPO has given his reasons for rejection.

However, the tender was cancelled after the request of 4 June 2021 made by the Central Pharmacy. According to CF, after the decrease in COVID-19 cases, the demand for medicinal oxygen also decreased. Through the request with protocol number 4195, the CF asked the Chief Administra-

¹Rules and Operational Guideline for Public Procurement, Article 40.13
<https://e-prokurimi.rks-gov.net/HOME/Documents/Legislation/Rregulloret//shq/A01%20Rregullat%20dhe%20Udh%20C3%ABzuesi%20operativ%20p%20C3%ABr%20Prokurimin%20Publik.pdf>





tive Officer (CAO), who in this case is the Director of HUCSK, to cancel the procurement procedure. The cancellation of this procedure would mean that oxygen orders would continue to be made with the contract that was active at that time (the contract with EO Medical Group, at a price of 0.47 Euros per litre), but that in June 2021 it had reached about 84% of quantity spent. Finally, on 16 June 2021, the Notice for the Cancellation of the procurement activity is published.

However, the entire process from the publication of the tender to the cancellation has gone through unnecessary delays, at the time when the price of the cheapest bid was 0.10 Euros lower than the price of the active contract. Below is the chronology from the publication of the contract notice to the cancellation of the tender:

- The contract notice was published on 1 April 2021
- The deadline for submitting bids was 26 April 2021
- The evaluation committee was established on 17 May 2021
- The Evaluation Committee's report was completed on 19 May 2021
- The request to cancel the tender was made on 4 June 2021
- The request reached the Procurement Office on 14 June 2021
- The tender was cancelled on 16 June 2021

As can be seen, from the moment the bids were submitted (April 26) until the cancellation of the tender, about 50 days have passed. According to Article 41.2 of ROGPP, the Bid Evaluation Committee had to be established no later than five days after the opening of the tenders, and it was established 23 days after the opening of the bids.

The Procurement Office has not published the document B58 Notice on the Decision of the Contracting Authority at all, which should have contained the reasons for the cancellation of the tender as well as the standard letters for the eliminated tenderers. Without standard letters and without publication of document B58, HUCSK has denied the right of appeal to economic operators.

The procurement activity has been cancelled based on Article 62.1.1 of the Law on Public Procurement, with the reason



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that a violation of the current Law has occurred or will occur if the procurement procedure is continued. Article 62.1 of the LPP stipulates:

1. A contracting authority may terminate that procurement activity that does not result in the award of a contract only for one of the following reasons:
 - 1.1. a violation of the present law has occurred or will occur in the procurement procedure, which cannot be remedied or prevented through a lawful amendment of the procurement conditions, including cases where a provision of the present law requires the cancellation of the procurement activity.



However, only two months later, on 23 July 2020, HUCSK signed another contract through the negotiated procedure (with procurement No. 00220-20-3783-1-1-5) with the company Medica, for the same supply, but this time at a price of 2.01 Euros per kg of oxygen. The quantity ordered through this contract was 44,250 kg. HUCSK paid 88,942.50 Euros for this quantity. However, it could have ordered the same quantity through the contract it had with the company Medical Group.

The difference of 0.33 Euros in price (2.01 – 1.68) means that for the ordered quantity there is a difference in price of 14,602.50 Euros.

According to the request made by the Central Pharmacy, it can be seen that no violation of the current Law has occurred. Therefore, even HUCSK has not been able to show which law has been violated or would be violated if it were to continue with the awarding of the contract to the recommended EO. In

² [SARS-CoV-2 Variant Classifications and Definitions \(cdc.gov\)](https://www.cdc.gov/media/releases/2021/s110921-covid-19-variant.html)



fact, not proceeding with awarding the contract has caused HUCSK to lose a significant amount of funds because the price per litre of oxygen in the existing contract was 10 cents higher than the bid of EO Medica, in the cancelled tender.

The reason for the cancellation, that the demand for oxygen has decreased, may be correct, but during June 2021 there have been constant reports in the media that the Delta variant is spreading rapidly. In June 2021, the US Centre for Disease Control and Prevention (CDC)² classified the Delta variant as a VOC (variant of concern) and which was spreading faster than previous variants.

However, even though the tender was cancelled, during this time HUCSK continued to order oxygen with the contract that was active. Only during May and June 2021, 190,000 litres of oxygen were ordered. While from May to August 2021, when a new contract was signed using the negotiated procedure without publication of the contract notice, 428,000 litres of oxygen were ordered. So, while the tender was cancelled in June 2021, on 23 August 2021, HUCSK sent an invitation to three EOs to bid through the negotiated procedure. If calculated with the price of the existing contract, 428,000 litres of oxygen cost 201,160 Euros, while if the contract would have been signed with the company Medica, this quantity would cost 158,360 Euros (428,000 * 0.37). The difference between the two prices is 42,800 Euros. HUCSK damaged its budget by 42,800 Euros as it did not sign the contract that had a cheaper price, but cancelled the procurement procedure and continued to place orders with the existing contract that had a higher price by 0.10 Euros per litre.

On 27 August 2021, HUCSK signed a negotiated contract with the company Medical Group at a price of 0.36 Euros per litre of oxygen. So, this contract might not have existed at all if a contract would be signed in June with the company Medica, at a price of 0.37 Euros.

The two cases analysed above reflect a lack of preparation and analysis in HUCSK. In both cases, due to wrong actions, oxygen was purchased at a higher price, causing budget losses of around 57,000 Euros.

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