

PUBLIC MONEY OR COMPETITION?

PRISHTINA,
DECEMBER 2015

**TO PROTECT
PUBLIC MONEY OR
COMPETITION?**

**PUBLIC PROCUREMENT
MONITORING AT THE CENTRAL
PROCUREMENT AGENCY**



PUBLIC MONEY OR COMPETITION?

PRISHTINA,
DECEMBER 2015

PUBLIC PROCUREMENT

**DILEMMA: TO PROTECT
PUBLIC MONEY OR
COMPETITION??**

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LIST OF ABBREVIATIONS

CA	Contracting Authority
CPA	Central Procurement Agency
TAK	Tax Administration of Kosovo
EU	European Union
GDP	Gross Domestic Product
TD	Tender Dossier
KDI	Kosovo Democratic Institute
PPRC	Public Procurement Regulatory Commission
LPP	Law on Public Procurement
MF	Ministry of Finance
MTI	Ministry of Trade and Industry
SME	Small and Medium Enterprises
EO	Economic Operator
PRB	Procurement Review Body
TI	Transparency International
AG	Administrative Guidelines
OAG	Office of the Auditor General
PO	Procurement Officer
OPM	Office of Prime Minister





DEFINITION OF MAIN TERMS

TERM	DEFINITION	EXAMPLE
Excise per Litre	Specific type of tax, applied on domestic and imported products	Specific tax applied for every Litre of imported fuel.
Common use items	Products or services required by one or more contracting authority, for which a more cost-effective or more efficient use of public funds may be achieved by conducting a central, common or consolidated procurement.	Oil, paper, food, vehicle repairs.
Monthly stock exchange average	Calculation of all average monthly stock exchange prices	
Abnormally low price	Tender price when the economic cost of process of production and service delivery is higher than the bid price, which risks ending up unimplemented.	When an item is offered with lower price than production cost. For example, a window with frame offered with 5 EUR.
Billing Price	Final price including all taxes and additional components, which should be paid by the consumer	
Tender dossier	Document which describes terms and conditions for awarding the contract	
Supplier	Economic operator contracted to deliver a service or product	
Monthly average exchange rate	Calculation of average of all monthly currency rates	
Lot	Tender divided into parts	Tendering of 30 types of essential drugs, in a single tender procedure.



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TERM	DEFINITION	EXAMPLE
Fuel Truck	Motor vehicle for transporting fuel	
Contract Award Notice	Notice through which the winner in a tender procedure is declared, which includes price and contact details of the company	
Contract Notice	Tender announcement notice published on the website of PPRC	
Economic Operator	Supplier, service provider or contractor of works	
Bill of quantities	Pre-calculation of needs for specific items or works, in tenders with price per unit	
PLATTS	A consulting company for fuel and energy prices	Average monthly oil price
Premium	Premium means company's profit margin for every Litre of oil	0.0001 EUR for every Litre of oil sold to the institution
Refinery's premium	Refinery's profit from the sale of oil, usually per Ton	
Evaluation Report	Report prepared by Bid Evaluation Committee, which is submitted to chief procurement officer in the form of recommendation	
Performance security (guarantee)	Document used by the company to guarantee successful completion of the contract	Bank deposit or bid security through insurance companies

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INTRODUCTION

Public procurement contracts present a large portion of budget of the Gross Domestic Product (GDP) and public spending of each country, and as such it presents a very sensitive area exposed to potential manipulations and mismanagement. Public contracts are used for most diverse purchases, starting from a simple pencil or drinking water to construction of highways or contracting sensitive state services, and as such generate a large cash flow, and if properly managed, present a key indicator of business sector development. A bad management of public procurement prevents real development of market competition, creating preferential opportunities for certain economic operators, and loses the “value for money” by paying for goods and services more money than the actual retail market price, respectively, by increasing the public spending and having negative impact on resources or investments made by the Government for the taxpayers. Up-to-date there are many cases when the most usual products such as bottled water, printing paper, oil, drugs from the essential list, are paid by the state with a much higher price than the retail market price. One of the main objectives for entering into longer term contracts is to ensure favourable conditions for parties to the agreement, both in the aspect of price and aspect of guarantee and management.

An effective method for preventing or addressing corrupt practices is monitoring public contracts.

“Effective monitoring plays an important role in preventing corruption and helps to ensure that corruptive behaviour is properly exposed and sanctioned.”¹

Kosova Democratic Institute (KDI), with its Program on Transparency and Anticorruption, respectively, Public Procurement Monitoring, has conducted surveys and published many reports on procedures of developing technical specifications, tendering process and bid evaluation, contract awarding, contract management, appeals and decisions of the PRB, and findings in different phases of public procurement.

Public Procurement in Kosovo faces many different problems, such as insufficient legal provisions, lack of adequate training, poor planning, lack of good will and integrity, lack of transparency and accountability, etc.,

1 (Transparency-International, 2014)

CPA was established within the Ministry of Finances in order to apply professional expertise, cost effectiveness and other legitimate issues, by applying centralized procurement for common interest products for all Public Institutions of Kosovo.

and is considered as the most corrupt and mismanaged sector among public institutions of Kosovo.²

In order to improve this situation, Public Procurement Regulatory Commission, in cooperation with the EU funded project - Support to Public Procurement Reform in Kosovo - proposed changes to the Law on Public Procurement, which entered into force on 05 October 2011, where one of the key amendments was the transformation of Public Procurement Agency into the Central Procurement Agency under the Ministry of Finance. The main purpose of this Agency is acquisition of goods or items of common interest. According to the same law, Ministry of Finance should prepare a list of common interest items, which unfortunately proved to be a very slow process of identification and approval. Only in February 2015, the Administrative Instruction (QRK) Nr.02/2015 was approved, on the implementation of centralized public procurement procedures, where the following six (6) products of general interest were approved: fuel, office supplies, hygienic products, procurement of food, purchase of tickets and tyre supply.

Fuel is item of general interest where public institutions have most frequently failed to ensure a reasonable price, and not only it was paid at different values, but many times it was paid with a price higher than the retail market, which was also proven in the previous KDI report “Chaotic Tenders of Municipalities” published in June 2015.

2 EU: Progress Report 2015 Kosovo*, 10/11/2015 Brussels





SELECTION

During the last three years, KDI has advocated that CPA should acquisition the common interest supplies as a possibility to ensure ‘value for money’ and reduce the possibility for mismanagement of contracts.

These common interest procurements for all public institutions present big values of fund commitments. Even a small saving in one item can translate into a big saving of public money, which would provide for additional capital investment or any other type of returning the service for money to Kosovo taxpayers. For example, a saving of 0.01€ (1 Euro cent) in a quantity of 100,000 units generates a saving of € 1,000, which could be invested somewhere else.

KDI has chosen to monitor and analyze practices of the fuel supply contract for 37 Public Institutions as the first centralized procurement contract made by the CPA, and the key interest is to see whether this type of contract is appropriate for better management of public money compared to existing contracts.

In drafting this report, KDI has analyzed over 100 documents and publications with more than 2,000 pages, had dozens of meetings and phone conversations, dozens of email communications, submitted 12 requests for access to official documents, etc.

Since this contract is the first of its kind, KDI intends to evaluate applied practices and procedures and provide practical recommendations for CPA, contracting authorities and PPRC on how they could improve and strengthen this process even more.



METHODOLOGY

The research methodology used for this report tries to measure the implementation of public procurement legislation by examining the CPA fuel supply contract for 37 contracting authorities, which are analyzed in different stages.

Due to the nature of selected contract, analysis addresses five (5) procurement stages: assessment of needs and planning, preparation of technical specifications, evaluation of bids, implementation of contract and monitoring of performance, and audit and close out. In addition, this methodology addresses the level of transparency, proportionality, equal treatment and non-discrimination of Economic Operators (EO), and appeals submitted to Procurement Review Body and decisions taken by this body.

This methodology of research and monitoring of public procurement is one of the practices that is widely used by monitoring organisations and mainly by branches of Transparency International in different countries.³

The main advantage of this methodology is that it is comprehensive and does not neglect any phase of procurement. Special importance is given to cooperation with economic operators, respectively, businesses which are in contractual relationship with Central Procurement Agency.

Documents used during the examination of tenders were: tender evaluation reports, contract award notices, contract notices, tender dossiers, economic operator bids, public contracts, PRB decisions, expertise reports, operators' appeals. The active monitoring of the project shall improve the overall performance of institutions with more budget/higher risk, and inclusion of different stakeholders in this process will bring benefits to all parties involved in the process. Participants from business community (who did not win the tender), NGOs, investigative media journalists, members of Assembly Committee for Supervision of Public Finances, Contracting Authorities, Public Procurement Regulatory Commission, Office of Auditor General will all have the opportunity to benefit from the knowledge KDI obtained through the years.

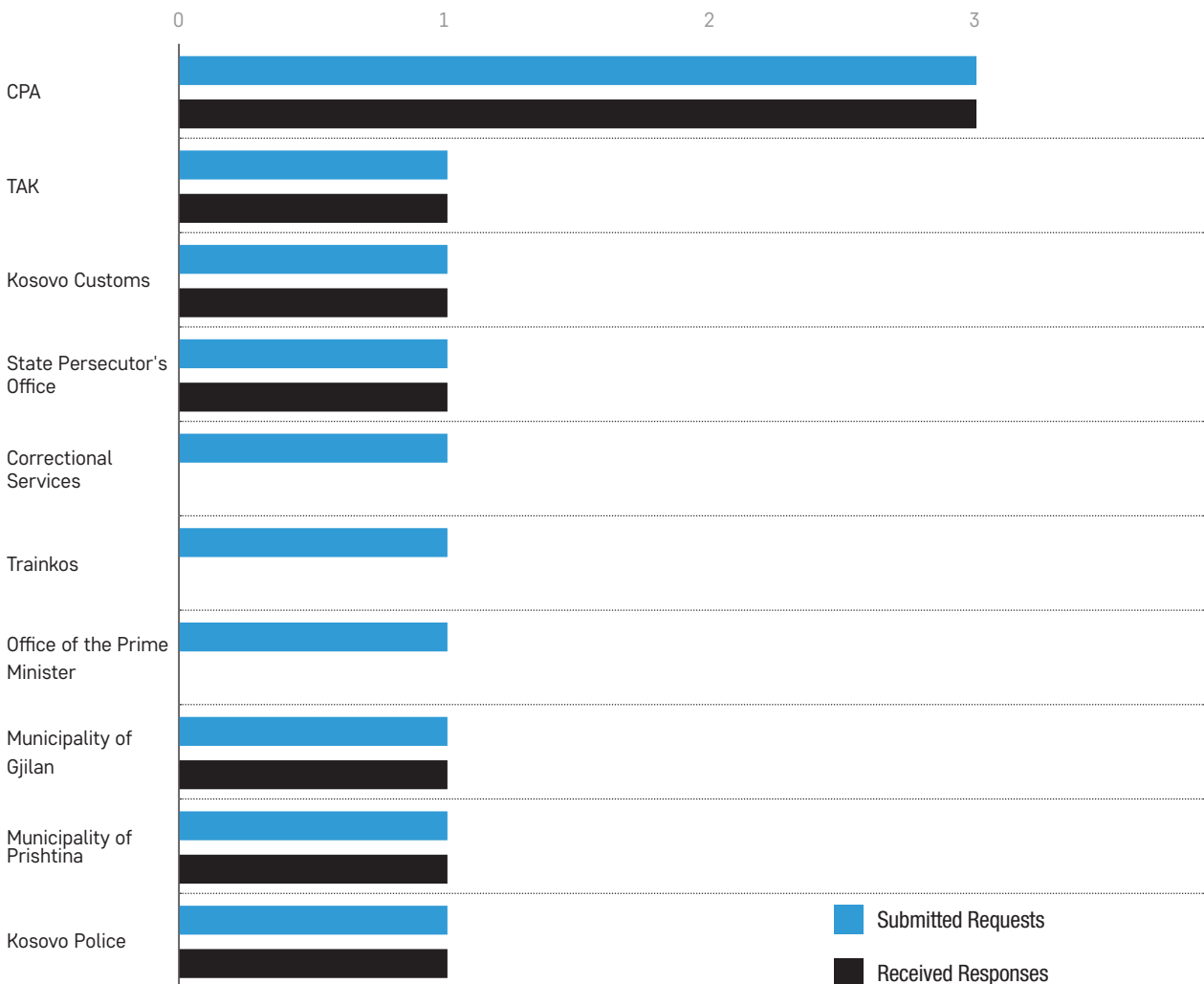
³ Transparency International. (2006). Handbook for Curbing Corruption in Public Procurement. Berlin:Lisa Prevenslik, Kenneth Kostyo. For further information: http://www.transparency.org/whatwedo/pub/handbook_for_curbing_corruption_in_public_procurement



TRANSPARENCY

Monitoring of this contract also serves as measurement of transparency of the CPA institution itself and of authorities that contracted this service. KDI submitted 12 requests for access to public documents and received 9 replies. Institutions that did not reply are Kosovo Correctional Service, Trainkos Sh.A., and Office of the Prime Minister.

Furthermore, KDI had a number of interviews, meetings and telephone conversations with officials of the CPA, public institutions, investigative journalists and economic operators, and almost all of them have shown good will and readiness to respond and cooperate in the process of monitoring this contract, for what KDI is grateful.



EXECUTIVE SUMMARY

Public Procurement sector continues to be one of the most dynamic and most-talked about topic when it comes to mismanagement of public money. That is why many different stakeholders have been engaged at the national and international level to improve the quality of these services. Some of the most active projects for enhancing Public Procurement capacities and legislation in Kosovo are the EU funded project Support to Public Procurement Reform in Kosovo, Improving Administrative Capacities in the field of Public Procurement in Kosovo, funded by the EU, the World Bank Project Quick Gains Kosovo and Improving implementation of Public Procurement in Kosovo, Public Administration Reform Project, supported by OECD/SIGMA, different projects supported by the Embassies in Kosovo and usually implemented by Civil Society, investigative journalism and other institutions aimed at improving this sector. Biggest complaints about this sector are related to various shortcomings in legal provisions, lack of adequate trainings, poor planning, lack of good will and integrity, lack of transparency and accountability, possibilities for abuse, mismanagement, non-achievement of value for the money, etc. These concerns are also expressed in various reports published by both international and local institutions.⁴

In order to improve this complex situation in public procurement, government institutions have been engaged in improving the existing legislation and developing secondary legislation to address the identified shortcomings. So far, six (6) amendments to the Law on Public Procurement have been made, and the PPRC and other agencies are engaged in making additional amendments to current law. These amendments, no matter how good they are in addressing shortcomings, they have posed a challenge for continuous training of procurement officers and awareness raising of economic operators.

According to various surveys and reports, many institutions have failed to get the services and supplies with market prices and achieve the value for the money, which is one of the fundamental principles in the public procurement. Actually, that was the key objective for establishing the centralized procurement. Special emphasis is given to fuel supply, where most often institutions have failed to ensure a reasonable price, and very often paid a higher price than the retail market.

4 Reports: BE_2590_PECK_AC assessment report_FINAL_ALB; BE_2590-PECK-AC_Compliance_Matrix_Alb; BE_2590-PECK-AML-CFT_Follow_up_Report_F_Alb; EU_Progress Report Kosovo 2014, EU_Progress Report Kosovo 2015, KDI_NIS Report 2015;

Thirty seven (37) Contracting Authorities included in this contract have altogether a budget of over 110 million EUR in Goods and Services and Capital Spending, about 50 million EUR of which are spent through public procurement procedures. About 10% of this spending is planned for procuring fuel, including diesel for automobiles, gasoline for automobiles, oil for generator and heating oil.

Another problem are the abnormally low prices in public procurement in Kosovo, which puts in question the quality of service or product, but also undermines business profits. In certain cases it has been noted that although there are abnormally low prices in one or more items, the invoice values are higher than retail prices, which means that EOs have manipulated, respectively, inflated prices for other specific items of contracted services.

Based on the analysis conducted by KDI in this report, we may conclude that this centralized contract, the first of its kind in Kosovo, had managed to ensure better contract management terms, but the weakness of these type of acquisitions is limitation of competition, which is in contradiction with the Law No. 03/L-229⁵ and Law No. 04/L-226 on Protection of Competition,⁶ and the Draft National Strategy on Public Procurement which aims to increase support for SMEs.⁷

5 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2727>

6 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=9326>

7 <https://krpp.rks-gov.net/Default.aspx?PID=Home&LID=1&PCID=-1&CID=HTMLStatic&CID=PPRCNews&ID=234>



CONTRACT ANALYSIS

VNEEDS ASSESSMENT AND PLANNING

Fuel, as an energy resource, today is more than necessary for performing daily operations in all fields, including public institutions. These needs are planned and budgeted by every institution on annual basis, and presented to evaluation committees and Assembly for adoption. Taking into consideration the unavoidable need for purchasing fuel, high values of these purchases, different prices that institutions pay for the same product, for similar amounts from the same supplier, and that this sector is notorious as one of the worst managed sectors, and in order to implement the recommendations of the Auditor General, and at the request of then Minister of Finance, Central Procurement Agency initiated the process of researching and analyzing the needs and fuel market to supply public institutions. This undertaking is supported from different institutions like the World Bank (Quick Gains Kosovo Project), Project of Public Administration Reform in Kosovo, European Liaison Office (Public Procurement Reform Project) and SIGMA. During the four (4) month period (November 2012 – February 2013), the CPA had inquired information from central and local institutions concerning their current services and their interest in joint procurement, which were reported to the World Bank, Government Institutions and other stakeholders in this process. This report presents quite detailed analysis of the will of institutions, prices they pay, contracted amounts, number of received bids, number of responsible bidders, lists of suppliers, and an analysis of advantages and challenges of joint procurement. Based on this analysis we may conclude that average premium for oil paid by institutions was 0.0720 EUR/Litre, while average number of bidders for

According to procurement plans submitted to the CPA by contracting authorities that have entered into joint contract, the approximate required quantity of such fuel is around four (4) million Litres a year

TABLE 1.0 Comparing premiums from the data collected by the CPA for the report of 20.02.2013

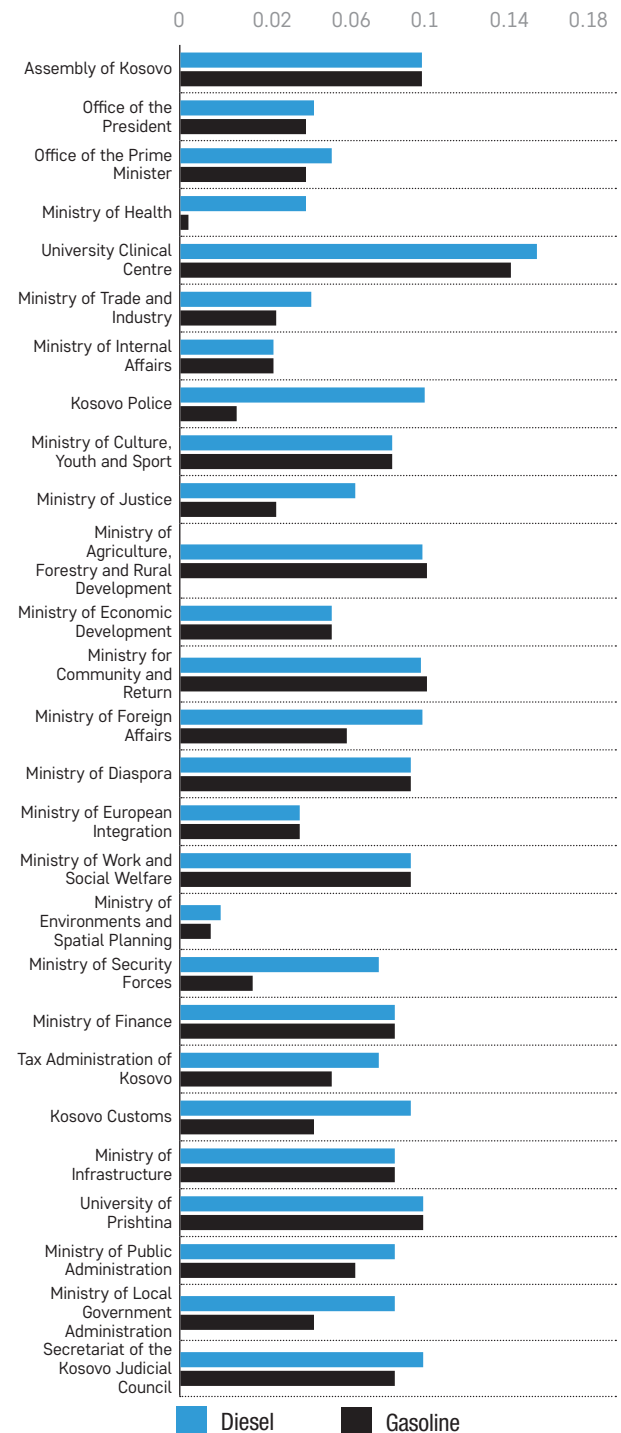
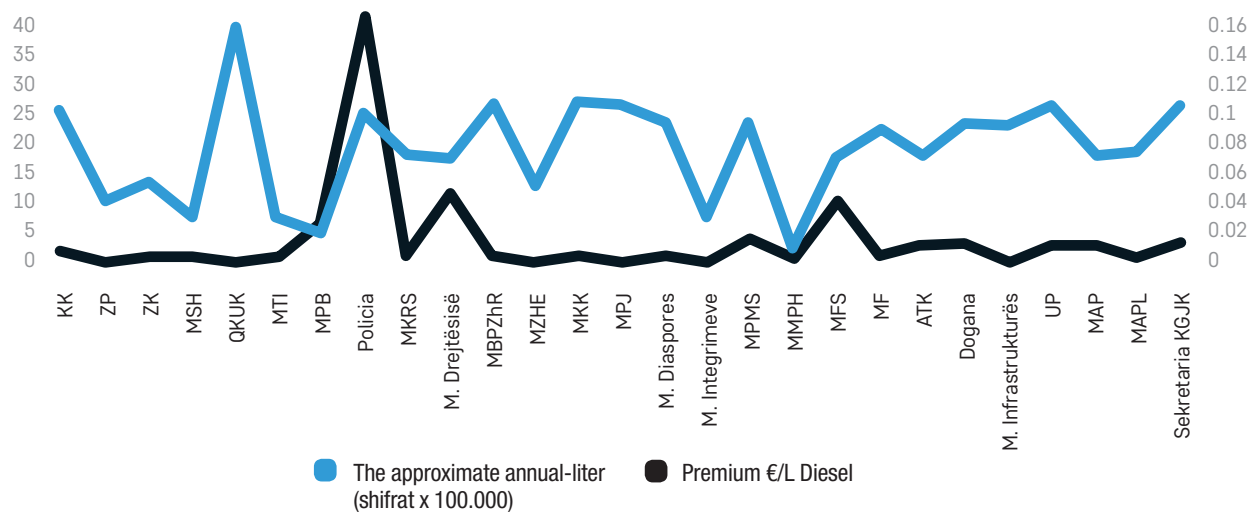




TABELA 2.0 Overview of premiums compared to contracted quantities for 2013



Non availability of stock exchange prices to contracting authorities left the billing pricing at the mercy of economic operators, where often a price with lower premium was paid by institutions more expensively than the price per Litre in the retail market.

0.03 EUR more than the premium paid by the Ministry of Diaspora and Ministry of Kosovo Security Force of about 0.065 EUR for a quantity of about 1,000,000 Litres. This means that Kosovo Police, with the largest quantity, in total has paid about 120,000 EUR more than the average paid by other institutions.

Tables above reflect in the best way possible the need for a joint procurement with the aim to save public money by making a reasonable purchase. In the conducted analysis, CPA had foreseen an average saving of 6 % compared to prices paid in 2012, or an average premium of 0.05 EUR/Litre.⁹

These institutions had also entered into contracts in which the basic fuel price referred to average monthly price in the stock exchange. In order to get stock exchange prices, each contracting authority (total of 160 CAs) has to pay a membership to PLATTS in the amount of two (2) million Euros per year, a cost that would be avoided with centralized procurement, where only one membership would be required.

each tender was three (3), and average number of responsible bidders was two (2) .⁸

According to market principles (Economics), when the supply grows, prices go down; however, when we compare the previously paid premiums by these institutions, we see that this is not the case with fuel supply, that is, in this analysis. The report indicates that University Clinical Centre of Kosova (UCCK) paid the highest premium of 0.15 EUR for 15,000 Litres, Ministry of European Integration paid the lowest premium of 0.03 EUR for a quantity of 11,538 Litres, Ministry of Diaspora paid 0.090 EUR for the smallest quantity of 9,075 Litres, while the Kosovo Police as the biggest consumer paid 0.0955 EUR for 4,100,100 Litres, which is

8 Republic of Kosovo – Ministry of Finance – Central Procurement Agency – Report – Analysis – Fuel Supply, Pristina, 20 February 2013

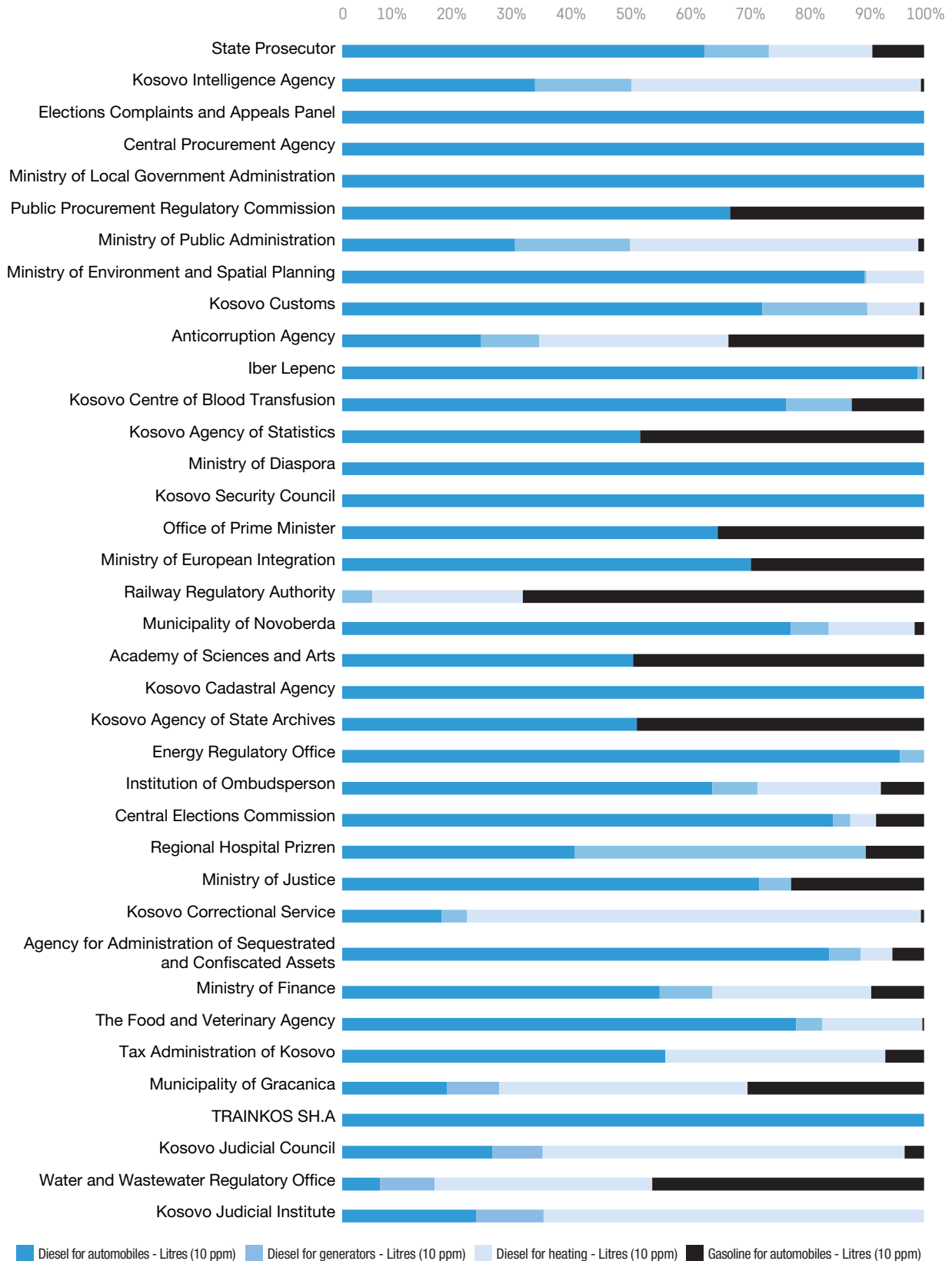
9 Central Procurement Agency – Report – Analysis – Fuel Supply, Prishtina, 04 March 2013



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TABLE 3.0 The fuel type ratio compared to total quantity foreseen for 36 months per institution



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TABLE 4.0 Overview of approximate quantities by product requested by each contracting authority included in the contract

No	NAME OF CONTRACTING AUTHORITY	PROJECTED QUANTITY FOR 36 MONTHS			
		Diesel for automobiles and other motor vehicle -Litres (10 ppm)	Diesel for generators Litres (10 ppm)	Diesel for heating Litres (10 ppm)	Gasoline for automobiles Litres (10 ppm)
1	State Prosecutor	280,000	50,000	80,000	40,000
2	Kosovo Intelligence Agency	120,000	60,000	180,000	2,000
3	Elections Complaints and Appeals Panel	12,000	0	0	0
4	Central Procurement Agency	12,000	0	0	0
5	Ministry of Local Government Administration	90,000	0	0	0
6	Public Procurement Regulatory Commission	16,000	0	0	8,000
7	Ministry of Public Administration	180,000	120,000	300,000	6,000
8	Ministry of Environment and Spatial Planning	272,000	1,100	30,000	0
9	Kosovo Customs	600,000	150,000	75,000	6,000
10	Anticorruption Agency	11,000	4,600	15,000	15,500
11	Iber Lepenc	282,861	2,378	0	895
12	Kosovo Centre of Blood Transfusion	27,000	4,000	0	4,400
13	Kosovo Agency of Statistics	21,000	0	0	20,000
14	Ministry of Diaspora	46,800	0	0	0
15	Kosovo Security Council	22,500	0	0	0
16	Office of Prime Minister	144,000	0	0	79,200
17	Ministry of European Integration	35,400	0	0	15,000
18	Railway Regulatory Authority	0	1,800	9,000	24,000
19	Municipality of Novoberda	94,000	8,000	18,000	2,000
20	Academy of Sciences and Arts	14,000	0	0	14,000
21	Kosovo Cadastral Agency	41,190	0	0	0
22	Kosovo Agency of State Archives	9,300	0	0	9,064
23	Energy Regulatory Office	20,900	900	0	0
24	Institution of Ombudsperson	36,000	4,400	12,000	4,200
25	Central Elections Commission	56,800	2,000	3,000	5,550
26	Regional Hospital Prizren	48,000	60,000	0	12,000
27	Ministry of Justice	82,797	6,367	0	26,403
28	Kosovo Correctional Service	318,750	83,333	1,458,333	10,417
29	Agency for Administration of Sequestrated and Confiscated Assets	35,418	2,300	2,300	2,300
30	Ministry of Finance	90,000	15,000	45,000	15,000
31	The Food and Veterinary Agency	162,498	9,416	35,832	581
32	Tax Administration of Kosovo	375,000	0	255,000	45,000
33	Municipality of Gracanica	16,000	8,000	38,000	27,000
34	TRANKOS SH.A	2,700,000	0	0	0
35	Kosovo Judicial Council	540,000	180,000	1,300,000	70,000
36	Water and Wastewater Regulatory Office	2,100	3,000	12,000	15,000
37	Kosovo Judicial Institute	12,000	6,000	34,000	0
Total of approximate quantities for 36 months		6,827,314	782,594	3,902,465	479,510

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PREPARATION OF TECHNICAL SPECIFICATION AND TENDER DOSSIER

Technical specifications for this contract are titled as mandatory technical specifications, which include quantities, technical specifications of product quality and general conditions¹⁰.

Technical specifications, concerning quantities per institution and accumulated quantities are pre-established by contracting authorities and included in Procurement Plans submitted to CPA.

TABLE 5.0 Approximate supply quantities for 36 months

#	Product description	Measuring Unit	Approximate quantities for 36 months
1	Diesel for automobiles and other motor vehicles 10 ppm	Litres	6,827,314.00
2	Diesel for Generator 10 ppm	Litres	782,594.00
3	Diesel for Heating 10 ppm	Litres	3,902,465.00
4	Gasoline for automobiles (95 and 98) 10 ppm	Litres	479,510.00

Technical specifications of product quality are developed in accordance with Administrative Instruction No. 07/2012 issued by the Ministry of Trade and Industry on 27.04.2012¹¹, which defines the quality of fuel that is allowed to be imported in Kosovo. These specifications address the quality of fuel, as follows:

- o Technical specification for (Diesel for automobiles and other motor vehicles 10 ppm, Diesel for generator 10 ppm, Diesel for heating 10 ppm)
- o Technical specification for Petrol 95 (Gasoline for cars 10 ppm)
- o Technical specification for Petrol 98 (Gasoline for cars 10 ppm)

10 Tender Dossier Re-tendering, for the Public Framework Contract – Supply by single economic operator, Open procedure
11 <http://www.mti-ks.org/sq/Udhezimet-Administrative/page/6>

Further, CPA has also included general conditions, as follows:

Eligibility of Economic Operators, where Economic Operators should meet the requirements specified in Article 65 of the Law on Public Procurement (LPP), Law No. 04 \ L-42¹².

Professional Suitability Requirement:

- o Copy of the business registration certificate
- o Copy of VAT certificate
- o Copy of fiscal number certificate
- o Copies of licenses for providing services in fuel sector:
 - Import License
 - Storing License
 - Wholesale License,
 - Transport License, and
 - License for retail sale for gas stations where economic operator provides fuel supply and which he owns or has rented.

All licenses issued from the Ministry of Trade and Industry should be valid.

Requirements on economic and financial standing, where economic operator is requested to present audited financial statements for 2011, 2012 and 2013, proving that EO has had an annual turnover of not less than **15,000,000.00** EUR during this period.

If we analyze the requirement above we will see that it is a bit unclear if the total required amount is 15 million EUR for all three (3) years or for each individual year. Since the requirement mentions the annual turnover, then this implies that the required turnover for all three years is 45,000,000.00 EUR, which is very large sum and unbearable amount for many economic operators and that automatically reduces the number of competitors.

In the communication with CPA officer it was clarified that required amount is the total for all three (3) years, but such confusion might have scared off small and medium competitors, considering very small number of bidders in this tender, who might have perceived that the required turnover is 15 million EUR a year¹³.

12 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772>
13 Email communication with Behram Abazi, Director of Special Projects CPA, RE: Question on fuel supply contract, date Fri, Dec 4, 2015.

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TABLE 6.0 Location of points of sale required under the contract.

No.	LOCATION	No.	LOCATION
1	Prishtina	16	Lipjan
2	Peja	17	Glllogoc
3	Gjakova	18	Shtërpce
4	Klina	19	Kaçanik
5	Gjilan	20	Suhareka
6	Kamenica	21	Malisheva
7	Viti	22	Rahovec
8	Klllokot	23	Dragash
9	Novobërda	24	Deçan
10	Mitrovica	25	Istog
11	Prizren	26	Skenderaj
12	Ferizaj	27	Vushtrri
13	Graçanica	28	Leposaviq
14	Hani i Elezit	29	Zubin Potok
15	Podujeva		

Requirements for technical and/or professional capability:

- Economic operator should provide evidence demonstrating that in the last three years (2011-2012-2013) it has successfully supplied fuel in value of not less than 7,000,000.00 EUR.
- Economic operator should provide evidence that it owns or has rented means of transport for implementing a contract; at least 3 fuel trucks for diesel and 1 fuel truck for gasoline.
- Economic operator should submit a list of gas stations that it plans to use for implementing the contract.

According to general conditions, economic operator should provide a total of 29 distribution points throughout the territory of Kosovo, as listed on Table 6.0 below:

The bidder who is selected for the award, should submit to the Contracting Authority the following documents prior to Contract Award Notice:

- a.** A statement from the Economic Operator stating that they will store in their storage facility, without any

compensation, the fuel confiscated by the Kosovo Customs, approximately up to 50,000 **Litres**.

This was a beneficial criterion for the Kosovo budget, however, during the interview with representatives of Kosovo Customs was raised the technical problem of failure to include or address transportation means and price, from the confiscation points to the storage facilities, which was seen as omission on the side of the Contracting Authority. Fuel supply services for Kosovo Customs have entered into force on 5 October 2015, time when the lack of this criteria for transportation of confiscated fuel became evident. Kosovo Customs is discussing with the CPA on the possibility to improve the situation with an Annex to Contract or an entirely new Contract .¹⁴

- b.** A statement from Economic Operator, stating that in case of fuel crisis, the Economic Operator shall keep its reserves dedicated for the Central Procurement Agency – Diesel **300,000 Litres** and gasoline **50,000 Litres**
- c.** A statement from Economic Operator, stating that it undertakes to compensate all damages caused to

¹⁴ Meeting with Customs' Head of Media Office and Procurement Department, 16 November 2015.

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Criteria used in the terms of contract are seen as unreachable for SMEs, and made them withdraw from participation in the tender process!

vehicles of contracting authorities, if found that such damages are as result of bad quality of fuel.

Tender security - The amount of tender security should be € 450,000.00 for duration of 120 days from the day bids are received.

Performance security - The value of performance security is: € 1,400,000.00 for duration of 37 months from the date contract is signed. The amount required for performance se-

curity is the sum of service prices foreseen for a period of four (4) months, or 10% of total values of planned procurement.

Another criterion requested from CPA was that maximum distance of gas stations owned or rented by the economic operator should be up to 10 km from the town centre. For gas stations that are subcontracted, maximum distance may be up to 5 km from the town centre.

During the focus group discussion organized by the KDI, participants emphasized that the main problem with centralized contract is reduction of competition, considering that criteria in the tender dossier were unbearable for small economic operators and they favoured big companies and strengthening monopoly over the fuel market.

According to “Graniti Petrol” - Vushtrri, one of the main problems is the discretion that Law on Public Procurement gives to Procurement Officers in defining the contract terms as they please. The same economic operator had submitted an appeal to PRB concerning the discriminatory criteria, respectively, violation of Article 7 of LPP – Equality of Treatment/Non-discrimination, but the PRB had taken



TABLE 7.0 Information table for calculating fuel prices

No	Description	Fix/Variable
1	Average monthly stock exchange - CIF Med (Genova/Lavera Ton/\$)	Variable
2	Refinery premium in \$/ Ton	Fix
3	Refinery price (1+2) \$/Ton	Variable
4	Average monthly exchange rate \$/euro according to European Central Bank	Variable
5	Price of Ton in Euros (3X4)	Variable
6	Converting the Ton into Litre	Fixed one (1) Ton of diesel = 1 191 Litres One (1) Ton of petrol = 1 368 Litres
7	Price per Litre in Euros (5/6)	Variable
8	Transport price per Litre	Fixed: 500.00 € /30.000 Litres
9	Price before taxes (7+8+9)	Variable
10	Excises per Litre	Fixed according to TAK (may change only if the TAK laws change)
11	TOTAL (10+11)	Variable
12	Company premium / Litre according to bid and contract	Fixed
13	Total price with premium (12+13)	Variable
14	VAT 16% / Litre	Fixed 16 % according to TAK (may change only of TAK laws change)
15	Price per Litre for billing (14+15)	Variable



the decision (Nr. 152/14) in favour of Contracting Authority (CPA) and rejected the appeal as ungrounded¹⁵.

According to the same economic operator, there is a discrepancy between criteria because the quantity of approximately 11,000 Litres of fuel a day does not present any problem for majority of EOs, however the values of cash turnover and successfully completed contracts are unreachable for many small enterprises. Furthermore, Graniti Petrol considers discriminatory the CA requirement where the supplier is obliged to keep in its reserves (storage) at all times at least: 300.000 Litres of diesel and 50.000 Litres of gasoline (95.98), as an ungrounded criterion, but according to the CPA this criterion is put in order to make sure that in case of fuel crisis, CAs will not remain without proper supplies¹⁶.

Në tabelën për ndërtimin e çmimeve, AK ka specifikuar parametrat për shfrytëzim në ndërtim të çmimeve, të cilat karakterizohen në fikse dhe variabile.

When analyzing these parameters it was noted that two economically variable prices were listed by contracting authority as fixed prices.

1. Refinery' premium – is listed as fixed price although refineries are private and have various premiums, which vary also based on the quantitative rebate.
2. Transport price per Litre – is also listed as fixed price, although the transport cost varies depending on the supply distance.

During the analysis of the offers submitted by the Economic Operators it was found that none of the EOs had applied with the same origin of supply.

TABLE 8.0 Country of supply according to bidders

BIDDER	COUNTRY OF SUPPLY
PETROL COMPANY	ITALY
HIB PETROL	OKTA MK
PATRONI & EIDA	GREECE

According to some interviews with EOs, refinery premiums vary from USD 45.00 to USD 75.00 per Ton, and the trans-

¹⁵ <https://oshp.rks-gov.net/repository/docs/vendimet/2014/Furnizim-me-karburante-aqp.pdf>

¹⁶ Meeting with the CPA, 10 November 2015

During analysis of tender requirements it was noted that variable units prices used to build the billing price per Litre were pre-set as fixed prices

port price for Litre also varies from 0.0167 €/Litre for supply from Macedonia and 0.0333/Litre for supplies from Greece, Bulgaria or Albania. It was confirmed that for supplies from Italy, transportation cost was about or over 0.050 €/Litre.¹⁷ During the interviews it was stated that the refinery premium of USD 50.00/Ton was the average of Refinery OKTA in Macedonia, and the transport price 0.0167 EUR/Litre is the transport price from Macedonia to Kosovo.

At first glance it seems as the CA indirectly has favoured OKTA Refinery in Macedonia.

During the explanatory meeting with CPA on setting these criteria, CA argued that the reason for setting these variable units, as fixed prices was for the protection of public funds from price inflation, as it has happened in the past, where average transport that was paid by institutions was 0.0333 EUR/Litre (1,000.00 EUR per truck), and especially because with the improvement of the infrastructure, this cost is even lower. Such inflation of transport prices was emphasized also by the KDI, where prices have varied from 500.00 Euros/Tank to 3,000.00 Euros/Tank.¹⁸

The same reason was also given by the CA for setting the refinery's premium, since according to the CPA, different companies have presented different premiums and when premiums for companies supplying various institutions were calculated, it was concluded that the average refinery's premium paid was USD 50.00/Ton. According to the CPA, if there would have been any change in refinery premium, EOs had the possibility to include it within the premiums they offered per Litre.¹⁹

The Association of Oil Companies expresses concerns and are against awarding such a high value contract to a single economic operator.²⁰ In this context, KDI also raised as

¹⁷ Telephone interview with the legal representative of HIB Petrol (03 November 2015) and Patroni (19 October 2015)

¹⁸ Kosovo Democratic Institute, Chaotic Tenders of Municipalities, Prishtina, June 2015

¹⁹ Personal interview with Behram Abazi, Director of Special Projects, CPA, 11 October 2015

²⁰ Personal interview with Fadil Berjani, President of Association of Oil

concern the limitation of competition as result of tendering for contract with a single Supplier,²¹ in what case the CPA's reply was that CPA's mission is to ensure the best value for money, thus saving the public money. Over 50% of distribution points in the current Contract are Subcontracted to small and medium enterprises, which does not mean that competition is limited or undermined by this contract.

Abnormally low prices are in contradiction with key motivation of businesses, which is their financial profit

EVALUATION OF BIDS

On 27 January 2014 the CPA published the tender AQP-AK-14-002-111²² and because there were no bidders on 03 March 2014 they published an extension of bidding deadline through 18th of March 2014.²³ Two companies applied in response to this Request for Tender: HIB Petrol and Patroni. During evaluation of received bids it was found that Patroni Company did not possess all required licenses, and on 27 March 2014, CPA had published the notice to annul the contract under the reason "the procurement activity was annulled because there were no sufficient responsible bids."²⁴ On 28 March 2014, NTSH Patroni filed an appeal to PRB, claiming that annulment of tender was unfair, and that the CA had violated the LPP, respectively Articles 59, 66 and 72. On 24th of April 2014, on the decision number 52/14, the PRB rejected the appeal as ungrounded.²⁵

The CPA re-tendered these services on 08th of May 2014.²⁶ Three (3) companies applied in response to re-tendering, Petrol Company, HIB Petrol and NTSH Patroni & Euro Petrol Durrës Albania, Kosovo Branch²⁷

During the evaluation of received bids by the evaluation committee it was concluded that all economic operators that bid in response to re-tendering Nr. AQP-AK-14-002-111 were responsible. On 11th of June 2014, CPA sent to Petrol Company a request for clarifications concerning abnormally low price and on 16 June 2014, received the answer from EO that they had quantitative rebate from the supplying refinery. Based on the lowest price criteria and explanations received from Petrol Company, the winning EO in this tender was declared Petrol Company, with a premium of 0.0001 Euros/Litre.

On 04th of July 2014, HIB Petrol submitted an appeal to PRB against the decision of the CPA for awarding the contract to Petrol Company, claiming that the LPP, respectively, Article 59, Examination, Evaluation and Comparison of Tenders had been violated. During the investigation conducted by the PRB review expert, it was found that that company that was declared a winner did not have all licences valid, respectively, licence no. 1862 for Gjilan region had already expired and since the EO had stated in the tender dossier that validity period of this licence was until 31.01.2015, PRB

Companies of Kosovo, 04 December 2015

21 Re-tendering for Public Framework Contract – Supply with one Economic Operator, AQP-AK-14-002-1-1-1

22 <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&P-CID=-1&CtlID=ViewNotices&ID=81576>

23 <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&P-CID=-1&CtlID=ViewNotices&ID=82464>

24 <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&P-CID=-1&CtlID=ViewNotices&ID=83343>

25 <https://oshp.rks-gov.net/repository/docs/vendimet/2014/-Furnizim--me--karburante-.pdf>

26 <https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&P-CID=-1&CtlID=ViewNotices&ID=85023>

27 Report from Bid Opening for Fuel Supply- AQP-AK-14-002-111 Re-tender

FIG 1.0 Extract from the bid opening report.

Nr. Br.	Tenderuesi Tenderer	Vendi: Country: Mesto:	Çmimi Price Cena e	Vërejtje PO/JO Remarks YES/NO Napomena DA/NE	Përfaqësuesi i OE / EO Representative/Zastupnik EO	
					Emri / Mbiemri Name / Surname Ime / Prezime	Nënshkrimi Signature Potpis
1	Petrol Company	Prishtinë	1.195,18	—	FATOS SHALA	
2	HIB Petrol	Ferizaj	278.367,06	—	Artan Beqiri	
3	NTSH Patroni & Euro Petrol Durrës Shqipëri Dega Kosovo	Prishtinë	827.430,51	—	DRILON THAÇI	

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TABLE 11.0 Comparison of unit prices between public institutions

Fuel Supply	Contracting Authority:	CPA (AQP-AK-014-002-111)	Kosovo Police	Municipality of Prishtina	Municipality of Gjilan
	Economic Operator:	HIB Petrol	HIB Petrol	Petrol Company	Petrol Company
Description	Month	€ / Litre	€ / Litre	€ / Litre	€ / Litre
DIESEL 10 ppm AUTOMOBILE	August '15	0.9267	1.0060	1.0580	0.8960
	September '15	0.9422	1.0226	1.0580	0.8956
	October '15	0.9251	1.0056	1.0580	1.0508
DIESEL 10ppm GENERATOR	August '15	0.9197	1.0060	1.0580	0.8960
	September '15	0.935	1.0226	1.0580	0.8956
	October '15	0.9179	1.0056	1.0580	1.0508
DIESEL 10ppm HEATING	August '15	0.9197	1.0060	1.0580	0.0000
	September '15	0.9350	1.0226	1.0580	0.0000
	October '15	0.9179	1.0056	1.0580	0.9098
GASOLINE 10ppm AUTOMOBILE 95,98	August '15	0.9396	1.0143	1.0580	0.8803
	September '15	0.9257	1.0015	1.0580	0.8886
	October '15	0.9112	0.9870	1.0580	1.0388
Type of Contract/ Price basis		Premium/Litre	Premium/Litre	Fixed	Premium/Litre

|||||

From the above listed tables we may note that from all the contracts issued by the Public Institutions that are used for this comparison, Gjilan Municipality was the only one to pay a lower price than the CPA for the months of August and September 2015. However, although with a premium of 0.0001 €/Litre, Gjilan Municipality paid the price of 1.0508 EUR³⁵ for a Litre of diesel for automobiles, respectively 0.1257€/Litre higher than the contracting authority "TAK", which is also party to contract AQP-AK-014-002-111, (Premium 0.0260€/Litre) and which paid 0.9251 EUR/ Litre for the same month³⁶. The same is with gasoline supply for October 2015, where Municipality of Gjilan paid 1.0388 EUR/Litre (Premium 0.0001 €/Litre), respectively 0.1276 €/Litre more than Contracting Authority "TAK" which paid 0.9112 €/Litre (premium 0.0159€/Litre).

Additionally, we have noted that although the supplier in this contract AQP-AK-014-002-111 is the same as the one for Kosovo Police and pricing policies are the same in the two contracts, CPA prices are lower because of a lower premium per Litre in the CPA contract, than those of the Kosovo Police, which are shown in the table below:

Një tjetër krahasim është bërë me kontratën e Komunës së Prishtinës, e cila ka lidhur një kontratë të tjetër lloji me çmime fikse, me aktivizim të mini-konkurrencës në ndryshim të çmimeve të tregut. Përderisa në raportin e bërë nga KDI për tenderët e komunave, është vërejtur se Komuna e Prishtinës kishte siguruar çmime më të mira se AQP. Në krahasimet për muajt gusht, shtator dhe tetor 2015 vërehet se si rrjedhojë e uljes së çmimeve të derivateve në tregun ndërkombëtarë, gjatë këtyre muajve AQP ka siguruar çmime shumë më të favorshme se Komuna e Prishtinës.

35 Petrol Company Invoice No. 2301/14, 30.11.2014

36 HIB Petrol Invoice for TAK, No. FDT15-8-003814, 31/10/2015.

Although with a premium of 0.0001 €/Litre, Municipality of Gjilan in October 2015 paid a price of 1.0508 Euro/Litre for diesel for automobiles, which is 0.1257€/Litre higher than the one paid by the Contracting Authority 'TAK', which is also part of the contract AQP-AK-014-002-111 with a premium of 0.0260€/Litre, and who paid 0.9251 €/Litre.

Diesel does not have fixed prices, as they depend from international markets and often they change on daily basis

Another comparison was made with the contract of Municipality of Prishtina, who entered into a different type of contract with fixed prices, with activation of mini-competition in changing market prices. The KDI report on tenders of municipalities noted that Municipality of Prishtina has ensured better prices than the CPA. However, when comparing figures for August, September and October 2015, it

TABLE 12.0 Comparison of unit prices between the CPA and Kosovo Police

Description	Unit	CPA	Kosovo Police	Difference
		Price €/ Unit	Price €/ Unit	
DIESEL 10 ppm AUTOMOBILE	Litre	0.0260	0.0940	-0.0680
DIESEL 10ppm GENERATOR	Litre	0.0199	0.0940	-0.0741
DIESEL 10ppm HEATING	Litre	0.0199	0.0940	-0.0741
GASOLINE 10ppm AUTOMOBILE 95,98	Litre	0.0159	0.0800	-0.0641



was noticed that, as result of falling prices in international fuel market, during these months the CPA ensured much more favourable price than the Municipality of Prishtina.

Also, according to documents received from Municipality of Prishtina, as result of changes in fuel market, when prices were very high, this institutions activated mini-competition, which resulted in signing the contract Nr. 616 14 059 111 on 13th of July 2015 with Petrol Company, with a price of 1.058 €/Litre, which was the lowest price received from two contractors involved in the mini-competition. However, referring to Table 11.0, we notice that immediately in August 2015 fuel prices went down, but Municipality of Prishtina did not activate the mini-competition and as result, municipality is paying higher price than other institutions, and higher price than the retail market prices.

Municipality of Prishtina pays a fixed price of 1.058 €/Litre although the retail market price for diesel for this period was on average 0.96 €/Litre.

From the comparisons above, we see that CPA has ensured favourable prices compared to other contracting authorities and the retail market.

According to the contract AQP-AK-014-002-111, invoices should be paid within 30 calendar days from the date admissible request for payment is registered by the relevant department. Payment date shall be the date in which the account of the institution is debited. Payment request will not be admissible if one of more basic requirements is not met.

From the communication with the Economic Operator HIB Petrol, it was stated that in general, contracting authorities involved in this contract are responsible in meeting their financial obligations, with the exception of municipalities who, not only in this contract, continue to be problematic in making payments.³⁷

This contract will be valid until 14 September 2017; therefore we do not have any final assessment of contract performance. The contract was not audited by the auditor general, either.

³⁷ Telephone interview with Fatbardh Xhaferin, HIB Petrol, on 09 December 2015



CONCLUSION

- **Centralized procurement:** emerged as a need to improve the current situation in public procurement, where various shortcomings have been identified, such as insufficient legal provisions, lack of adequate training, poor planning, lack of good will and integrity, lack of transparency and accountability, possibilities for abuse, mismanagement, non-achievement of value for money, etc.
- **Participation in centralized contract:** Contract AQP-AK-014-002-111 was with voluntary participation, where 37 contracting authorities expressed their willingness to enter into centralized contract for fuel supply.
- **Centralized procurement creates disfavoured conditions for Small and Medium Enterprises:** Due to legal provisions and guarantees for ensuring continuous services for contracting authorities, this type of contract has created a disfavoured situation for Small and Medium Enterprises. Some of such criteria are requirements for annual turnover, bank guarantee and fuel reserves in times of crises.
- **Centralized procurement creates more favourable conditions for contract management:** This type of contract eliminates diversity of terms and conditions included in different contracts, which may present disfavoured pre-conditions for both economic operators and contracting authorities.
- **Centralized procurement ensures best value for money:** From the price analysis paid by different institutions, even with the same provider, we may conclude that the CPA has ensured a pretty good value for the money, compared to other institutions and, what is the primary objective of the contracts, they pay lower prices than those in the retail market.



RECOMMENDATIONS

RECOMMENDATIONS FOR REGULATORY INSTITUTIONS

Considering the economic principle that businesses are one of the crucial factors that impact and contribute to economic development of a country, Kosovo institutions should make efforts as much as possible to protect and develop SMEs, since SMEs growth helps generating jobs, stimulates capacity strengthening and development and contributes in increasing the state budget through the application of taxes.

Public contracts to an SME mean stability of income for a certain period of time, and play a major role in their welfare and development.

Different governments have identified challenges facing SMEs regarding the centralized public procurement, especially due to high criteria of technical specifications and contract terms and conditions, particularly based on key principles of EU Procurement Regulations such as Transparency, Proportionality, Non-Discrimination and Equal Treatment, and have applied different methods to address this issue.

KDI recommends to national regulatory institutions to adopt EU instructions and recommendations to stimulate SMEs (The Small Business Act for Europe) and how to increase their participation in public procurement process (European Union 2008b), particularly in dividing contracts into smaller lots, evaluation of bids based on best value for money rather than the lowest price, reducing administrative requirements and number of required documents.

RECOMMENDATIONS FOR CONTRACTING INSTITUTIONS

- KDI recommends that a tariff that should be variable not be defined as fixed (such as the price of oil refinery and transport per Litre), which indirectly would favour a specific business entity which is used as fuel point of supply.
- KDI recommends that as a policy for good management and saving public money, the CPA should conduct procurement activities for common use items for all institutions of Kosovo, as mandatory rather than a voluntary practice.
- We recommend appointment of one central authority, which would be responsible for periodic monitoring of fuel quality
- We recommend a detailed reviewing of abnormally low prices, as they do not reflect honesty in business making practices.



KDI is a non-governmental organisation (NGO) engaged in supporting development and democracy through inclusion of citizens in making public policies and strengthening civil society sector with the aim to influence in increasing transparency and accountability of public institutions.

For more information about KDI, please visit www.kdi-kosova.org

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