

ROAD TO MONEY

PUBLIC PROCUREMENT
MONITORING AT
MINISTRY OF
INFRASTRUCTURE

MARCH 2016



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**PRISHTINA,
MARCH 2016**



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AT MINISTRY OF
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EXECUTIVE SUMMARY

Corruption affairs in the field of public procurement in Kosovo continue to be one of the main issues in the media discourse, as well as in various national and international reports and publications. Undoubtedly, improvement of road infrastructure for several years in a row continues to be a high priority in the agenda of Kosovo's Government. This means that special attention should be paid to management of public money, with a special focus on the Ministry of Infrastructure. Through the years there have been many allegations for abuse at this Ministry as well as sentences and suspensions of procurement officers for abuse of office duty, receiving of bribes, etc., including indictment against the former Minister of this Ministry (previously known as the Ministry of Transports¹). Based on these facts

and assumptions, KDI under the auspices of public procurement monitoring project, has selected to monitor procedures of contract tendering and awarding for services of summer and winter maintenance of national and regional roads in 2014.

Contract notice MI-14-051-2-1-1 was published on 22 May 2014, with the request for bids for a total of 14 regions of Kosovo. The total of the predicted amount was 10,384,998.82 Euros.² The tender was divided into lots, and a total of 14 individual contracts were signed in December 2014, in the total amount of € 9,135,110.00 for a three-year period.

Region	Company	Contract value	Region	Company	Contract value
	Arbotec	€1,140,116.74	Gjilan - Lot 2	Jaha Company	€ 600,341.01
Prishtina - Lot 2	Integral	€ 876,781.48	Ferizaj - Lot 1	Eurokos & VIA	€ 550,952.81
Mitrovica - Lot 1	Alko Impex	€ 807,027.68	Ferizaj - Lot 2	Damastion Project	€ 486,567.24
Mitrovica - Lot 2	Jasen	€ 462,782.11	Gjakova - Lot 1	Victoria Invest	€ 487,022.61
Prizren - Lot 1	Famis Co	€ 738,732.92	Gjakova - Lot 2	RS & M	€ 641,017.98
Prizren - Lot 2	Drini Company	€ 511,627.53	Peja - Lot 1	Lika Trade	€ 578,408.62
Gjilan - Lot 1	Tali	€ 653,522.45	Peja - Lot 2	Granit	€ 600,209.58
Total € 9,135,110.76					

1 <http://www.ekonomiaonline.com/ekonomi/33550/shefat-me-aktakuze/>; BIRN-Arka e Favoreve, 2014; Prokurori i Shtetit: <http://www.psh-ks.net/?page=1,8,471>; <http://lajmi.net/suspendohet-baba-i-tender-eve/>; <http://www.gazetaexpress.com/lajme/ish-zyrtari-i-mtise-nexhat-krasnqi-denohet-me-26-muaj-burg-131712/?archive=1>

2 Shkresë e datës 04.07.2014 drejtuar drejtorit të departamentit të prokurimit nga kryetari i komisionit për hartimin e paramasave.

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The report examines all phases of tender procedures in order to be inclusive of each phase.

Tender Dossier for the services in question, Section II respectively, Tender Data Sheet (TDS), Requirements for technical and/or professional capacities, Item 12.c, Vehicles, warehouses, and technical equipment under remarks listed as a footnote “RE: Contracting authority enjoys the right of inspection and will visit the working site of business operators during the evaluation phase in order to verify possession of required technical equipment and other requirements noted in the required technical specifications. Business Operators (BO) that do not possess technical equipment and minimum requirements according to the tender dossier will be disqualified”. MI did not make use of this contracting provision, and due to lack of inspections during the evaluation phase based its judgement only on the received bids, and as we found during this analysis, some of them were not honest. This lack of honesty from Business Operators, as well as the lack of proactivity of Contracting Authority with regard to verification of bids, resulted with six lots in which CA disqualified BOs with cheaper prices per unit due to shortcomings in their bids, and more expensive BOs were awarded with contracts, which according to road inspectorate reports prior to beginning of work, were found not to have met the technical and professional requirements.

Lack of inspection of bids prior to contract award cost Kosovo’s budget a loss of **€1,913,641.25**, based on the amounts paid by 20.10.2015, which could have been saved if a second chance was given to disqualified BOs which had same shortcomings but had cheaper prices. A reminder, the total value of the contract was € 9,135,110.

Also referring to individual contracts between the Ministry of Infrastructure and Business Operators for 14 regions, the General Conditions of the Contract, Article 21, Changes to the quantity of completed works,

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paragraph 3 reads as follows “**If the calculated price for the completed works exceeds 10% of the initial price, then the contractor will not allow changes to the initial contract price, but it will instruct the Project manager to calculate only foreseen works for which an annex contract would be entered between parties of the framework contract in compliance with the provisions of the Law on Public Procurement**”. During the analysis of payments made by 20.10.2015 for the services rendered, we have observed that in 4 regions, the invoiced services exceeded the total value of the contract from 26.4% up to 72%, i.e. **1,347,672.39 Euros** were paid above the contract value for additional works for these 4 regions.

Contracts also have arithmetic errors in calculation of price per unit which results with a mismatch between the bid and contract, as well as secondary errors such as mismatches between the contract number with the number of insurance policy, bids with extremely high prices or low prices for the same positions, for which no explanations were asked from Business Operators. Monitoring of contracts also continues to be very weak and not very objective. Despite many irregularities, there was no punishment for business operators who presented documents other than real in field situations.

The contracts awarded by the Ministry of Infrastructure occurred with the revocation of Article 32.5 of the Law no. 04/L-042 on public procurement, since out of 33 bidders, only 14 business operators had submitted responsible bids. In the justification/notice for revocation of the Article dated 24.10.2014, Director of Procurement Department within the Ministry of Infrastructure, Mr. Nexhat Krasniqi, stated that since winter season had already started, and since 33 business operators participated in the tender process, there was no time nor expectation that bids would improve so the decision was made to revoke article 32.5.



INTRODUCTION

Since 2011, the area of public procurement in Kosovo attracted high interest at the Kosovo Democratic Institute (KDI)/Transparency International Kosova (TIK). This due to the fact that the sector every year consumes a large part of the public budget, and for quite some time it is followed with numerous shortcomings regarding the lack of order and control in the sector. In 2013 KDI published a report that focused on the Ministry of Infrastructure. The publication of 2013 provides a good comparative basis over the situation at this institution, even though the methodology employed varies.

In this research KDI examines the tender that at the time of publication of this report is still underway at

the Ministry of Infrastructure. A total of 14 contracts that were awarded in one tender procedure are subject of this report. The contracts were focused on maintenance of national and regional roads in the entire territory of the Republic of Kosovo. Based on the analysis of this tender procedure, results were drawn and verified, conclusions were drawn, and suggestions were made, based on the evidenced findings and irregularities in all the phases. However, the report also mentions positive findings, whenever they were encountered.

KDI thanks the British Embassy in Prishtina for making the research and this report possible.





METODOLOGJIA

The research methodology of this report tries to measure implementation of public procurement legislation through examination of the contract of the Ministry of Infrastructure “Summer and Winter Maintenance of National and Regional Roads for 2014”, which was analysed in various phases.

Due to the nature of the selected contract, the analysis examines five (5) procurement phases: needs assessment and planning, preparation of technical specifications, evaluation of bids, contract implementation and performance monitoring, and auditing phase and closure. Besides, the methodology addresses level of transparency, proportionality, equal treatment and non-discrimination of Business Operators (BOs), as well as complaints submitted to the Procurement Review Body, and decisions made by this body.

The research methodology and public procurement monitoring is one of the practices used widely by oversight organization and mainly by branches of Transparency International in various countries ³.

The key strength of this methodology is the fact that it is comprehensive and does not bypass any of the procurement phases. Special attention is paid to the cooperation with business operators that had contracting relations with the Ministry of Infrastructure.

While drafting this report numerous methods were employed to collect data such as requesting access to office documents, organization of focus groups, requests for explanations via official emails, organization of a focus group with business operators as well as bidders in this tender procedure.

Documents used during examination of tenders included the following: reports on evaluation of bids, contract award notices, tender dossier, business operator bids, business operator complaints, PRB decisions, contract management plan, invoices of monthly payments or according to completion of works, etc. Active monitoring of the project will improve overall performance of institutions with high budget/risk, and inclusion of various stakeholders in the process will bring benefits for all involved parties. Business community participants (that did not win the tender), NGOs, journalists of investigative media, members of the Committee for supervision of public finances, Contracting Authorities, Public Procurement Regulatory Committee, and Office of the General Auditor will have the opportunity to benefit from the knowledge that KDI obtained through years.

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



TRANSPARENCY AT THE MINISTRY OF INFRASTRUCTURE

Transparency is synonymous with good governance, accountability, and increasing trust among citizens to public institutions.⁴ Transparency of access into public documents is a basic right of all citizens to be informed how public money is being spent.

This is the second time KDI is monitoring the Ministry of Infrastructure, and it is worth noting that access to public documents in this institution has improved significantly during the past year, and based on this it may be concluded that there is an increase of transparency level at this ministry. However, maintenance and organization of archive is at a dire situation, this archive is disorganized. In some cases it is impossible to find some documents related to bids of business operators.

Due to high volume of documents to be accessed, and due to lack of capacities to photocopy documents, MI officials offered the opportunity to KDI researchers to photocopy documents requested on 29 July 2015. However, because Office of the General Auditor and internal auditors were auditing the same tender, KDI could have access to the contracts of winning business operators only after 3 months and 10 days had passed from the submission of the request. On December 7, KDI requested access in improved specifications for summer and winter maintenance for all Regions but KDI did not receive the document even after promises of MI official

⁴ See Maja Augustyn, Cosimo Monda, "Transparency and Access to Documents in the EU: Ten Years on from the Adoption of Regulation 1049/2001", last accessed on 11 December 2015.

that she would send the document by email. Access to improved specifications was made possible only through assistance of business operators.

Another request for access into office documents was submitted on 9 December 2015, and only after insistence of KDI researcher the Ministry instructed us to submit two separate requests, for each department separately, even though, even though the officer in charge could have easily forward the request to relevant documents. External persons may not be aware of internal organization of a public institution. On 30 December 2015, KDI submitted two requests⁵ for access into public documents and even after continued insistence of KDI researcher, until 8 February 2016, KDI did not receive any response from the MI Department of Road Management.⁶ Whereas Department for Budget and Finance on 5 February 2016 ensured access into payments made for each case for all regions, from the signing of the contract and for entire 2015.

The last request for access into public documents was sent to MI on 18 January 2016. Department of

⁵ Request for access to public documents submitted to Department of Road Management and Department for Budget and Finances at the Ministry of Infrastructures.

⁶ On 22 January 2016 the same request was submitted to the two departments. On 27 January 2016, directors of respective departments Mr. Besnik Hajdari and Mr. Rexh Osmanaj were contacted via phone by KDI researchers, but despite the positive attitude, there were no results with regard to access to public documents related to the request dated 30 December 2015.



Procurement allowed access into documents within the legal timelines.

From all requests submitted to the Ministry, department of public procurement was more efficient in responding and collaborating. While requests submitted to other departments such as those of finance and road management experienced lengthy delays. Delays at the department of finances were justified with the lack of staff to provide copies of requested documents and to handle volume of work pertaining to budget revision.

NEEDS ASSESSMENT AND PLANNING

Based on planning and needs assessment of tendering activity, envisioned by LPP ⁷ there are two initial steps that need to be taken in each procurement procedure.

It is worth mentioning that after completion of technical specifications, the final amount planned for the project, for one year, was estimated to be about: 10,282,311.42€. ⁸ However, after identifying a technical error in the quantity of summer specifications for region Prishtina 1, the number of quantities was increased, therefore the total of estimated amount for one year was 10,384,998.82 €⁹.

It is worth noting that there is a time mismatch of needs assessment and availability of funds and tender announcement. Contract notice at PPRC website was dated 22.05.2014, while needs assessment statement is dated 25.06.2014. Article 9 paragraph (1) of LPP requires that “[b]efore a contracting authority may initiate any procurement activity the contracting authority’s CAO shall ensure that a formal needs assessment is conducted with respect thereto and that the results of such assessment

7 Law No. 04/L-42, Article 8 Planning of Procurement, and Article 9 Defining needs that need to be supported.

8 Request dated 25.06.2014 addressed to director of procurement department by director of road infrastructure department.

9 Request dated 04.07.2014 addressed to procurement department director by the chair of committee for drafting specifications.

are formally recorded in writing and maintained in the contracting authority’s records.” So it is very clear that any needs assessment should be completed prior to the initiation of any procurement activity.

CONDUCTING TENDER PROCEDURES AND PREPARATION OF MANDATORY SPECIFICATIONS

Irregularities in conducting tender procedures and application of discriminatory technical specifications continue to be problematic at the Ministry of Infrastructure.

Notice for the framework contract for services was published on PPRC website on 22.05.2014, with procurement number MI 14-051-211 while the procurement number on tender dossier appears as MI 13-051-211. The deadline for submission of bids was 02.07.2014. The requirement for awarding the contract was lowest price. Applying PRB decision, some of the technical specifications were changed, and this will be elaborated in the section on business operators’ complaints. Deadline for submission of bids was extended to 15.09.2014 since one of the business operators complained it had received tender dossier only one day prior to first deadline. Notice for contract award was made on 30.10.2014, when 14 business operators were contracted, for a total of 14 regions of Kosovo.

Complaints’ section elaborates in detail key arguments of each complaint and decisions issued by PRB. However, for purposes of elaborating on development of requirements of the tender dossier, cases will be mentioned as needed. The Ministry of Infrastructure as the Contracting Authority has prepared requirements of the tender dossier in the format envisioned by the Law on Public Procurement (LPP). ¹⁰

Before we provide details about the tender dossier requirements, it is worth mentioning that the initial tender

10 Law No. 04/L-42.



dossier was revised three times. On 26 June, business operators received via email changes made in requirements pre-calculations and technical tender specifications, while other tender dossier requirements remained the same. In relation to this, general auditor report states that “technical specifications were changed, while it was not found that the same was initiated by the requesting unit.” During monitoring, KDI also did not find any request for the requesting unit.¹¹ Based on copies of consulted emails we observe that some business operators received improvements made to the tender dossier requirements on 30 June 2014.

The second improvement of specification for region Prishtina 1 was sent to business operators on 09 July 2014. According to the notice, the change was only with regard to planned quantities, where instead of a distance of 196,700 metres, the distance was decreased to 19,670 metres.

The latest change in the tender dossier came after PRB decision dates 29.08.2014 which required to improve paragraph 9.1 and 9.2 of FDT, i.e. the contract was to be notarized by all business operators and not only by the winning business operator, and to extend the deadline for this procurement activity. The latest changes in the tender dossier were sent to business operators on 01 September 2014.

The Contracting Authority submitted the following tender dossier requirements:

Acceptability of business operators (BO):

- Requirements specified under Article 65 of the Law on Public Procurement (LPP), Law no. 04 \ L-42;
- Requirement that the winning BO has paid taxes;

- Requirement related to financial status accompanied with financial statements of the bidder for past three years, certified by a Licensed Auditor.

Professional suitability requirements:

- Business registration certificate - copy;
- VAT certificate - copy;
- In case when the bidder includes a group of business operators, a draft Contract that defines and authorizes group leader for signatures and other documents - original;
- In cases when the bidder is a group of business operators, a statement of each partner related to their responsibilities according to LPP - original;
- A draft Contract on insurance of work site by a licensed security company for:
- Covering insurance of personnel and insurance from third parties - original;
- Covering insurance of vehicles and equipment according to technical specification in tender dossier – original;
- Covering insurance of assets of the business operator – original.

Requirements on economic and financial status, are posed as minimum requirements related to financial capacities of the business operators. Sufficient capital to implement the contract, a minimum of 20% of the bid (access to loans), that specifies the project with certain references - original.

Requirements on technical and/or professional capacities. After the complaint of one of the business operators, requirements related to item 9.1 of the tender dossier

¹¹ Office of the General Auditor, Auditing report on financial statements of the Ministry of Infrastructure for year ending 31 December 2014, p. 22.

participate in tendering procedures, unless they enter a consortium and is subject to conditions and terms set by the current (or past) operator that maintains roads.

Speaking of consortia, during the focus group discussion by KDI, business operators emphasized the phenomenon of political favouritism. Since 2009, many new companies emerged which were awarded various contracts even when lacking experience, but the justification was that they are part of certain consortia, and older companies were blocked.¹³ In this scenario, the majority of works are delegated to the consortia partner thus exceeding the value allowed by the law. The risk of this is that being in the market favours leading companies, which in fact does not possess capacities for completion of works, and thus the smaller company finishes works of the leader beyond the norms stipulated by law. The necessity of entering into the consortia favours the monopoly for the companies that have entered the market sooner. The side effect of this requirement is that it damages competitiveness of the free market.

- One contract in the amount of ½ of the bid in past three (3) years.

Another requirement of the tender dossier was about the contract being in the amount of ½ of the bid in past three (3) years. This and the previous requirement are such that they create confusion among business operators whether the evidence has to be not less than double the amount of the bid or as much as ½, which is half the amount of the bid. This issue was raised in the complaint of “Victoria Invest” company, while the PRB review panel in the decision dated 29 July 2014, besides the statement that there is no violation of article 68 of LPP, and that the model refers to article 8, paragraph 3 of the regulation on public procurement, did not provide explanations how this specification is in compliance with those articles. However, this claim deserves to be criticized because it is not clearly articulated by the business operators.

With regard to last two requirements, evidence was re-

¹³ KDI, focus group held on 30.10.2015.

quested in the relevant field for a past period of three years, and to attach references or minutes of project hand-over in the relevant field.

- To implement this project it takes a minimum of 20 employees per lot, together with annual tax statements (for past three years) of those employed at your company issued by KTA.
- A basis for production of licensed asphalt, owned, or supply agreement.
- Licensed quarry owned or agreement for supply with sand (aggregate).
- A licensed station for production of concrete with sufficient capacities to complete the works or an agreement for supply with a licensed concrete producer.

In relation to last three requirements, it was requested to present a valid license issued by the Agency for Mines and Minerals.

- Drivers of 6-ton trucks possess category “C” driving license – if the bid includes more than one section, then the number of personnel needs to be increase in proportion to the number of sections/lots for which they are bidding.
- A statement on average labour force of the business operator, average number of managerial personnel for each of the three (3) past years (presented in a detailed for).
- Tools, establishments¹⁴ and technical equipment that are in your possession as noted below:

¹⁴ The working group organized with Business Operators on 29 January 2016, noted that “the request to have all the equipment registered poses a heavy burden for business operators since BOs do not register equipment during the time when, for example, trucks are not needed, and since it was a requirement of CA to have all equipment registered, this costs BOs up to 10,000 Euros only to participate in a tender. It would be good to request evidence of owning equipment and to allow a period for registration, e.g. within 30 days from the award of contract”.

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- A station for production of asphalt with minimum capacity of 80 tons either owned or with an agreement for supply in the same quantity
- Licensed quarry owned or agreement for supply with a business operator who owns a licensed quarry (with capacity no less than 30 m3 hrs)
- List of requested equipment verified by a licensed notary
- Vehicles, warehouses, and technical equipment need to be ensured by a service provider, besides those that are made available by MI for completion of services of winter maintenance, which will be as follows:
- For removing snow and dissemination of materials against ice trucks with carrying capacity of 6 tons, with minimum motor power 73,5 kw (100 hp) need to be used.
- Containers with distribution equipment that is installed into a truck with a capacity up to 5 m3 and distribution capacity of salt up to 25g/m2.
- Plough for removing snow that is installed in front of the truck, with a steel edge with a width of 2.5 to 2.9 m.
- Salt needs to be warehoused under a covered building. The warehouse needs to meet requirements for preserving and manipulating salt.

It is worth mentioning that even though in the tender dossier the Contracting Authority has stated that it enjoys the right of inspection and that it would visit the working station of the business operators during the evaluation phase to verify possession of required requirements, for access to public documents, KDI was offered copies of inspection reports on working stations only after signing the contract with business

operators.¹⁵ As it will be discussed in the following section, after inspection, almost all business operators do not meet requirements. In normal conditions, business operators who do not possess technical equipment and minimum requirements according to the tender dossier would have to be disqualified. KDI did not receive any report related to inspection of working stations during bid evaluation phase.

- Requirements stipulated by law on allowed sub-contracting for completion of works.
- Requirements related to establishment of a group of business operators.
- **Tender guarantee** - The amount of tender guarantee needs to be 50,000.00 € for each section/lot, for a duration of 120 days from the date of receiving bids.
- **Execution guarantee** – after the contract is awarded and prior to contract signing, execution guarantee in the amount of 10% of the total bid price for a duration of 30 days upon completion of the contract.

In the working group¹⁶ it was noted that the Contracting Authority, “besides execution guarantee, also charge s10% of the bill value as quality guarantee, which is severely harming BOs by causing problems in turnover or liquidity.”¹⁷

¹⁵ In the request for explanation addressed to the department of procurement, KDI encountered silence from the Ministry of Infrastructure.

¹⁶ KDI, Working Group held on 29.01.2016.

¹⁷ Ibid.

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ASSESSMENT OF CONTRACTS FOR SUMMER AND WINTER MAINTENANCE OF NATIONAL AND REGIONAL ROADS

As it was noted above, a total of 33 business operators had submitted their bids for this tender, and 15 of them were responsible according to the evaluation committee, and 14 contracts were awarded based on the contract award notice published at the PPRC website. Technical specifications were divided for summer and winter maintenance. For each region calculations were made and accurate distance, units and quantities of units defined. The following map shows the distribution of roads in Kosovo regions as developed by the Ministry of Infrastructure.

Road network that needs to be maintained through maintenance Lots:

While Table 1 translates the road map into kilometres and percentages for each region.

In the following sections, the bid of each winning business operators will be analysed and compared to other bidders who were declared as irresponsible.

TAB. 01 TENDER DOSSIER – TECHNICAL SPECIFICATIONS

REGIONS	Ferizaj "1"	Ferizaj "2"	Gjakova "1"	Gjakova "2"	Peja "1"	Peja "2"	Prishtina "1"	Prishtina "2"
National and regional (km)	111.76	88.54	127.53	84.42	112.82	155.98	201.32	159.30
Percent: %	5.66	4.93	7.28	4.70	6.28	8.70	12.21	8.87

REGIONS	Prizreni "1"	Prizreni "2"	Mitrovica "1"	Mitrovica "2"	Gjilani "1"	Gjilani "2"	Total
National and regional (km)	149.85	101.86	150.12	116.57	123.58	111.58	1795.23
Percent: %	8.30	5.67	8.36	6.49	6.88	6.21	100%

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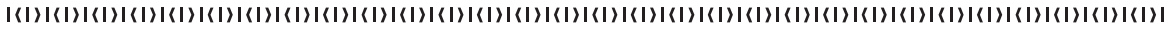
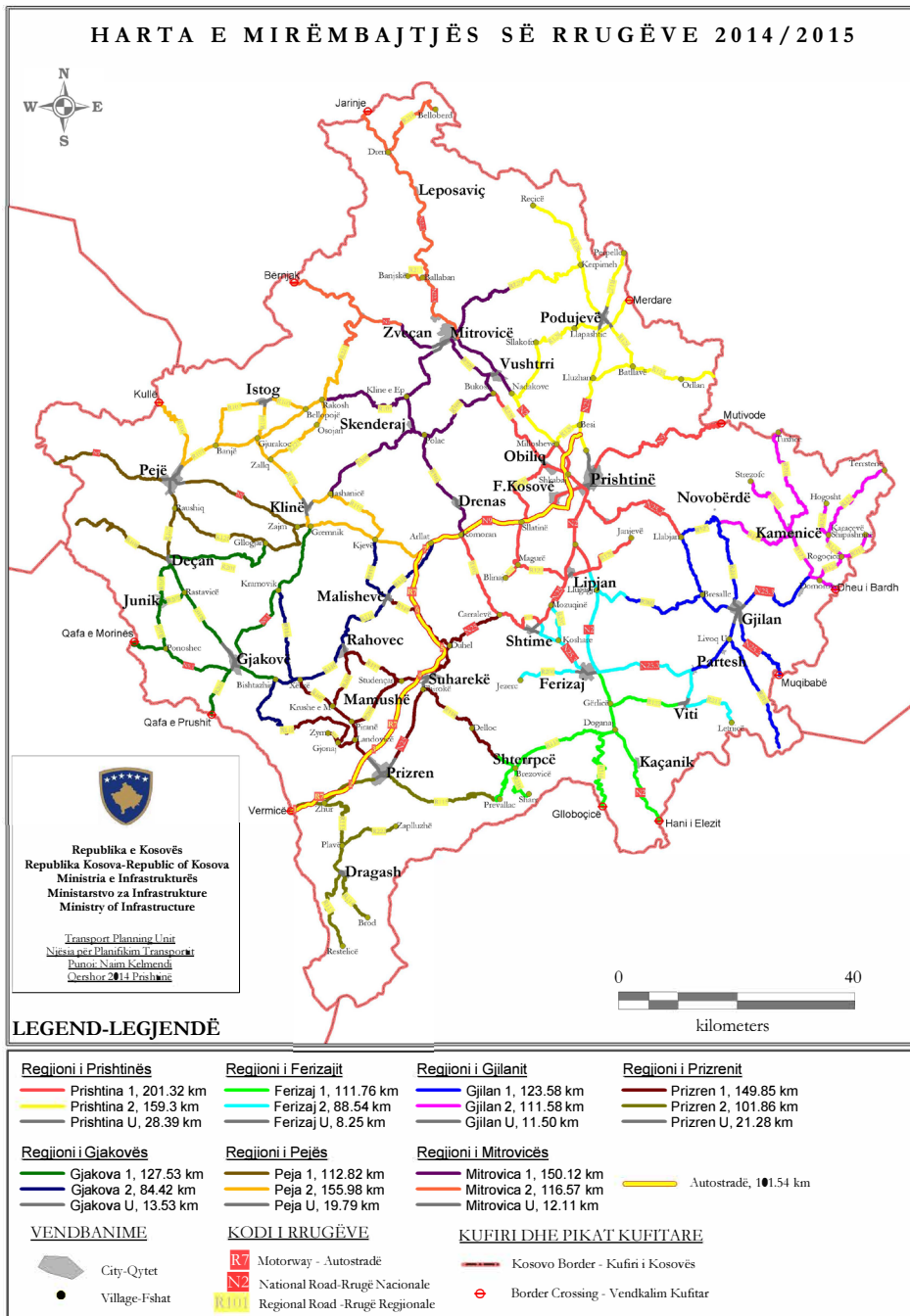


FIG. 01 TECHNICAL SPECIFICATIONS FOR SUMMER AND WINTER MAINTENANCE OF NATIONAL AND REGIONAL ROADS IN KOSOVO DURING 2014/2015, PRISHTINË, JUNE 2014.





REGION: PRISHTINA 1

Ministry of Infrastructure, on 19.11.2014, entered into a three (3) year contract with the business operator "Arbotec" Sh.P.K. for summer and winter maintenance services of national and regional roads located in Region Prishtina 1. This contract had the amount of 1,140,116.74 €¹⁸ for three performance years, or a total of 632.98 €¹⁹ for the bid positions (hereinafter referred to as "Units"), for maintenance of 201.32 kilometres of national and regional roads in Prishtina 1 during the summer and winter seasons.

The contract for region of Prishtina 1 has the highest financial value but it also covers the largest area for maintenance compared to other regions in Kosovo.

Only two business operators applied for this lot. The following table shows the financial bid of the two applicants for this region.

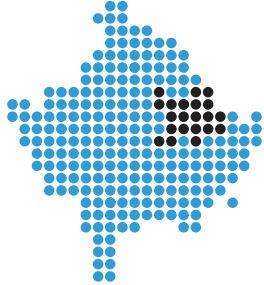
●● TAB. 02 COMPARING FINANCIAL BIDS IN REGION – PRISHTINA 1

Total of the bid for five (5) positions (Units)

#	Business operator	Status	Summer maintenance	Winter maintenance	Total
1	ARBOTEC SH.P.K.	Contract winner	€ 352.41	€ 280.57	€ 632.98
2	Integral & Milenium Construction	Irresponsible BO	€ 199.11	€ 259.94	€ 459.05
Difference			€ 153.30	€ 20.63	€ 173.93

¹⁸ Contract award notice, MI-14-051-211, date 30.10.2014

¹⁹ Contract between MI and Arbotec SH.P.K. MI/14/051/211, No of contract 058/2014



REGION: PRISHTINA 2

In Region Prishtina 2, company **“Integral Sh.P.K & Milenium Kostrucjon” Sh.P.K** was the winning business operator. The amount of the contract for services of this operator was 781.48 €²¹ or 459.73€²²

€ per unit for summer and winter road maintenance of 159.30 kilometres. For this region, a total of five business operators applied, with prices per unit as per the table below:

●● TAB. 04 COMPARISON OF FINANCIAL BIDS IN REGION – PRISHTINA 2

Total of the bid for five (5) positions

#	Business operator	Status	Summer maintenance	Winter maintenance	Total	Difference with the winning BO
1	INTEGRAL SH.P.K & MILENIUM KOSTURCJON SH.PK	Contract implementer	€ 199.75	€ 259.98	€ 459.73	€ 0.00
2	Jaha Company & TOIFOR Prishtine	Irresponsible BO	€ 116.43	€ 87.16	€ 203.59	€ (256.14)
3	CONEX GROUP & ITK-Prishtinë	Irresponsible BO	€ 145.99	€ 162.25	€ 308.24	€ (151.49)
4	ARBOTEC sh.p.k	Irresponsible BO	€ 330.60	€ 275.36	€ 605.96	€ 146.23
5	VAKAL	Irresponsible BO	€ 439.34	€ 436.96	€ 876.30	€ 416.57

21 Contract awarding notice, MI-14-051-211, date 30.10.2014

22 Contract between MI and Integral Sh.P.K. & Milenium Construction MI/14/051/211, No. of contract 072/2014

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TAB. 05

#	Business operator	Status	Price per unit	Total units	Total contract amount
1	INTEGRAL SH.P.K & MILENIUM KOSTURCTION SH.PK	Performues i Kontrates	€ 459.73	1,907.17	€ 876,781.48
2	Jaha Company & TOIFOR Prishtine	OE i papërgjegjshëm	€ 203.59	1,907.17	€ 388,279.95
3	CONEX GROUP & ITK-Prishtinë	OE i papërgjegjshëm	€ 308.24	1,907.17	€ 587,864.88
4	ARBOTEC sh.p.k	OE i papërgjegjshëm	€ 605.96	1,907.17	€ 1,155,666.38
5	VAKAL	OE i papërgjegjshëm	€ 876.30	1,907.17	€ 1,671,249.67

If we apply simple math when the total contract amount is divided by total per unit, we get 876,781.48 € / 459.73€ = 1,907.17 Unit. The difference between the bids would be as follows: (see on table 05)

FINDINGS:

Referring to minutes of meeting on examination, evaluation and comparison of tenders, BO "INTEGRAL Sh.P.K. & MILENIUM KOSTURCTION Sh.P.K.", was assessed as the operator with the cheapest bid for Region Prishtina 2. According to the same minutes of the meeting, four (4) other BOs were considered as irresponsible for the following reasons:

Jaha Company & TOIFOR Prishtinë – had submitted bids for two lots - Gjilani 2 and Prishtina 2. Regarding Region Prishtina 2, the commission had assessed that this operator did not possess sufficient tools for implementing the project, according to the request of the tender dossier in item C, which listed required vehicles, establishments and technical equipment for each Lot separately.

CONEX GROUP & ITK-Prishtinë – had submitted a bid for one lot only – Prishtina 2 – but the commission had assessed it as an irresponsible bid because it did not meet technical conditions for the required vehicles and equipment necessary to implement the project, and the bid was confused with specifications required for region Ferizaj 1, i.e. the bid was short of two (2) trucks and two (2) snow removers required for Prishtina 2, “7 trucks and 7 ploughs, while the BO had offered 5 trucks and 5 ploughs.”

ARBOTEC sh.p.k – had submitted bids for Region Prishtina 1 and Prishtina 2, but regarding Prishtina 2, the commission had assessed that the BO was not successful since it had not met the requirement on technical and professional capacities with regard to technical staff for running the project, since project manager assigned for this lot did not meet the requirements such as evidence/reference for completed works in the field, and the same geodesy engineer was assigned for both lots, implying that the BO did not possess sufficient staff required for the lot.

VAKAL Company & Murseli – was assessed as not successful since it did not meet many requirements needed such as completion of the tender document-

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tation, lack of financial reports, lack of technical and professional capacities, licenses and tax statements.

What is concerning about these evaluations is that the Report of the Road Inspectorate, dated 12.02.2015 shows that based on inspection of BO "INTEGRAL Sh.P.K & MILENIUM KOSTURCTION Sh.PK" completed on 20.01.2015, with the purpose of verifying the status of office, administration, and technical equipment for winter and summer maintenance based on action plan for January-February 2015, the inspectorate had issued a decision for elimination of the following findings:

- 1 BO does not possess personnel dossier for:
 - Work site and maintenance manager with adequate qualifications,
 - Contracts and qualifications of drivers.
- 2 BO does not possess orders for daily routes for vehicles and drivers
- 3 BO does not possess certificate of tachograph for vehicles (trucks)
- 4 BO does not possess two (2) more vehicles (trucks) according to the contract
- 5 BO does not possess adequate technical conditions according to the contract.

From the perspective of tender requirements, this shows that evaluation report for this BO indicates it met these requirements, while during inspection it was found that the BO actually did not the following requirements:

- Project manager is a graduated engineer with 3-years of work experience after graduation – and has evidence of at least two (2) managed projects in the required area (CV, diploma, contract, and a letter of reference for the completed works)

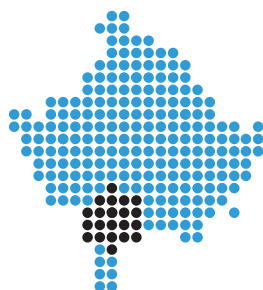
- Documents of the work site leader
- Vehicles, establishments and technical equipment needed for project implementation
- 6-ton truck drivers equipped with category C.

From the report, we see that the awarded BO with the contract was not honest in its bid regarding fulfilment of technical and professional requirements, and this lack of honesty, and lack of inspection prior to contract award has cost Kosovo budget approximately 488,501.53 € more than if the contract was awarded to Jaha Company & Toifor, or 288,916.60 € if contract was awarded to CONEX Group & ITK, in which case both of these companies were disqualified due to non-fulfilment of technical and professional requirements.

According to the data from the Directorate for Budget and Finances at the Ministry of Infrastructure, in 2015, this ministry, for six (6) positions has paid a total amount of 868,237.75€, while if this work was completed by the business operator who had submitted the cheapest bid, Kosovo budget would pay 384,946.38 €. From this, we see that Kosovo budget for this region would have saved 483,741.36 € if the contract was awarded to Jaha Company, or 286,101.27 € if the contract was awarded to Conex Group.

Meanwhile BO CONEX GROUP & ITK-Prishtina had submitted a complaint, but its complaint was rejected as it can be seen in the complaints section.

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REGION: PRIZREN 1

The Ministry of Infrastructure had entered a contract with “Famis Co Holding Company” Sh.A as the sole responsible bidder for this lot, with a price per unit at 1,239.98 €²³, and total contract amount at 738,732.92 € for road maintenance of 149.85 kilometres during summer and winter seasons as requested by tender dossier. For this region, only to business operators had submitted bids.

If we apply simple math when total contract amount is divided by total per unit, we get $738,732.92\text{€} / 1,239.98\text{€} = 595.76$ units. Then, the difference between the bids would be as follows:

●● TAB. 06 COMPARISON OF FINANCIAL BIDS FOR REGION – PRIZREN 1

Total of the bid for five (5) positions

#	Business Operator	Status	Summer maintenance	Winter maintenance	Total
1	Famis Co Holding Company Sh.A	Contract winner	€ 696.43	€ 543.55	€ 1,239.98
2	Drini Company sh.p.k	Irresponsible BO	€ 92.80	€ 83.57	€ 176.37
Difference (1-2)			€ 603.63	€ 459.98	€ 1,063.61

²³ Contract between MI and Famis CO Holding Company SHA - MI/14/051/211, No of contract 055/2014



REGION: PRIZREN 2

Same as for the region above, there were only two bids from two business operators for region Prizren 2. Business operator “**Drini Company**” sh.p.k had submitted a bid with the cheapest price for units at 173.37 Euros ²⁵. While the total amount of the signed contract was 511,627.53 EUR for road maintenance of 101.86 kilometres during summer and winter seasons.

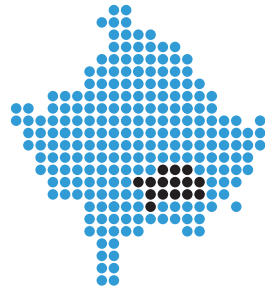
If we apply simple math when the total contract amount is divided by total per unit, we obtain $511,627.53\text{€} / 1,239.98\text{€} = 2,951.07$ units. Then, overall difference between the bids would be as follows:

TAB. 08 COMPARISON OF FINANCIAL BIDS IN REGION– PRIZREN 2

Total of the bid for five (5) positions

#	Business operator	Status	Summer maintenance	Winter maintenance	Total
1	Drini Company sh.p.k	Contract winner	€ 92.80	€ 83.57	€ 173.37
2	Famis Co Holding Company Sh.A	Irresponsible BO	€ 696.43	€ 543.55	€ 1,239.98
Difference			€ 603.63	€ 459.98	€ 1,066.61

²⁵ Contract between MI and Drini Company - MI/14/051/211, No of contract 057/2014



REGION: FERIZAJ 1

For region Ferizaj 1, the Ministry of Infrastructure entered into a contract with the business operator "Eurokos & VIA" Sh.P.K with price per unit at 561.31 €²⁷, and total contract amount at 550,952.81 € for road maintenance of 111.76 kilometres during summer and winter seasons.

TAB. 10 COMPARISON OF FINANCIAL BIDS IN REGION – FERIZAJ 1

Total of bid for five (5) positions

#	Business operator	Status	Summer maintenance	Winter maintenance	Total	Difference with winning BO
1	"Eurokos & VIA" sh.p.k	Contract winner	€ 406.35	€ 154.96	€ 561.31	€ 0
2	Eskavatori	Irresponsible BO	€ 940.55	€ 619.54	€ 1,560.09	€ 998.78
3	Kastrioti & Ledi	Irresponsible BO	€ 1,212.89	€ 756.83	€ 1,969.72	€ 1,408.41
4	RSM & Joos Krasniqi Bazë	Irresponsible BO	€ 1,074.27	€ 631.63	€ 1,705.90	€ 1,144.59

²⁷ Contract between MI and EUROKOS sh.p.k. & VIA sh.p.k. - MI/14/051/211, No of contract 071/2014




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FINDINGS:

Based on analysis of the documents and evaluations of the commission it turns out that three (3) other bidders were not serious with their bids considering that their extremely high process and non-fulfilment of technical and professional requirements as required by tender dossier.

Procurement, Article 35, stipulates that negotiated procedures may be used as a contract annex in the amount not higher than 10% of the initial contract value, even though KDI was not informed that there was an additional contract for this activity.

However, it is worth mentioning that the winning business operator during inspection in the field dated 03.02.2015 turned out not to have met the following requirements:

-  1 The company does not possess daily route orders for vehicles and drivers;
-  2 The company does not possess tachograph certificate for vehicles (trucks);
-  3 The company does not possess adequate technical conditions according to the contract for covering salt.

The awarded business operator with the contract has offered the cheapest price and has met requirements the best, despite irregularities found later. Therefore, even if the inspection had taken place prior to contract award chances for recommending another operator for contract award would be small due to higher prices or non-fulfilment of requirements.

In this lot, the third listed operator in the table, exercised its right to submit a complaint to PRB but as it can be seen in the section on complaints, the complaint of this business operator was only partially accepted.

According to data from the Directorate of Budget and Finance at the Ministry of Infrastructure dated 20.10.2015 the ministry for seven (7) positions has paid a total amount of 862,685.91 €. Total amount of the contract was 550,952.81 €, which means that by the above-mentioned date, MI has paid 311,733.10 € more (57% of the contract value). The Law on Public

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REGION: FERIZAJ 2

In Region Ferizaj 2, the contract awarded to responsible business operator “**Damastion Project**” **Sh.P.K.**, who had submitted the bid with the cheapest price per unit in amount of 1,453.58 €²⁸. Meanwhile, total of the signed contract was 486,567.24 € for road maintenance of 88.54 kilometres during summer and winter seasons as required in the tender dossier.

● **TAB. 11 COMPARISON OF FINANCIAL BIDS IN REGION– FERIZAJ 2**

Total of the bid for five (5) positions

#	Business operator	Status	Summer maintenance	Winter maintenance	Total	Difference with winning BO
1	“Damastion Project” sh.p.k	Contract winner	€ 1,204.67	€ 248.91	€ 1,453.58	€ 0.00
2	RSM & Joos Krasniqi Bazë	Irresponsible BO	€ 82.96	€ 129.36	€ 212.32	€ (1,241.26)
3	Shkoza F07 & Papenburg+ Adriani	Irresponsible BO	€ 398.58	€ 568.96	€ 967.54	€ (486.04)
4	Eskavatori	Irresponsible BO	€ 669.02	€ 327.00	€ 996.02	€ (457.56)
5	Kastrioti & Ledi	Irresponsible BO	€ 1,124.73	€ 598.21	€ 1,722.94	€ 269.36

²⁸ Contract between MI and Damastion Project. - MI/14/051/211, No of contract 067/2014



REGION: GJAKOVA 1

Regarding region Gjakova 1, a total of five (5) business operators had submitted bids, while BO **Victoria Invest International Sh.P.K.**, was awarded with the contract in the amount of 1,215.66 €³⁰ per unit, or 487,022.61 € on summer and winter maintenance of 127.53 kilometres. While per unit, the Ministry of

Infrastructure paid the amount of 1,215.66 €. If we compare other bidders as listed in the table below, we find that the BO awarded with the contract was the third in terms of price.

TAB. 12 COMPARISON OF FINANCIAL BIDS IN REGION – GJAKOVA 1

Total of the bid for five (5) positions

#	Business operator	Status	Summer maintenance	Winter maintenance	Total	Difference with winning BO
1	VICTORIA INVEST INTERNATIONAL SH.P.K	Contract winner	€ 695.30	€ 486.86	€ 1,182.16	€ 0.00
2	PE-VAL-KU	Irresponsible BO	€ 679.41	€ 279.84	€ 959.25	(€ 222.91)
3	ASFALTI SH.P.K	Irresponsible BO	€ 399.62	€ 884.15	€ 1,283.77	€ 101.61
4	RSM COMPANI SH.P.K	Irresponsible BO	€ 1,050.84	€ 743.67	€ 1,794.51	€ 612.35
5	Alb Shpresa & Malësia	Irresponsible BO	€ 700.70	€ 814.43	€ 1,515.13	€ 332.97

³⁰ Contract between MI and Victoria Invest International Sh.P.K. - MI/14/051/211, No of contract 066/2014



REGION: GJAKOVA 2

For Region Gjakova 2, the winning business operator was “R.S.M sh.p.k & JOOS KRASNIQI BAZE” sh.p.k - Prishtinë/JUNIK, declared as a winner by the Contracting Authority based on the evaluation and recommendation of the evaluation commission. The contract amount was 641,017.98 € and the amount

per unit was 184.74 €³¹ for road maintenance of 84.42 kilometres. Four (4) business operators had submitted bids for this region, and their bids are presented in the table below:

TAB. 13 COMPARISON OF FINANCIAL BIDS IN REGION – GJAKOVA 2

Total of bid for five (5) positions

#	Business operator	Status	Summer maintenance	Winter maintenance	Total	Difference with winning BO
1	R.S.M sh.p.k & JOOS KRASNIQI BAZE sh.p.k	Contract winner	€ 68.35	€ 116.39	€ 184.74	€ 0.00
2	Victoria Invest International	Irresponsible BO	€ 749.24	€ 521.50	€ 1,270.74	€ 1,086.00
3	Shkoza F07 & Papenburg Ardiani	Irresponsible BO	€ 534.63	€ 461.39	€ 996.02	€ 811.28
4	Drini Company	Irresponsible BO	€ 92.80	€ 83.57	€ 176.37	(€ 8.37)

31 Contract between MI and R.S.M sh.p.k & JOOS KRASNIQI BAZE sh.p.k. - MI/14/051/211, No of contract 069/2014

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FINDINGS:

The same winning operator of this region was declared as irresponsible for regions Gjakova 1, Ferizaj 1 and Ferizaj 2. Amongst else, the evaluation commission noted that this BO “did not notarize the list of tender dossier (it was only filled for each lot), but its own list that it had notarized was not divided into lots” so it was not specified for which lot the list was notarized “and evaluation commission after examination stated that the company possessed equipment only for one lot”. This approach of the commission is discriminatory in relation to other business operators since in some cases similar documents were not accepted without being specified for which lot or contract they are submitted for, e.g. agreement with the engineer but without specifying what tender it was signed for it cannot be accepted. While winning business operator in Gjakova 1 was at the same time a complaining BO for this region, and it was ranked the fourth in terms of price per unit. As it can be seen in the complaints’ section to PRB, the complaint was partially grounded.

Inspectorate’s report on winning operator, drafted by road infrastructure inspector dated 12.02.2015 shows that inspection completed on 28.01.2015, with number of minutes: 009962, in order to verify the status of office, administration, and technical tools for winter and summer maintenance based on action plan January-February 2015, had found that the company “RSM Sh.P.K & Joos Krasniqi Sh.P.K”, does not possess all required tools, with which it had met contract requirements with MI, and the shortcomings were the following:

- The cover for salt is missing and as a result salt was placed under open sky.
- *Office for staff.*
- Shelter for machinery.

From the ranking in the table, we see that the business operator had three (3) other operators in competition, and that the winning BO was the second with regard

to the financial bid, but it was still awarded with the contract even though it was more expensive for 8.37 € cent per unit compared to “Drini Company”. In the minutes of meeting on examination, evaluation and comparison of tender of the evaluation commission dated 24.10.2014, it is noted that for lot Gjakova 2, business operator “Drini Company” was irresponsible because it did not meet requirements related to leader assigned for the project, for whom there was no evidence/reference of his/her past work experience. It also did not meet technical requirements regarding tools and work equipment which means that it does not possess tools to implement the project in this lot as required in the tender dossier.

According to data from the Directorate for Budget and Finances at the Ministry of Infrastructure for 2015 the ministry for four (4) positions, until 13.08.2015, paid a total amount of 480,833.44 €.

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REGION: PEJA 1

In region of Peja 1, business operator “**Lika TRADE**” **Sh.P.K.**, was considered by evaluation commission as responsible and it had the cheapest price per unit at 247.40 €³². The total contract amount was 578,408.62 € for maintenance of 112.82 kilometres of roads. The

following table shows details of financial bids of a total of four (4) bidders per unit as well as for the total, and difference in comparison with the winning BO.

TAB. 14 COMPARISON OF FINANCIAL BIDS IN REGION – PEJA 1

Total of bid for five (5) positions

#	Business operator	Status	Summer maintenance	Winter maintenance	Total	Difference with winning BO
1	LIKA TRADE SH.P.K	Contract winner	€ 74.05	€ 173.35	€ 247.40	€ 0.00
2	GRANIT SH.P.K	Irresponsible BO	€ 106.37	€ 164.00	€ 270.37	€ 22.97
3	ARFA[1] DECAN	Irresponsible BO	€ 1,154.65	€ 708.54	€ 1,863.19	€ 1,615.79
4	Ve-Mor & AHN Group	Irresponsible BO	€ 180.88	€ 48.08	€ 228.96	(€ 18.44)

³² Contract between MI and LIKA TRADE Sh.P.K. - MI/14/051/211, No of contract 064/2014



REGION: PEJA 2

The Ministry of infrastructure entered into contract with Business Operator “Graniti” Sh.P.K. as the only responsible business operator for this lot. The contract was signed for the amount of 270.37 €³³ per unit, and a total of 600,209.58 € for maintenance of a total of 155.98 kilometres. A total of two (2) BOs applied for this region.

FINDINGS:

Details of the evaluation report show that BO “Ve-Mor & AHN Group”, which was the cheaper tenderer for this lot, had a series of irregular documents such as expired contract with work site leader and he/she did

not appear in KTA list, and contracts of traffic and geodesy engineers of the winning BO were not notarized. Tender documents were not signed and sealed according to the tender requirements.

According to data from the Directorate of Budget and Finances at the Ministry of Infrastructure for 2015, the ministry for four (4) positions paid a total amount of 393,035.62 €, while if this work would have been completed by the BO ranked as the first with the cheapest price the Kosovo budget would pay 276,827.21 €. This indicates that Kosovo budget for this region for the given time period would have saved 116,208.41 €.

TAB. 15 COMPARISON OF FINANCIAL BIDS IN REGION – PEJA 2

Total of the bid for five (5) positions

#	Business operator	Status	Summer maintenance	Winter Maintenance	Total	Difference with winning BO
1	Graniti sh.p.k	Contract winner	€ 106.37	€ 164.00	€ 270.37	€ 0.00
2	Ve-Mor & AHN Group	Irresponsible BO	€ 143.46	€ 46.97	€ 190.43	(€ 79.94)

³³ Contract between MI and GRANIT Sh.P.K.. - MI/14/051/211, No of contract 068/2014





REGION: MITROVICA 2

Business operator awarded with the contract for region Mitrovica 2 was “P.P. JASEN” with a contract amount of 462,782.11 € or 1,313.97³⁵ € per unit for maintenance of 116.52 km of national and regional roads during summer and winter seasons. There was only one additional competitor in this lot.

almost all requirements, be them technical, financial or professional. In reality, it seems that the relevance of application of BO “Road Trade” is only for meeting the legal requirement for having two BOs applying.

FINDINGS:

Same as in region Mitrovica 1, in region Mitrovica 2 there is confusion in naming, in the tender dossier, the region is referred as Mitrovica 2 while the signed contract indicated Mitrovica B.

The second ranked operator had a higher price for 285.49 € cent per unit. Referring to the report of the evaluation commission it is seen that the operator ranked as second lacked as series of documents in

As it was noted in the KDI report of 2014,³⁷ the contract of the operator is followed with irregularities this time because prices for position 4.3.7 (winter season) are missing. Also, there was no chance that another

TAB. 17 COMPARISON OF FINANCIAL BIDS IN REGION – MITROVICA 2

Total of bid for five (5) positions

#	Business operator	Status	Summer maintenance	Winter maintenance	Total	Difference with winning BO
1	P.P. JASEN	Contract winner	€ 714.73	€ 599.24	€ 1,313.97	€ 0.00
2	Road Trade	Irresponsible BO	€ 1,071.92	€ 454.78	€ 1,599.46 ³⁶	€ 285.49

35 Contract between MI and P.P.JASEN.-MI/14/051/211, No of contract 060/2014

36 Calculation of total of units would be an error because it should have been 1,526.70 and not as it was noted in the evaluation report (1,599.46).

37 KDI (March, 2014), Public procurement at the Ministry of Infrastructure, p. 20.



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business operator would win the tender this time, because there was no other serious competitor. Then, lack of any bid from companies owned by Albanians, because of the issues that might have occurred in contract implementation in this part of Kosovo (northern part), serious issues with rule of law are also an additional indicator that the contract was destined for the winning operator. In these circumstances, the impression is created that the report dated 10.02.2015, of the MI inspector that “the company did not have any issues with regard to administrative and technical requirements based on the contract” was a solidarity act with the factual circumstances mentioned above, but not a result of a realistic inspection. Similarly to region Mitrovica 1, in this region too there was no complaint against the CA decision regarding awarding of the contract.

Also, in this region, the winning BO was ranked as the first with cheaper price and for 2014 and 2015 Kosovo budget for maintenance of roads of the region for six (6) positions paid 485,775.27 € cent.

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It is hard to be just a chance that for Gjilan 2 there are five (5) business operators that submitted bids but for Gjilan 1 there are no other interested operators, when it is known that the main competitors in Gjilan region are “Tali” and “Magjistranja”. Furthermore, in 2014, the case from being an administrative issue was transferred to a criminal one, since the parties submitted their cases to economic crime units at Kosovo Police and EULEX Police.³⁹

In the previous tender, the largest issues were found in this region, with a total of 4 complaints in all tender phases, the tender was announced twice for services of the same contract, while the current tender did not involve any complaint, and the strong competition ended without having any competitor.

In relation to this, BO “Magjistranja” during the focus group organized by KDI on 29 January 2016 with regard to non-application for this region stated the following “tenders were set up since in Gjilan and Mitrovica the same BOs win tenders for 15 years in a row, and other BOs have no chance of winning. Elimination of BOs follows favours, some companies are disqualified because they don’t have equipment for all lots, while contracts are given to BOs that do not possess all equipment even for the won lot, or with the presented equipment the contract is given for one lot.”⁴⁰

If we add to this the fact that there was a single bidder, there are reasonable doubts that the contract might have been set up. How it is possible that for all other regions there were 3 or 4 bidders on average, while for region Gjilan 1 only one bidder? Such a suspicion in fact was the claim of BO “Magjistranja”, which in 2014 had accused that two other companies in the tender “Tali” and “Integral” had set the tender up, only to meet the requirement for having two (2) responsible bids.⁴¹

39 KDI (March, 2014), Public Procurement at the Ministry of Infrastructure, p. 22.

40 KDI, Focus group held on 29.01.2016.

41 KDI (March, 2014), Public Procurement at the Ministry of Infrastructure, p. 23.

For this tendering procedure there was no complaint submitted to PRB, even though in a previous tendering procedure for the same services out of total of eight (8) complaints, four (4) of them were about this region alone.⁴²

Tendering procedures for region Gjilan 1 were in violation of article 32.4⁴³ and 32.5⁴⁴ of the LPP as well as with Operational Guide since there was no ground to claim that it was reasonable to continue with one bid as an exception of article 32.5 of the LPP. While in region Gjilan 2 there were six (6) bidders and traditionally there were strong competitors in the region, this shows that the exception did not hold. The Contracting Authority should have cancelled the tender procedure for this region in line with article 32.4 of the LPP and return received applications with explanation that less than two requests for participation were received.

In this region, there was only one bidder and for 2015 Kosovo budget for road maintenance of the region for seven (7) positions until 20.10.2015 paid 1,123,846.06 €. The total contract amount was 653,522.45 €, which means that until the above-mentioned date, MI paid 470,323.61€ more (72% of the total contract amount).

42 Ibid.

43 Article 32 (4) If during the conduct of a procurement activity, less than two (2) responsive tenders or, where applicable, requests to participate are received; the contracting authority shall cancel the procurement activity.

44 Article 32 (5) Notwithstanding the requirements established by paragraph 4 of this Article when less than two responsive tenders or requests to participate have been submitted in response to an open procedure, a restricted procedure or negotiated procedure after publication of the contract notice, provided that a) the initial contract specifications are not changed and b) that the contracting authority has demonstrated that due to a severely limited competitive market for the contract in question a new open, restricted or negotiated procedure after publication of a contract notice will not result in an increased number of responsive tenders, where applicable, requests to participate, the contracting authority may waive the requirement. However the PPRC must be notified by the concerned contracting authority, within two days from the date of the decision, for the waiver of the requirement.



REGION: GJILAN 2

The bidder with the cheapest price with which the Contracting Authority had signed a contract was BO “**Jaha Company & Toifor**” Sh.P.K. to maintain national and regional roads of Kosovo in distance of

111.58 kilometres. The contract signed had the cost of 600,341.01 €, while the cost per unit for this contract was 203.59 €⁴⁵.

● TAB. 19 COMPARISON OF FINANCIAL BIDS IN REGION – GJILAN 2

Total of the bid for five (5) positions

#	Business operator	Status	Summer maintenance	Winter maintenance	Total	Difference with winning BO
1	“Jaha Company & Toifor” sh.p.k.	Contract winner	€ 116.43	€ 87.16	€ 203.59	€ 0.00
2	Zuka Commerc	Irresponsible BO	€ 244.88	€ 410.95	€ 655.83	€ 452.24
3	Magjstralja Bageri	Irresponsible BO	€ 415.13	€ 530.06	€ 945.19	€ 741.60
4	Bejta Commerc & Bas Com	Irresponsible BO	€ 892.54	€ 556.59	€ 1,449.13	€ 1,245.54
5	Tali	Irresponsible BO	€ 211.99	€ 359.11	€ 571.10	€ 367.51
6	Shkoza F07 & Papenburg + Adriani	Irresponsible BO	€ 398.63	€ 568.95	€ 967.58	€ 763.99

⁴⁵ Contract between MI and JAHA Company SH.P.K. & TOIFOR Sh.p.k. Sh.P.K.-MI/14/051/211, No of contract 065/2014



FINDINGS:

Contrary to region Gjilan 1, in this region there was a total of six (6) bidders and the outcome to save public money was much better. From the received tenders for this region, the lowest difference with the cheapest price per unit was 367.51 €, ranked as second in the table. While the highest price compared to the lowest price of the winning company was 1,245.54 €.

The inspection report from inspectors of the Ministry of Infrastructure dated 12.02.2015, and inspection completed on 06.02.2015, identified the following shortcomings:

- Lack of possession of the warehouse for covering salt, and
- Technical condition of the vehicles was not assessed as good.

Despite identified irregularities and compared to high prices submitted by other business operators, even if inspection had been completed prior to awarding the contract, it turns out that conclusions of the evaluation commission for this region are the best possible. However, it remains to be seen how contract implementation will go, considering the fact that the price offered is extremely low compared to that of the other five (5) bidders.

In this region, the winning BO was ranked the first with regard to cheaper price and for 2015 Kosovo budget for road maintenance of this region for seven (7) positions, until 16.10.2015 paid 598,408.68 €.



COMPLAINTS OF BUSINESS OPERATORS AND EFFICIENCY IN HANDLING THEM

Regarding this tender procedure, several complaints were submitted by business operators. After the request for access to public documents, PRB confirmed that a total of eight (8) complaints by business operators. One (1) complaint was submitted prior to deadline for submission of bids and seven (7) complaints were submitted after contract award.

Business operator “Victoria Invest International”⁴⁶ Sh.P.K with protocol number 214/14, related to procurement activity “Summer and winter maintenance of national and regional roads for 2014”, with procurement number MI/14/051/211, against the decision of the Contracting Authority (CA) – the Ministry of Infrastructure. The claims of BO noted that during this procurement activity, articles 7, 56, 65, 68, and 69 of the LPP were not observed. From the PRB perspective, only the claim related to article 69 of the LPP, under paragraph 9.1 and paragraph 9.2 of the FDT was grounded because regarding technical and professional capacities, those are accurate requirements that show whether the company passes or does not pass. According to PRB decision, based on which CA extended the deadline for submission of bids, this

“means that if the requirements are met, bids from other bidders are still under consideration, and if the requirements are not met, bids submitted by those bidders will be turned down immediately”.⁴⁷

Seven other complaints were submitted to PRB. All these complaints were handled together and for all these complaints there was a single decision. ⁴⁸ Claims from BOs varied. According to BO “Graniti” Sh.P.K, which claimed that for region Peja 1, from the beginning the company felt discriminated against since even after submitted three requests to the Contracting Authority, it was not granted access to office documents, while PRB considered this as a minor deviation. The reviewing panel also proved that in the evaluation commission report the operator submitted an non-sealed and non-signed diploma by the university that issued it, therefore this operator did not meet the requirement 9.1.3 of FDT, and as such it was irresponsible. While regarding the evaluation of the commission that BO Graniti possessed drivers only for one lot, the statement was groundless and PRB gave the right to the business operator in question.

46 <https://oshp.rks-gov.net/repository/docs/vendimet/2014/rrug-ver-ore-dimer-nacion-region.pdf>

47 Ibid, p. 4.

48 PRB decision dated 17.12.2014, https://oshp.rks-gov.net/repository/docs/vendimet/2014/mirmb_ver-dim_rrug-nacion-ks.pdf.



The complaint of BO “RSM & JOOS KRASNIQI BAZE”, for regions Gjakova 1, Ferizaj 1 and Ferizaj 2 according to PRB decision was partially grounded. PRB decision validates the assessments of the evaluation commission regarding the lack of management staff in the KTA list, and that the project manager did not possess adequate references. Regarding assessments of the evaluation commission that the BO did not possess sufficient tools was groundless.

With regard to elimination of complaining BO “Conex Group & ITK” in region Prishina 2, PRB decision states that the BO did not offer the list of equipment in line with tender dossier, since the list was offered for region of Ferizaj, while the business operator submitted the bid for region Prishtina 2. “Also, the review panel stated that the submitted list, is not in compliance with the title, which does not contain the accurate name about where services will be rendered, i.e. which lot it had submitted the bid for”.⁴⁹ However this error of technical nature could be considered as a minor deviation, the BO had submitted the bid with two trucks less than that it was required in the tender dossier. But as it can be seen in the report of inspectors in the field, the winning business operator also had to trucks less than required.

Claims of the business operator “Vemore & AHN Group” that it had not been treated fairly in regions Peja 1 and Peja 2, were rejected with regard to technical specification that were not signed and sealed as requested in item 3.1 of the FDT. Also, submitting a bid with an expired contract for the work site leader and absence of being in KTA list were two requirements not in line with those defined in the tender dossier. With regard to other claims that evaluation commission had assessed that are not met, the PRB decision found those statements as grounded.

Further, PRB decision for region Gjilani 2, confirms evaluation commission regarding elimination of the BO “Magjistranja” because it had not submitted auditor’s

report for past three years. But during the hearing session, a decision of the Basic Court in Prishtina was presented, which showed that the business operator had been sentenced. In this regard, the business operator could not submit a bid because that would be in violation of article 65.4.7 of the LPP.

Similar to other complaining operators, complaints in region Gjakova 1 of BO “Malsija” were partially confirmed, except for the claim pertaining to submission of the expired license of asphalt, as well as the lack of license for quarry. So according to the PRB decision the assessments about the lack of sufficient capital and lack of notarized work contract for geodesy engineer were groundless.

The last complaining BO for Gjakova 2 was “Victoria Invest International”, for which, PRB decision reached a similar conclusion by partially approving its complaints. BO had submitted the bid with the same equipment for two lots, which was in contradiction with tender dossier requirements, which required different equipment for each lot. Neither the report from evaluation commission nor PRB decision mentions which were the claims that were partially grounded.

On 23 June 2014 BO Tali Sh.P.K asked from CA to extend the deadline for 10 days with the justification that BU did not get the tender dossier on time.

⁴⁹ PRB decision dates 17.12.2014, p. 11.



RECOMMENDATIONS

Based on the findings of this report, KDI makes the following recommendations to the Ministry of Infrastructure:

- Inspection of business operators as part of the evaluation of bids process need to become an obligatory part, in which case evaluation should not rely on trust but on facts, and there would be a fairer evaluation of technical and professional capacities, which would enable saving and better management of public money;
- To avoid such situations, when due to modifications, complaints, and irregularities in tender dossier revocation of articles or acceptance of conditions not in favour of the public occur for continued services, procurement process needs to start immediately with the approval of budget and procurement planning in order that there is enough time for cancelling and re-tendering of services;
- To monitor rendered services in line with contract requirements, and not allow additional services which exceed the contracted amounts;
- To increase efficiency of transparency at the Ministry of Infrastructure, respect for Law on Access to Public Documents and Law on Public Procurement;
- PPRC to increase monitoring especially for contracts divided in many lots and with large amount both during tender process and during contract performance;
- To oversee awarding of contracts with abnormally low prices and contracts where prices are much higher than market prices, and prices of other bidders;
- To pay attention to presence of fake bids, just to meet the legal requirement for two responsible bids, or when there are suspicions about tender set-up;
- The Ministry of Infrastructure to add monitoring of contract implementation and in case of delays or lower quality to apply fines to business operators.

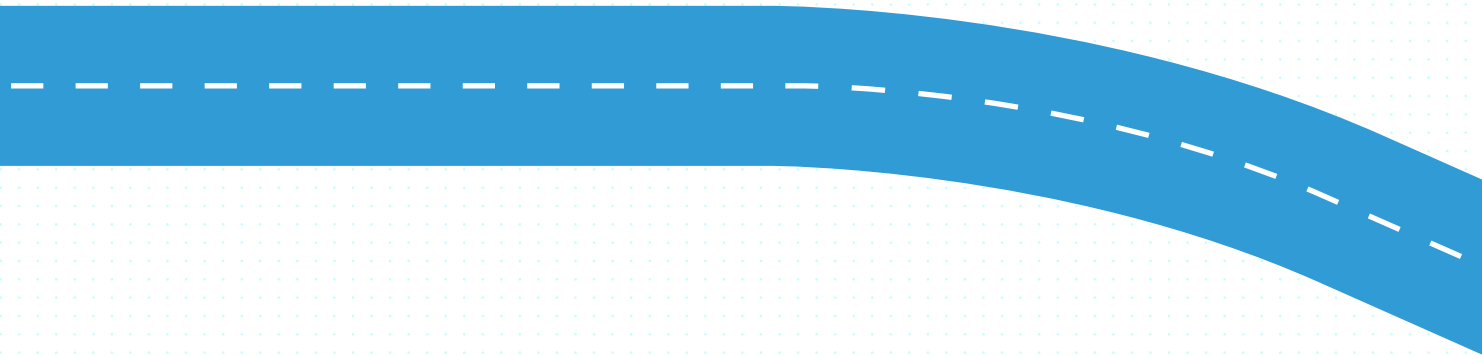


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