

MY TENDER

Transparency and Accountability in Public Procurement

Analytical Report

(March 2011 - March 2012)

**MINISTRY OF
INFRASTRUCTURE**





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The views expressed in this report do not necessarily correspond with those of the donor.



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Kosova Democratic Institute (KDI), Transparency International Kosova (TIK) aims at improving transparency and the effectiveness of legislation implementation in public procurement, contributing to corruption reduction and establishing a competitive environment. Increased transparency and accountability derives from constant requests, arising from various reports and research on corruption in Kosovo. The monitoring process of public procurement and the publishing of analytical reports that reflect the state of affairs in this sector are among chief activities of KDI/TIK.

This initiative includes the Advisory Group that consists of representatives of the Chambers of Commerce in Kosovo, representatives from civil society and the media. This group plays a central role by discussing, advising and advocating on the public procurement state of affairs. Its significant contribution is highly appreciated.

The methodology used for this report is adopted by Transparency International.

In addition to the work done by researchers/analysts, significant factors in the content and findings of this report are the interviewees – institutional representatives related to public procurement, civil society representatives, economic operators, journalists and constant interviews with the Procurement Department officers in the Ministry of Infrastructure.

ABBREVIATIONS

AG	Advisory Group
AI	Administrative Instruction
CA	Contracting Authority
CPA	Central Procurement Agency
EO	Economic Operator
EU	European Union
FG	Focus Group
ISO	International Organization for Standardization
KBRA	Kosova Business Registration Agency
KDI	Kosova Democratic Institute
KIPA	Kosovo Institute for Public Administration
LPP	Law on Public Procurement
MAFRD	Ministry of Agriculture, Forestry and Rural Development
MH	Ministry of Health
MI	Ministry of Infrastructure
MTI	Ministry of Trade and Industry
PO	Procurement Officer
PPA	Public Procurement Agency
PPRC	Public Procurement Regulatory Commission
PRB	Procurement Review Body
TAPP	Transparency and Accountability in Public Procurement
TD	Tender Dossier
TI	Transparency International
TIK	Transparency International Kosova

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1. SUMMARY

Results from the monitoring of public procurement in the Ministry of Infrastructure include irregularities, misuse allegations and lack of transparency. Through the analysis of 11 tenders for the period March 2011 – March 2012, a number of irregularities were evidenced; the contracting of economic operators with the highest bid, the issuing of valuation reports after the contract was awarded, the lack of monitoring of proceedings' supervision, and other.

The report highlights problems of contracting responsible economic operators with the lowest price in two tendering processes selected for this research. In the tender “Summer and winter maintenance of national and regional roads in Kosovo 2011-2012– ri-tender” for the region of Gjilan, with the recommendation of the evaluation Commission, the company with the second lowest price was contracted, damaging the budget of Kosovo by 14,137.58 Euros. Whereas, there was only one responsible offer in the regions of Prishtina A, Gjakova and Mitrovica B, and upon Commission's recommendation, the contracts were entered.

In the tender “Signaling and maintenance of equipment of the magistral and regionals roads of Kosovo in 2011” for the lots 3, 6 and 8, contracts were signed with economic operators with responsible offers, in the total amount of 250,566 Euro. There were irresponsible bidders selected in lots 4, 5 and 7; for lot 5, after the complaint in PRB and after re-evaluation, the economic operator with the responsible bid and lowest price was contracted. This improvement enabled Kosovo budgeted to save 16, 242 Euros. However, there were nor complaints or re-evaluation in lot 4 and 7 and responsible bidders with the highest price, that of 49, 710 Euros, were contracted.

Regarding contract content and implementation, problems are encountered with the criterion of the lowest price in selecting economic operators with the highest price. The concern of economic operators is presented as well, regarding payment delays by the Contracting Authority which is causing damage to the businesses.

This government sector is characterized by insufficient transparency. The monitoring process of Ministry of Infrastructure proves slow responses and violated deadlines. This might be due to the frequent change of the

procurement management. The previous management had neglected KDI's claims for access in official documents, slowing the responses and violating the deadlines. Compared to the previous management, the current one has shown more willingness to make the access in official documents easier.

Based on the Annual Work Report 2011 of PRB, the Ministry of Infrastructure had been the institution with most complaints, that of 32. In 21012, PRB has accepted 22 complaints. Only the period covering this research (March 2011 – March 2012), PRB has accepted 16 complaints for MI.

On the other hand, MI refused the access on these documents, justifying this with the lack of adequate time to find the decisions for the fines or other punitive measures against the bidders. This has disabled the identification of the kinds of possible fines – delays, quality, etc., the amount of the fine, the fined economic operators and the deadline of the issuing of these decisions.

Management capacities of public procurement institutions provide an overview of the level of professionalism of this field. The main problem in the Ministry of Infrastructure remains the lack of space and staff. In regards to the budget in 2012, MI has a total of 280,471,941 Euros and 269,500,001 Euros for capital expenditure. The capital expenditure was 95.3% of the budget of MI.

The findings of this research enable advocacy towards MI to guarantee more rational management of the public money, accountability, transparency and to establish a more competitive environment in public procurement.

2. INTRODUCTION

This analytical report on the Ministry of Infrastructure (MI) highlights the lack of legislation implementation that regulates public procurement. The results from the monitoring process in this institution include concrete findings of irregularities and allegations on the misuse of public funds.

The report includes 11 tenders for the period March 2011 – March 2012 and classifies the findings into five dimensions: Tendering, Contract Content and Implementation, Preventive Measures and Transparency, Complaints and Sanctions, and Management Capacities. Each dimension presents the tendering processes and the problems encountered in specific aspects in the field of public procurement. The report aims to identify and address the problems in order to advocate for the improvement. This includes analyzing tender dossiers as well and interviewing economic operators, the representatives of public procurement institutions, chambers of commerce and non-governmental organizations.

Conclusions and recommendations of this research and analysis are presented at the end of this report. KDI/TIK is dedicated to advocate at responsible institutions in order to prevent irregularities in this field and to avoid the repetition of the found ones.

3. METHODOLOGY

The analytical report on the Ministry of Infrastructure (MI) analyses the legal framework and its implementation. The legal aspects are analysed in consultation with the domestic legislation and with the legal system of European Union (Acquis Communautaire), as a reference point¹.

The analysis on legislation implementation and the state of affairs in practice is realized by selecting 11 tenders. The tenders belong to period March 2011 – March 2012, and the selection is done according to the amount and the type of procurement. Hence, 6 large value tenders were selected, 5 medium and 1 with low value tender. All the selected tenders belong to ‘supply’ type of procurement, except the small value tender that classifies as works concession.

Questionnaires and interviewees with a number of actors are part of the methodological framework and data selection as well. Included are the followings: The Contracting Authority, Public Procurement Regulatory Commission (PPRC), Public Procurement Review Body (PPRB), Public Procurement Agency (PPA), Kosovo Institute for Public Administration (KIPA), Civil Society Organizations (CSA), Anti-Corruption Agency (ACA), media representatives, and economic operators who participated in the tendering processes.

In order to reflect more accurately in the current state of affairs of public procurement in infrastructure, attention has been paid to the communication with economic operators. They were identified through Evaluation Reports and Contracts. However, due to data deficiency in those reports, their contact information is found through Kosova Business Registration Agency (KBRA). The economic operators with great hesitation agreed to cooperate and share their experience during the tendering process. Out of 12 economic operators contacted, 5 agreed to be interviewed.

The data collected are grouped and presented in the following dimensions:

¹ KDI/TIK (June 2012): My Tender, Analysis of Legislation on Public Procurement

Tendering (dimension 1) aims at addressing the legal part and practices in the tendering process before selecting the best bidder; **Contract Content and Implementation** (dimension 2) deals with the contract details and the way the best bidder is assessed, it shows how much has the contract been monitored and implemented, and whether the works are inspected; **Preventive Measures and Transparency** (dimension 3) presents and advocates for the best ways of preventing misuses, including the ethical code, internal regulation and the issue of payments. It elaborates the principle of transparency through the access in official documents, tendering processes, and the importance of the digital system of procurement (e-procurement); **Complaints and sanctions** (dimension 4) analyse the legally regulated aspects for complaints and the implementation in practice. As the responsible institution for handling complaints in this field, the role of PRB is mainly discussed in this dimension. Moreover, the importance of the black list for economic operators and the penalties for the contracting authorities and senior procurement officers is emphasized as well. **Management capacities** (dimension 5) address the capacities of responsible institutions of public procurement in managing the procurement activities. The professional qualification of the managing staff is included - education or work experience. The budget is analysed as well as the infrastructural space in which it is worked. (Appendix, Table 2. Dimensions for Transparency and Accountability in Public Procurement).

Prior to publication, all results have been evaluated by the Focus Group. It consists of experts in the field of procurement, institutional representatives, civil society representatives, chambers of commerce and business associations, and the economic operators.

4. RESEARCH RESULTS

Dimension 1: Tendering

Legislation

The time limits for opening of tender offers vary based on the tendering process. Price quotation is done within a minimum of 5 days. For negotiated procedures after the publication of contract notice and when the contract is public with a large value, the limit is within 20 days. For negotiated procedures after the publication of public contract with non-large value is 15 days. For open procedures, the limit is within 40 days. On the other hand, for limited procedures is 15 days (LPP, articles 36 and 44).

The publication of notices is required to be submitted in the official webpage of the PPRC, in the Register of Public Procurement within 2 days when received by the contracting authority (LPP, article 42,2). The publication for contract notices for low and minimal value contracts (less than 10,000 Euros) is not required. The previous law required all publications to be made in newspapers as well. However, this is not required with the new law. For any procurement activity, the number of offers should be at least 2 (LPP, article 32,4).

The tender dossier contains all requirements that a bidder should fulfill and all documents that should be submitted in order to qualify for a responsible bidder. Among formal/administrative requirements is the tender form and if signed, tender security, tender validity and declaration under oath.

Eligibility requirements include the tax, professional, commercial and/or corporate register. The requirements for technical and/or professional capability include product presentation with samples or brochures/catalogues. The offered products manufactured in the EU states, are required by UA 04/2088 and in accordance with the authorization of the manufacturers and ISO 9001 and 9002 (LPP, article 51, 1)².

² And Secondary Legislation, Part B Rules on Procurement Procedures, tender dossiers and evaluation reports. Public Procurement Regulatory Commission (PPRC) webpage <http://krpp.rks-gov.net/Default.aspx?LID=2>

These tender dossier requirements vary, particularly for contracts with minimal value, less than 1.000 Euros (LPP, article 27,2). “A contracting authority shall designate in the tender dossier the applicable technical specifications and, where appropriate, performance requirements, the scope for variants and information concerning subcontracting in accordance ...” (LPP, article 27,1). There are also standard form tender adopted by the PPRC that should be met by economic operators³. After the above mentioned criteria is met, two crucial criteria are determined: the lowest price or economically most advantageous tender” (“contracting authority shall specify in the contract notice and the tender dossier the criteria for determining the winning tender and the weighting assigned to each criterion” (LPP, article 52).

Practice

The time limits for the tendering processes selected for this research have been respected. Contract notices for the large value tenders were published on the PPRC webpage within 25 until 41 days. Similarly, contract notices for medium value contract were published within 22 days.

Contract notices for the tendering processes less than 10,000 Euros are not published on the PPRC web-page. In regards to economic operators, this fact causes limitations in information access and does not contribute to fair competition between them. On the other hand, the contracting authorities may not get the lowest prices for works or service required. In this respect, for the period March 2011 – March 2012, the contract notice had not been published for the 4 low value tenders out of 33 tendering processes. One of these small value tenders, namely “Laptop and PC-system unit Supply” is part of this research.

The legal provisions in the new law regarding the publication of contract notices save time and equipment for the contracting authority and economic operators. Before the changes in law, respectively until 5 October 2011, medium and large value tenders were published in the newspapers in addition to the PPRC web-page.

³Secondary Legislation, Part A: Regulations of Public Procurement, A02 Operational Guidelines for Public Procurement, Standard Forms. On Public Procurement Regulatory Commission (PPRC), <http://krpp.rks.gov.net/Default.aspx?LID=2>

In regards to the number of tenderers, it is noticed that the selected small value tender had 4 tenderers, whereas medium value tenders had at least 6. Large value tenders had 12 tenderers for all lots. The contracting authority claims that usually for a tender there are from 10 to 30 economic operators that compete.

The contracting authority and CPA claims that the condition for the necessary minimal number of offers is always met.

On the other hand, what bothers the economic operators is the issue of specifications determined by the contracting authority. A case highlighted by businesses is about the guarantee of 10% pre-determined in the Tender Dossier, provided either from a bank or an insurance company. Nevertheless, even though an economic operator had presented the guarantee by an insurance company, its offer was rejected by the contracting authority.

Another concern for the economic operators is the discrimination towards domestic companies due to specifications, such as “the determined amount of annual turnover”, “the obligation for the determined percentage for sub-contractors”, or “specific capacities”. Such cases occur in large projects, such as the construction of highways.

In regards to importance of the requirements for specific documents, the PRB and PPRC explain that documents provide evidence that an economic operator is serious to be rewarded with a contract, and its responsibility in fulfilling state obligations in payments and other aspects. In addition, the PPRC recommends procurement officers of the contracting authority to respect the legal provision in regards to “the minimum requirements” (LPP, article 29.4), in the tender dossier. The PPRC asks the contracting authorities to not extend the requirements and demand a lot of documents from the contracting authority.

On the other hand, large value tenders, had in general, approximately 11 responsible tenderers; respectively, 4 to 16 responsible tenderers. For medium value tenders, there were 4 responsible tenderers; 2 to 5. For small value tenders, there were 3 responsible tenderers. In general, this report finds that the selected tenders were not sole-source tenders.

Nonetheless, the verification of facts was hampered by the evaluation way in several tenders, such as in “Signalling and maintenance of equipment of the magistral and regional roads of Kosovo in 2011”. The Evaluation Committee had evaluated all operators for the entire tender, and then divided them into lots. Since there are economic operators that have offered for one lot only or more, and since such an evaluation disables a proper analysis of the evaluation process, it is recommended that the offers are individually evaluated for each lot of the tender.

The research finds that none of the tenders were selected according to the criterion “economically most advantageous tender”; all were selected according to “the lowest price criterion”.

The economic operators are not satisfied that the criterion for the lowest price is always used. They (EO 2) criticize the law for this criterion since it leads to poor quality. Business representatives (FG 1) claim that the lowest price is not proving quality since the budget gets overspent if poor quality leads to the repetition of works. It is reported that this criterion not clearly determine what exactly does it mean. Operators complain that even when the “economically most advantageous” criterion is used, the price is taken into account by 70%.

An economic operator (EO 4) states that the current criteria are wrong since they do not favour the business, despite the fact that businesses help public procurement through taxes. Whereas, another economic operator (EO 5) claims that the law on public procurement should have criteria that enables the selection of qualitative companies.

Some economic operators (EO 2 and EO 3) complain about the offers of other economic operators. They offer very low prices, even below the cost of production that does not cover the cost of work. The operator (EO 4) provides an example; he claims that 1 m³ gravel costs 14 Euros (including the work and other costs), whereas it is offered for 5 Euros. This cannot be possible since there have been inflation and raised oil prices. On the other hand, another economic operator claims that economic operators offer prices from 400, 000 Euros for the works with minimum real value of 1,5 million Euros. Economic operators (EO 2, EO 3, EO 4) state that as a result of the low prices offered and the impossibility to cover the real costs, works are conducted with very poor quality. Nonetheless, it is the responsibility of procurement officers to

research the market, whereas it is the responsibility of the contracted economic operators to offer products and services offered in the contract.

On the other hand, operator (EO 3) claim that very often it offers lower prices than those in the market; with 0% profit for the sake of the turnover and in order to pay its employees. The same operator claims that sometimes the procurement officers find troubles in selection since they are obliged to choose the legal criterion, the lowest price. This operator recommends limits when introducing projects with specific prices, for example +/- 25 % of the market price, instead of having very low prices that leads to anomaly.

When it comes to awarding the economic operators with the lowest price, this report finds irregularities in two tendering processes selected for this research:

1. In the tender “Signaling and maintenance of equipment of the magistral and regionals roads of Kosovo in 2011 – Re-tender” in the lots 4, 5 and 7, are selected responsible tenderers with the highest price⁴. Nonetheless, after the complaint in the PRB⁵ for lot 5 and after re-evaluation, the operator with the responsible offer with the lowest price was contracted. Through this improvement, 16, 242 Euros of the Kosovo budget were saved.

There were no complaints nor re-evaluation for lots 4⁶ dhe 7⁷ and the responsible tenderers with the highest price were contracted. This is also confirmed by the Audit Report: “Lot IV of the contract was signed with the company that had offered 194, 003€ whereas the offer with the lowest price was 155,378€”. Also, “for lot VII the awarded company of the contract had offered 118,482€ whereas the tenderer that had offered 1071 397€(a lower price for 11,085€) was eliminated.”⁸ In this tender, it is also noticed that

⁴ Based on the Evaluation Report for the procurement number MI-11-016-511 of 1 November 2011, and the Re-evaluation Report of 21 December 2011.

⁵ PRB (18.10.2011): Review Panel with No 269/11.

⁶ Contract with the protocol number 4162 of 23 November 2011.

⁷ Contract with the protocol number 4151 of 22 November 2011.

⁸ Office of the Aditor General (June 2012), Audit Report on the annual financial statements of the Ministry of Infrastructure, 31 December 2011, 21.8.1.2011 – 08, 6.2.2, page 16.

for lots 3⁹, 6¹⁰ dhe 8¹¹ are signed contracts with economic operators without responsible offers and in the total amount of 250,566 Euro¹².

2. In the tender “Summer and winter maintenance of national and regional roads in Kosovo 2011-2012, Re-tender” for the region of Gjilan as recommended by the evaluation committee, the company with the second lowest price was contracted, damaging the budget of Kosovo by 14, 131.58 Euro¹³. Whereas, for the regions of Prishtina A¹⁴, Gjakova¹⁵ dhe Mitrovica B¹⁶, there were only one responsible offer. With the committee’s recommendation, the contract was signed.

In regards to the contracting authority, the perception of economic operators is that each contracting authority, can easily remove a document from their tenders’ dossiers in order to announce them as non-responsible. However, the law determines that for each tender the economic operators must submit three copies of the offer: an original and two copies. One of the copies can only be opened if complaints are made in the PRB.

Another concern presented by economic operators deals with the content of the contract. Economic operators complain that they are not involved in the drafting of contracts.

The report for the tendering process for “Signaling and maintenance of equipment of the magistral and regionals roads of Kosovo in 2011, Re-

⁹ Contract with the protocol number 3863 of 28 October 2011.

¹⁰ Contract with the protocol number 3891 of 1 November 2011.

¹¹ Contract with the protocol number 3867 of 28 October 2011.

¹² Based on the Evaluation Report for the procurement number MI-11-016-511 of 1 November 2011, and dhe Raporti i Ri-Vlerësimit i datës 21 dhjetor 2011.

¹³ Based on the Evaluation Report for the procurement number MI-11-001-211 of July 2011, page 18 and the Contract with protocol number 3081 of 29 August 2011.

¹⁴ Based on the Evaluation Report for the procurement number MI-11-001-211 of July 2011, page 15.

¹⁵ Based on the Evaluation Report for the procurement number MI-11-001-211 of July 2011, page 22.

¹⁶ Based on the Evaluation Report for the procurement number MI-11-001-211 of July 2011, page 24.

tender Lot 3” finds that the contract¹⁷ is signed 3 days before the Evaluation Report was conducted or published. This falls into contraction with the legal provision on time limits. By law, contracts can be signed only after 10 days from the Contract Award Notice on the PPRC webpage. In this case, the contract is signed before the submitted offers were evaluated.

The contract notice for the tender “Rehabilitation of the Roganë-Hogosht” was not published at all in the PPRC web-page. This fact has caused lack of information to economic operators, the offered prices and the fair competition between them.

Audit Report 2011¹⁸ finds that in the tender “Rehabilitation of the road, Llukafc-Tomoc-Kovragë, Istog, Re-tender”, “procurement forecast was not in full compliance with the LPP” and that the “selection of economic operators was not in full compliance with the LPP”. The Audit Report in question finds that the operator to whom the contract was awarded was not responsible. Respectively, the financial requirements for “the annual financial statement for the last three years” and “the audit report for 2010”, were not met.

In regards to the lack of compliance with the LPP in selecting economic operators, the Audit Report refers to the tender “Rehabilitation of the Roganë-Hogosht”. It is claimed that the contracted operator did not meet required criteria in the tender dossier. The following were missing: a licence copy from the MTI, the bill for the paid electricity, and the ensuring of the construction-site before signing the contract¹⁹. It is also highlighted that “MI was not capable of offering evidence that the winners of the contracts had submitted the signed contract in the amount of 617,685 € for the tender “Construction of the regional road R124 (Shipashnicë-Desivojcë)”. The licence for road freight transportation

¹⁷ Contract with protocol number 3863 of 28 October 2011, and Evaluation report of 1 November 2011.

¹⁸ Office of Auditor General (June 2012), Audit Report on the annual financial statements of the Ministry of Infrastructure for the accomplished year in 31 December 2011, 21.8.1.2011 – 08, 6.2.2.

¹⁹ Office of Auditor General (June 2012), for the accomplished year in 31 December 2011, 21.8.1.2011 – 08, 6.2.2. page 15.

issued by the Ministry of Infrastructure for personal needs and a geode (graduated geodesy engineer), were required²⁰.

Dimension 2: Contract Content and Implementation

Legislation

Contract content is determined by the standard form contract – sample, prepared by the PPRC.

They are further adopted by the contracting authority for each type of contract.

In the previous law, the procurement department was responsible until the contract was signed, whereas the role of the monitoring department of the PPRC was to monitor the procurement activities until the contract was signed. To avoid the misuse of the public money, a new legal provision in managing the contract was needed. With the new law, the Contract Management Activities were determined (LPP, article 81). It includes the designing of a detailed plan in managing the contract within clear time limits.

Additional works are regulated by law, article 35,1 where it is emphasized that the contract for additional works can be entered without publication of a contract notice. Additional works refer to supply, service, and works contracts, but they cannot have a value greater than the 10 % of the contract value that covers the primary contract (LPP, article 35,2). It is recommended that the term ‘additional works’ to be explained in the definitions, article 4, or in a specific article that would explain what precisely is included in additional works.

In regards to terms of the additional contract – prices, delivery deadlines, quantities, technical characteristics and guarantees, and others- the contracting authority takes responsibility in determining them as stated in article 35, 3 in the LPP.

²⁰ Office of Auditor General (June 2012), Audit Report on the annual financial statements of the Ministry of Infrastructure for the accomplished year in 31 December 2011, 21.8.1.2011 – 08, 6.2.2, page 15.

Practice

Based on the verification of tender contracts included in this research, it is noticed that the data of the suppliers are not complete. Except for the name of the economic operator, the business number, the name of the owner and other data are absent. In regards to this issue there are two opinions from the interest group. One holds that the name of the owner in the contract, the business number and such data, are not necessary. On the other hand, the other opinion holds that the inclusion of those data is very important. Moreover, the later claim that the abovementioned data should be available in the webpage of Kosova Business Registration Agency. However, its web-page is not always accessible and functional.

There are cases when specific articles have been completely erased from the standard document for contracts, such as Article 16 – Terms of the Contract – in the contract with the protocol number 3083 of 29 August 2011, and in the contract with protocol number 3080 of 29 August 2011 – a point that deals with the time limits. Such facts cause suspicion for possible violations.

In regards to the time limits, it is usually stated in the contract that the the contract implementation is begun upon its signing. There are cases when the beginning of the contract implementation is set to be within 2 to 5 days from the date it was signed. The research has found that the determination of time limits for the beginning and concluding is complementary for the low value contract “Laptop and PC-system unit Supply”. In 181.1 paragraf of the Contract²¹, it is noted that the contracting authority will set the date through the Administrative Instruction. Whereas, in article 18.2 it is noted that the execution of the contract will begin no later than 90 days after the notice for the contract award notice. Even though they do not contradict the law, it is evaluated that these two alines are not necessarily together.

However, due to the lack of access in official documents from the Ministry of Infrastructure, respectively in the decisions for giving penalty for the contracted economic operators, successful beginning and conclusion of contract implementation cannot be confirmed. The

²¹ Contract agreement, General Conditions and related Annexes for Laptop and PC-base unit Supply, 42/11. (Protocol no 4241, 01.12.2011).

economic operators awarded with these tenders were not accessible, ignoring our request for meeting.

The prices in the contract are presented as total values, as a total contract price. However, contracts are referred to initial offers by economic operators, where details for unit prices are shown.

The total amount of additional works for these three tenders is 530,734 Euro. The additional works for the contract “Rehabilitation of the road, Llukafc-Tomoc-Kovragë, Istog, Re-tender” cover the amount of 32, 526 Euros or 4.38 % from the value of the basic contract. The additional works for the contract “Construction of the regional road R124 (Shipashnicë-Desivojcë) – segment: Shipashnicë e Epërme – Mulliri, L=3.5 km” include the amount of 51,318 Euros or 8.31% from the value of the basic contract.

The research finds that in the contract “Summer and winter maintenance of national and regional roads of the Republic of Kosovo 2011-2012, Gjakova, Ferizaj, Prizren and Peja Regions”, all contracts had the presentage value of 9,99% of the total value 446, 890 Euros. Even though none of the had exteeded the 10% of the value determined by law, two of the contract approach the determined limit by 8, 31%, respectively 9, 99 of the basic contract value.

In the contract “Reconstruction of the link road in R126 (Podjevë-Pollatë, km 6+650) – phase II”, a mistake in procurement number is noticed; instead of MI-11-057-521, MI-11-057-251 is written. Such mistakes, although technical, hamper the identification and access in specific tenders of all interested pairs that analyze this documentation, particularly Economic Operators, the PRB, and the Auditors.

Economic operators express their concerns in regards to the delays in the execution of the contract. According to them, in most cases, delays are not their fault; for example, the problems with expropriations and the penalties towards them are not fair. A concrete case that bothers operators is the contraction roads towards Mitrovica and Peja. Another aspect that worries economic operators in regards to delays is the lack of consideration for the weather conditions.

On the other hand, economic operators have risen as a concern is the delays in payments by the contracting authority. Operators claim that as a

result of these delays, they are forced to take loans in order to pay their employees and other expenses. Therefore, economic operators highlight the need to penalize the contracting authorities in cases when they delay the payments. The phenomenon of delays by the contracting authorities is also confirmed by the Audit Report on the Ministry of Infrastructure, where stated that “payments are not conducted in the determined legal deadline”.

Economic operators complain that the procedures after tendering are accompanied by numerous misuses. Among them, it is claimed that as a result of threats, the supervisors hesitate to report misuses.

Due to the lack of access in the orders for fines and penalties from the Ministry of Infrastructure, KDI/TIK was unable to prove the number of fines for the contractors of the selected tenders.

It may be concluded that public procurement has two problems: procurement forecast and realization. It can be said that the law on public procurement is the best in the region in terms of compliance with the European legislation. However, civil society organizations state that both government officials and businessman should implement the EU legislation. Business representatives claim that the Commercial Court does not function, the Supreme Court does not issue decisions on the compensation of damages, and the power of family relations prevails over the power of law.

Dimension 3: Preventive Measures and Trasparency

Legislation

Under article 91,2 of the Law on Public Procurment – in regards to the secondary legislation – the PPRC has designed the Code of Ethics and Declaration under Oath for the procurement officers, the employers of the PPRC, CPA and PRB. This Code includes issues that prevent the abuse of public resources. However, the definitions are simply indications on what is considered crime and what should be stopped. They do not set preventive measure or relevant sanctions for each misuse separately.

In regards to preventive measures, the issue of payments in “cash” and those “through the bank” is elaborated. Cash payments are not forbidden by law, respectively, it is not strictly determined whether payments should only be made through the bank. For example, “tender security” (LPP, article 57.5), “performance security” (LPP, article 63.5), as well as the payment for the PRB (LPP, 118.1) determines that “will be made in cash”.

Articles 57 and 63 explain that each contracting authority should open a separate bank account for the receipt and storage of funds, such as tender security, bank guarantee, performance security.

The Law on Public Procurement promotes the principle of transparency through article 10 – “Means to promote transparency”. It is emphasized that the contracting authority shall maintain a well-ordered and comprehensive set of records for each procurement activity that it conducts (LPP, article 10,1). At the request of any person, the contracting authority should provide immediate and responsible data access, except for the confidential business information that deals with any concluded procurement activity. Moreover, it is claimed that the contracting authority shall provide access to copies of any records the person or the interested pair has access right in a routine, uneventful, and non-obstructive manner.

All notices – contract notice, contract award notice, cancellation notice, indicative notice for tenders larger than 10, 000 Euros, should be published in the official web-page of the PPRC (LPP, article 42). At the same time, it is required that the law and rules on public procurement (LPP, article 10.6) to be published electronically. Thus, enabling accurate and efficient information on the legal basis and the procedures legally determined for open and transparent procurement processes.

Practice

According to the Ministry of Infrastructure, all payments are made through the bank and no transaction is made in cash. The ministry possesses specific budgetary codes in managing the payments through the bank. On the other side, MI highlights that the contracted economic operators possess a sole bank account for the contracts in question. Since

the contracted operators refused to discuss in regards to this issue, such data cannot be confirmed. The opening of a single account is considered to assist in preventing misuses since payment evidence and values would facilitate the investigation of relevant institutions.

The report finds that the staff, including the leading staff had moved during this time period. Such a situation is created due to a PRB decision on revoking the license of the Director of Procurement Department due to “major violations of the LPP and procurement regulations on the case of non-implementation of the PRB decisions and orders.

The interviewed economic operators claim that there is transparency in regards to opening of tenders, publication of a contract notice as well as the number of tenderers. However, in terms of transparency, skepticism is expressed towards the selection criteria.

According to the monitoring of the tendering process in the Ministry of Infrastructure, it is concluded that the access of this institution is not in compliance with transparency principles that the legal framework determines. The requests for access in official documents, such as in evaluation reports, tender contracts and the research questionnaire submitted in the MI procurement department, have exceeded the legal time limit from 10 – 14 days.

The first request for access in official access is directed to the previous director of procurement department, Arif Zhushi, on 5 July of this year. Through this request the following were required: Tender Dossier, Evaluation Reports, Contracts and Contracts for Additional Works, as well as the Contract Management Plan to 45 tenders for 2011-2012. Due to delays, the request was repeated on 30 August. This time, the request was received by the new director, Nexhat Krasniqi. The request was specified in two documents out of the 45 tenders previously required: Evaluation Reports and Contracts and Contracts for Additional Works. These documents were received at the end of September.

The survey request for the contracting authority was submitted to the former director the procurement department on 5 July. Since it was returned partly filled in after a month, the request was sent to the new director on 4 September. Again, important questions such as those regarding conflict of interest, nepotism, and sanctions for senior

executive officer, have been avoided. This has hampered the elaboration of such critical issues and the obtaining accurate information whether there have been cases of conflict of interest between the contracting authority and economic operators. Consequently, transparency and accountability is put into question mark and citizen skepticism on the ethical values of this institution, mostly subjected to investigation, has been further strengthened.

Dimension 4: Complaints and Sanctions

Legislation

The PRB is a complaint administrative review body (LPP, article 98). Complaints must be may be filed only within the ten (10) day period following the date of the contract award notice. This differs from the previos law with only 8 days available (LPP, article 109.2).

The “interested parties”²² can use the procurement review procedures (LPP, Part IX & Article 103), “at any stage of any procurement activity and with respect to any act or omission of the concerned contracting authority that is alleged to be in violation of this law. (LPP, article 109,1). Whereas for any complaint in the PRB, the complainant is required to pay a complaints fee to the PRB the amount of five hundred (500) Euros together with the filing of a complaint. The amount is returned to the complainant if the complaint is grounded (LPP, neni 118).

Sanctions in the field of public procurement include penalites, exclusion from participation in tenders up to a year (LPP, article 99,2) starting from the inclusion in the “Black List”, civil penalties and violations (LPP, article 67,1).

These sanctions can be to given to both economic operators and contracting authorities (LPP, article 131); especially to their procurement officers (LPP, article 23). Economic operators can be put into the black

²² Law No. 04/L-042 on Public Procurement in the Republic of Kosovo (5 October 2011), article 4,1,26: Interested pair: a person who can demonstrate a specific material interest in the outcome of a procurement activity conducted by a contracting authority and relating to a specific public contract or design contest including any person who has been or risks being harmed by an alleged infringement.”

list if false data or documents are submitted. Whereas, upon a written request by contracting authority, the PPRC can include the economic operator on the black list (LPP, article 99.2).

The types of punitive measures differ. If the complainant offers false information, the fine by 500 Euors results (LPP, article 118). On the other hand, if the contracting authority “does not implement an order of the PRB within 5 days (LPP, article 131), the fine by a mimum of 5,000 results.

Under article 25.8 of the LPP, the PRB procurement officers can revoke the procurement certificates issued by KIPA if “If the holder of the certificate does not meet or no longer meets, the eligibility requirements specified” or “or has committed a serious violation of this Law or the procurement rules”.

Practice

Based on the time limits for contract award notices, this report finds that all tenders have the expiration date from 12 to 22 days. Despite this legal fact, a contract has been signed 3 days before the date of publication of the contract evaluation. However, this shows that the time limit for complaints, that of minimum of 10 days, has been respected.

According to the Annual Work Report of the PRB for 2011, the Ministry of Infrastrutture has been the institutions with the most complaints; out of 32 received complaints, 31 are reviewed, 12 approved in the favour of Ministry, 10 cases were sent to re-evaluation, 9 in re-tender, and 1 case was withdrawn. In 2012, the PRB has received 22 cases; 10 were approved in the favour of the Ministry, 8 were sent to re-evaluation, 2 were refused, 1 to re-tender, and 1 was withdrawn. Whereas, only for the period of this research (March 2011 – March 2012), the PRB has received 16 complaints for the Ministry of Health, taking 12 decisions.

For March 2011-March 2012, the PRB has reviwed complaints for 4 tenders included in this report: 1 complaint was approved and the tender “Signalling and maintenance of equipment of the magistral and regional roads of Kosovo in 2011” was sent to re-evaluation. 1 complaint for the contract “Summer and winter maintenance of national and regional roads

in Kosovo 2011-2012, was partly approved and send to re-tender. 2 complaints are rejected; one for “Rehabilitation of the road, Llukafc-Tomoc-Kovragë, Istog, re-tender” and the other for “Construction of the bridge in the village Sopi, Suhareka Municipality Construction of the bridge in the village Sopi, Suhareka Municipality”.

On July 2011, a complaint on the contract “Signalling and maintenance of equipment of the magistral and regional roads of Kosovo in 2011” was made by the economic operator Jona Sh.p.k, Ferizaj and was refused as not grounded. Jona Sh.p.k was complained for requesting the licence with activity specifications, financial and economic capacity, and discrimination due to lack of consideration for similar proceedings as signalling and maintenance. Experience in such specific spheres was required. In addition, this operator is complained since a construction engineer was required.

The PRB justifies the rejection claiming that such a contract requires financial turnover; at least with the offer value, and by law, twice the value may be required. Moreover, the construction engineer is necessary since the contract involves work such as concreting and the relevant licensing of any work needs to be done.

In September 2011, another complaint for the same tender was made by Road, Signs and Marking (RSM). The complaint was evaluated as grounded for parts 1, 2, 4, 5, and 7, whereas it was refused for parts 6 and 8. In the evaluation report of this tender, part 6 and 8 do not appear. At the same time, the evaluation in this report is noticed, even though the selection criterion was the lowest price, parts (lots) 4, 5, and 7 were selected by companies that offered high prices. The complaint by RSM was made on the violation basis of effectiveness and efficiency, equality of treatment, calculation of time limits, and others. After documentation evaluation, the PRB sent parts 1, 2, 4, 5, and 7 in re-evaluation due to the violation of article 52.1 (notification of contract award criteria) and article 59 (Examination, Evaluation and Comparison of Tenders), and 60.1 (Contract award criteria).

In September 2011, for “Rehabilitation of the road, Llukafc-Tomoc-Kovragë”, a complaint was made by N.T.SH.N. "Arfa" for violation of article 40 (Contract Notice) and article 59 (Examination, Evaluation and Comparison of Tenders). According to evaluation report of this contract,

the economic operator N.T.SH.N. "Arfa" is noted irresponsible. In addition, according to the PRB justification, after the decision of the expertise was read, this economic operator has not made further complaints.

In "Construction of the bridge in the village Sopi, Suhareka Municipality", a complaint by N.P.N. "Teknika Projekt" was made in October 2011. The complaint was made due to violation of several articles, and most importantly, the complainant was the cheapest tenderer. However, according to evaluation report, this company not does appear responsible. Therefore, the company Famis Co was selected who in addition had recommendations on the basis of its previous works.

When it comes to complaints by economic operators, citizens, the media or other groups of interest, Contracting Authority claimed that there were no complaints in Department of Procurement.

Justifying the lack of sufficient time to find the decisions for fines or other penalty measures against the contracted tenderers, the Contracting Authority has refused the access in these public documents. This has disabled the identification of the types of possible penalties – delays, quality, etc., the amount of fines, the fined economic operators, and the issuing deadline of these decisions.

According to the Annual Work Report of the PRB in 2011, the Ministry of Infrastructure was enounced with 2 Orders and 1 fine by 20, 000 Euros for not respecting the orders of the PRB Review Panel.

In 2012, the MI was enounced a fine by 10, 000 Euros by the PRB, as well as an order for implementing the decision of the PRB, no. 415/12, 01/12, 05/12 and 07/12. Until now, the PRB has put into the black list two economic operators for all contracting authorities in the country.

Dimension 5: Management Capacities

The Contracting Authority – The Ministry of Infrastructure (MI)

The level of education and work experience of procurement officers of the contracting authorities is regulated by the Law on Civil Service of the

Republic of Kosova. On the other hand, the training of procurement officers is regulated with the law on public procurement (LPP, article 25). Kosova Institute for Public Administration (KIPA) and Public Procurement Regulatory Commission (PPRC) are responsible for designing the training modules and curriculum for qualifications in procurement. There are two certificate levels and their validity has been exceeded from 1 to 3 years. Furthermore, “The Advanced Certificate” is issued only to those that have accomplished all advanced procurement courses (LPP, article 25, 4).

According to the MI, procurement employees that deal with public procurement for the first time possess university diploma. Whereas, the professional staff of the MI consists of 7 people; 6 have university diploma, whether one has high school education. The Contracting Authority in question does not specify what field and level does ‘university diploma’ fall into, but adds that the managing experience of the leading staff is 11 years.

In regards to the budget in 2012, Ministry of Infrastructure has a total of 280,471,941 Euros. It has 269,500,001 Euros capital expenditure, meaning 96,1 % of the budget. In 2011, the total was 276,508,391 Euros, whereas capital expenditures were 263,533,563 Euros; 95.3 % of the budget for MI.

Since Kosovo budget for 2012 is 1,512,647,064 Euros, it means that the budget for MI is 18, 54 %, including Merdarë – Morinë highway that in 2012 were spent 239,200,000 Euros (15,8 % of the total budget). Without the highly, MI budget is 41,271,941 Euros or 2,7 % of the total budget. According to MI, the budget for this institution meets the needs on the basis of annual planning.

Public Procurement Regulatory Commission - PPRC consists of 3 members and civil servants. The law on public procurement determines two criteria, one of which should be met: “(i) he/she is a lawyer, economist or other professional holding a university degree and possessing substantial procurement or other relevant experience, or (ii) he/she holds a university degree in engineering or architecture and has substantial experience in executing works projects.” (LPP, article 89,4).

As such, these criteria are not strictly determined. Starting from the word “another professional” – that includes all other professions, then “university diploma” – bachelor, masters of phd, “considerable experience”, a month, a year or ten years, until the description of “another relevant experience”.

In practice, all members of the Leading Bord of the PPRC have university education: 2 qualified with master level and 1 graduated economic with 10 year work experience. There are 27 civil servants employed in the PPRC; 3 with master’s, 18 with bachelor, and 6 high school education. The PPRC claims that the staff is not sufficient to meet the objectives of the PPRC.

By the Law Nr. 04/L-001 on the Budget of the Republic of Kosovo for 2011, the budget for the PPRC has remained unchanged for 2 years - 326.523 Euros. Given that only 18.8% of the annual budget is spent on performing the activities for which it was established, the PPRC officers claim that this value is extremely low. Meanwhile, since its establishment in February 2005, the PPRC has never had an building of its own with sufficient space for routinely proceedings. Even now, the PPRC is situated in a private object with about 360 m2 space.

Central Procurement Agency – CPA is “administered by a Director²³” that has “a position equivalent to the General Secretaries” (LPP, article 96). When it comes to the education of CPA personnel, according to our survey submitted to the CPA, it is underlined that the CPA staff has “university preparation”.

CPA budget remains the same for two years - 161.617 Euros. According to the Budget of the Republic of Kosovo for 2012, around 61% of the CPA budget is allocated for salaries and daily pays for the 15 workers of this Agency. The CPA officers stated in the quetionnaire that they are not satisfied with the allocated budged and neither with the infrastructural space they are currently situated.

²³ ‘TAPP Questionnaire 5 for the Public Procurement Regulatory Commission (PPRC), received on 20 July 2012 (Protocol number PPRC 106/2012, date 18.07.2012).
‘TAPP Questionnaire 7 for the Central Procurement Agency (CPA), received on 26 July 2012 (Protocol number PPRC 106/2012, date 18.07.2012), question XL (106).

Since July 2007 until September 2011, the CPA has published 94 notices in the PPRC web-page, 35 of them - contract award notice. However, since its establishment until 1 April 2012, it has published 22 notices, 14 of them – contract award notices. Through such data, it can be concluded that the CPA can carry out its function better, especially its basic duty “cost effectiveness”, taking more responsibility in the processes of public procurement. In this respect, a part of responsibility belongs to the Ministry of Finance and The Cabinet to issue a relevant Administrative Instruction (LPP, article 95,2).

The PRB has taken 8 decision form March 2009 until 2011 for the complaints in regards to CPA. Three of the decisions are made in favor to the CPA, 4 for non-subject matter jurisdiction from the Customs, Airport, the Police and one from an economic operator (EO 6), as well as a partly approved decision as; as a grounded complaint of another economic operator (EO 7).

During the monitoring of the procurement activities in the Ministry of Infrastructure, it is noticed that the procurement activities “for reasons of professional expertise, (and) cost-effectiveness” (LPP, article 95,1), should be done by the Central Procurement Agency (CPA). Here, the contract “Library material supply” and “Dervatives supply for the needs of MI” are included.

Based on the Law on Public Procurement of Kosovo Nr 04/L-042, Part VII, Article 95, paragraph 2, “The government as per the proposal from the Ministry of Finance shall establish a list of any commodities or common use items the procurement of which it has assigned to the CPA”. CPA officers state that the list of commodities and common used items has been submitted to the Ministry of Finance on 27 February 2012. However, the Ministry has not approved the Administrative Instruction. This problem was highlighted also in the 2010 Kosovo Progress Report, underlining that “under the state budget many public institutions continue with their own procurement processes and do not use the Public Procurement Agency (now Central Procurement Agency), as the main authority of performance and contracting...”²⁴.

²⁴ EU, European Commission, 2010 Kosovo Progress Report, point.1.6 paragraf 6.

Public Review Body – PRB, otherwise known in the media and in the political jargon as the “The Court of Tenders”, consists of 5 members appointed by the approved Government of the Assembly of the Republic of Kosovo. The staff education and work experience is properly envisaged by law (LPP, article 100). For administrative support, the PRB assists the Secretariat, whether others are civil servants.

According to the survey responses by the PRB, in practice the PRB personnel has work experience from 1 to 10 years, whereas the president and other members of the PRB have higher education preparation, and meet the conditions to be appointed as judges. However, the number of experts who evaluate the complaints in the PRB for certain areas is relatively small.

In regards to the reliability of economic operator on this institution, the former (EO 1, EO 2, EO 4, EO 5) claim that they do not trust the PRB. Operator (EO 1) was complained in the PRB in 2009 for a tender in the KKE sh.a. It had offered 300, 000 Euros, whereas the winner had taken 1,450,000 Euros. According to this operator, the officers of this institution had falsified a document with the operator’s signature, in order to leave space for the other economic operator to be awarded the contract. Whereas, another operator (EO 2) claims that PRB officers are Kosovo bosses that gain the most. Operator (EO 5) emphasizes that the PRB has taken into account the constant complaints. According to this operator, the PRB cannot be trusted, making a complaint might come as a revenge to you since the same people circulate in these institutions and there is a more urgent need to make friends in stead of enemies. An economic operator (EO 4) states that due to his experience, he does not trust any judicial institution in the country.

According to the Law on the budget of the Republic of Kosovo, the budget allocated for the PRB in 2012 is exceeded from 273.308 Euros to 288.508 Euros. This is due to the increased staff from 18 to 21 and according to the PRB officers; the budget allocated for the PRB covers partially the needs PRB.²⁵ On the other hand, regarding the infrastructural

²⁵ TAPP Questionnaire 6 for the Procurement Review Body (PRB), received on 24 July 2012 (Protocol no.264/2012, date 18.07.2012), question XVIII (118).

space, the PRB does not have sufficient space; although the PRB officers have constantly requested the Government to provide another space.²⁶

²⁶ TAPP Questionnaire 6 for the Procurement Review Body (PRB), received on 24 July 2012 (Protocol no.264/2012, date 18.07.2012), question XX (120).

5. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

- The law does not require the publishing of notices for the low and minimal value contracts/tenders (under 10, 000 Euros).
- Economic operators complain that the contracting authority does not take into consideration the legal provision “minimum requirements” (PPL, article 29.4) when preparing the Tender Dossier.
- Verifying the facts is hampered by the evaluation manner in some tenders such as in “Signalling and maintaining the equipments in the magistral and regional roads of Kosovo for 2011”. Initially, all economic operators were evaluated together for all the lots. Then, the selection was made.
- The contract for Lot 3 of the tender “Signalling and maintaining the equipments in the magistral and regional roads of Kosovo for 2011” was unlawfully signed 3 days before the Evaluation Report was conducted or published.
- “The Most Economically Advantageous” criterion is used rarely. It is neither applied in the selected tenders for this research.
- There are economic operators that offer products under the market price. In implementation, it results in poor quality.
- As a result of selecting economic operators with the highest price, the budget of Kosovo is damaged for at least 310 thousand Euros.
- There are cases when Notices for Contract are not published in the PPRC web-site. There are also notices published with errors, especially in regards to the tender number.
- According to the Auditor, there are cases when “MI was not capable of providing evidence that the contracts’ winners had handed in the documents with the licences required”.
- The data of tender suppliers included in this research are not complete. Important data are not provided, such as business number, the name of the owner, or other.
- 3 out of 11 tenders included in this research have had Contracts for Additional Works, in the total amount of 530, 734 Euros.
- There are delays in implementation of works. One of the causes is the process of property expropriation.
- Economic operators claim that the contracting authority delays the payments.
- There have been a number of staff movements during this period in MI, including the leading staff.

- The request for access in official documents in the Ministry of Infrastructure, respectively in evaluation reports, tender contracts and the research questionnaire submitted in the MI procurement department, have exceeded the legal time limit from 10 – 14 days.
- The project on electronic procurement financed by The World Bank, according to the PPRC is in its final phase of preparation and it is expected to start its implementation from 1 January 2013.
- According to the Annual Work Report 2011 of PRB for 2011, the Ministry of Infrastructure has been the institution with the most complaints; out of 32 complaints 4 included in this research.
- There were 2 Orders and 1 penalty by 20, 000 Euros issued to the Ministry of Infrastructure for 2011 due to its lack of respect towards the decisions taken by the Review Panel of the PRB.
- The PRB took the decision on revoking the licence of the Director of Procurement Department due to “major violations of the LPP and procurement regulations on the case of non-implementation of the PRB decisions and orders. In this case, the contracting authority was also fined for 10,000 Euros.
- The PRB put two economic operators in the black list, for all contracting authorities.
- The professional staff at the MI consists of seven people; six have university degree while one has high school education.
- For the Merdarë – Morinë highways, in 2012, 239,200,000 Euros are spent.
- The report finds that the Ministry of Finance and the Government have not yet approved the Administrative Instruction for 2012 regarding the list of goods and common used items whose procurement is determined by CPA f\since 27 February 2012.

Recommendations

- The PPRC is recommended to publish in its webpage the followings:
 - o contract award notice for low and minimal value tenders (less than 10,000 Euros),
 - o the verbal processes from the opening of tenders,
 - o reports of evaluation of tenders,
 - o basic and additional contracts, and
 - o the decisions for penalties or sanctions
- The contracting authority is recommended to respect the legal provision “the minimum requirements” when preparing the tender dossier.
- In tenders containing lots, the evaluation of economic operator to be done for each offer separately, not all lots altogether.
- The contracting authority to respect the time limits of signing contracts with responsible and successful economic operators.
- The criterion “economically most advantageous” to be used more by the Ministry of Infrastructure.
- A database of products with minimal and maximal market prices to be prepared, and to refer to it when the exepcted offers qualify.
- To reward only economic operators that have offered responsible tenders with the lowest price as determined by law.
- The contracting authority and the PPRC to publish all notices as obliged by law, and to not make/issue technical mistakes when published.
- Evaluation Commissions to evaluate the offers by economic operators on the basis of the required documentation that they submit.
- The contracts awarded to suppliers to contain important data, such as:
 - o business number,
 - o the name of the owner,
 - o other basic data.
- The term “additional works” to be determined by law in article 4 or a specific law, explaining what precisely is included in additional works.
- A better budget planning in order for contracts for additional works to not be bid, meaning without the tendering process.

- The contracting authority and other relevant bodies to regulate the issue of property, and then to open tendering processes or contract economic operators for conducting the works.
- The contracting authority to pay economic operators with the legal time limit.
- The staff, especially the leading staff is recommended to be more motivated and work in a long term period, in order to avoid constant moving. At the same time, the staff is encouraged to implement the laws strictly and not be fined by the PRB.
- Offers to be analysed and evaluated according to the referant prices according to the market of the required items, and not only according to the lowest price. Moreover, it is required that in cases when offers have very low prices – below the possible production cost, to be reported at the MTI, Kosovo Competition Authority, and other relevant bodies.
- MI to implement the Law about the access on public documents, by providing access in official documents to the wider public within the foreseen time limits.
- The PPRC, KIPA, PRB, CPA and all contracting authorities to do the necessary preparations in increasing the necessary capacities in the implementation of the project on electronic procurement.
- MI to implement precisely the LPP in order to lower the number of complaint in the PRB by the economic operators.
- Contracting authorities together with the PRB to cooperate and identify the irresponsible operators and to put them in the black list. The Ministry of Infrastructure is encouraged to issue referances for all contractors of public tenders.
- More financial means are required, adequate and qualified personnel, as well as permanent infrastructural space for all public procurement managing institutions; PPRB, PRB, KIPA and CPA.
- The Ministry of Finance and the Government of the Republic of Kosovo to approve the Administrative Instruction for the list of goods and common used items, whose procurement is determined by the CPA.

6. ANNEXES

List of tables

Table 1: List of tenders

No.	Procurement No.	Title
1	MI-12-013-221	Drafting of the main project for the extension of national roads M 25.2, Segment: Crossroad for the old street for Gjilan-Graçanicë – 1=4.50 km.
2	MI-11-016-511	Signalling and maintenance of equipment of the magistral and regional roads of Kosovo in 2011
3	MI-11-064-221	Humanitarian Transport of Passangers
4	MI-11-029-511	Rehabilitation of the road, Llukafc-Tomoc-Kovragë, Istog, Re-tender
5	MI-11-021-511	Construction of the regional road R124 (Shipashnicë-Desivojcë) – segment: Shipashnicë e Epërme – Mulliri, L=3.5 km
6	MI-11-001-211	Summer and winter maintenance of national and regional roads in Kosovo 2011-2012, Re-tender
7	MI-11-057-251 (521) ²⁷	Reconstruction of the link road in R126 (Podjevë-Pollatë, km 6+650) – phase II
8	MI-11-020-511	Rehabilitation of the Roganë-Hogosht
9	MI-11-027-511	Construction of the transit road to Shtime – phase II – Re-tender
10	MI-11-047-521	Construction of the bridge in the village Sopi, Suhareka Municipality
11	MI-11-062-136	Laptop and PC-system unit Supply

²⁷ Technical mistake throughout all the phases.

Table 2: Dimensions for Transparency and Accountability in Public Procurement

Dimensions	Specific Question Indicators
1. Tendering	Time of tender/bids opening; the publishing; number of bidders; documentation; selection criteria.
2. Contract content and implementation	The foreseen deadlines on the contract; deadlines for contract implementation; delays in implementation; additional works.
3. Preventive measures and transparency	Legislation as means of preventing misuses; public means; code of ethics; the issue of payments; the background of economic operators; reports on misuses; public access to procurement activities of contracting authorities of CPA; access to documents of the main public procurement institutions.
4. Complaints and sanctions	Complaints in PRB, PPRC, Contracting Authorities; the number of complaints, and who made them; fines and other sanctions to economic operators and contracting authorities.
5. Management Capacities	Education, training and work experience of the personnel and leading staff of Contracting Authorities, PPRC, PRB and CPA; their budget; the number of employees; work infrastructural space.

Table 3: Questionnaires for the actors

Questionnaire	Actors	Number of respondents
Questionnaire 1	Legislation	1
Questionnaire 2	Tenders	11
Questionnaire 3	Contracting Authority – Ministry of Infrastructure	1
Questionnaire 5	Public Procurement Regulatory Commission (PPRC)	1
Questionnaire 6	Procurement Body Review (PBR)	1
Questionnaire 7	Central Procurement Agency (CPA)	1
Questionnaire 8	Kosovo Institute for Public Administration (KIPA)	1
Questionnaire 9	Civil Society Organizations (CSO)	6
Questionnaire 10	Anti-Corruption Agency (ACA)	1 ²⁸
Questionnaire 11	Journalists / Media	2
Questionnaire 12	Economic Operators	7

²⁸ Despite numerous request, the Anti-Corruption Agency has not responded to our questionnaire.

