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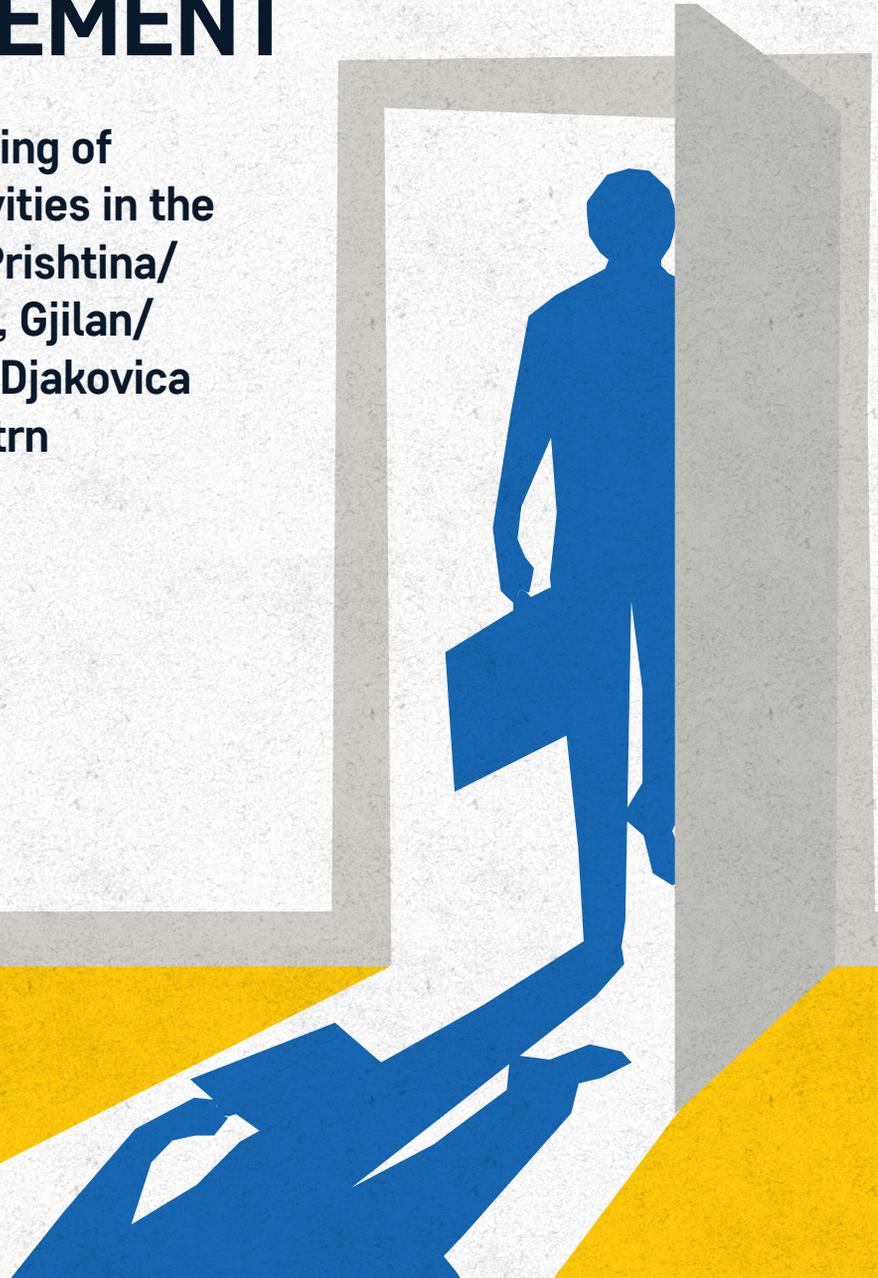


**DEMOCRACY  
PLUS**

# TOWARDS MUNICIPALITIES WITH OPEN, ACCOUNTABLE, AND EFFICIENT PUBLIC PROCUREMENT

Report on monitoring of  
procurement activities in the  
Municipalities of Prishtina/  
Priština, Peja/Peć, Gjilan/  
Gnjilane, Gjakova/Djakovica  
and Vushtrri/Vučitrn

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## About Democracy Plus

Democracy Plus (D+) is a non-governmental organization that gathers people who strongly believe in democratic values and a Kosovo with sustainable democracy. D+'s principal goal is to support democratic values and practices, as well as policies that promote civic activism.

There are three programs within the scope of D+: Good Governance Program, Rule of Law Program, Elections and Political Parties Program. D+ supports government institutions, citizens and media in improving governance, advancement of public policies and strengthening of the rule of law.

Our organization is focused on using information technology for the above-mentioned purposes, and it has consequently developed two online platforms: ndreqe.com and qeverisjatani.info, which provide space for civic participation in decision-making and accountability of government institutions. Moreover, D+ is a member of ProOpen, a coalition of NGOs that aims at increasing transparency in public procurement and preventing abuse of public money.

November 2018

Project Title: Exposing corruption through active monitoring and comparison of five municipalities Submission  
Date: November 2018

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# ABBREVIATIONS

<b>AMD</b>	Advanced Micro Devices
<b>CA</b>	Contracting Authority
<b>DIN</b>	German Institute of Standardization
<b>EO</b>	Economic Operator
<b>EU</b>	European Union
<b>GUIDELINES</b>	Public Procurement Guidelines and Rules
<b>ISO</b>	International Standards Organization
<b>JUS U.N2.060</b>	Jugoslav Quality Standard
<b>KEVA</b>	Kosovo Food and Veterinary Agency
<b>LGAP</b>	Law on General Administrative Procedure
<b>LPP</b>	Law on Public Procurement
<b>PPRC</b>	Public Procurement Regulatory Commission
<b>PRB</b>	Procurement Review Body
<b>ST</b>	Special Conditions
<b>TD</b>	Tender Dossier
<b>TDS</b>	Tender Dossier Sheet
<b>UHT</b>	Ultra High Temperature of Milk Processing
<b>VAT</b>	Value Added Tax
<b>ZHD</b>	German Standard of Quality
<b>CBR</b>	California Bearing Ratio

# KEY FINDINGS

Public procurement is one of the main economic activities of municipalities, and as such it also carries one of the main risks in terms of providing quality services to citizens. In order to identify violations in public procurement activities and to provide substantiated data on violations occurring in procurement, losses and budget damages, D+ monitored nine procurement activities in five different municipalities. <sup>1</sup> However, in the Municipality of Peja/Peć, only five procurement activities were monitored, since at the time of commencement of the monitoring phase, the municipality had limited projects under development.

Previously, D+ published “Public Procurement Meter”, which aimed to identify good practices in public procurement in these five municipalities. The purpose of this report was to assess and share with other contracting authorities the good practices identified in these five municipalities. In this report, D+ focused on identifying breaches in public procurement, especially in cases which resulted in losses or damages to the municipal budget. As a result of the work of D+ in monitoring public procurement at the municipal level, at least EUR 36,684 of taxpayers’ money was saved. The monitoring highlighted errors in billing by one contractor, which previously were not identified by the Municipality of Prishtina/Priština. Following this, the Municipality plans to take corrective measures, by amending the contract to arrange the price adjustment and reimbursement of lost taxpayer money to the Municipality. This is just an example of how monitoring by civil society can be used as a tool by municipalities in addressing weaknesses of their internal systems.

From this monitoring, D+ identified a number of findings that are common to all five municipalities, but also noted violations that are characteristic for one particular municipality. Some of the key findings of this report relate to the following:

- Drafting of bill of quantities and project estimates, especially related to road construction contracts, contains inflated volumes of work. Companies that have the information about the inflated volume of work bid with abnormally low prices, knowing in advance that they have to carry out less work in reality. Companies who do not have access to this information bid with real prices, assuming the municipality planned properly the volume of works. Consequently, companies with lower bids win contracts. For example, the tender of Municipality of Gjilan/Gnjilane for repairing and opening of tertiary roads stated that the quantity of different materials should be 32500 m<sup>3</sup>, while the quantity is 17500m<sup>3</sup> in total. The difference in quantity is over 15000 m<sup>3</sup> higher, almost half of the estimate. A company which has this information can outbid competitors, knowing that the volume of works is lower than presented in the tender dossier. This practice has a negative effect on competition and may lead to loss of public funds.
- Ordering only the expensive items of the contract, without requiring items with cheaper prices. For instance, Municipality of Gjakova/Djakovica ordered separately cleaning of the roads from snow and separately salting. These two items together cost twice as much as the other item of the contract, cleaning the roads from snow and salting together.

Other findings from the monitoring of procurement activities include:

- Lack of effective supervision of receipt of goods, that can create a risk of receiving supplies that do not match the contract, or are old or cheaper, For example Municipality of Vushtrri/ Vuçitrn received used and old computers from a supplier which was a clear violation of the contract;
- Purchase of works or services at prices higher than the market value, in some cases way more expensive, due to lack of an efficient system of assessing financial bids of companies, Municipality of Peja/ /Peć bought wood for heating purposes at a price of Euro 48 per square meter, compared to EUR 38 that the Municipality payed a year before;
- Adjustment of criteria and terms and conditions of the tender dossier to a particular brand or manufacturer. Municipality of Gjilan/ Gnjilane copy pasted a catalogue of a company to the tender dossier;
- Tender dossier criteria that are immeasurable and unquantifiable. Municipality of Gjilan/ Gnjilane required chairs of high quality, without quantifying any standard or method of evaluation. Cases like this leave all the power in the hands of the evaluation committee to decide what is considered high quality and what is not.
- Tender dossier criteria for non-existent products, especially in information technology. Municipality of Prishtina/Pristine required computers with features that do not exist in the market;
- Use of quality standards of other countries, contrary to the Law on Public Procurement, even in cases where there are EU standards in place for the same issue.

<sup>1</sup> Municipalities of Prishtina/Priština, Peja/Peć, Gjilan/Gnjilane, Gjakova/Djakovica and Vushtrri/Vučitrn

# INTRODUCTION

Increasing efficiency and transparency of the public procurement system is a constant concern of Kosovo society and the international community in Kosovo. For this purpose, various projects have been implemented in Kosovo in order to improve the legislation and practices concerning public procurement. Despite this, public procurement in Kosovo still remains a sector perceived to be corrupt, inefficient and ineffective in terms of ability to deliver quality services for citizens.

In the framework of cooperation with the USAID Transparent, Efficient and Accountable Municipalities activity (USAID TEAM), Democracy Plus has undertaken the initiative of monitoring five municipalities including Prishtina/Priština, Gjilan/Gnjilane, Peja/Peć, Gjakova/Djakovica and Vushtrri/Vučitrn. This monitoring focused on two main components:

- Monitoring procurement activities with the purpose of exposing violations of the law, losses, and allegations of corruption, and;
- Identifying and sharing good practices in public procurement management.

To this end, since September 2017, D+ has conducted a baseline assessment of these municipalities, developed a report on measuring good practices, and published this third report, identifying public procurement violations with data from direct monitoring.

This monitoring was conducted based on the methodology adapted by D+, which included direct monitoring of bid evaluations, monitoring of tender documents, and monitoring of contract enforcement by directly observing work in the field and checking documents on contract execution. The findings of monitoring were shared with the respective municipalities, to enable them to provide their comments, as a means of validating the data. On some of the findings of the report, D+ and the municipality failed to share a common view. Therefore, this report also presents the monitoring findings and comments from municipalities.



## MUNICIPALITY OF PRISHTINA/PRIŠTINA

The monitoring report for the Municipality of Prishtina/Priština reveals data on violations in public procurement which are repeated in almost every tender. Road tenders require products from a particular company (brand or specific trade mark) which are used without adding the word “equivalent”. Although they are designed by contracted outsourced companies, road projects in their description require use of standards of foreign states, despite the fact that there are international standards known as ISO for the same. According to the Law on Public Procurement, the standards that can be used in procurement are Kosovo, European and international ones. Standards of other countries are not applicable, especially not in those cases where Kosovo or international standards apply. In all road tenders, price descriptions contain numerous errors in calculation of quantities which should be based on the dimensions contained in the technical description, which makes a composite part of the tender dossier (TD).

In the tender for milk supply, the company Abrazen (former Devolli Group)<sup>2</sup> gave a wrong VAT rate, and as a result the municipality lost about EUR 36,000. For this year, the contract cost the municipality significantly more higher than the previous years, since in 2017, the contract was signed for 20 cents per unit; in 2016, 15 cents; and in 2015, 10 cents per unit. As of 2015, the same supplier doubled the price for the same item.

In the tender for supply with information technology equipment, technical specifications were so complex that the tender has been canceled three times as no company could match its criteria. This specification required a model of computer processor that does not exist on the market. In the same tender, but for another lot, the company Europrinty edited the manufacturer’s catalog by itself and changed the data so that they correspond with the required specifications.

In a tender for construction, renovation and extension of several secondary roads, Bashkimi & Bageri companies consortium has been offering abnormally low prices. The Municipality didn’t analyze the prices put forward, and consequently requested no clarification from this consortium.

A delay may be observed in the publication of the contract signing notice in most of the tenders, which according to the law, should be made within two days from the date of preparation of the notice.<sup>3</sup> In some tenders, special conditions (SC) are not fulfilled, while they have to be fulfilled at the time the tender dossier is prepared. The SC provide information about the warranty, the manner of supply, the time when contract execution will start, the settlement of disputes, etc. These data should be available to economic operators (EOs) in order to prepare their bids.

In the majority of tenders, the required financial turnover reaches the maximum limit allowed by the law, which is twice the estimated tender value, and 1.5 times the estimated value when the turnover for work, services, or similar supply is required. Even though this requirement is within the maximum legal limit, it can harm the competition and, in particular, make it impossible for new companies especially SMEs, entering the market to compete.

<sup>2</sup> Devolli Group changed its name to Abrazen LLC on 11 November 2016.

<sup>3</sup> Law on Public Procurement 05/L-068, Article 41/A. (2016). Official Gazette of the Republic of Kosovo. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=11332>

## Milk supply to school pupils –from I–V grades

As a result of non-validation of the VAT rate granted by the winning company Abrazen (former Devolli Group), the budget of the Municipality of Prishtina/Priština was damaged at least EUR 36,684.90. Further, Abrazen billed the municipality with a price of 19 cents without VAT, for a package of 0.25 liters, although in its bid, it offered a price of 18 cents without VAT.

The price change is in contradiction with Articles 4.1 and 4.3 of the Contract stating that unit prices are fixed and are not subject to change. In preliminary contracts signed with the same company in 2015, the price was 10 cents per 0.25 liters packaging. In 2016, it was 15 cents and in 2017 the price increased to 20 cents.

Abrazen has doubled the current price in 2017 compared to the one from 2015. If the contract was concluded for 10 cents, the municipal budget would have saved EUR 366,849. In 2016 and 2017, the Municipality did not make the contract value projection in accordance with Section 13.2 of the Public Procurement Rules and Operational Guidelines (hereinafter 'Guidelines') on the basis of which it should have considered the prices of the previous contracts. The Municipality justifies this by the fact that prices vary over the years which is why as a baseline it took the data from Kosovo Agency of Statistics (KAS) and the market. However, KAS data indicate that the price of milk per liter since 2015 dropped for EUR 0.03<sup>4</sup>, whereas in Prishtina/Priština Municipality this price increased by 100% since the 2015 contract.

Based on the data found in the 2016 Contract Signing Notice<sup>5</sup> and Democracy Plus (D+) calculations, the unit price was 4 cents rather than 15 cents, as it is in the contract. As seen from the Contract Notice for the 2016 tender, 407,610 units of 0.25 liters of milk were expected to be purchased per month (\*12 months) with a contract value of EUR 200,000.

<b>II.1.11) Vlera e parashikuar e kontratës: 200,000.00</b>
<b>II.2) SASIA APO FUSHËVEPRIMI I KONTRATËS</b> <b>Sasia apo fushëveprimi i përgjithshëm (përfshirë të gjitha pjesët dhe opsionet nëse aplikohen)</b> <b>- Numri i nxënësve është gjithsej: 19,410, që për 21 ditë furnizime do të thotë gjithsej duhen 407,610 copë nga 0.25l për një muaj.</b>
<b>II.3) KOHËZGJATJA E KONTRATËS APO AFATET KOHORE PËR PËRFUNDIM</b> <b>Kohëzgjatja në muaj 12 apo ditë 365 (nga data e kërkesës së zyrtareve të Autoritetit kontraktues)</b>

FIGURE 1

Estimated quantity and value of the milk supply contract

4 Kosovo Agency of Statistics, Harmonized Index of Consumer Prices 2002-2017, page 59-61. <http://ask.rks-gov.net/media/4081/ihck-2002-2017-shqip.pdf>

5 Tender Contract Signing Notice "Milk supply to school pupils-from I-V grade, published on 6 December 2016 <https://krpp.rks-gov.net/DownloadNotice.aspx?ID=133049&LID=1>

The 2017 tender for milk supply to school children was announced twice. The estimated value of the contract was EUR 730,000. The procedure used included an open procedure and framework contract for 12 months. 3,668,490 milk packs of 0.25 liters were required. This tender limited some elements of competition. Firstly, the terms of the tender dossier required that the milk conforms to Ultra High Temperature (UHT) criterion.<sup>6</sup> Only Vita fulfills this criterion out of 13 dairy producers in Kosovo. Under this condition, only Vita Company and any import company were eligible to apply. Also, the deadline for submitting the bids was shortened, which also reduced the number of bids

The Tender dossier required Tetra Pack packaging. This requirement also restricts competition as there are many other companies offering alternative packaging. On this, the Municipality has reasoned that there are no other 0.25 liter packaging. However, even if this were true, a producer brand should never be mentioned.

No company was bidding for the first tender, although there are 49 companies on the Kosovo Food and Veterinary Agency (KFVA) list of licensed companies for processing dairy products. As a result, in the first procurement activity, the Municipality failed as a result of lack of bids for the tender.

Also TD requested a financial turnover within similar projects of EUR 700,000 in the last three years. On the other hand, this requirement used to be EUR 200,000 in tenders of the previous two years. The increase of this requirement for 3.5 times without any reason restricts competition even more, since only Devolli Group made a bid in the 2016 tender whereas in 2015, four companies including Devolli Group submitted bids. The Municipality argues that this was a technical mistake in 2016.

The reason why there were very few bids in these two years is that the Municipality intended to buy a large quantity of milk with a small budget. This is confirmed by the 2016 tender, where the estimated value was EUR 200,000 for 12 months, while approximately 4.9 million 0.25 liters packages were demanded, or around 1.2 million liters. The estimated price per package was 4 cents. This price cannot be matched by any company taking into account the cost of production, taxes, salaries of employees, etc.

In the second tender, Abrazen won the tender with the price of EUR 733,698. The bid exceeded the estimated value, but according to Article 62.2 of the Law on Public Procurement (LPP), the contracting authority (CA) is allowed to decide whether to continue with bid award which exceeds the estimated value.<sup>7</sup>

The deadline for submission of bids was shortened with an explanation that the existing contract was being finalized. However, shortening of deadlines in a contract of such value significantly reduces competition. An alternative to this would be the timely initiation of the procurement activity and the drafting of the tender dossier providing more favorable terms for the producers. Even though the accelerated procedure was used, the single bid estimate lasted 41 days, exceeding the usual legal deadline of 30 days. The LPP permits the CAs, in this case the municipality, to extend the tender review deadline for 10 more days in exceptional cases when the contracts are complex, which in this case would again exceed the legal deadline. This time around, only one bid was received and the contract object was relatively simple. The contract was signed on 11 January 2018 and the publication of the notice was due within two days but it was published only on 23 January 2018.

Abrazen offered a price of 20 cents with VAT. But with the price excluding VAT, it bid 18 cents. This constitutes an error in VAT calculation, as VAT on milk is 8%. In this case, the municipality had to reduce the price to EUR 0.1944 in order to adjust the VAT price. Even if the municipality were to round up the price, and something like this should not be done in taxes, the price should have been EUR 0.19 and not 0.20. Moreover, the Guidelines state that the price should list only the two numbers after the decimal point, whereas any number after the second number will not be taken into account<sup>8</sup>. In this case the price should have been EUR 0.19. In this case the price should have been EUR 0.19. With this price, the municipality would have saved even more on its budget, namely EUR 36,684.9.<sup>9</sup> The way the VAT price is calculated, instead of being charged

6 UHT milk is heated at 135 degrees for one to two seconds to eliminate bacteria. This milk has a longer expiry than non-UHT.

7 Law on Public Procurement 05/L-068, Article 62.2. (2016). Official Gazette of the Republic of Kosovo. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=11332>

8 Public Procurement Rules and Operational Guidelines, Article 18.3 (2017). <http://rebrand.ly/rroopp>

9 Abrazen has offered a price of EUR 0.20 per packaging. Value excluding VAT is EUR 0.18, and VAT EUR 0.02. The VAT rate for milk is 8%. By dividing 0.20 / 1.08 = 0.1851. Pursuant to the LPP, only two numbers after the decimal item should be taken. Then we only need to find the VAT, which is calculat-

with 8% VAT, the Municipality of Prishtina/Priština was in fact charged with 11.11% VAT. The Municipality has accepted this error and has pledged to amend the contract in order to fix the price and reimbursement of the Municipality.

Another finding is the duration of the execution of bid security, which, according to the tender dossier, should have been valid for 13 months. Performance security should have started from January 11, 2018, but it is from February 4th, 2019 until February 10th, 2019. So instead of a 13 months security, the company has provided execution of security for only 7 days. Procurement officials should have looked into it before signing the contract. Municipality of Prishtina/Priština disputes this finding, by saying that the date of issue of the security policy is 11.01.2018. However, the date of issue is not the date of its entry into force. Policy clearly states that the date of entry into force is 04.02.2019.

NUMRI PERSONAL IDENTIFIKUES	1003685116	ADRESA E DREJTORISE SIGURUESI	Rr. "2 Korriku", nr. 4, Prishtinë, 10000
SIGURIM/GARANCIA FILLON ME:	04.02.2019	PRIMI I SIGURIMIT	8.47 €
SIGURIM/GARANCIA PËRFUNDON ME:	10.02.2019	TATIMI I VLERËS SË SHITUAR 18%	1.53 €
SHUMA E SIGURUAR	73,369.80	SHUMA PËR PAGESË	10.00 €
DATA E LËSHIMIT TE POLICËS	11.01.2018	DATA E PAGESËS	11.01.2018
PËRFITUES/AUTORITETI KONTRAKTUES	KOMUNA E PRISHTINËS		

The lack of validity of bid security subjects the municipality to the situation that in case of serious violations by the company, it cannot protect its interest of EUR 73,369.80. The insurance company would rightfully not execute any payment on this issue.

Price description is done in Word, while it should have been done in Excel and prepared with formulas, and password-protected cells in which cannot be edited. Only one column should have been allowed to be filled by the bidder, the price per unit and VAT, while the total would be calculated based on the formula. This method makes it impossible for the EO to set its own VAT rate and it would reduce misuse and fraud. The Municipality does not accept this finding on the grounds that no legal provision specifies this requirement. D+ does not claim in any way that this is a legal requirement, but rather a good practice which is used in other<sup>10</sup> municipalities. Indeed, if Prishtina/Priština were to practice it, this VAT error would be impossible.

Apart from damaging the budget as a result of not verifying the VAT rate provided by Abrazen, the municipality has also entered into a contract with a higher price than prior contracts with the same company. The municipality states that it concludes contracts based on the market price and does not take into account the price of the previous contract and that according to the Law no reference is required to the previous contracts. D+ does not dispute the fact that the law allows buying supplies at a market price, rather it encourages it. However, while two years earlier the price was EUR 0.10 and now it increased to 0.20 without the change of the milk value on the market, in fact the price decreased EUR 0.03, either back then or now the municipality signed a contract contrary to the real market value. Also, D+ encourages the municipality not to develop technical specifications fitting only a limited number of companies, but to allow for greater competition.

Moreover, one member of the Tender Evaluation Commission was a senior media officer, which does not constitute an adequate background for this tender, in terms of her work and the requested procurement.

ed as follows:  $108/8 = 13.5$ ,  $0.20 / 13.5 = 0.0148$ . Since we only need to get 2 numbers then  $EUR 0.18 + 0.01 = 0.19$ , which should have been the offered price. This is also confirmed by the calculation of the VAT-free price multiplied by the VAT rate,  $0.18 * 1.08 = 0.1944$ , with only 2 numbers is EUR 0.19. The amount required when multiplied by the actual price,  $3,668,490 * 0.19 = 697,013.1$ . The difference is  $733,698 - 697,013.1 = EUR 36,684.9$ .

<sup>10</sup> It has been noticed from the monitoring of the five municipalities, that in some cases Municipality of Vushtrri/Vučitrn uses a cell protection practice in Excel, which prevents operators from making any changes, and which in practice facilitates the evaluation process.

## CONTRACT IMPLEMENTATION

Abrazen bid a price of 18 cents without VAT and 20 cents including VAT. But in the invoices, the price was changed to 19 cents without VAT, and was rounded to 20 cents with VAT. Price change is not permitted under the contract<sup>11</sup> and makes sufficient grounds to terminate the contract.

The contract was signed on 11 January 2018. All claims, commitments and purchase orders were made about two to three months later than the received invoices. The Municipality blames the Ministry of Finance payment system Free Balance for this issue. However, this finding shows that firstly the municipality was supplied with milk, the company distributed it, and after a few months the goods were ordered. There is no sense in something like this.

Firstly, purchase requisition is made and funds are committed. Afterwards, a purchase order is issued for the EO, by which work, supplies, and services are ordered. After the purchase order, the company starts implementing the contract, and after implementing a part of the contract, the technical acceptance of the works is done. After that, the company sends the invoice, and the municipality pays it. According to the Financial Rule 01/2013 on Public Expenditures, Article 22 states that initially a purchase requisition must be made, then the purchase order, the third step is the acceptance report and the fourth step is the receipt of invoice.<sup>12</sup> After receipt of invoice, payment may be made. In this case, January and February bills were paid in April. These delays exceed the legal deadline of 30 days.<sup>13</sup> As a result, the municipality risks being penalized for payment delays.

## Construction of several roads in the village of Trudë

In this tender, as a result of incorrect dimensions in the bill of quantity, which do not match the data in the technical description of roads<sup>14</sup>, the municipality lost at least EUR 16,767.78.

The Open procedure was used for this tender, the estimated value was EUR 499,794.05 with 120 days for completion of works. In this activity, 18 companies bid, of which 14 were responsive and four were non-responsive. Pro & Co Group company was selected as the winner of this contract with a price of EUR 375,501.30.

The Tender dossier contains requirements as to application of German DIN<sup>15</sup> standards, whereas according to LPP only Kosovo standards and/or standards of international organizations such as ISO standards and European Union (EU) standards should be applied<sup>16</sup>. The application of national standards (of another country) damages competition between economic operators in the tender, or if unfulfilled due to lack of company knowledge, remains only a paper-based standard that does not produce any effect. The Municipality provided a justification that the design was done by a private company contracted in 2010 and that the standards are foreseen in accordance with the Law on Standardization. However in this case, we are dealing with the implementation of the Law on Public Procurement and the same has explicitly defined which standards can be applied in Kosovo. Maybe it was allowed to use the standards of certain countries in 2010, when this project was drafted.

The length of the main road is 870m and the width 5.5m with a surface area of  $870 * 5.5 = 4785$  m<sup>2</sup>. The road shoulder and the pavement is  $870 * 8.5 = 7395$  m<sup>2</sup>. The main road will be paved with asphalt, while the other roads with concrete cobble-stones. In many items of the bill of quantity the municipality has given wrong dimensions, which do not match the dimensions given in the bill of quantity and the technical description. Some of the items with a large discrepancy in quantity follow in the table below:

<sup>11</sup> Articles 4.1 and 4.3 of the Contract between Abrazen and Municipality of Prishtina/Priština.

<sup>12</sup> Financial Rule No. 01/2013/MF – Public expenditures. Official Gazette of the Republic of Kosovo <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10203>

<sup>13</sup> Article 18.2 of General Terms and Conditions of the Tender Dossier for Supply. Form B27 of PPRC <https://rebrand.ly/b27>

<sup>14</sup> Technical Description is a detailed description of the road including information on the road to be constructed, such as dimensions, coordinates, detailed drawings, profiles etc.

<sup>15</sup> DIN is an abbreviation for Deutsches Institut für Normung, or in English, German Institute for Standards.

<sup>16</sup> Law on Public Procurement No. 04/L-042, Article 28.4, 28.5. (2011). Official Gazette of the Republic of Kosovo. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772>

DUE TO DOUBTS ABOUT ABNORMALLY LOW PRICES, THE COMPANY PERFORMANCE SECURITY WAS INCREASED

from 10% to 30%.

According to the project, the roads shall have the following dimensions:

Width 5.5m

Pavement 1.5m

Shoulder 2\*0.75m

Total width 10m

According to the project, the road route contains the following:

Asphalt -concrete 0-16 4cm

Gravel 0-32 10cm

Stabilizing layers 0-150 30cm

Bitumen-gravel 0-31 8cm

Gravel 0-63 20cm

Total 72cm thickness

### Main Road

Item on the price list	Description	Reiured quantity	The quantity that should have been required	Offered price EUR	New price per due quantity EUR
2.1	Extensive digging of the soil, this item includes also the transport to the town landfill in Shkabaj.	11,626 m <sup>3</sup>	7395 * 0.72 = 5324.4 m <sup>3</sup> To achieve the given quantity, digging of 11626 / 7395 = 1.57m is necessary	€9,300.80	€4,259.52
4.1	Supply, transport, levelling and compression of the 0-150mm limestone buffer layer serving as a stabilizer in two layers with a thickness of t = 30cm, with CBR> 20%	3360 m <sup>3</sup>	7395 * 0.3 = 2218.5 m <sup>3</sup>	€10,080.00	€6,655.50
4.2	Supply, transport, levelling and compression of buffer layer of cracked limestone 0-63mm with thickness t = 20cm	1570 m <sup>3</sup>	7395 * 0.2 = 1479 m <sup>3</sup>	€6,280.00	€5,916.00
4.3	Supply, transport, levelling and compression of the buffer layer of cracked limestone 0-32mm with thickness t = 10cm	785 m <sup>3</sup>	7395 * 0.1 = 739.5 m <sup>3</sup>	€3,925.00	€3,697.50
4.4	Supply, transport, leveling and compression of the 0-31mm bitumen-aggregate with a thickness of t = 8cm.	5360 m <sup>2</sup>	870 * 5.5 = 4785 m <sup>2</sup> To achieve the given quantity the asphalt should be laid in 5360 / 870 = 6.16m width	€39,128.00	€34,930.50
4.5	Supply, transport, levelling and compression of asphalt concrete 0-16 mm with thickness t = 4cm.	5360 m <sup>2</sup>	870 * 5.5 = 4785 m <sup>2</sup> To achieve the given quantity, the asphalt should be laid in 5360 / 870 = 6.16m width	€22,512.00	€20,097.00

## “Beteja e Lumes” Road

4.1	The buffer layer (60MN / m <sup>2</sup> ) made of crushed limestone 0-63mm with thickness of t = 20cm	528 m <sup>3</sup>	2240 * 0.2 = 448 m <sup>3</sup>	€2,112.00	€1,792.00
4.2	The buffer layer (60MN / m <sup>2</sup> ) made of crushed limestone 0-31.5mm with a thickness of t = 10cm	264 m <sup>3</sup>	2240 * 0.1 = 224 m <sup>3</sup>	€1,320.00	€1,120.00

## Construction of five alleys along the road of Sanxhaku i Nishit

3.2	Shaping and compression of the road substrate with compression 30MN / m <sup>2</sup>	4200 m <sup>2</sup>	840 * 4.5 = 3780 m <sup>2</sup>	€410.00	€378.00
4.1	The buffer layer (60MN / m <sup>2</sup> ) made of crushed limestone 0-63mm with thickness of t = 20cm	840 m <sup>3</sup>	3780 * 0.2 = 756 m <sup>3</sup>	€3,360.00	€3,024.00
4.2	The buffer layer (60MN / m <sup>2</sup> ) made of crushed limestone 0-31.5mm with a thickness of t = 10cm	420 m <sup>3</sup>	3780 * 0.1 = 378 m <sup>3</sup>	€2,100.00	€1,890.00
<b>Total</b>				<b>€100,527.80</b>	<b>€83,760.02</b>
<b>Difference</b>				<b>€16,767.78</b>	

**TABLE 1** Analyzed items with inaccuracies in the tender dossier for the road construction in Trudë

As a result of incorrect quantities, the Municipal budget was damaged at least EUR 16,767.78. The municipality says, related to this issue, that the planning and design was done by Proart company in 2010. However, D+ has no remarks related to the project and the technical description, but to the bill of quantity of the tender dossier, which was under the competence of the municipality and not the project company.

There are also some other roads in the bill of quantity, whose quantities were calculated without errors, according to the given dimensions.

For item 3.1 “Xhemush Kamberi” road, II-IV category soil digging with loading and transfer to the landfill max. 15 km away (price should have foreseen demolition of existing asphalt, cobblestones, and guard rails with loading and transfer to landfill), Pro & Co Group offered a price of EUR 0.80 per m<sup>3</sup>. Reference Price Guide published on the Public Procurement Regulatory Commission (PPRC) website, which serves as a guideline for the authorities, provides the prices between EUR 3.4 to 4.5 per m<sup>3</sup> for the same job.

At all items for the supply, transfer and placement of cobblestones with a thickness of 8 cm and layer of sand 5 cm thick, the company offered a price of EUR 7 per m<sup>2</sup>, while the price is EUR 13.73 on the PPRC list.<sup>17</sup> On the other hand, the market price is approximately EUR 14.

According to the Contract Notice, the deadline for completion of works was 120 days, whereas it was 90 days in the Contract.

<sup>17</sup> List of average referent prices per unit on construction works and construction materials, PN0068 (2015). Public Procurement Regulatory Commission <https://rebrand.ly/krpp>

## Construction of roads in the neighborhoods of Myrtaj, Bekaj, Bahtirovit and Nezirovit in the village of Busi and the construction of roads and pavements in the village of Drenovc

Even in this tender, as a result of miscalculated quantities in the bill of quantity, the municipal budget was damaged at least EUR 13,107.50.

This tender was divided into two lots, with an open procedure with a time limit of 90 days for completion of works. The estimated value of the contract was EUR 993,080.26. Papenburg & Adriani Company was announced as the winner of Lot 1 with a bid of EUR 347,880.30, while for Lot 2 the winner was Erdi Group & El-Bau with the bid of EUR 367,972.12. The contract for both lots was signed on February 22nd, 2018, but the preparation of the contract signing notice was made on March 1st, 2018, and it should have been done within two days of signing.

Also technical description for this tender includes requirements for German DIN standard, the Yugoslav standard JUS U.N2.060<sup>18</sup>, which moreover expired in 2016.<sup>19</sup> As in other tenders, this is considered illegal, since in addition to Kosovo public procurement standards, only European or international standards can be used. Lot 1 has not been provided with a technical description along with the tender dossier, which means that there is no detailed project that includes drawings of how the road will appear, route contents and road coordinates.

The Municipality has requested clarification of doubts about abnormally low prices of the two companies for items 2, 3, 4 and 5 of the bill of quantity (for these items, see the table below). Both companies responded with their explanations on how they reached the given price. The municipality demanded that performance security is increased from 10% to 30% due to these suspicions. This contract performance security is a kind of guarantee that in case of non-execution of the contract, this amount would be forfeited by the companies that have not performed.

As there is no technical description for Lot 1, the issue arises as to the width of the road, including the pavement and guide rails from item **2.2** which lists excavation, planning and leveling of the substrate with a surface of **24059 M<sup>2</sup>** and the length of the road **2830.48M**.

$$24059 / 2830.48 = 8.5M$$

In item **3.3** laying with asphalt concrete, the amount given is **14750 M<sup>2</sup>**.

From this number we draw the width of asphalt laying

$$14750 / 2830.48 = 5.21M$$

Usually, the width of the asphalt paving is represented with numbers ending with

**0** or **5**, e.g **5M**, **5.5M**, etc.

<sup>18</sup> Yugoslav Standard on fabricated parts of concrete [http://www.iss.rs/en/standard/?natstandard\\_document\\_id=12091](http://www.iss.rs/en/standard/?natstandard_document_id=12091)  
<sup>19</sup> SRPS U.N2.060:1990, Institute for Standardization of Serbia [http://www.iss.rs/en/standard/?natstandard\\_document\\_id=12091](http://www.iss.rs/en/standard/?natstandard_document_id=12091)

In relation to all roads that will be paved within the village of Busi, in item 2.4 of the bill of quantity, the Municipality provided erroneous dimensions, which do not correspond to the dimensions provided in the bill of quantity, respectively item 2.2. These discrepancies may be mistakes of designers themselves, but may also be omissions in order to give priority to companies that are aware of these project shortcomings and bid at very low prices to win the contract. Some of the items with a large difference in terms of quantity are presented in the table below:

### Myrtaj Neighborhood Road in Busi, main road segment

Item in the bill of quantity	Description	Required quantity	The quantity that should have been required	Offered price	New price per due quantity
2.4	Supply, transport, fabrication of non-coherent filler material with CBR> 20%, levelling and compression in layers not higher than 30cm up to 45MN / m2 compression module	16922.64 m <sup>3</sup>	2830.48 * 8.5 * 0.3 = 7217.72 m <sup>3</sup>	€ 33,845.28	€ 14,435.44
3.1	Supply, transport, levelling and compression of buffer layer (65MN / m <sup>2</sup> ) of crushed limestone, 0-60mm with thickness of t = 20cm	5186 m <sup>3</sup>	24059 * 0.2 = 4811.8	€ 25,930.00	€ 24,059.00
3.2	Supply, transport, levelling and compression of buffer layer (80MN / m <sup>2</sup> ) of crushed limestone, 0-31mm with thickness of t = 10cm	2047.2 m <sup>3</sup>	24059 * 0.1 = 2405.9	€ 14,330.00	€ 16,841.30

### Bahtirovit Neighborhood Road in Busi

2.4	Supply, transport, fabrication of non-coherent filler material with CBR> 20%, levelling and compression in layers not higher than 30cm up to 45MN / m2 compression module	5287.05 m <sup>3</sup>	7454.5 * 0.3 = 2236.35 m <sup>3</sup>	€10,574.10	€4,472.70
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### Nezirovit Neighborhood Road in Busi, Road Segment 2

2.4	Supply, transport, fabrication of non-coherent filler material with CBR> 20%, levelling and compression in layers not higher than 30cm up to 45MN / m2 compression module	2620 m <sup>3</sup>	5355 * 0.3 = 1606.5 m <sup>3</sup>	€5,240.00	€3,213.00
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### Bekaj Neighborhood Road in Busi, Road Segments 3 and 4

2.4	Supply, transport, fabrication of non-coherent crude material with CBR> 20%, levelling and compression in layers not higher than 30cm up to 45MN / m2 compression module	1305 m <sup>3</sup>	2025 * 0.3 = 607.5	€2,610.00	€1,215.00
<b>Total</b>				<b>€92,529.38</b>	<b>€64,236.44</b>
<b>Difference</b>				<b>€28,292.94</b>	

**TABLE 2** Analyzed items which contained inaccuracies in the bill of quantity for the road construction in Busi

As a result of the wrong quantities, mainly in item 2.4<sup>20</sup>, the Municipal budget was damaged at least EUR 28,292.94. These flaws of designers seem to have been noticed and exploited by Papenburg & Adriani Company that offered a price of two Euros for item 2.4 of the bill of quantity, which according to consultations D+ made with construction companies, turned out to be the price that the company incurs for purposes of carrying out this work. In the tender for the roads in Trude, the price offered for this item was three euros, by the other company that had won this tender. If the quantities were the exact ones in this contract, the company would not bid at the price of two euros.

According to the municipality, findings regarding this tender are not accurate, as it is the thickness of the road that is not constant and this project also includes the expansion of the existing road.

Furthermore, extensions, tie ways and turns are included in this item. However, D+ shares the opposite opinion with the municipality on this issue, as the difference in this item is double and the bids of companies with abnormally low prices confirms D+ claim that the

item is overestimated.

<sup>20</sup> Supply, transport, producing of non-coherent crude stone material with CBR> 20%, layering and compression in layers not higher than 30cm up to 45MN /m2 compression module

**LOT 2 RELATES TO THE CONSTRUCTION OF SEVERAL ROADS AND PAVEMENTS IN THE VILLAGE OF DRENOC. FOR THIS LOT, THE TECHNICAL DESCRIPTION OF THE ROAD WAS SUBMITTED, FROM WHICH THE DIMENSIONS WERE CALCULATED. ACCORDING TO THE PROJECT THE FOLLOWING ARE THE ROAD DATA:**

<b>Width:</b>	<ul style="list-style-type: none"> <li>— 5.5m main road,</li> <li>— 5m Left road segment and at Gjafollt,</li> <li>— 4m road segment at the Cemetery</li> </ul>	<b>Whereas the road shall be made of:</b>												
<b>Pavements:</b>	1.5m	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Asphalt-concrete AB011</td> <td style="width: 40%; text-align: right;">4cm</td> </tr> <tr> <td>A buffer layer made of lime stone</td> <td style="text-align: right;">0-31.5 – 10cm</td> </tr> <tr> <td>Filling material with CBR&gt;</td> <td style="text-align: right;">20% - 30cm</td> </tr> <tr> <td>Bitumen-gravel layers BZH022</td> <td style="text-align: right;">8cm</td> </tr> <tr> <td>A buffer layer made of lime stone</td> <td style="text-align: right;">0-60 – 25cm</td> </tr> <tr> <td><b>Total</b></td> <td style="text-align: right;"><b>77cm thickness</b></td> </tr> </table>	Asphalt-concrete AB011	4cm	A buffer layer made of lime stone	0-31.5 – 10cm	Filling material with CBR>	20% - 30cm	Bitumen-gravel layers BZH022	8cm	A buffer layer made of lime stone	0-60 – 25cm	<b>Total</b>	<b>77cm thickness</b>
Asphalt-concrete AB011	4cm													
A buffer layer made of lime stone	0-31.5 – 10cm													
Filling material with CBR>	20% - 30cm													
Bitumen-gravel layers BZH022	8cm													
A buffer layer made of lime stone	0-60 – 25cm													
<b>Total</b>	<b>77cm thickness</b>													
<b>Shoulder:</b>	1m													
<b>Total:</b>	<ul style="list-style-type: none"> <li>— 8m main road</li> <li>— 7.5m other roads.</li> </ul>													

Item 2.1 of the bill of quantity for the main road that relates to the digging of soil of III and IV category, as well as loading and transfer to landfill, provides the quantity of 4145 m<sup>3</sup>. The length of the road is 1044.26m. The surface of the road is 1044.26 \* 8 = 8354.08 m<sup>2</sup>. The depth to be excavated is 4145 / 8354.08 = 0.496m. As the road composition is 77cm and according to the project an attempt was made to maintain the vertical level of the road, D+ suspects that some parts of the composition will be laid with a smaller thickness or if it is 77cm, the road level will be raised for 77-49.6 = 27.4cm.

For item 2.2 on excavation, leveling of substrate, and compression, the amount given is 7875 m<sup>2</sup>, whereas it should be 8354.08 m<sup>2</sup>.

For item 3.3 on paving all roads, the amount is given per m<sup>2</sup> instead of m<sup>3</sup>, as it concerns the supply, transfer, lay-ering and compression of fine sand with a thickness of 5cm. Therefore, apart from the surface, thickness is also provided, and in this case three dimensions (cubic meters) should be used.

On the main road, item 3.5 on supply and processing of bitumen gravel, the amount is 2553 m<sup>2</sup>, while item 3.6 for the supply of asphalt concrete works stipulates 5952 m<sup>2</sup>. These two items should have the same amount, as they relate to the first and second layer of asphalt. Here the quantity should have been as follows:

1044.26m length of road \* 5.5m width of asphalt = 5743.43 m<sup>2</sup>

Related to the left road segment, bitumen gravel and asphalt concrete items do not specify the same quantity, respectively 738 and 3625 m<sup>2</sup>, while both should be 3625 m<sup>2</sup>.

**Some of the items with major differences in quantities follow in the table below:**

<b>Aksi: A dhe Aksi: B Trotualet</b>					
Item in the bill of quantity	Description	Required quantity	The quantity that should have been required	Offered price EUR	Price per due quantity EUR
2.4	Supply, transport, fabrication of non-coherent stone filler material with CBR> 20%, levelling and compression in layers not greater than 30cm up to 50MN / m <sup>2</sup> compression module	930 m <sup>3</sup>	2424.2 * 0.3 = 727.26 m <sup>3</sup>	€2,790.00	€2,181.78
3.1	Supply, transport, planning and compression of buffer layer (Msh = 80MN / m <sup>2</sup> ) of crushed limestone 0-60mm with thickness of t = 25cm.	805 m <sup>3</sup>	2424.2 * 0.25 = 606.05 m <sup>3</sup>	€5,635.00	€4,242.35
<b>Main road segment - Drenoc</b>					
2.2	Excavation, planning, substrate leveling and compression up to compression module 20N / mm <sup>2</sup>	7875 m <sup>2</sup>	1044.26 * 8 = 8454.08 m <sup>2</sup>	€1,575.00	€1,690.81

2.4	Supply, transport, fabrication of non-coherent stone filler material with CBR> 20%, levelling and compression in layers not greater than 30cm up to 60MN / m2 compression module	1780 m <sup>3</sup>	8454.08 * 0.3 = 2536.22 m <sup>3</sup>	€5,340.00	€7,608.66
3.5	Supply and fabrication of Bitumen-gravel BZH22 - BIT 50/70 with thickness of t = 8cm, with 0.5 / kg / m2 emulsion spraying of the bituminous aggregate surface.	2553 m <sup>2</sup>	1044.26 * 5.5 = 5743.43 m <sup>2</sup>	€15,318.00	€34,460.58
3.6	Supply and fabrication of asphalt concrete AB11, PmB 50 / 70-65) with thickness of t = 4cm, with 0.5 / kg / m2 emulsion spraying of binder surface.	5952 m <sup>2</sup>	1044.26 * 5.5 = 5743.43 m <sup>2</sup>	€23,808.00	€22,973.72

#### Road segment at the Cemetery, Drenoc

2.2	Excavation, planning, leveling of the substrate and compression up to the compression module 25N /mm <sup>2</sup>	2145 m <sup>2</sup>	330.42 * 5 = 1652.1 m <sup>2</sup>	€214.50	€165.21
2.3	Supply, transport and geotextile coverage of 400gr / m <sup>2</sup>	2345 m <sup>2</sup>	330.42 * 5 = 1652.1 m <sup>2</sup>	€1,641.50	€1,156.47
3.1	Supply, transport, planning and compression of buffer layer (Msh = 70MN / m <sup>2</sup> ) of crushed limestone 0-60mm with thickness of t = 20cm	455 m <sup>3</sup>	1652.1 * 0.2 = 330.42 m <sup>3</sup>	€3,185.00	€2,312.94
3.2	Supply, transport, planning and compression of buffer layer (Msh = 80MN / m <sup>2</sup> ) of 0-32mm of crushed limestone with thickness of t = 10cm	215 m <sup>3</sup>	1652.1 * 0.1 = 165.21 m <sup>3</sup>	€1,505.00	€1,156.47

3.3	Supply and construction of Bitumen-gravel BZH22-BIT 50/70 layer, with thickness of t = 8.0cm including emulsion spray 0.5 / kg / m <sup>2</sup> .	1345 m <sup>2</sup>	330.42 * 4 = 1321.68 m <sup>2</sup>	€8,070.00	€7,930.08
3.4	Supply, transport, planning and compression of buffer layer (Msh = 80MN / m <sup>2</sup> ) of 0-32mm of crushed limestone with thickness of t = 10cm	1345 m <sup>2</sup>	330.42 * 4 = 1321.68 m <sup>2</sup>	€5,380.00	€5,286.72

#### Road segment at Gjafollt, Drenoc

3.4	Supply, transport and fabrication of Bitumen-gravel BZH22 - BIT 50/70 with t = 8cm thickness, with spraying of 0.5 / kg / m2 emulsion of the bituminous aggregate surface.	1893 m <sup>2</sup>	364.63 * 5 = 1823.15 m <sup>2</sup>	€11,358.00	€10,938.90
3.5	Supply, transport and fabrication of asphalt- concrete AB11 PmB 50 / 70-65) with thickness of t = 4cm, with 0.5 / kg / m2 emulsion spraying of binder surface.	1893 m <sup>2</sup>	364.63 * 5 = 1823.15 m <sup>2</sup>	€7,572.00	€7,292.60

#### Road segment 1

3.4	Supply, transport and fabrication of Bitumen-gravel BZH22 - BIT 50/70 with t = 8cm thickness, with spraying of 0.5 / kg / m2 emulsion of the bituminous aggregate surface	553 m <sup>2</sup>	125 * 4 = 500 m <sup>2</sup>	€3,318.00	€3,000.00
3.5	Supply, transport and fabrication of asphalt concrete AB11 PmB 50 / 70-65) with thickness t = 4cm, with 0.5 / kg / m2 emulsion spraying of binder surface.	553 m <sup>2</sup>	125 * 4 = 500 m <sup>2</sup>	€2,212.00	€2,000.00

## Road segment 1

3.4	Supply, transport and fabrication of Bitumen-Gravel BZH22 - BIT 50/70 with t = 8cm thickness, with spraying of 0.5 / kg / m2 emulsion of the bituminous aggregate surface.	925 m <sup>2</sup>	224 * 4 = 896 m <sup>2</sup>	€5,550.00	€5,376.00
3.5	Supply, transport and fabrication of asphalt concrete AB11 PmB 50 / 70-65) with thickness of t = 4cm, with 0.5 / kg / m2 emulsion spraying of binder surface.	925 m <sup>2</sup>	224 * 4 = 896 m <sup>2</sup>	€3,700.00	€3,584.00
<b>Total</b>				<b>€ 108,172.00</b>	<b>€ 123,357.29</b>
<b>Difference</b>				<b>(€ 15,185.29)</b>	

**TABLE 3** Analyzed items, which contained inaccuracies in the bill of quantity for the construction of roads in Drenoc

The difference is EUR -15,185.29. In most items, the new price, based on the quantity calculated by D+, is lower than the offered price, with the exception of items 3.5 and 3.6 for the main road segment that have higher prices. These two items should provide the same quantity, as they refer to the first and second layer of asphalt. With the quantity given in item 3.5, only 2.44m of the road can be paved and not the road width of 5.5m. This value is calculated by dividing the quantity given in item 3.5 in the table above, the main road segment part, which is 2553 m<sup>2</sup> and the length of the road, 1044.26 m.

In all items related to the laying of cobblestones for sidewalks, the company has offered a price of EUR 6. Based on the letter sent regarding suspicions of abnormally low prices, the company responded by giving details of the way of production, coming at a variable cost of EUR 5.4, without calculating the fixed costs. Fixed costs are costs that occur regardless of whether the company produces or not. Some of the fixed costs include rent, employee salaries, vehicle registration, electricity, etc. Variable costs are costs that occur and vary depending on the quantity that is produced. Examples of variable costs are the raw materials. Variable costs increase with an increasing output, while the fixed costs are the same for producing one or 1000 products.

Although based on the contract, both companies were asked to deposit performance security at 30%, only Edi Group & El-Bau deposited 30%, while Papenburg & Ardiani only 10%.

Regarding these findings related to the bill of quantity of this project, the Municipality in its response<sup>21</sup> did not deny the findings, but it said that the compensation of works will be done in accordance with real quantities executed on the ground. However, D+ warns that wrongly compiled quantities have an impact on competition between operators, because those economic operators that know that quantities are not real can bid at much lower prices and win contracts.

<sup>21</sup> Complete Response of the Municipality - With regard to the Project: "Construction of several roads and pavements in the village of Drenoc", we are dealing with pavement of new roads and existing ones. This project will be implemented based on the detailed project, compiled by the project company "3D project" supervised by the Municipality of Prishtina/Priština. Based on consultations with project design company and based on field needs, we will conduct works within this contract. Usually, the amount of work accomplished will be paid in accordance with the situation on the ground and based on the drafted project.

## Construction of roads inside the village of Slivovë

As a consequence of the misstated quantities in the bill of quantity, the municipal budget was damaged at least EUR 7,476.53.

Open procedure was used in this tender, and the estimated value of the contract was EUR 139,275.56 with a deadline for completion of works of 60 days. The tender dossier sheet (TDS) carries a deadline of 120 days, whereas the contract notice stipulates 60 days. Performance security should cover a period of 120 days, however provided that it is plus 30 days from the deadline required for completion of works, in this case due to the different deadlines of 90 or 150 days<sup>22</sup>.

The deadline for submitting bids was 18 days, but according to the Guidelines<sup>23</sup> the usual deadline is 20 days for medium value contracts.

NTP Bashkimi was selected as the winner of this tender, with a bid of EUR 99,385.36, and the contract was signed on 12 Feb-ruary 2018. The contract signing notice was prepared on 28 February 2018, which should have been done within two days.

Again, the technical description provides unlawful requirements in terms of using Swiss, German, and Jugosllav standards.

### According to the project, the road shall be made of the following layers:

- Asphalt concrete- 4cm
- A layer of asphalt binder - 7cm
- Buffer layer made of limestone 0-31.5 - 10cm
- Buffer layer made of limestone 0-60 - 20cm
- Filler material with CBR>20% - 40cm
- Total - 81cm thickness

The length of the road is **1194.03M** while the width to be paved with asphalt is **4M**, road shoulders **2X1M**, giving the surface of **1194.03 \* 6 = 7164.18 M<sup>2</sup>**

<sup>22</sup> Public Procurement Rules and Operational Guidelines, Article 30.6 (2017). <http://rebrand.ly/rroopp>

<sup>23</sup> Public Procurement Rules and Operational Guidelines, Article 21.1 (2017). <http://rebrand.ly/rroopp>

Item 2.4 in the bill of quantity, relating to supply, transport and production of the filling material, provides the required thickness of 30cm, whereas according to the project it should be 40cm. At this item, NTP Bashkimi offered a price of one euro and no explanation was asked for an abnormally low price. Although within the tender for the roads in Busi and Drenoc, companies Papenburg & Adriani had offered two euros and Erdi Group & El-Bau had offered three euros for the same item, they were asked for clarification under the same pretext. Considering this item differs greatly in quantity, the company offered low prices, knowing that the amount required is higher than the actual quantity.

In some calculations made in the bill of quantity related to pavement of asphalt-concrete and binder, a **100** was added to amounts in items **3.3** and **3.4**. The estimated quantity is **4960.75** and it became **5060.75**.

Some of the major differences in quantities are shown in the table below:

Main Road					
Item in the bill of quantity	Description	Delivered quantity	Due quantity	Offered price EUR	Price per due quantity EUR
2.2	Excavation, planning, leveling of the substrate and compression up to the compression module 25N / mm <sup>2</sup>	7767.5 m <sup>2</sup>	1194.03 * 6 = 7164.18 m <sup>2</sup>	€ 1,553.50	€ 1,432.84
2.4	Supply, transport, fabrication of non-coherent stone filler material with CBR> 20%, levelling and compression in layers not greater than 30cm up to 45MN / m <sup>2</sup> compression module	4324 m <sup>3</sup>	7164.18 * 0.3 = 2149.25 m <sup>3</sup>	€ 4,324.00	€ 2,149.25
3.1	Supply, transport, levelling and compression of buffer layer (65MN / m <sup>2</sup> ) of crushed limestone, 0-60mm with thickness of t = 20cm	1613 m <sup>3</sup>	7164.18 * 0.2 = 1432.84 m <sup>3</sup>	€ 8,871.50	€ 7,880.59
3.2	Supply, transport, levelling and compression of buffer layer (80MN / m <sup>2</sup> ) of crushed limestone, 0-31mm with thickness of t = 10cm	738 m <sup>3</sup>	7164.18 * 0.1 = 716.42	€ 3,925.00	€ 2,865.72

3.3	Supply, transport and fabrication of binder BZH 22 asphalt with thickness of t = 7,0cm incorporating the first emulsion layer of 0.3kg / m <sup>2</sup> .	5060.75 m <sup>2</sup>	1194.03 * 4 = 4776.12 m <sup>2</sup>	€ 35,425.25	€ 33,432.84
3.4	Supply, transport and fabrication of asphalt concrete from a uniform AB11 material with thickness of t = 4.0cm incorporating the second emulsion layer 0.3kg / m <sup>2</sup> .	5060.75 m <sup>2</sup>	1194.03 * 4 = 4776.12 m <sup>2</sup>	€ 20,243.00	€ 19,104.48
<b>Total</b>				<b>€ 74,342.25</b>	<b>€ 66,865.72</b>
<b>Difference</b>				<b>€ 7,476.53</b>	

**TABLE 4.** Analyzed positions, which contained inaccuracies in the bill of quantity for the construction of roads in Slivovë

The works have not yet begun although the contract was signed on February 12th, 2018. Bashkimi Company has another contract with the Municipality of Prishtina/Priština which is being implemented at the same time. This may be the reason why the works have not started yet.

### Reconstruction, repair and expansion of some secondary roads in the territory of the Municipality of Prishtina/Priština

The Municipality rewarded with a contract an abnormally low tender. The Municipality did not analyze the prices of bidders, and did not compare their tenders and as a consequence did not seek clarification for an abnormally low tender. Also the winning consortium submitted an unsigned contract by an employee, and it presented as its own a vehicle rented from another person, while the vehicle registration was under the name of another person. For these two elements, the winning consortium should have been declared non-responsive.

The open procedure was used in this tender, and the estimated value of the contract was EUR 476,515.04, with the term of works completion of 12 months. The Municipality amended the Framework Contract for 12 months with an additional clarification. The main difference is that the Framework Contract permits deviation of +-30%. Usually for road construction, framework contracts are not used since the quantities are known exactly, and are calculated in the bill of quantity. Use of the framework contract where quantities are known allows room for abuse, as companies can bid with abnormally low prices, and then increase the quantities up to 30% for the parts where they bid previously with high prices.

The winner of this tender is the group of economic operators Bashkimi & Bageri with the price of EUR 247,853.52. There were six bids in the tender, five of which were responsive and one was non-responsive. There was a request for reconsideration from the second lowest bidder, Toifor, with claims lack of documentation from the winning consortium. The same re-request was rejected by the Municipality. One of the items of this request was that the graduated hydraulic-civil engineer presented an employment contract signed only by Bashkimi. D+ looked at the documents for this tender and found that the contract was not signed by the employee. Also, the contract was signed based on UNMIK regulations and provisions of the Basic Labor Law.

Contracts signed between employees and Bashkimi provide the working hours from 07:00 to 18:00 h with the possibility of their extension or shortening. The contract does not stipulate what day the employee will be off. Based on the Labor Law<sup>24</sup> the regular working hours are 40 hours per week, with the possibility of 8 hours overtime if required. In these contracts, the daily working hours last 11 hours, which is 77 hours per week, while the maximum allowed is 48 hours.

The request for reconsideration was rejected by the Municipality, whereas the response provided related to the claim regarding the unsigned contract by the employee. The Municipality argued: "Although the contract was not signed by the project manager, this is considered a technical omission, based on the fact that the diploma of that same person was notarized on the day of the start of the contract and it is proved that such notarization was done by the manager himself and not by any other person". According to the Labor Law, Article 10, the contract must be signed by both parties and cannot be qualified as a technical omission. Since the contract was not signed by both parties, this consortium should have been declared non-responsive related to this criterion.

E0 Bashkimi rented the equipment required in the TD from Enver Aliu, but one of the trucks, a 1991 Mercedes, was owned by Leotrim Aliu. Also related to this item, the consortium should have been declared non-responsive as it enclosed a lease contract for equipment, one of which is not registered under the name of Enver Aliu. This shows that not all equipments were part of the lease contract.

For the Tender Dossier, PPRC Form B17 was used, which is the Tender Dossier for works, and after the Municipality changed the procedure into a Framework Contract, it should have used Form B29 that is the tender dossier for open procedure, work, and framework contract. These two forms have differences related to special conditions and TD general conditions.

Even this tender required the use of German DIN and ZTV standards and regulations.

Compared to previous tenders, the technical description and TD have fewer details. It is not known at what locations the works will be carried out. Roads that will be reconstructed, repaired or expanded are written neither in the TD, nor in the contract notice or the technical description.

The offered price is around EUR 230,000 lower than the projected value or 52% of this amount. This price is about EUR 81,000 lower than the second cheapest offer, which is Toifor company. Bashkimi & Bageri's bid is 54.37% lower than the average of responsive bids, and 32.45% lower than the second lowest bid. Pursuant to PPRC form B57<sup>25</sup>, the contracting authority should seek explanations from economic operators when the price offered is 30% lower than the average of responsive bids, 10% lower than the second lowest bid, and when there are at least three tenders. All of these conditions have been met and the Municipality should have sought a clarification for an abnormally low tender, but has failed to do so.

Based on the bill of quantity, item 2.1, the surface of roads was extracted, which is 275,000 m<sup>2</sup> (55 km length and 5m width).

For item 1.3 of the bill of quantity related to excavation of Category IV and V soil, opening of the new route and transport of the excavated material, Bashkimi & Bageri offered a price of EUR 0.80 per m<sup>3</sup>, while the price from the PPRC list is EUR 2.87<sup>26</sup> m<sup>3</sup> for the similar work.

For items 3.1 and 3.4 for supply of reinforced concrete pipes, Bashkimi & Bageri offered a price of EUR 20 for all pipes between ø 400mm - 1200mm. On the market, different diameter pipes do not have the same price.

<sup>24</sup> Labor Law No. 03/L-212, Article 23.1 (2010). Official Gazette of the Republic of Kosovo.

<sup>25</sup> B57 Rules of Abnormally Low Tenders – Corrected version, Article 3 (2016). Public Procurement Regulatory Commission. <http://rebrand.ly/b57>

<sup>26</sup> List of average referent prices per unit on construction works and construction materials, PN0014 (2015). Public Procurement Regulatory Commission <https://rebrand.ly/krpp>

## CONTRACT IMPLEMENTATION

Related to this contract, only one payment was made though June 28th, 2018 in the amount of EUR 11,198.40. According to the contract, the start of the works must be determined by the SC. The SC states that the start date of the works will be determined by the management team. The invoice issued by Bashkimi Company does not contain data as to what was done, while the documents that the Municipality of Prishtina/Priština gave us did not provide a situation report for the works performed. The situation report is a document that shows what has been done and which items of the bill of quantity have been completed. Lack of a situation report may raise doubts as to the level of works done.

### ● Transport of pupils and teachers II

Municipality set criteria in TD for EOs to provide proof that they have provided at least two similar services in the last three years. This criterion is discriminatory and favors only companies that have won a public tender in the past. Transport companies that work with private persons issue only individual bills and are unable to prove the services performed with copies of references or certificates of acceptance. A company that carries passengers daily and has never won a public tender could not win this tender. The Municipality disagrees with this finding, arguing that companies can also provide other documents deemed appropriate by the contracting authority which attest to their technical and professional skills. This is regulated by Article 69 of the LPP. However, in the case of companies transporting passengers, any other type of document is inappropriate to prove this requirement of the municipality. This is because the service in this case can be proven by contract or reference, and any other type of document does not guarantee that the company has actually provided this service in the past. These documents cannot be issued by individual travelers and such a requirement of the municipality for this type of service does not have any relevance, apart from the fact that it reduces competition between the operators. This is proven by the fact that for 12 lots of this contract, 22 bids were received from 13 companies, or on average 1.83 bids per one lot, which is significantly below the average of other procurement activities in Prishtina/Priština.

The tender for transportation of pupils and teachers was made up of 12 lots with an estimated value of EUR 162,112. The procedure used was open, framework contract for 12 months. Of the 14 tenderers, all were responsive. The contracts were signed on 22 December 2017, while the preparation of the contract signature notice was done on 24 January 2018, which was due within two days of signing.

The deadline for submitting bids was 18 days. The contract notice states that initially an advance notice was made. Given that the value is high, the deadline should have been 24 days with advance notice.<sup>27</sup>

The TD requires technical capacity that the EO should have a minibus, however the number of students and teachers is higher on both routes than the capacity of a minibus, which is why the companies offered to transport them by bus.

### ● Revitalization of the stairway and construction of overpass in Arberia neighborhood

The open procedure was used in this tender, and the estimated value was EUR 653,071.76. The deadline for completion of works was 120 days. Of the 14 bidders, ten were responsive and four were non-responsive. The winner was NBT-ING with the price of EUR 463,262.41. The contract was signed on 5 February 2018, and the contract signing notice was published on March 23rd, 2018 with about two months delay.

No date was listed on the statement of needs and availability of funds (hereinafter the 'needs declaration'). This statement must be dated before the publication of the contract notice.

<sup>27</sup> Public Procurement Rules and Operational Guidelines, Article 21.1 (2017). Public Procurement Regulatory Commission. <http://rebrand.ly/rroupp>

In the special conditions section of the TD, the warranty was requested for five years, but after the contract was signed, the warranty was reduced to three years. The municipality said this was a mistake and that the contract should be modified. The warranty represents a cost to the company. The shortening of the warranty period reduces the cost for the company, but it damages the public interest, especially that of the municipality, as it implies that the municipality received less for the same money spent. The warranty for three years was supposed to be stipulated when TD was published, as shortening after signing of the contract creates inequality. If the companies knew that the warranty was required for three years, they could bid at a lower price.

The bill of quantity is designed better than road construction tenders, with numerous details and error-free estimates of quantities. In the winning company's offer, items 3.2 and 3.3 for the extensive excavation of III and IV Category soil, the company list the price of EUR 1 per m<sup>3</sup>, while the price on the PPRC list ranges between EUR 2.7 to 2.87.

Items 6.4.1 to 6.4.6 relate to bars with dimensions from Ø 8 to 22, the price per kilogram is the same, EUR 0.80

## Supply with technological equipment for municipal premises and premises of local community offices

Technical specifications for computers, laptops, and servers were extremely detailed, beyond any need, and as a result the tender for lot 1 was canceled three times. Some of the required specifications are impossible to meet because the required product with those specifications does not exist in the market. For Lot 2, printer supplies, the winning company is suspected of writing the requested catalogue itself, simultaneously changing the data to match the required specifications. This was not noticed by the evaluation commission. If it was, this company could have been declared non-responsive and at the same time the Procurement Review Body (PRB) could have been requested to blacklist this company. If verified, this is pure fraud. The company, in addition to blacklisting, should also be investigated by the prosecution for suspected forgery of the catalogue.

This tender was divided into two lots, with an estimated value of EUR 80,000, while the deadline for the completion of the supply was 60 days. In the first tender, out of four bids, all were non-responsive because they exceeded the estimated value, and the Municipality canceled the procurement activity. In the second tender, five bids were responsive for Lot 2, and the contract was awarded to Europrinty. For Lot 1, all bids were non-responsive. Lot 1 was canceled but notice of cancellation of procurement activity was not published. In the third tender published only for Lot 1, the activity was canceled again considering that all bids were non-responsive.

The TD in items relating to the server, computers, and laptops, required Intel processors, although company AMD has similar processors. If the municipality names a product from a specific manufacturer as a way to establish the minimum level of quality desired, then it should add the word "equivalent" as required by the law<sup>28</sup>. The municipality argues that Intel processors have a better performance.<sup>29</sup> D+ does not dispute the quality of one or the other, it just reminds the municipality that trademarks cannot be named in the TD, and as such it is prohibited by the LPP.

Also as to the PC, the requirement was that the processor be Intel Core i3 7100 6M Cache<sup>30</sup>, but this processor has 3M Cache. As a result, two companies were declared non-responsive, as they offered this processor with 3M Cache as it exists on the market.

For the required laptops, one of the specifics was that the laptops have One-Link Docking Port which is produced only by the manufacturer Lenovo. In accordance with the law, it is forbidden to adapt technical specifications to a particular manufacturer.

28 Public Procurement Rules and Operational Guidelines, Article 20.8 (2017). Public Procurement Regulatory Commission. <http://rebrand.ly/rroupp>

29 Complete response of the Municipality - Bearing in mind that municipal requests concerning hardware capacities are increasing, we have chosen Intel processors, as they offer much better performance compared to AMD processors. There are many brands on the market that offer Intel processor products (such as HP, DELL, ACER, FUJITSU, Asus, Apple, Toshiba, etc.)

30 Intel Core i3-7100 Processor [https://ark.intel.com/products/97455/Intel-Core-i3-7100-Processor-3M-Cache-3\\_90-GHz](https://ark.intel.com/products/97455/Intel-Core-i3-7100-Processor-3M-Cache-3_90-GHz)

One of the bidders, Ilir-Kosova, was eliminated after it offered a server processor Intel Xeon 2620 v3, while 2620 v4 was requested. In addition to the brand name of a company (Intel), a specific product was also required. There are other companies like AMD that supply the requested products. Technical specifications for the processor could have been better designed by specifying the speed of the processor and the year of production.

Also, as to the requested server, the company InterAdria was declared non-responsive since it offered 1.5TB memory capacity while 3TB was required. The requested installed capacity was 128 GB. The Intel Xeon 2620 v4 processor supports RAM memory up to 1.54 TB.<sup>31</sup> Therefore, in practice, it is impossible to fulfill the 3TB RAM memory requirement. As far as RAM memory is concerned, the capacity of 1.5TB is more than sufficient for the needs of the Municipality.

Since the requirements in the technical specification for the laptop, computer, and server were overly detailed, this tender failed three times. The municipality should simplify these specifications and, as guidance when drafting the technical specification in the future, should take into account the manual published on the website of the Ministry of Public Administration<sup>32</sup> (MPA). The Municipality provided a justification that technical specifications are compiled in more detail so that economic operators provide the best and most advanced equipment. D+ points out that the specifics required by the municipality in some cases do not exist in the market and as such are incorrectly drafted and consequently cannot be offered by any operators.

For Lot 2, where Europrinty was the winner, the catalogue of printers was developed by the company itself, while the data were changed and adapted to the required technical specification. The request was for a printer that has 512MB of memory, while the HP site, in the printer catalogue indicates that the requested printer has a 256MB<sup>33</sup> capacity. Europrinty wrote in its catalog that the printer comes with 512MB of memory.

In the Europrinty offer, the toners for the two required printers were offered at a price of EUR 16. The original HP toner cartridges cost EUR 86.44<sup>34</sup>, on Idealo.de website, and USD 126.89<sup>35</sup> on Amazon.com. The prices of companies filling toners come at around EUR 30. Since the price difference is very high, it is reasonable to expect that the company has offered filled toners and not original ones

The warranty portion of the contract provides as follows "For the foreseen Period of Supplies", with a noted period of 60 days. The warranty should be sought for a longer period of time. The warranty should have been requested at least for a year.

The tender for Lot 1 was announced three times and it was canceled in all three cases. The technical specifications required were excessive, and at one point impossible to meet. For Lot 2, the Municipality should have used the criterion of the most economically favorable price for contract award. In printers, much of the cost is incurred after the purchase in terms of required maintenance of toners and printers.

The municipality also erroneously failed to use the technical specifications developed by the Information Society Agency, which is specialized in information technology. Moreover, it seems that the municipality has made no steps to avoid scams from private companies, in terms of comparing the catalogues offered by operators and those of producers.

31 Intel Xeon E5 2620 v4

[https://ark.intel.com/products/92986/Intel-Xeon-Processor-E5-2620-v4-20M-Cache-2\\_10-GHz](https://ark.intel.com/products/92986/Intel-Xeon-Processor-E5-2620-v4-20M-Cache-2_10-GHz)

32 Technical Specifications "Information and Communication Technology equipment for office use". Information Society Agency. 2017 <https://map.rks-gov.net/getattachment/76a9628b-65c1-4416-9ce8-dcd86644be11/Specifikime-Teknike.aspx>

33 HP LaserJet Pro MFP M426 Series Datasheet <http://h20195.www2.hp.com/v2/GetDocument.aspx?docname=4AA6-1046EEP>

34 Hewlett-Packard HP 26A Schwarz (CF226A)rebrand.ly/idealc519a

35 HP 26A (CF226A) Black Original Toner Cartridge for HP LaserJet Pro M402 M426 rebrand.ly/amazooa7ca

## ● Info graphics and signalization in the municipal premises

The open procedure was used for this procurement activity, and the estimated value was EUR 50,000. The timeframe for completion of works was 45 days. This tender was announced twice. The first time it was canceled because the only company that was bidding was declared non-responsive as it did not fill the tender form relating to the validity of the tender.

In the second tender, company Depart Studio was selected as the winner with the price of EUR 42,120. Following the announcement of the winner, Grafo-Loni made a request for reconsideration with the reasoning that the winning company lacked the proof of having carried out similar works in 2014, 2015, and 2016. Depart Studio presented references of works carried out in 2017. The municipality approved the request for reconsideration and the tender was referred back for re-evaluation. After the re-evaluation, Grafo-Loni was selected with the price of EUR 43,117.20.

Through the letter of clarification of the tender, the Municipality removed item 4 from the bill of quantity relating to a colored tarpaulin and item 18 relating to paper bags, while the estimated value remained the same. This increased the value foreseen for other items and enabled EOs to bid at higher prices.

Special conditions were not presented in the first tender.

The deadline to carry out the works according to the contract notice was 45 days, but the contract stipulated 90 days.



# MUNICIPALITY OF PEJA/PEĆ

Unlike in other municipalities, D+ analyzed five tenders in the Municipality of Peja/Peć. The main findings are as follows: Special conditions are not met and consequently no work or product warranty was required. In this municipality, there are also requests for products of certain producers. There are many mistakes in calculating dimensions for construction of High Art School, including misuse of the measurement unit contrary to the practices on the market.

For wood supply tender, there is a purchase order that was dated prior to contract signing. The tender was awarded to the Acvilla Company at a price difference of EUR 9.9 (per unit), which is higher than the previous year's contract with the Municipality of Peja/Peć.

In the tender for the construction of public lighting, the deadline of the request for review was miscalculated, where even though the complainant company made the request within the deadline, the same was rejected as a late request.

In the tender for mobile telephony services, technical specifications required that the EOs bid be 30% cheaper than their existing tariffs. This claim is unreasonable and illegal since the company is the one that sets the prices for its services.

In the comments sent related to this report, the Municipality of Peja/Peć stated that it has filled the special conditions forms of tender dossiers in all cases since 2018. However, in the 15 procurement activities published between 1 June - 31 July 2018, only in one particular dossier the special conditions were filled<sup>36</sup>, in another one they were only partially filled<sup>37</sup>, while in 13 other dossiers forms are completely blank.

## ● Supply with firewood for school facilities for phase II

The municipality entered into a contract with Acvilla Company at a price of EUR 48.60 per cubic meter, while the price was EUR 38.70 in the previous contract with the same company. The difference is EUR 9.9 per m<sup>3</sup>, but this contract was regional, which means that the quantities were significantly higher. Had the municipality signed a contract at a price of EUR 38.70, it would have saved EUR 23,611.50. The municipality enabled the company Acvilla to bid at a higher price, since at first the estimated value per cubic meter was EUR 45. Then, it published a correction notice where it reduced the required amount and thus automatically increased the estimated value to EUR 50 per cubic meter. According to the municipality, this happened because the purchase was made during November, when the price of wood is higher. The increase in the estimated value made it possible for the operator to bid at a higher price damaging thereby the budget of the Municipality. According to the research done by D+, one cubic meter of firewood with related costs and transportation services should have cost not more than EUR 40 per cubic meter. Municipality of Peja/Peć argues that for this time of the year and this quantity, prices are around EUR 50, providing evidence of the tenders of the Municipality of Gjilan/Gnjilane (EUR47.80) and the Municipality of Klina in 2014 (EUR 47.80). However, D+ has re-compared these prices with the Municipality of Obiliq, which made purchases in October 2017 at EUR 36.6 per cubic meter, for about three times less quantity.

<sup>36</sup> Asphaltting of the road Llugagji-Glllogjan, Procurement No. 635-18-5549-521

<sup>37</sup> Arrangement of some public spaces in the Municipality of Peja/Peć, Procurement No. 635-18-4240-521

Then, the the municipality of Novobërdë in September 2017 also bought four times less for the amount of EUR 36.60 per cubic meter. The municipality of Klina in January 2018 purchased approximate quantities with Peja/Peç for EUR 39.92. These data prove that the price of firewood per cubic meter in the Municipality Peja/Peç did not provide value for money and potentially damaged the budget of this municipality.

The tender was announced under a six months framework contract with an estimated value of EUR 119,250. The deadline for submission of bids was shortened with justification that it was a winter phase back then and supply of wood was the competence of the CPA. But the CPA on 13 July 2017 sent letters to CAs stating that they could initiate a procurement activity for supply with firewoods. The Municipality had sufficient time to start the procurement activity and to use normal timeframes. The Needs Declaration was not completed entirely, i.e. it did not state whether the procurement activity was planned or not. Three companies submitted their bids for this tender, two of them being responsive. Acvilla was selected as the winner with the price of EUR 115,911.

The contract was signed on 24 November 2017 but after our researchers looked at all the documents, we noticed that the Municipality had issued a Purchase Order for Acvilla dated 22 November 2017. The Municipality stated that the purchase order was made for the preliminary contract with this operator. However, even that contract at this time had expired<sup>38</sup> and it was impossible to issue a purchase order on 22 November 2017.

Until 15 July 2018, the contract signing notice had not been published yet, and it was due two days after signing.

Tender dossier item 2.6 provides no indication of estimated value. Special conditions were not met. The TD was uploaded together with a bill of quantity on the e-Procurement platform for the unit price of EUR 45. With the error correction notice, the quantity was changed from 2650 m<sup>3</sup> to 2385 m<sup>3</sup>, but the estimated value remained the same. As the value had not changed, the planned price increased, as the quantity decreased, i.e. 119,250 / 2385 = EUR 50 per cubic meter. This price is much higher than the market price, that ranges from around EUR 35-40, and probably lower considering that the required quantity is as much as for 150 homes.

The price offered by Acvilla is EUR 48.60 per m<sup>3</sup>, with a total value of EUR 115,911. There are two price lists in Acvilla's bid, one is priced at EUR 115,911, and the other one EUR 124,614. The Acvilla Company should be declared non-responsive as it submitted two pricing lists in its file that are not the same.

## CONTRACT IMPLEMENTATION

The tender for wood supply was monitored by analyzing invoices, payments, and other documents. In order to pay an invoice, the municipality committed funds and initiated purchase orders about three months after the company had started supplying woods. The payment was made in this period, which exceeds the legal deadline of 30 days.<sup>39</sup> Delays in payments may cause damage to the budget as the municipality could be forced to pay interest rates to the company. An invoice worth EUR 40,726.80 was not paid in full, only EUR 20,000 was paid. The reason why it was not paid in full was that there was a lack of funds, while the reimbursement for the remainder was supposed to be made later. Also for this invoice, commitment of funds and the purchase order were made after the supply of wood.

Some of Acvilla's delivery orders changed the price per cubic meter from EUR 38.70 to EUR 48.60. The price of EUR 38.70 was the price of the preliminary contract signed with the same company. Invoices were paid to various bank accounts. The first payment of EUR 10,011.60 was made to the bank account of the company with BpB. This Acvilla account was provided in the tender dossier when it bid. Payment in the amount of EUR 66,144.60 was made to a Raiffeisen bank account, although Acvilla listed its account at the BpB bank on the two invoices related to this pay-

<sup>38</sup> The contract with the CPA expired on 11 November 2017. On the other hand, the municipality received a permission to conduct a new procurement activity for the supply of firewood on 13 July 2017.

<sup>39</sup> Article 18.2 of General Terms and Conditions of the Tender Dossier for Supply. Form B27 of PPRC. <https://rebrand.ly/b27>

ment. This account number was written down manually, and poses a risk that the money will end on an account that is not authorized for payments. According to Section 18.1 of the General Conditions of the Tender Dossier, payment will be made to the bank account provided in the Financial Identification Form.<sup>40</sup> If there is a change of data, the financial identification form must be attached to the payment request. In all payments, the attached form provides the bank account details at BpB. In this regard, the municipality reasoned that:

“With regard to payment findings on 2 accounts of the E0, this finding is not relevant because of the fact that E0 has several accounts in commercial banks, and the Free Balance System easily identifies E0 with their account. CAs make payments to E0 accounts according to the Financial Identification of E0. CA, is not able to make payments to different accounts if they are not registered in the Free Balance System (Treasury Department)”.

## Supply with diesel and diesel by-products to the Municipality of Peja/Peç

This tender is an annex contract because the contract was reaching its end and the municipality needed oil. The procedure used was a negotiated procedure without publication of the contract notice. The estimated value was EUR 50,000 for two months. As it is the case with all diesel tenders, no price per liter was required, but the premium per liter, which is the company's profit per liter. The premium is calculated from the average offered by the PLATTS system, a company that analyzes, compares, and sells data for many areas such as oil, energy, gas, etc. The problem with the PLATTS system is to get the average for oil from major stock-market and bigger markets. While the Municipality does not have access to this system, it has been requested by the company to issue the price. Allowing the company to set the cost, and based on that cost to apply a premium, allows for misuse, because the cost presented by the company and the actual costs according to import documents may not be the same. The contract annex is linked to Seferi-Mont with a premium of EUR 0.01 per liter.

### The required amount is:

- Diesel for cars 10ppm – 10,000 liters
- Diesel for heating 10ppm – 80,000 liters
- Gasoline for cars 10ppm – 5,000 liters

While the estimated value was EUR 50,000, it is not possible for these supplies to be made with this value. Seferi-Mont's premium is EUR 950 in total. Calculation by the PLATTS system takes into account only the direct costs of oil such as transport, excise, taxes, and VAT, while fixed costs cannot be covered by EUR 0.01 profit per liter. The gross margin of profit without the operating costs of the company is 950/50000 = 1.9%. It is likely that the company will earn more than 1 cent per liter, since by calculating through PLATTS system, the price may go higher than the market price.<sup>41</sup>

<sup>40</sup> Article 18.1 of General Terms and Conditions of the Tender Dossier for Supply. Form B27 of the PPRC <https://rebrand.ly/b27>

<sup>41</sup> The company can calculate through PLATTS, for example that a liter costs EUR 1.10, and a premium of EUR 0.01 is calculated on it. But the company can actually import it with a price of EUR 1, in which case the profit would be EUR 0.11.

The tender dossier required bid and performance security, but no deadlines were given as to the extent to which the security of the tender execution should be valid. In this regard the municipality stated that this request remains under the responsibility of the CA, if it considers such a request necessary. On the other hand, D+ does not dispute the municipal discretion to seek the security of the tender execution, but if such a thing is required, as in the case of this tender, it should have a time validity of 30 days more than the term of implementation of the contract. The main problem in this case is that the municipality requested performance security without specifying its validity.

## Construction of public lighting in some neighborhoods of the city of Peja/Peć, Phase II

The open procedure was used in the tender for construction of public lighting. The estimated value was EUR 67,486, with a deadline for completion of works of 16 months. Four companies bid, and according to the first assessment, all of them were responsive. The group composed of EOs BK-Construction & V3-Ing was announced as the winner with a price of EUR 50,533. After the announcement of the winner, the company Risamont made a request for reconsideration for the reason that the winner lacked references for similar works, which were required by the TD. According to the TD at least 50% of the references should belong to the leader of the consortium. Also, it lacked the required certificates and catalogues. The request for reconsideration was approved and the tender was referred back for re-evaluation.

After the re-evaluation, Elmont LLC was selected as the winner with price EUR 54,665.67. BK-Construction & V3-Ing made a request for reconsideration on 9 October 2017, but the Municipality rejected it with reasoning that it was made after the deadline allowed by law<sup>42</sup>. Even though the request was impermissible (according to the municipality), it also considered its grounds, deeming it unfounded as well. The contract notice was prepared on October 3rd, 2017, which was Tuesday, while the request for reconsideration was made on Monday, 9 October 2017. Considering that the deadline for the request is five days and if the last day falls on Saturday, Sunday, or official holiday, the term should be extended until the first working day. The last day in this case was Saturday, so it had to be extended until Monday. The Municipality did not calculate the deadline correctly and it had unjustly rejected the request for reconsideration. But even if the Municipality would accept the same as the deadline, it would still be rejected as unfounded.

The TD, in some items, lists requests for products from a particular company without using the word 'equivalent'. SC are not met at all. Also, as in other tenders, the contract signing notice was not published.

In items 153, 368 and 399 of the bill of quantity, digging of a canal with dimensions 0.4 x 0.75 x 0.45m makes 0.135 m<sup>3</sup>. 10 electric poles had to be placed for a road in these items.  $10 * 0.135 = 1.35$  m<sup>3</sup>, while the required quantity is 25 m<sup>3</sup>. The same applies in items 158, 372, 403 where the dimensions are  $0.8 * 0.8 * 0.9 = 0.576$  m<sup>3</sup>, while the required quantity is 17 m<sup>3</sup>. The winning company Elmont bid a price of EUR 10 per m<sup>3</sup> for these items, while the PPRC List<sup>43</sup> provides prices for digging works less than EUR 5 per m<sup>3</sup>. The municipality should ensure that the quantities of work to be performed are accurate, as thereby it will eliminate the possibility for misuse as well. Implementation of this contract has begun, but until 24 May 2018 no payment was made by the Municipality.

## Construction of the Secondary Art School "Odhise Paskali" - Masonry works.

The tender for the construction of the secondary school of art is estimated at EUR 480,000. The deadline for completion of works is 15 months. Of the ten bidders, eight were responsive, while the winner was Armendi-FA at the price of EUR 331,562.30. As in the above tenders, the contract signing notice was not published.

<sup>42</sup> Public Procurement Rules and Operational Guidelines, Article 22.3, Section C (2017). Public Procurement Regulatory Commission. <http://rebrand.ly/rroopp>

<sup>43</sup> List of average referent prices per unit for construction works and construction materials, PN0009-PN0052 (2015). Public Procurement Regulatory Commission <https://rebrand.ly/krpp>

In the Contract, item 10.1 of the SC stipulates the start date for the works as October 9th, 2017, while the manager was appointed on October 14th, 2017. The project manager prepares the contract management plan, which needs to be done prior to the beginning of contract implementation.<sup>44</sup> This enabled the company to work for five days without supervision by the project manager. The municipality, on the other hand, denies this finding, claiming that only the marked date is wrong and that the manager was appointed timely.

For this tender there was first a design contest to make the school project. But this project was not offered along within the TD as required by the Guidelines.<sup>45</sup> Special conditions were not met, so no warranties were required. As is required with school building, the warranty should have been sought for at least three years. However, the Municipality provided proof that security was required in the contract (not the tender dossier) for one calendar year. However, D+ considers that this deadline is minimal and it would be good for the Municipality to seek at least three years warranty.

The TD, in the bill of quantity, items 1.4 and 5.5 on supply and painting with betolit, requires that the product be of Italian production. Items 3.7, 3.8, 5.8, 5.10 require products by companies Geberit and Rehau, but without adding the word equivalent.

### In many items there are wrong dimensions by the designer and the requesting unit, as listed below:

- Item 1.7 casting, laticing and filling of foundations with concrete and reinforcement. Concrete and reinforcement should have been separated, as concrete is calculated by m<sup>3</sup> while reinforcement with kg. The quantity given is 1233.50 m<sup>2</sup>. As filling of the foundation does not exceed 1m depth the amount would be less if calculated in m<sup>3</sup>.
- Item 1.93 casting, laticing, and filling the slab above the foundations, the amount is 1161.50 m<sup>2</sup>. At this point the 20cm thickness is also given. The amount in m<sup>3</sup> should be  $1161.50 * 0.2 = 232.3$  m<sup>3</sup>. Even in this part, concrete and reinforcement had to be separated.
- The amount given in items 2.0 to 4.0 that have different works, is the same 1236 m<sup>2</sup>.
- Item 2.9 relating to casting, laticing, and filling the ground floor slab with concrete and reinforcement, the thickness is 22cm. It should be  $1236 * 0.22 = 271.92$  m<sup>3</sup>.
- There are two items 4.0. The first is the same as 2.9, it only applies to the first floor. Here, too, the quantity should be 271.92 m<sup>3</sup>. The second item 4.0 relates to the second floor but the quantity given is 479 m<sup>2</sup>. As the thickness is not given, we assume it is 22 cm as the first floor slab, which means that consequently the quantity should be  $479 * 0.22 = 105.38$  m<sup>3</sup>.
- Dimensions given in item 5.11 are 300 m<sup>2</sup> and 15 cm thickness while the quantity given is 50 m<sup>3</sup>, but it should be  $300 * 0.15 = 45$  m<sup>3</sup>.
- Dimensions given in item 5.12 are 300 m<sup>2</sup> and 60 cm thickness while the quantity given is 210 m<sup>3</sup>, but it should be  $300 * 0.60 = 180$  m<sup>3</sup>.
- In item 5.14 requirement is to lay 5 cm thick gravel, but the amount is given in m<sup>2</sup>, while gravel is measured in m<sup>3</sup>.
- Items 6.1, 6.2 and 6.3 provide the quantity, but without specifying the metering unit.

All these mistakes in quantity, the use of m<sup>2</sup> instead of m<sup>3</sup>, lack of separation of concrete and reinforcement, the joining works such as masonry, concrete, and lightning construction made Armendi-FA bid with very low prices. In item 1.7 it offered a price of EUR 26, probably noticing that the quantity was in m<sup>2</sup>, while the market price per m<sup>3</sup> for the required concrete

<sup>44</sup> Public Procurement Rules and Operational Guidelines, Article 61.8 (2017). Public Procurement Regulatory Commission. <http://rebrand.ly/rroopp>

<sup>45</sup> Public Procurement Rules and Operational Guidelines, Article 20.12, 20.13 (2017). Public Procurement Regulatory Commission. <http://rebrand.ly/rroopp>

C25/30 ranges around EUR 50-60. While the reinforcement has a price of about EUR 0.90 per kg. In item 5.5 painting with betolit with the second layer, the price offered was EUR 25 per m<sup>2</sup>, while the prices from the PPRC list range from EUR 13 to 14.<sup>46</sup> In item 1.4 that relates to the same work, but with much less requests, the price is EUR 1.50 m<sup>2</sup>. In order to avoid these mistakes in the future, the Municipality should ensure that the quantity is calculated well, the work is divided into specific items in the bill of quantity, appropriate measurement units are used, and are clarified for abnormally low prices.

## CONTRACT IMPLEMENTATION

For this tender, apart from analyzing the invoices, purchase orders and other documents, D+ also monitored execution of works. Until May 24th, 2018 the ground floor slab was completed. The work dynamics was slower, with only three workers working that day. The municipality made the payment for the first situation report involving works for building foundations. The purchase order was made before the works started, while the payment was made after the EO sent the invoice to the Municipality, therefore in accordance with the Financial Rule.

### ● Mobile telephony services for the needs of municipal institutions

The tender for mobile telephony services was canceled after the complaint of Kosovo Telecom to the PRB. The estimated value was EUR 75,000. This was issued as a framework contract for 36 months. Kosovo Telecom made a request for reconsideration before the bids were opened. The request for reconsideration was made based on Article 9.4 of the LPP<sup>47</sup> which states that if a service is provided by any public authority, the contracting authority should take measures for these services to be provided by the public authority. The request for reconsideration was rejected by the Municipality, after which Kosovo Telecom complained to the PRB and its complaint was approved.<sup>48</sup> The Municipality implemented the PRB decision in this case.

#### There are some unreasonable requirements in the tender dossier and the bill of quantity:

- Items 1, 2, 3 required 10 packages with minutes specified for each item, a total of 30 packages, but below a note was provided that 2000 numbers will be included in the contract. These amounts do not match, as 30 packages are required in order to include 2000 numbers in the contract.
- Item 4 requires smart phones, but no features for them were provided. There are smart phones also at a price of less than EUR 100 and up to EUR 1000
- EO should offer a price for calls towards all operators in Kosovo for 30 to 50% cheaper than the existing operator tariffs. This requirement is illegal and tends to dictate the price.

If we take into account the average market price for a package that is EUR 15, then  $15 * 30 * 36 = \text{EUR } 16,200$ . As for phones, if we assume that they will be of the highest level, with a price of EUR 500 then  $500 * 25$  required phones = EUR 12,50. Total is EUR 28,700. The bill of quantity is composed only of these items, from 1 to 4, and a price may be offered only for them. The estimated value of EUR 75,000 cannot be achieved, taking into account the market prices. SCs are not met, and given that this is a service, there is no article in the TD that covers General warranty conditions. A warranty should have been requested for smart phones.

<sup>46</sup> List of average referent prices per unit on construction works and construction materials, PN0241 – PN0248 (2015). Public Procurement Regulatory Commission  
<https://rebrand.ly/krpp>

<sup>47</sup> Law on Public Procurement 04/L-042, Article 9.4 (2011). Official Gazette of the Republic of Kosovo.  
<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772>

<sup>48</sup> Decision 280-17 (2017). Procurement Review Body  
<http://rebrand.ly/280-17>



# MUNICIPALITY OF GJAKOVA/ DJAKOVICA – KEY FINDINGS

Out of the tenders that have been analyzed in the Municipality of Gjakova/Djakovica, D+ detected an incorrect practice; this is the failure to meet the special conditions during preparation of the tender dossier, although they are filled along with the contract. Special conditions regulate important elements of the contract such as the warranty, damages, dispute resolution and other important matters.

In the majority of cases, bid security was required, except for the tender for pupils' transportation where a company withdrew after the bids were opened. In some tenders, there were no bids and tenders were canceled because the requested financial turnover was at the maximum limit provided by the law. In two tenders, there were items identified in the price list with abnormally low prices. Even in tenders in the Municipality of Gjakova/Djakovica there are requests for products of a certain company without adding the word 'equivalent'.

There are a lot of mistakes in the calculation of quantities in the tender for maintenance of roads, where in some parts, the quantity given per month is higher than the quantity for two years. In terms of winter maintenance, compiled technical specifications contain many mistakes, where companies provided higher prices for combined services than for individual ones. During the implementation of the contract, most often the snow clearing service was more expensive than the snow clearing service plus salting. The interest of the municipality in this case was damaged, as the municipality uses the price with which it receives less in exchange and pays more in value without a reason.

In the tender for servicing of vehicles, which was re-tendered three times, the Municipality selected a winner with abnormally low prices for some products/services, but on the other hand it had very high prices for other parts. During the implementation of the contract, the company has performed services as evidenced by 11 invoices, for which it offered higher prices than the market ones (abusive prices).

### ● Inventory supply to schools

There were bids from four companies in response to the tender on inventory supply to schools, of which three were responsive and one was non-responsive. The procedure was open, and the estimated value was EUR 24,735 while the deadline to complete the supply was 30 days. NTP Metali i Ri was selected as the winner with a price of EUR 15,155.35.

The 2017 Final Procurement Plan provided the estimated value of EUR 18,000, and when the contract notice was published, the value was higher, at EUR 24,735.

The contract notice was published on October 16th, 2017, and the deadline for submitting bids was 26 October 2017. The deadline was 10 days, whereas according to the LPP it should be 20 days for average values.

The special conditions were not filled in at all, but they were completed after the contract was signed. According to the Guide-lines, Section 18.3<sup>49</sup> they must be completed when the tender dossier is prepared.

<sup>49</sup> Public Procurement Rules and Operational Guidelines, Article 18.3 (2017). Public Procurement Regulatory Commission.

Technical specifications provide a requirement that school boards are of high quality, without specifying what 'high quality' constitutes. Item 5 relating to rolling chairs provides no dimensions while they are required to be made of quality fabric, but the requirement is immeasurable if no specific requirements are provided on what is considered to be of quality. For item 12, colored chairs were required, but the request had to be made in TD and it was absent.

Metali I Ri's bid is the same for all items with that of DC Office, with the sole exception of item 13.

## CONTRACT IMPLEMENTATION

Monitoring of implementation of this contract was done by checking the invoices, payment receipts, and other documents. For this tender, the purchase orders are dated prior to the date of supply, so they are done as required by the law. The contract was concluded with a price of EUR 15,115, while the total purchase order amounted to EUR 12,247.

### Supply with diesel for heating and with by-products

The tender for diesel supply was projected to be EUR 175,000 in the 2017 Plan, but the contract notice provided an amount of EUR 124,500. A six-month framework contract was used. Two companies made their bids for this tender, both responsive according to the municipality's assessment. Petrol Company was announced as the winner with the price of EUR 108,315. The tender was canceled one day prior to contract signing upon a request made by the Central Procurement Agency (CPA). As tenders for supply with diesel fall under the competence of the CPA, the Municipality was only allowed to announce a tender after communication between the CPA and the Municipality. However, having a procurement activity cancelled one day prior to the signing of the contract is in violation of Article 62.1.1 of the LPP.<sup>50</sup> Moreover, cancelling of this procurement activity by the Municipality was not done because of the fault of the Municipality, but because of the CPA. This interference has a direct impact on service delivery of the Municipality for the citizens.

There are two requirements in the TD that can limit competition. The first is that only companies that import by-products can compete. This requirement greatly damages competition, as many companies that sell oil, but are not necessarily self-importers, are excluded. The second restrictive requirement is that the distance of the supply station premises should not be further than 5 km from the municipal building. This requirement limits competition as this criterion can only be met by companies that have their supply stations within the city. HIB Petrol company, although it does not have supply stations in the Municipality of Gjakova/Djakovica, had to be declared non-responsive by the evaluation commission since it did not meet the criterion for a distance of less than 5 km.

Price per liter is calculated as a fixed price, and as it is for six months, the market price may increase or decrease during this period of time. The practice for this type of supply is to use the premium, which is the company's profit per liter. This practice is used by CPA and the majority of CAs in Kosovo. The TD required performance security, but it did not provide a time-limit for how long it should be valid, and without a time limit, the Municipality would not be entitled to enforce the performance security.

### Supply with a car for hemodialysis

The tender for the car for hemodialysis was canceled twice because no company made a bid. The estimated value was EUR 15,000 which is considered to be too low considering also the high technical specifications of the vehicle that were requested in the tender dossier. Research that D+ conducted showed that the price for these types of vehicles starts around EUR 25,000. The Municipality reasoned that this budget was planned at the request of the respective directorate and that because there was no budget review, it was impossible to add funds to this budget line.

<http://rebrand.ly/rruopp>

<sup>50</sup> Law on Public Procurement 04/L-042, Article 62.1.1. (2011). Official Gazette of the Republic of Kosovo. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772>

Criteria to prove economic and financial capacity required a turnover of EUR 30,000 which is the maximum permitted by law. In terms of technical and professional capacity, the economic operator should have at least two completed contracts of a similar nature. Since dialysis vehicles are not required often and often times they are donated by foreign organizations, this requirement could have limited the participation of companies.

A warranty is required for two years, but usually vehicle manufacturers offer five years or more. The warranty should have been required for five years or for as long as the vehicle manufacturer offers.

If the Municipality wishes to re-announce a tender for this supply then it should increase the expected value, and reduce the requirements for economic, financial, technical and professional capacity. With the estimated price of EUR 15,000, only a small car or a used car could be purchased.

### Servicing and maintenance of vehicles of the Municipality of Gjakova/Djakovica

The Municipality of Gjakova/Djakovica announced a tender for servicing vehicles, without separating them into lots according to producers or similar categories, and consequently there were no responsive bids. Local businesses did not apply. Subsequently, due to the conditions of the tender dossier, car repair has to be done in Prizren and not in Gjakova/Djakovica.

Vehicle servicing and maintenance are problematic tenders due to the fact that the quantity is not known, and the contract is signed based on unit prices. This enables companies to offer higher prices than for the most demanding servicing, such as servicing of oil and filters, and much lower prices than the market ones for servicing that is sought rarely, thus abnormally low.

The tender was re-announced four times for this service until the winner was selected. The contract notice was issued on March 28th, 2017 and until the signing of the contract on January 12th, 2018, approximately ten months passed.

The procedure was open, for this framework contract with a period of validity for 24 months, and with an estimated value of EUR 55,000.

**In the first tender, no company made a bid and as a result, the tender was canceled. The tender was divided into lots, whereas the criterion of awarding it to the economically most advantageous price was implemented by dividing the assessment into:**

- Regular servicing - 60%
- Maintenance and spare parts - 20%
- Repair and coloring - 5%
- Carriage part - 15%

Another criterion that was required was that if the company's workshop was no more than 5 km away from Municipality of Gjakova/Djakovica, then the vehicle should be towed to the workshop and vice-versa by the company itself. Also, the other criterion was that the tow vehicle should be owned by the company, and the rental could also be allowed.

The Municipality did not request any authorization from the authorized vehicle manufacturer or authorized dealer or that the spare parts be original. This should have been sought, considering that the installation of used parts break down faster than new parts and increases the need for more frequent servicing.

Special conditions were not met. The TD for services provides no warranty period of the GC, and since the SCs are not met, no warranties were required. For this kind of service, it is necessary to require a warranty, taking into account how often the vehicles are repaired.

The second tender was divided into two lots, municipal vehicles in one lot and vehicles for the Municipal Center of Family Medicine (MCFM) in the other lot. In both lots, the vehicles were the same. Separation in lots could be done according to the size of vehicle, or according to the manufacturer. Instead of decreasing the financial turnover requirements, considering that there was no bid in the first tender, the Municipality increased it in the second tender. While in the first tender it demanded a financial turnover of EUR 55,000, in the second it was increased to EUR 60,000 for Lot 1 and EUR 40,000 for Lot 2. Another change introduced was that now the criterion was the lowest price. Also, bid security requirements were removed. Even in the second tender, the special conditions were not met.

Although the Municipality made a number of changes to the TD, in some parts by increasing the criteria and in some by reducing it, no company bid and the tender was again canceled.

In the third tender, there were even more changes to the criteria. The framework contract with an economic operator was changed into a framework contract with several operators, using a mini-competition for the execution of the contract. Separation into lots has not changed. Requests for financial turnover were removed. The criterion of the lowest price was applied again.

In the third tender, a consortium made a bid, but it was declared non-responsive because one of the constituent companies of the consortium had not signed the declaration under oath. As a result the tender was canceled again.

In the fourth tender, again there were changes in criteria. Now, a framework contract with one operator was used, as it was the case in the first and the second tender. The other criteria remained the same as in the third tender.

In this tender, two operators submitted their bids; a consortium that was eliminated in the third tender and DPZ Auto Ford, which was announced as the winner. Auto Ford's bid was EUR 35,621.21 for Lot 1 and EUR 12,031.13 for Lot 2. The non-responsive Consortium was again eliminated for the same reason. The Municipality requested signed statements based on Article 72 of the LPP that deals with additional clarification but the consortium did not reply to the email.

On 14 December 2017, the evaluation commission noted that there was a mistake in the formula prepared by the requesting unit. The error occurred in an Excel formula that was not properly written and produced the wrong result. The Municipality required interpretation by the PPRC. The question was "Can we continue with the evaluation of bids despite the arithmetic error, that may exceed 2% in the total price? The PPRC responded by advising that in that specific case a decision should be made in accordance with the circumstances created and in accordance with the provisions of the LPP. There are no paragraphs in the LPP that regulate situations related to errors that are found in the TD during the evaluation process. Errors of the CA can be corrected only before the bids are opened.

In the opening minutes, the price given by Auto Ford was EUR 31,994.81 for Lot 1 and EUR 10,831.13 for Lot 2. In the Evaluation Report, the price was changed to EUR 35,621.21 and EUR 12,031.13. To address the mistake in the formula, a re-calculation was necessary since at the item relating to regular servicing that weighs 60%, the total price was changed from EUR 720 to 6,746 for Lot 1 and from EUR 240 to 2,240 for Lot 2.

As mentioned above, when the quantity is not known, the contract is signed based on unit prices. This is provided by Article 56.1 of the Guidelines<sup>51</sup>, stipulating that the total quoted price serves only for the purposes of evaluating the bids while the contract relates to unit prices.

After viewing Auto Ford's bid, it was noted that rarely used items and services are offered at very low prices, while the opposite has occurred with the most usual articles and services where prices in many cases are much higher than those on the market. In many cases, apart from the car brand, spare parts have the same price. On the market, these prices differ significantly depending

<sup>51</sup> Public Procurement Rules and Operational Guidelines, Article 56.11 (2017). Public Procurement Regulatory Commission. <http://rebrand.ly/rroopp>

on the manufacturer and brand of the car. For all vehicles, the regular service was offered at EUR 200 (a service that includes change of oil, oil filters, air conditioner filters, and labor). For vehicles owned by the municipality (Golf V, Golf VI, Dacia Sandero, etc.), servicing costs less than EUR 100 on the market.

**Table below provides some of the main spare parts of vehicles where very high and abnormally low prices are offered:**

Description	Price per unit EUR	Market price EUR	High / Low
Regular servicing	euro 200.00	euro 100.00	High
Liter of oil	euro 20.00	euro 5.00	High
Washing	euro 8.00	euro 3.00	High
Water for glass / liter	euro 2.00	euro 0.50	High
Antifreeze / liter	euro 20.00	euro 3.00	High
Glass wipers	euro 25.00	euro 5.00	High
Metallic / Aluminum wheels	euro 0.10	euro 30.00	Low
Brake cylinder, front/rear	euro 0.10	euro 30.00	Low
Cooler	euro 1.00	euro 100.00	Low
Motor of glass wipers	euro 1.00	euro 50.00	Low
Cylinder head	euro 1.00	euro 150.00	Low

**TABLE 5:** Differences between the prices offered by Auto Ford and the market prices

Regular vehicle servicing is done every 10,000 km, which means that servicing will take place at least once a year. Since the contract is for two years and there are 32 vehicles to be serviced, the price given is EUR 12,800, while based on market prices it would be EUR 6,400.

For most items, abnormally low prices such as EUR 0.10 or EUR 1 were offered. In order for the municipality to balance the losses caused by abusive prices in some bidding items, an alternative would be to require the use of items where the operator bid with abnormally low prices at the stage of contract implementation. For example, if the municipality were to change all municipal vehicle wheels, it would cost only EUR 3.2, as the company bid their replacement for only EUR 0.10 per unit.

As the quantity is not known, the limit of + -30% cannot be used, while the total price serves only to score points and find the operator which has the cheapest bid, and if the price per unit is used, any percentage of the items would not change. When it comes to unit prices, the evaluation commission must look at the market price for each item in the bill of quantity in order to ensure that the prices are real, if one were to have no damages to the public budget.

## CONTRACT IMPLEMENTATION

For the vehicle servicing contract where Auto Ford EO was the winner, most unit prices are EUR 0.01 or EUR 1.00. Invoices and payments that D+ accessed are dated until 14 April 2018. Contract enforcement was monitored only by analyzing the documents without physically verifying the serviced vehicles. The allegation that some prices were manipulated is confirmed by the fact that the municipality only ordered services or changes of spare parts where the EO offered market prices or higher, except for an invoice where it replaced one spare part which had a price of one euro. Ordering services with high and abusive prices will damage the municipal budget to a large extent. The municipality shouldn't have signed a contract that contained such prices. However, such preparation of the Tender Dossier enabled the company to apply with such prices. The operator should not be rewarded with a contract with these prices in order to save the budget. However, since the tender failed several times and the municipality was obliged to enter into a servicing contract, the alternative remains to look for items that are offered at abnormally low prices.

The contract has items that are very similar and complicate the billing for the municipality. The first item is Article 2.2 which states that the contractor will tow a vehicle in a tow truck free of charge in case of road defect but item B140 in the bill of quantity states that removing a broken vehicle from the place of loading up to the service location will be charged at the rate of eight euros per kilometer. The two bills viewed do not specify where the vehicle is towed from, but the billed distance is 28 kilometers. While in the first tender, billing was not allowed for more than 5km from the municipality for towing to the workshop, this item was added to the last tender, which in many cases could cost the municipality more than the servicing.

All 11 invoices analyzed have an item to "provide the price on diagnosing of possible breakdowns" such as checking the brakes, lights, wheels, etc., at a price of EUR 50. So this price applies only for identifying the breakdowns and not for fixing them. The defects that were identified are not listed on the invoice or on any other document. According to research conducted among companies that deal with servicing of vehicles, this identification does not last more than half an hour and the price of EUR 50 is very high. As this price is recurring in all of the invoices, we believe that the municipality will be charged with the same amount for all checks in the future.

All requests, commitments, and purchase orders were made for about 50 days after the invoices were received. In this case, the municipality commissioned servicing of vehicles without committing funds for this. Entering into liabilities without providing financial means may result in delays in the execution of payments as well as cause an increase of unpaid liabilities.

## Maintenance of Motorways

The tender for road maintenance was divided into three lots: summer maintenance of roads, winter maintenance of urban roads, and winter maintenance of rural roads. In all three lots, the technical specifications are compiled with many errors, both in terms of quantity, in the metering unit, and in calculations. In most invoices related to winter maintenance lots, the municipality commissioned the most expensive service as evidenced by the majority of invoices, while it could have saved the budget by commissioning a cheaper service. The price offered by a snow removal company was 16 times higher than the price for snow removal, but when salting is also included. When it comes to framework contracts, the total amount is not allowed to be exceeded by + -30%, and the amount for each item in the bill of quantity can be exceeded provided that the limit of + -30% of the total amount is not exceeded<sup>52</sup>. If the municipality were to order only the snow clearing service plus salting, which had a price of EUR 5, it would have saved EUR 48,750.

The estimated value was EUR 341,136.28, for the 24-month framework contract. However, the values for each lot are not given. According to the municipality, this was impossible because the e-Procurement platform still does not enable this. The contract notice used a shortened deadline for submitting bids with a justification that they were very close to the winter season. The TD was dated 29 September 2017, while the e-procurement indicates it was submitted on October 5th, 2017. So the Municipality itself was late, whereas it was necessary to start the procurement activity earlier.

<sup>52</sup> Public Procurement Rules and Operational Guidelines, Article 56.10 (2017). Public Procurement Regulatory Commission. <http://rebrand.ly/rroupp>

The Regional Waste Company Çabrati was announced as the winner for Lot 1 with a price of EUR 159,561.14. The price includes 8% VAT, but the Law on VAT does not list this service on the list of products that can use the 8% rate<sup>53</sup>. For Lot 1, five operators submitted bids, while only Çabrati was declared responsive. Others were non-responsive. Four of the non-responsive bids were less expensive than Çabrati. These operators were declared non-responsive because of the lack of documents such as VAT Declaration, technical and professional capacity requirements. The Municipality used Article 72 of the LPP to request additional information, but some of the EOs did not respond. On all bids, the Municipality was guided by Article 39.8 of the Guidelines<sup>54</sup> that advise on how to act when there is a lack of documents. D+ looked at all bids that were declared non-responsive and established that these operators were lacking documents.

Tenders for Lot 2 and 3 was canceled after all bids were non-responsive, to be announced again.

Technical specifications for Lot 1 provide numerous details on how roads should be cleaned, while the dimensions of the roads are shown in the table. But no date was given as to what time period is considered summer maintenance. Based on the table, the number of road clearings per month is one, while for two years it is 10. Based on that, we have two summer seasons of five months each.

The dimensions of the roads from part I of the bill of quantity are well calculated as the length of the road and the width of the road, along with the pavement, are given. However, in Part II, from items 1 to 42, the width of the road along with the pavement of 2 or 4m is given in most of the items, and only in some it was 6m. It is known that the road along with the pavement is at least 7m, and for main roads that have four lanes, the width is greater.

In part II of the bill of quantity, items 1 to 42 (except 3a and 3b), the number of road sweeping services for two years is 18 sweepings, whereas for most of the items it is four sweepings and in some two sweepings per month. Considering that we have five months in the summer season, then the total should be  $5 * 4 * 2 = 40$  sweepings, and where we had 2 sweepings per month  $5 * 2 * 2 = 20$  sweepings. In items 3a and 3b the number of sweepings per month is 22. Based on this value, it turns out that there will be more sweepings per month than for two years. The municipality argues that a technical error was made only in the description of the service, since number 18 does not imply the number of sweepings as stated in the contract, but it is the number of sweepings multiplied by 18 months.

Items 44 to 49 are not related to road sweepings. The quantity is written in pieces or m<sup>3</sup>, but the number of sweepings per month and the number of sweepings for two years are left in the table. The quantity for two years is 20 in all, except in item 44 which is 10. While the quantity per month is greater than the quantity for two years. The errors in these two columns of the bill of quantity provide an example in item 45 where the transport of waste is done per m<sup>3</sup>, the amount required per month is 26 m<sup>3</sup>, while for two years 20 m<sup>3</sup>. These errors in the bill of quantity make the contract unenforceable, since in items where the quantity per month is greater than for two years, the anticipated quantity would be exceeded.

The next example is item 49 cleaning of atmospheric water catchment and pipes at the main collector, where the amount per month is 300 pcs, and for two years 20 pcs.

As Lots 2 and 3 were canceled, they were re-announced, and the estimated value was EUR 144,600. The procedure was open, a framework contract for 24 months, yet the value foreseen for the lot was not given. Of the four bids, only two were responsive. D & T Group & Florida consortium was the winner of Lot 2 for winter maintenance of urban roads with EUR 47,300 while the Lot 2 winner for winter maintenance of rural roads was the consortium Berisha Com & Drini Company with price of EUR 58,500. D&T Group & Florida had offered EUR 103,200 in the first tender, while it won the second tender for EUR 47,300. In the first tender, this consortium was declared non-responsive due to lack of documentation and non-fulfillment of criteria such as possession of waste management license, and their equipment did not meet the criteria and most of them had expired registration.

Description of the service in Technical specifications for Lot 2 lists snow clearing from the roads and salting. As a good practice, the Municipality asked for cleaning of sidewalks, as well as places where the garbage containers are located. In most municipalities,

<sup>53</sup> Law No. 05/L-037 on Value Added Tax /Annex.(2016). Official Gazette of the Republic of Kosovo <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=11015>

<sup>54</sup> Public Procurement Rules and Operational Guidelines, Article 39.8 (2017). Public Procurement Regulatory Commission. <http://rebrand.ly/rroupp>

D + has observed that the sidewalks are not cleaned and businesses are usually the ones cleaning them in front of their premises.

Technical specifications for urban roads provides that all roads length end at 00 or 50, eg 250m, 300m. Not all roads may be like this, and therefore the measurement is not correct. The dimensions of the roads are given by meter, unlike Lot 1 where length and width were provided. Since cleaning includes the entire surface of the road and sidewalks, the meter-length specification is covered by this sentence. But this makes it impossible for EO to know the exact surface of the road when not all roads have the same width. Salt is measured per km, while it should be per kg, as the company may spread salt for a kilometer, but it is not specified how much it will spread per km. The total length of roads is 61,567 km, while all roads are expected to be cleaned 12 times within the season, hence, 24 times for 2 years.

The total kilometers to be cleaned should be  $61.567 * 24 = 1477.608$  km, but the bill of quantities and the contract provide the value of 1290 km.

#### **D&T Group & Florida offer provides the prices as follows:**

- Snow and ice clearing - EUR 35 / km
- Snow and ice clearing plus salting - EUR 60 / km
- Only salting - EUR 15 / km

The two combined services have a higher price than the separate services, which is beyond the common logic on the market. In practice, if two services are combined then they should always be cheaper<sup>55</sup>. Snow and ice clearing plus salting should have a price lower than EUR 50, as the other two services together make EUR 50 (35 + 15). The suspicion is that the company has offered abnormally low prices in items 1 and 3. It is cheaper for the Municipality to request service 1 and 3, as it pays EUR 50 per km, instead of EUR 60 that it would pay if requiring service in item 2. Also Horn & Co. consortium. Kosovo & Viktory Com that has been deemed non-responsive has tried to win with abnormally low prices, by offering EUR 110, 10 and 5.

Technical specifications for Lot 3, which relates to winter maintenance of rural roads, provides the total length of the roads of 245 km. Distances for the villages are given in full numbers, and there can be no distance in full numbers in all villages, for example. 7 km, 1 km, etc. The roads are foreseen to be cleaned 10 times within the season, as the contract is for two years, meaning that there will be 20 cleanings.

The total kilometers foreseen to be cleaned should be  $245 * 20 = 4900$  km, but the bill of quantities and the contract provide the value of 1950 km.

The contracts lists the price of EUR 47,300 while this consortium offered EUR 58,500.

#### **Berisha Com & Drini Company offer provides the following prices:**

- Snow and ice clearing - EUR 80 / km
- Clearing of snow and ice plus salting - EUR 5 / km
- Salting only - EUR 5 / km

<sup>55</sup> Combination of internet and cable TV can be taken as an example. On the market, a combined price is cheaper than the price for the two services separately.

The first service has a very high price compared to the price of Lot 2, considering that rural roads are narrower and most have no sidewalks. Items 2 and 3 are abnormally low prices, and there is also no logic that the price for item 3 is the same as item 2. In order to save the budget, the municipality should have ordered only the service in item 2, as this item also includes items 1 and 3. But as noted below, during the implementation of the contract, most of the service commissioned was from item 1.

Consortium Horn & Co. Kosovo & Viktory Com, which was considered non-responsive, again offered abnormally low prices by bidding EUR 89 and 1 in two other items. In this case, there is always a risk that the requesting unit will make a request only in terms of the most expensive item and in this way, the price becomes abusive, although on average it does not seem to be such.

Only the other non-responsive EO, Lekaj Company offered more normal prices, respectively EUR 27, 35, and 32.

Gjakova/Djakovica Municipality should not have accepted these prices and should have sought clarification from the EO. After it had received their bids, it should have ensured maximally that the budget is not harmed. For Lot 3, since the winning operator offered EUR 5 per km for the combined service, the municipality should only ask the service from that item only.

Since the bill of quantities was not well prepared, it has enabled EOs to offer abnormally low prices. As it is not known exactly how many snowfalls will occur during the winter and they may vary from season to season, the contract should have been linked to unit prices, where the required quantity is not known, while the three services should be scored in order to select the winning EO. Also the amount of salt should be calculated by kg, and not by km.

To prepare the technical specifications as best as possible, as an example, the Municipality of Gjakova/Djakovica should take the tender for the same service of the Municipality of Vushtrri/Vuçitrn which is well-prepared, uses the appropriate measurement units and predicts how many days within the year snow will fall.

## **CONTRACT IMPLEMENTATION**

The contract for Lot 1, which relates to summer maintenance of urban roads, was concluded with the Cabrati company. Road clearing is scheduled to take place in the summer - autumn season. Çabrati has been clearing the roads in December, which falls within the winter season. The purchase order was issued approximately 45 days after the service was provided. This means that the service was provided without committing the financial means.

The prices given by Çabrati include VAT at the rate of 8%, while in two other lots the companies have provided VAT at the rate of 18%. This means that the evaluation commission has not verified VAT rates provided by the bidders.

The contract for Lot 2 was concluded with the D&T Group & Florida consortium, which had offered a price of EUR 47,300. Lot 2 relates to winter maintenance of urban roads. This contract is a two-year framework contract with a term until 20 January 2020, including the winter season for 2019 and part of the season for 2020. Already, the winning consortium had carried out services worth EUR 31,786.06. Even if the quantity is increased by 30%, which is allowed under a framework contract, the municipality will have problems implementing this contract as the remaining amount available is EUR 29,703.94 for a remaining half season.

The quantity foreseen and the prices given by the winning EO follow in the table below:

No	Description	Measuring Unit	Quantity	Price per unit EUR	Total price EUR
1	Clearing of snow and ice	Km	430	35 euro	15,050 euro
2	Clearing of snow and ice plus salting	Km	430	60 euro	25,800 euro
3	Salting only	Km	430	15 euro	6,450 euro
<b>Grand total</b>					<b>47,300 euro</b>

TABLE 6: Bid of D&T Group & Florida

Of the two invoices analyzed, item 2 including snow and ice removal plus salting has exceeded the quantity for 157.72 kilometers. The quantity calculated from these two invoices is 587.72 kilometers. Even if the amount of 30% was added, which is allowed for framework contracts, the quantity would be exceeded for 28.72 kilometers. Exceeding the amount, when there is one and a half year period for the contract to be completed, will present major problems during the implementation of this contract. As it is expected in such cases, the Municipality has ordered more often the item two, i.e. the most expensive and most harmful item, although items one and three combined have the lowest price. If the municipality would order items 1 and 3, it would receive the same service with less expense and save its budget. Even in this contract, the works were performed before the funds were committed. One invoice has 50 days' time difference between the invoice date and the date of the purchase order.

Contract for Lot 3, which is for the winter maintenance of rural roads, was concluded with the consortium Berisha Com & Drini Company. The contract is concluded for the price of EUR 47,300 while the bid of this EO was EUR 58,500. According to Article 4.1 of the contract, the contract shall have the priority as a document, so in this case the price of EUR 47,300 should be applicable.

The amount provided and the prices given by the winning EO follow in the table below:

No	Description	Measuring Unit	Quantity	Price per unit EUR	Total price EUR
1	Clearing of snow and ice	Km	650	80 euro	52,000 euro
2	Clearing of snow and ice plus salting	Km	650	5 euro	3,250 euro
3	Salting only	Km	650	5 euro	3,250 euro
<b>Grand total</b>					<b>58,500 euro</b>

TABLE 7: Bid of Berisha Com & Drini Company and prices per unit

Even in this case, the municipality has commissioned more services from item 1. Item 2 includes item 1 plus salting and the price is EUR 5. The company invoiced the municipality EUR 27,780 for the clearing done for three days in January, with only EUR 20 for salting, and EUR 27,760 for snow and ice removal. In order not to harm the budget, the municipality should order the service from item 2, and in case the company refuses to perform the service, the contract should be terminated and the service re-tendered. The members of the acceptance committee are the same persons as in the contract for Lot 2. The maintenance of roads within Lots 2 and 3 was done on the same days, on 20, 21, and 22 January 2018. The acceptance committee has approved two situation reports for these days. The Committee could not verify whether these services were performed within the same day when we consider that one service is for cleaning urban roads and the other for rural roads. It seems this verification was not done properly and professionally.

## EVEN FOR THIS LOT, THE PURCHASE ORDER WAS ISSUED ABOUT THREE WEEKS AFTER THE MAINTENANCE SERVICE WAS PROVIDED.

### Full reasoning of the Municipality reads as follows:

According to the action plan, the operator has been instructed to perform salting when temperatures drop when there are road frosts especially downhill and uphill. Priority roads that need to be cleaned have been determined and the salt must first be spread and snow removed thereafter.

Spreading salt was done before snowfall begun, because when snow falls no ice should be present on the road surface. After the layer of snow is about 10 cm or more, the clearing started to be implemented without salting. Salting should be minimal because it damages the asphalt layer by opening pot holes. Therefore, as every year, the winter cleaning operators have been instructed to spread salt in minimal quantities because the salt damages the road.

### ACCORDING TO THE SUBMITTED SITUATION REPORTS AND THE PROCESS OF ACCEPTANCE OF WORKS, DURING THE WINTER SEASON 2018, THE EO PERFORMED THE FOLLOWING WORKS:

**833KM – Clearing of snow and ice**  
**266KM – Salting only**

After the layer of snow is about 10 cm or more, the clearing started to be implemented without salting. Clearing is done in the remote mountain areas—the border area, and in the streets of the villages.

It is worth mentioning that the municipality of Gjakova/Djakovica is composed of 86 villages with roads that are mainly unpaved with rough terrain. Even the most remote villages have open roads and permanent communication with the city during snowfall. As evidence of that, as a committee, we also have photos showing field works throughout the period.

D + however, does not agree with the municipality's reasoning, because if it were true that the municipality would have to perform these two services separately, there would be no need for the third item, which included snow clearing and salting. Apart from that fact, the price is too high for road cleaning, which in the worst case scenario should cost no more than EUR 50 per kilometer. With these amounts declared by the municipality as spent, and with these prices, it turns out that the amount for a two-year contract was fully expended in the first winter season.<sup>56</sup>

<sup>56</sup> 833 Km \* EUR 80 = 66,640, 266 Km \* 5 = EUR 1,330 the total spent so far EUR 67,970. The value of the signed contract is EUR 47,300. According to this calculation, the contract is exceeded by 47.3% that is more than 30% which is the legal limitation.

## Supply with medical and non-medical equipment

This tender was divided into four lots, with an estimated value of EUR 29,977.90, while the deadline for performing the supply was 15 days. The estimated value for each lot was not given. In the first tender, no company submitted a bid and it was canceled. In the second tender, Koslabor was selected as its winner with a price of EUR 10,965 and EUR 8,110 for Lot 1 and 4, while the winner for Lot 3 was Rimi-Altex with a price of EUR 4,184. For Lot 2 there was no bid and as a result it was canceled.

Technical specifications for the required products were missing information, such as dimensions and capacity. More-over, a specific brand was requested without adding the word equivalent. It has also been requested that a product has a purple color, which for medical equipment is not common or necessary. For Lots 1 and 2, the findings on what was missing in the specifications follow in the table below. For Lot 3, where the request relates to uniforms, no sizes have been specified. For Lot 4, items 1 to 5, a brand of a particular manufacturer was required.

### LOT 1: PURCHASE OF MEDICAL AND NON-MEDICAL EQUIPMENT

Position	Description	Findings
1	Revolving chairs for patients	Dimensions and materials are missing
4	FIELD BAGS FOR EMERGENCIES ELITE DOCTOR'S MEDICAL BAG – BROWN LEATHER	A brand of Elite Bags Company was requested

### LOT 2: PURCHASE OF VARIOUS NON-MEDICAL EQUIPMENT

4	Wood stoves	Dimensions and capacity is missing
8	Chairs with option of revolving and moving (with wheels) and armrest	Dimensions and materials are missing
9	Coat hangers	Capacity is missing

TABLE 8: Lack of information on technical specification

Koslabor bid EUR 75 for Lot 1, for the Elite Doctor's Medical Bag - Brown Leather; but at Medisave. co.uk the same item, costs GBP 281<sup>57</sup>.

Items 3 and 5 have the same description literally, but the prices are different, EUR 65 and 75.

The bill of quantities for Lot 4 shows differences between the offered price and the market prices for the following items:

Item 1 for Welch Allyn DS65, the price offered is EUR 40, while four online stores (Medisave, Wijgergangs Medical, HCE and Daxtrio), offer prices of GBP 64, GBP 70, EUR 66 and EUR 92.

Item 2 for the Welch Allyn Pocket LED Otoscope Mulberry is priced at EUR 45, while four online stores (Medisave, Oncall, Miller Medical and Digas) provide prices of GBP 70, GBP 77, GBP 90, EUR 141.

<sup>57</sup> "Elite Doctor's Medical Bag - Brown Leather". 2018. Medisave UK. Accessed on 14 March 2018. <https://www.medisave.co.uk/doctor-s-medical-bag-broen-leather.html>.

Item 3 for DermLite DL100 is offered at EUR 550, while three online stores (DermLite, Amazon and Medisave), provide prices of USD 375, USD 265, and EUR 397.

These price differences show that prices are not analyzed at all during the evaluation. Our researchers have confirmed this by monitoring ten evaluation commissions, and none of them made the price and market comparison.

The special conditions, as in all tenders in the Municipality of Gjakova/Djakovica, were not fulfilled when the tender dossier was prepared but were completed only after the contract was signed.

## Transport of pupils

The tender for transport of pupils was been re-issued because there were no bids for some lots. The tender was divided into 30 lots, with an estimated value of EUR 130,992.62 with a framework contract for seven months. In this tender, the estimated value for each lot was given. Shortened deadline for submitting bids was used, but procurement procedures should have been applied earlier in order to use the standard deadline. Also the special conditions were not completed.

As it was the case with the tender of the Municipality of Prishtina/Priština, Municipality of Gjakova/Djakovica also required operators to provide evidence of successfully concluded contracts of a similar nature. References were required as proof. Companies that carry out ordinary transport of passengers and issue individual tickets cannot prove their service references as such passengers do not issue references.

Four companies bid for 28 lots, while Lot 18 and 29 were canceled because there were no bids, as there is a small number of pupils in these two lots. Winners were Meti Comerc, Destani Trans, Çlirimi and Ekremi Tours. Ekremi Tours withdrew its bid for Lots 5, 22 and 24 after the bids were opened. For these winning lots, Çlirimi was chosen. For these 3 lots Ekremi Tours offered the price of EUR 3,824.70, 5,145.96 and 5,841.36 which were much lower than Çlirimi which offered EUR 6,710, 8,125 and 9,223.20 for these lots.

For 25 of the 28 lots, the price offered was the same as the estimated price. As Ekremi Tours has also withdrawn in the destinations where it has competed with Çlirimi, it is possible that there have been agreements between the two companies not to compete and offer the same value as the estimated one.

**In this tender, there are also differences in the calculation of the price excluding VAT and when the VAT has been added the price was rounded, while according to the law only two numbers after the decimal point are to be taken. Some of the cases where there are differences are:**

- Lot 14 – price per unit without VAT  $0.93 * 1.18 = \text{EUR } 1.0974$ , but it was given as EUR 1.10
- Lot 16 – price per unit without VAT  $0.76 * 1.18 = \text{EUR } 0.8968$ , but it was given as EUR 0.90

The bill of quantities in Excel has been very well prepared by accurately calculating the total price for each lot. The values in each cell are restricted to only two numbers after the decimal point. No changes to cells were allowed and were password protected. The evaluation commissions makes the calculations differently and there are differences in prices, though small ones, that should not have happened. The commission made the calculations by writing over the printed bills of quantities of the EO.



# MUNICIPALITY OF GJILAN/GNJILANE

Nine tenders were analyzed for the Municipality of Gjilan/Gnjilane. This municipality did not provide access to the records on implementation of three contracts, including invoices, nor did it permit D+ to view products delivered by economic operators. D+ draws attention that out of the five monitored municipalities, only Gjilan/Gnjilane Municipality has not provided such access. This, besides being a shortcoming of information in this report, also indicates the non-cooperative approach that the Municipality of Gjilan/Gnjilane has had in relation to this monitoring since its initial stage.

Gjilan/Gnjilane Municipality has four complaints at PRB, for which the PRB has made decisions that the Municipality of Gjilan/Gnjilane has to implement. The main findings for this municipality are as follows: in most of the tenders the deadline for submission of bids is shorter than the law allows, in one case the completion of the needs declaration was made with a pen, and in one case the needs declaration was completed after the publication of the contract notice, while it should be done prior to the publication. Some of the tenders were not planned in the 2017 Procurement Plan. Generally, the warranty is not required even if the special conditions are met.

Timelines for bid and performance security were also wrong, as they should be plus 30 days. In case the tender validity is 90 days, the bid security must be 120 days. The same applies for the performance security, if the deadline for the performance of works is 60 days, the security should be requested for 90 days.

In the tender for supply with inventory, the tender is abnormally low considering that it fulfills all the criteria set out in Form B57 of the PPRC<sup>58</sup>. The Municipality did not compare the tender with other tenders, and consequently did not seek any clarification from the company.

In the tender for the supply of toners, the procurement activity was canceled after the bids were opened with the reasoning that there were mistakes in the bill of quantities, while notification for cancellation listed lack of budget as the reason for this action. The cancellation due to lack of budget is in contradiction with Article 62 of the LPP and with the needs declaration where the municipality has pledged the financial means for this tender.

In the tender for the regulation and opening of tertiary roads, the municipality has not implemented the decision and order of the PRB, and even after six months it has not taken any decision on award of contract or cancellation of procurement activity.

## ● Inventory supply for all requesting units in the Municipality of Gjilan/Gnjilane

The tender for supply with inventory has been foreseen at a value of EUR 150,000 through a framework contract for 36 months. For this tender, four companies submitted their bids, all of which were responsive, while NTP Metali was selected as the winner with the price of EUR 88,935.

Compared to other bids, Metali bid with an abnormally low price, and according to PPRC Form B57 it meets the criteria to be considered as such. The average of four responsive bids is EUR 115,815 while Metali's price was 30.22% lower than the average. Its bid is also more than 10% lower than the second-ranked bidder with a price of EUR 116,885.

<sup>58</sup> This form regulates the handling of abnormally low prices in the public procurement activities

Difference between the average of responsive bids and the bid of Metali	115815 – 88935 = 26880 euro	
Difference in percentage between the highest value (26880) and the bid of Metali	26880 / 88935 = 30.22%	Bid of Metali is 30.22% higher than the average of responsive bids
Difference between the second-ranked bid and the bid of Metali	116885 – 88935 = 27950 euro	
Difference in percentage between the highest value (27950) and the bid of Metali	27950 / 88935 = 31.43%	The bid of Metali is 31.43% higher than the second-ranked bid

**TABLE 9:** Calculation of the tender with abnormally low price according to PPRC B57 Form

The municipality should have sought clarification from Metali after offering a bid with an abnormally low price.

As it is a high procurement value, the deadline for submitting bids is 30 days, whereas in this tender the deadline was initially 19 days, but it was extended to 24 days through an error correction notice, but still less than the deadline allowed by law.

TD requested two name-brand supplies in the technical and professional capacity requirements, but according to the law the word used should be "similar". Bid security was requested for 90 days, but considering that the validity of the tender was 90 days, it should have been requested for 120 days, as provided by the Guidelines<sup>59</sup>. The warranty was requested in an unclear manner, where six months warranty is required for the goods that allow this, and for specific goods a fixed term is required, but with no specific deadline. The contract was signed on 8 February 2018, while the contract signing notice was prepared on 15 February 2018. The preparation of the notice should have been done within two days of the contract signing.

**In most items in the technical specifications a brand of a particular manufacturer was required without adding the word 'equivalent'. Also in most items, specifications such as quantity, dimensions, and capacity were requested. Some of the items lacking information in the bill of quantities are:**

- In the supplies for schools, item 8 required rolling chairs for the staff, no dimensions for the chairs were provided, while for some other items also requesting chairs, dimensions were given.
- Item 12 requires metal boxes for students, with the estimated price of EUR 15 per one case. The bill of quantities should not have set a price, they should have been provided by EO.
- On supplies for the municipal administration, item 9 requests curtains, without giving their dimensions, material and design.
- Items 12 and 13 on supplies for the municipal administration required rolling chairs without specifying their dimensions.
- Item 15, three-seat waiting chairs were required without specifying their dimensions.
- Item 16, document shelves were requested without specifying their dimensions.
- Item 19, garbage baskets for the park were requested, but no capacity of baskets, materials, or other necessary specifications that determine price and quality were provided.

<sup>59</sup> Public Procurement Rules and Operational Guidelines, Article 29.6 (2017). Public Procurement Regulatory Commission. <http://rebrand.ly/rroopp>

- Item 22, chairs for amphitheater were requested, however no dimensions nor an indication of materials were provided.

With all these requirements, each product, regardless of quality, can be offered for sale to the municipality and the municipality is obliged to conclude the contract, as it has not specified the products, quality and content properly.

**There are some items in the offer of the Metali company where the tender is considered to be abnormally low:**

- Item 9 on supply of schools, the price given for a chair for the classroom teacher is EUR 5, while for item 5 that has almost the same description, the price given is EUR 20.
- In item 11 on school supplies, the price for a three-person desk with three folding chairs is EUR 5, whereas it should be higher because at item 9, only one chair had a price of EUR 5.
- Related to supply of inventory for the municipal administration in item 7 relating to tables for the teachers' room, the price of EUR 5 was offered, while in item 4, the reading table was priced at EUR 100.
- In item 10 for the procurement of a glass case for the office of the director, EUR 5 were bid, while a glass case with the required dimensions 80x45x200 costs at least EUR 100 on the market.
- In items 12 and 13 for rolling chairs for the staff, the price given is EUR 10, whereas they cost at least EUR 171<sup>60</sup> on the market as they were requested to be leather coated, with adjustable back-rest and the possibility of lowering and raising.
- In item 14, the price bid for metal cabinets with dimensions 200 x 90 x 40 was EUR 10 while they cost at least EUR 100 on the market.
- In item 15, for three-seat waiting chairs, the price is EUR 10, while on the market one chair costs at least EUR 20, and with three seats it should cost more.
- In item 17, the price given for metal wardrobe size 200 x 90 x 40 is EUR 10, while in item 18 for the same closet but with slightly larger dimensions, the price offered was EUR 150.
- In item 20, the price offered for three-drawer lockers for work tables with dimensions of 70 x 60 x 45 was EUR 5, which contradicts item 3 related to inventory of Main Clinical Family Center where the price was EUR 100, although the request was to have four drawers.
- In item 21, the price offered for wooden shelves with dimensions 200 x 90 x 45 was EUR 5, while considering that item 18 it was EUR 150, it should cost at least as much.

Since there are many items with abnormally low prices, it seems that the company planned to cover these by a framework contract that allows for a + -30% deviation while an additional order can be made from items where the price corresponds to the market one or is higher. In framework contracts, the total value should not be exceeded by + -30%, but the items in the bill of quantities may be exceeded or not ordered at all. In this tender, the possibility of misuse means ordering high-priced products, and ordering a very few of those with abnormally low prices.

<sup>60</sup> "Chairs". Shop-printy.Com. Accessed on 19 March 2018. <https://shop-europrinty.com/sq/45-chairs>.

## Hygienic-Sanitary Supply

In this tender, there is a lack of detailed dimensions, capacities and information in technical specifications. This enables the EO to deliver lower quality products.

The estimated value was EUR 100,000. Of the six bidders, two were non-responsive due to erroneous price calculations but were not cheaper. Eurotec won the contract at a price of EUR 86,929.20.

The estimated value in the needs declaration was EUR 66,000, whereas it should be the same as in the contract notice and TD. The accelerated deadline was used due to the request delay by the requesting unit. This delay is not reasonable and a usual deadline for submission of bids should have been used.

TD confuses requirements for technical and professional capacity with the similar supply that was done for toners, although it related this time around to procurement of hygienic and sanitary material. But the request for contract notice is different as it required EOs to have concluded two similar contracts in the last three years. Participation criteria should be the same both in the TD and contract notice.

**In most items in the technical specifications a brand of a particular manufacturer was required without adding the word 'equivalent'. Also in most items, specifications such as quantity, dimensions, and capacity were requested. Some of the items lacking information in the bill of quantities are:**

- In item 24, waste baskets were required without specifying the capacity of the baskets.
- In item 26, plastic shovels were required without giving dimensions.
- In item 65, work robes were required without specifying dimensions or other elements such as pockets, zippers, etc.
- In item 66, full work uniforms were required, without giving details of what was included in these work uniforms. Are gloves, hats, shoes also included?

All this can cause misuse. For example, the company can offer a price for a waste basket, referring to a large basket, while the company delivers a small one.

**The Eurotec bid contains some items where the prices given differ significantly from the market prices and those from the PPRC List**

- In item 87 for waste basket with lid, capacity 10 liters, the price offered is EUR 0.55, while on the PPRC list it is EUR 7.34<sup>61</sup>
- In item 95 for kitchen paper rolls, length 20m, the price offered is EUR 0.12, while the market price ranges from EUR 2-2.50, and on the PPRC list it is EUR 1.56.<sup>62</sup>

Out of a total of 102 items, 40 lack data on dimensions, capacity, and other elements. The Municipality should ensure that specifications are better formulated, as in this form it enables EOs to offer low quality products, trying to reduce the cost.

<sup>61</sup> Price list of average reference units for hygienic material, MH054 (2015). Public Procurement Regulatory Commission <https://rebrand.ly/krpp2>

<sup>62</sup> Price list of average reference units for hygienic material, MH054 (2015). Public Procurement Regulatory Commission <https://rebrand.ly/krpp2>

## Supply with greenhouses for the needs of farmers in the Municipality of Gjilan/Gnjilane

The tender for greenhouse supply was announced twice. The estimated value was EUR 36,000 with a deadline for supply to be carried out within 60 days. In the first tender, two companies bid, but both were declared non-responsive. One EO had huge price differences as a result of wrong calculations, while the other made changes in quantity.

In the second tender, Metaliku won with a price of EUR 35,240. There was another bid for EUR 700 more. Metaliku had changed the quantities given in the bill of quantities, although the municipality had sent a standard letter of request for clarification. Metaliku responded by saying that it was a technical error. To prevent these actions from happening, price description should be done in Excel and cells should be password protected. This practice is used by the Municipality of Vushtrri/Vučitrn and is a very good practice. In addition, the municipality should investigate the change of quantity made by the company, as it cannot be a technical error.

This procurement activity was not planned because it is missing in the 2017 Procurement Plan. The needs declaration was not completed in full, the procurement number is different from the number in the contract notice, and the part where the nature and scope should be written was deleted as there was handwritten text in it. While Section 3: Review was not signed by the Chief Financial Officer (CFO) and the Chief Administrative Officer (CAO). Bid security was requested for 60 days while it was to be required for 90 days. Although the special conditions were met, the warranty was not requested for a fixed term, only in general terms. The remark was that the supplies must be new, and it was copied from Article 24.1 of the General Conditions. For only one product, drip stop foil, a five year warranty was requested, which is written in the technical specifications

### Out of 10 items in the technical specifications, four lacked dimensions and other features.

- In item 4, rings and connectors were required without dimensions.
- In item 5, bolts were required without dimensions.
- In item 8, only the word “base” is written, in the amount of 38 m<sup>3</sup>. It is not specified whether the base will be laid and with what.
- In item 9, door wheels are required without giving their dimensions.

To overcome these shortcomings, the Municipality should provide more descriptions, specifying dimensions, or in the case of point 8, by which basis it will be laid. Shortcomings in the descriptions allows companies to tailor the offer as it suits them with inadequate quality and conditions that do not serve the Municipality or users.

## Supply of toners for all budgetary units in the Municipality of Gjilan/Gnjilane

The tender for the supply of toners was canceled after the bids were opened because “During the bid examination, evaluation commission encountered numerous errors in the technical specifications and therefore recommends cancellation of the procurement activity”. The notice of cancellation of procurement activity, states as a reason for cancellation, that “The Budget Directorate issued a notice that there were no funds due to the end of the year”. According to the Evaluation Report, errors are due to the fact that a printer was listed in several items, instead of merging it into a single one. According to the Guidelines<sup>63</sup>, a tender cannot be canceled for this reason after the bids had been opened.

63 Public Procurement Rules and Operational Guidelines, Art. 44.7, 44.8 (2017). Public Procurement Regulatory Commission. <http://rebrand.ly/rruopp>

Evaluation report indicates that all operators were informed that they are not in compliance with all TD requirements, so that they can be declared non-responsive and the tender canceled. The bids were opened on 6 December 2017, while the publication of the annulment decision was made on 29 December 2017. Taking into account these data, it is likely that the tender was canceled due to the lack of budget, and as a result of such cancellation, Article 62 of the LPP was breached.

The estimated value was EUR 100,000, with a framework contract for 36 months. The accelerated procedure was used with the reasoning that there is a delay from the requesting unit, but without giving reasons for the delay.

The technical specifications were well prepared, apart from listing some of the same printers two-to-three times. It was requested that the toners be originals, not refilled and reprocessed, which is a good practice that should be followed by all municipalities.

## Supply with scanners, metal detectors and equipment for the needs of the new Municipal Assembly Hall

Technical specifications for the scanner have apparently been tailored to the winning company since almost all the technical specifications offered are the same as the required one.

The estimated value for this tender was EUR 49,950, with a deadline of one month to complete the supply. Only one EO bid. EO Group NAS Systems & Tetronic LLC won with the price of EUR 49,903, which is only EUR 47 lower than the foreseen value.

This procurement activity was not planned since it is not in the 2017 Procurement Plan. The needs declaration has been marked as planned.

Also, for this tender the accelerated deadline for accepting bids was used with the reason “Due to the closing of the budget year and the fact that an inaugural session may be scheduled very soon”. This reason is not convincing, so the standard deadline should have been applied.

As this tender is of medium value, 60 days of tender validity are required, while bid security should be requested for 90 days but it was required for only 60 days.

In the qualification requirements, technical and professional requirements should have been covered by an authorization issued by the manufacturer, but an authorization of the distributor should have been valid too, as it is already authorized by the manufacturer. Major producers do not issue direct authorizations to companies, but have authorized representatives in certain countries or regions. Some requirements asked for references from 2014, 2015 and 2016 with at least one same reference. Here too, the word ‘similar’ should have been used, as competition is restricted, especially when it is known that these purchases are very rare. EU standards for all products were also requested, but no standards were specified. Also, in the other request the ISO 9001 Standard was required, with a note that this standard applies for the sale and installation of security equipment. ISO 9001 relates to quality management systems.<sup>64</sup>

Technical specifications for the products require a warranty of 12 months. The SC lists a warranty but without a duration, while no warranty at all was required by the contract.

64 “ISO 9001:2015 - Quality Management Systems”. 2015. iso.org. <https://www.iso.org/standard/62085.html>.

**The technical specifications for four required products correspond to the information from the catalogues of these products. This may raise suspicions that technical specifications may have been tailored to the winning company. Some of the items where the data are identical are as follows:**

- For the detector, the pipe electricity should operate at 0.7 mA, operating temperature ranges between 0 to 40 degrees Celsius, tape speed 0.20 m/s, load on tape 165kg. These data are the same as the product data provided. Also the computer that is in the detector has the same specifications as the model offered.
- Metal detector should have 10 levels of sensitivity, operating temperature -20 to 70 degrees Celsius, whereas these are the same as the data of the product offered.
- Digital voting system transmitter radio frequency should be at least 100 m, it should have two network ports, the power should be 9dBm, and the antenna can be extended up to 15cm. All of these are the same as the product data provided.

**Some of the items where the data do not match are:**

- It is required that the metal detector has IP44 protection, but the catalogue provides IP40-41. IP44 offers protection from water splash, while IP40 and 41 do not offer water protection.<sup>65</sup>

The TD was received by 22 EOs, while only one EO bid. It seems that the technical specifications were adapted to NAS-Systems & Tetronics, but such action is prohibited by Article 7 of the LPP.<sup>66</sup>

While the tender of the Municipality of Prishtina/Priština for the supply of IT equipment eliminated two companies only for one item, following the same practice, Gjilan/Gnjilane Municipality should have declared NAS-Systems & Tetronics non-responsive because the request was that detector has IP44 protection, while it was offered with IP40-41.

## ● Supply and installation of central heating for the gym in the elementary school “Musa Zajmi”

For this tender, the estimated value was EUR 25,000, with a deadline of two months for the contract implementation. Of the three bidders, one was non-responsive, while Adetex was chosen as the winner with a price of EUR 19,987.76. Doni Term Company was declared non-responsive, but made a request for reconsideration with the claim that Adetex did not submit the bid security even in physical form as required by the Guidelines<sup>67</sup>. The request for reconsideration was rejected by the Municipality on the grounds that documents that constitute TD show that bid security was submitted as a scanned form, with a date before the deadline for submission of bids. The reasoning continues with “Contract Notice and documents that constitute the TD do not specify that EOs which submit bids via the electronic platform are required to submit the physical copy of the bid security prior to the bid opening”. It is true that no contract notice requires bringing a physical copy, but this is required by Article 29.13 of the Guidelines.

Doni Term was not satisfied with the response and complained to the PRB due to the violation of Article 29.13. PRB approved<sup>68</sup> the appeal of Doni Term and ordered the tender to be returned for re-evaluation. After the re-valuation, the

65 Municipality took into (Progress Protection)

<http://www.dsmr.com/resources/ip-rating-chart/>

66 Law on Public Procurement 04 / L-042, Article 7. (2011). Official Gazette of the Republic of Kosovo.

<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2772>

67 Public Procurement Rules and Operational Guidelines, Article 29.13 (2017). Public Procurement Regulatory Commission.

<http://rebrand.ly/ruopp>

68 Decision 01-18 (2018). Public Procurement Review Body

<http://rebrand.ly/01-18>

account the decision of the PRB and announced Doni Term Company as the winner.

This tender was not planned because it was not in the 2017 Procurement Plan. The needs declaration has a date filled with pen of 9 November 2017, and the date of preparation of the contract notice was 1 November 2017, while the publication was done on 6 November 2017. The needs declaration must be drafted before the procurement activity is initiated, i.e. it should have been done prior to 1 November. TD indicates that the date of submission of the contract notice to the PPRC is 30 October 2017 but the contract notice was prepared on 1 November 2017.

The deadline for submission of bids was 18 days, while it should have been at least 20 days since it is of medium value.

In this tender, as in all other tenders in the Municipality of Gjilan/Gnjilane, bid security was not requested for +30 days from the deadline of validity of the tender.

## ● Vehicle Insurance for the needs of Municipality of Gjilan/Gnjilane

The tender for vehicle insurance has an estimated value of EUR 39,000. This was issued as a framework contract for 36 months. Nine EOs submitted their bids, while eight of them were responsive. Insig was selected as the winner with the price of EUR 13,048.07 for one year insurance for all cars, meaning the value for three years is EUR 39,144.21. Insig's price was corrected after having initially offered EUR 13,107.08. Sigma Company made a request for reconsideration against the contract award decision, on the grounds that the prices given by Insig and three other EOs are not the same as the prices set by the Central Bank of Kosovo (CBK). The municipality rejected the request for reconsideration on the grounds that the evaluation commission reconvened and reviewed all the prices, while the difference was very small.

After this decision, Sigma complained to the PRB with the same claims - the insurance prices for some cars do not match the tariffs imposed by the CBK. PRB partially approved<sup>69</sup> the complaint and decided that the tender should go for re-evaluation. Following the re-evaluation, the company Scardian was selected with a price of EUR 13,208.41 for one year of insurance. All other EOs have been declared non-responsive.

Technical specifications include reference to one Hyundai Tarracan car require even though it is out of use. This car should be unregistered or repaired. The requirement to pay for insurance causes a budget loss of about EUR 450 for three years.

## ● Repairing and opening of tertiary roads, cleaning of rivers and removal of ille- gal dump sites in the Municipality of Gjilan/Gnjilane

This tender is not closed yet and has been underway for ten months, due to two complaints filed at the PRB by El-Bau EO.

The estimated value was EUR 400,000, for this framework contract of 36 month duration. Also for this tender, framework contract should not have been used for works that are performed only once and not continuously. Zuka Commerce was selected as the winner with the price of EUR 115,269. El-Bau Company filed a request for reconsideration against this decision, which was rejected. Subsequently, the economic operator filed a complaint with the PRB, which approved it and the tender was returned for re-evaluation.<sup>70</sup>

After the re-evaluation, Zuka Commerce was declared the winner again, with the same price it bid the first time. El-Bau again made a request for reconsideration, which was again rejected. The same company filed a complaint with the PRB,

69 Decision 20-18 (2018). Procurement Review Body

<http://rebrand.ly/20-18>

70 Decision 277-17 (2017). Procurement Review Body

which, besides approving the complaint, issued the municipality an order to apply the earlier decision<sup>71</sup>. Thus, the tender was again sent for re-evaluation. More than six months have passed since the PRB issued its order and the municipality has not yet published a decision. Until 27 June 2018, no decision was published in the e-procurement platform regarding the order issued by the PRB.

The deadline for receipt of tenders was 17 days, while it should be 20 days for medium value. The tender was requested to be valid for 120 days, while the bid security should have been requested for 150 days, but it was requested for 120 days only. Performance security was requested but the duration was not given. Special conditions were not met. The first evaluation lasted 53 days, but it should be 30 days according to the law.

Technical specifications lacked necessary information. For the opening of the roads, no descriptions of roads which will be opened were provided, in terms of their length or width. The quantities in m<sup>2</sup> and m<sup>3</sup> are rounded to numbers ending with 000, for example 25,000, 5,000, 3,000, etc.

#### **Technical specifications for the opening of the roads provide the surface area of 25000 m<sup>2</sup>. There are some errors in calculating quantities per m<sup>3</sup>:**

- In item 3, laying the base with granulated material of 10cm thickness, the quantity given is 10,000 m<sup>3</sup>. According to calculation it should have been 2,500 m<sup>3</sup> because  $25,000 * 0.1 = 2,500$ .
- In item 4 that is the same as item 3 but only with 20cm thickness, the amount given is again 10,000 m<sup>3</sup>, but it should be  $25000 * 0.2 = 5,000$  m<sup>3</sup>.
- In item 5, filling with local material with a thickness of 20cm, the quantity is 9,000 m<sup>3</sup>, but it should be  $25,000 * 0.2 = 5,000$  m<sup>3</sup>.
- In item 6, laying of the base with material with a thickness of 20cm, the quantity given is 3,500 m<sup>3</sup>, but it should be 5,000 m<sup>3</sup>.
- In item 7, compressing the road with hydraulic roller, compression is only calculated for items 3-6, where the text «compressed thickness» is written.

All of these miscalculations of quantities have made a big difference between the foreseen value and the offer of Zuka Commerce.

In items 3-6, the quantity should have been 17,500 m<sup>3</sup> in total, but it was 32,500 m<sup>3</sup>, and based on these errors the quantity is 15,000 m<sup>3</sup> higher. Abuses may result from these large differences in quantity, by providing abnormally low prices. The municipality should make sure there are no mistakes in the quantity, as the budget could be misused in this way.

<sup>71</sup> Decision 461-17 (2017). Public Procurement Review Body <http://rebrand.ly/461-17>

## ● Reconstruction of Gjilan/Gnjilane City Stadium

The stadium reconstruction tender was co-financed by the Municipality of Gjilan/Gnjilane and the Ministry of Culture. The estimated value was EUR 3,883,855.22, to be procured through a framework contract for 36 months. Even for this tender, the use of a framework contract, in the opinion of D+, is not the best way to go. The needs declaration commits the amount of EUR 950,000, for three (3) years while the Ministry of Culture committed to pay EUR 598,000, totaling EUR 1,548,000. The rest, i.e. EUR 2.33 million are not committed. The funds must be committed before the procurement activity starts.<sup>72</sup>

For this tender, there were seven bidders, six of whom were responsive. Al-Trade company was selected as the winner with a price of EUR 3,121,346.07.

The only company that has been declared non-responsive, SDI LLC, had a lower price than Al-Trade. SDI was eliminated due to missing documents on the Geodesy Engineer. He was presented in the staff list, but his contract, diploma and CV were lacking. The municipality sent standard letters for additional information, and SDI sent these documents back to, but for another person. Based on the access to documents provided to our researchers, it is verified that the employee list refers to another person, whereas the contract and the diploma sent were for someone else.

The deadline for submitting bids was 38 days, while it should have been 40 days. The TD lacks the execution project that must be attached. Performance security was requested, but the duration was not given, while the SC was not met, so the warranty should be only one year according to the GC.

#### **The technical specifications are generally well designed, the quantities used the appropriate measurement unit, for example concrete with m<sup>3</sup>, reinforced concrete with kg, surface area per m<sup>2</sup>, and digging with m<sup>3</sup>. But for some items, there are omissions:**

- Item F021 of the description states that the price is calculated by m<sup>2</sup>, but the quantity is given in m<sup>3</sup>.
- Items F085-2, F087-2 require a specific Lexan product without using the word «equivalent».
- Item F121 relating to the power grid, requires that all manufacturers be from EU countries.
- Item 131 requiring air conditioning equipment, specifies the Daikin Company. The model at item 131-1 has a price of EUR 11,610, but the Daikin Company itself sells it for GBP 1,100<sup>73</sup>. Although mounting, pipe laying etc. are included, the price difference is tenfold. Item 130-2 has the same equipment with the same description with a price of EUR 1,207. For items 131-2 and 131-3, products labeled FLXS35B9 / RXS35L4 and L5 do not exist on the Daikin site, [daikinairconditioning.com](http://daikinairconditioning.com), while the prices provided are EUR 14,040 and EUR 16,215.
- Item F901 that relates to unspecified works, additional work, work on meeting the future criteria of UEFA is given as 6% of the amounts of the previous items, totaling EUR 175,354.02. Works at this item should be more clearly specified.

Technical specifications for stadium construction are generally well prepared. The lack of commitment of funds may cause delays in the completion of works.

<sup>72</sup> Public Procurement Rules and Operational Guidelines, Article 8.2, 8.3 (2017). Public Procurement Regulatory Commission. <http://rebrand.ly/rroopp>

<sup>73</sup> Daikin FLXS35B9/RXS35L3 3.5K€ 12,000Btu Heat Pump Floor/Ceiling Mounted Inverter System". [Daikinairconditioning.Com](http://Daikinairconditioning.Com). Accessed on 21 March 2018. <https://www.daikinairconditioning.com/daikin-flxs35b9-rxs35l3-3-5kw>.



# MUNICIPALITY OF VUSHTRRI/VUČITRN

Nine tenders were analyzed in the Municipality of Vushtrri/Vučitrn. The main findings in this municipality are as follows: there are specific product requirements for a particular company, a requirement for standards of foreign countries, one tender has abnormally low prices and in one procurement activity the whole tender is comprised of abnormally low prices based on the legal criteria, while no explanation was requested from the operator. In some tenders for works, there are errors in calculating quantities.

In the tender for supply of information technology equipment, the company Tech Vision sent old and used computers whose specifications do not match the required ones. Tech Vision apparently deceived the municipality, but this was not detected by the persons responsible for receiving the goods.

As a good practice, financial turnover is not required, enabling new or newly established companies to compete. Requirements for technical and professional capacities are minimal, bid security is not required even though this can be misused by the bidding companies. As a result of the lighter criteria, in most of the analyzed tenders there are more offers than in other municipalities, while the majority of EOs are responsive.

## Supply with information technology equipment for the needs of the Municipality of Vushtrri/Vučitrn

The winner of this tender, Tech Vision Company, apparently misled the Municipality of Vushtrri/Vučitrn by allegedly delivering old, used computers that are not compliant with the required specifications. Officials responsible for inspecting computers delivered by the company, noted in the acceptance report that the company delivered the required products.

The estimated value was EUR 21,554, with 30 days to complete the supply. Of the four bids, all were responsive, while Tech Vision was selected as the winner with the price of EUR 20,691.50, which was also the lowest price offer.

The deadline for submitting bids was 17 days. Since the normal procedure was applied, it should have been 20 days.

Many technical specifications specified the brand or the specific product of a brand without using the word 'equivalent'. As an example, the specifications required the processor be Intel Core i3 for laptops and computers. In items 15.1 and 16.1, a printer was required, but a specific model was also specified from the Ricoh manufacturer. Demand for the product of a particular manufacturer limits competition and conflicts with the LPP.<sup>74</sup>

Given that the technical specifications were prepared by the requesting unit, the Municipality should ensure that the word 'equivalent' is added where there are demands for a specific brand in order to comply with the law. Without adding the word 'equivalent', there may be doubts that the tender may have been tailored to a particular company in Kosovo that has the exclusive right to a particular brand.

<sup>74</sup> Law on Public Procurement 04/L-042, Article 28.7. (2011). Official Gazette of the Republic of Kosovo.

## CONTRACT IMPLEMENTATION

Related to the tender for supply of information technology equipment, our researchers visited two locations where these devices were delivered. A computer desktop was sent to the Vushtrri/Vučitrn Firefighting Unit. There is a significant difference between the required specifications and the computer that the company Tech Vision delivered.

**Tech Vision delivered used computers with parts from 2011 and did not provide the required specifications found in the table below:**

No	Requested specification	Specification of delivered computer
1	Intel Core i3 4170	Intel Core i5 2400 (2 generations older)
2	2 USB 3.0	No USB 3.0 ports
3	1 DVI	No DVI port

**TABLE 10.** Differences between the requested specifications and the ones delivered by Tech Vision

Tech Vision packaged the desktop in a box which only had the HP logo. Unlike the desktop packaging, the monitor was in a package where besides the HP logo, contained the model and additional detailed information on the content.

The computer worked very slowly, freezing several times. This was because the hard disk had about 1000 hours of work and slowed down the computer.

This computer was invoiced at EUR 420 by Tech Vision, but the market value is around EUR 200. Computers according to the specifications from the Tender Dossier were also requested for two schools, to which the same used computers were sent.

The acceptance committee, the Registration Officer and the Authorizing Officer, all have signed off on the goods and services under the terms specified. Damage to the budget is estimated to be at least EUR 660.

A laptop for the mayor's office was also requested in the tender. D+ researchers verified this laptop and it was according to the specifications required in the Tender Dossier.

Purchase orders list the date of receipt of the equipment, and in order to make the payment, the municipality issued a payment order for payment within 30 days. Also, the municipality fined Tech Vision Company EUR 310.32 for delays in delivery of products. The invoices that Tech Vision sent have many shortcomings, and do not show what products have VAT of 8 or 18%, even though the VAT field is on the invoice but was not filled out. None of the invoices contain detailed descriptions of the products, but list only 'supply of information technology equipment'. An ordinary purchase receipt for a computer would have data on the computer manufacturer, model, and basic specifications. Such an invoice would also have the price excluding VAT, VAT rate and VAT price.

## Supply of Walnut Seedlings

The tender for supply of walnut seedlings had an estimated value of EUR 32,264.34, while the deadline for the supply was 20 days. This procurement activity was included in the 2017 Annual Plan, but with a lower value, EUR 20,000. The shortened deadline for submission of bids was used "Since the project is financed from own-source revenues and participation of beneficiaries". Of the three bids, all three were responsive, while the contract was awarded to the Semenarna Company at a price of EUR 20,282.24.

The TD, requested that seedlings be imported from EU member or candidate states. This condition restricts competition as there are walnut seedlings from all over the world. There are detailed technical specifications and description on how the seedlings should look. Also a warranty of three years has been required for the drop-by-drop irrigation system.

## ● Winter maintenance of local roads in Vushtrri/Vučitrn Municipality

A tender for road maintenance provided the estimated value of EUR 95,982, through a framework contract for 18 months. Of the five bidders, all were responsive, while company Ramadani was selected as the winner with a price of EUR 68,989.72.

The start and end day for the service was stipulated, which is a good practice. But these dates in the contract differ from the tender dossier. The TD provides a maintenance period from 15 November 2017 to 15 March 2019, while the contract provides 11 December 2017 to 10 May 2019. The time period in the TD was wrong, as the deadline for submitting bids was 27 November 2017. These date discrepancies may lead to different interpretations on the dates that apply. Once the contract is signed, the dates given in the contract have priority, whereas prior to signing, the priority is given to the dates in the tender dossier.

It is anticipated the cleaning will be done for 180 days within a 18 months framework contract. So there are two winter seasons, which last 90 days each. Then, the average snowfall was extracted from the meteorological statistics in Kosovo, i.e. 22 days per one season. Road lengths are provided with rounded numbers such as 2,000m, 10,000m. Since the distances can be easily measured, it would be necessary to give the precise lengths. The width of many roads along with the pavement is less than four meters. In total the width of streets within the city is 18,470 meters, while the surface area is 81,260 m<sup>2</sup>. Of these two values, the average width was taken  $81,260/18,470 = 4.42\text{m}$ . The given width for all village roads is three meters. The width of the streets both within the city as well as the rural ones is greater in reality.

Compared to many other municipalities' bills of quantities, this bill of quantities is better designed, the economic operator only had to record the VAT rate and the unit price with VAT, while the formula calculated the rest. For item 1 in the bill of quantities related to salting, the measurement unit is ton. For item 2 relating to sand, the measurement unit is m<sup>3</sup>. Considering that maintenance was planned for 22 days per season, there were  $22 * 24 = 528$  hours planned, hours that were allocated for hourly work per truck. Although the width of the roads was incorrect, the cleaning was done based on meter-length calculations, totaling 205.57km. It is estimated that a truck does this distance is 10.05 hours based on the speed of 20km/h. So for one season, a truck can make this distance 52.53 times,  $528 \text{ hours} / 10.05 \text{ hours} = 52.53$  times or more than twice a day. It is anticipated that if there is precipitation, the roads will be cleaned at least twice a day. While in the municipality of Gjakova/Djakovica the roads were planned to be cleaned 10 and 12 times within the season, which if we calculate the precipitation average then  $12/22 = 0.54$  means one per day, or every two (2) days.

Given that for this service, three trucks and three loaders were required, working hours were divided by weight, but the operator was supposed to give a price for each truck. The company Ramadani offered a price of EUR 25 per hour for all trucks and loaders. The total price only for working hours was EUR 26,425.

Although the Municipality of Vushtrri/Vučitrn made efforts to make the calculation as accurately as possible, it provided an incorrect width of the roads. This error in the bill of quantities had no negative effect as the road cleaning was calculated by meter length. But this should not have happened because if the width was given accurately, EOs would know the exact surface of the roads to be cleaned.

## ● Construction of a Memorial in the Village of Gllavotin (I Phase)

The tender for construction of the monument in Gllavotin was canceled because the only bid that was received was non-responsive because of double calculation of the foreseen value of EUR 30,000.

The memorial project was attached to the tender dossier as requested by the Guidelines. Items 24 and 25 of technical specifications require that the material be of high quality, without specifying what type of quality is required. Item 26 specifies the font size to be used on the memorial that should correspond to the standards, without specifying the standard.

Item 27 requesting the engraving of names and figures of martyrs lacks the unit of measurement. Item 31 requires waste baskets to be placed around the memorial, but without the dimensions and capacity of the baskets.

The special conditions have been met, and the warranty was requested for two years. If the Municipality plans to announce this tender again, it would be best to correct the errors in the above items.

## ● Construction of the Cultural Centre "Hasan Prishtina" in Vushtrri/Vučitrn

The tender for the construction of the Cultural Centre was co-financed jointly with the Ministry of Culture. The estimated value was EUR 1,400,345, and the date for completion of works was set, which is a good practice. Of the eight bidders, six were responsive, while the contract was awarded to ENG Group and Ariani Co for a price of EUR 1,178,132.50.

According to the project that is attached to the TD, it is foreseen to demolish the existing facility and build a new one. The technical description is detailed, but in some parts products from certain manufacturers are requested and the German DIN standard is used. Technical specifications, item 9 relating to the demolition of the existing facility provides neither the quantity nor the unit of measurement. Quantity is 0.

Technical specifications, item 22 relating to earthworks with description: supply, dumping and compression of gravel under the foundation slab with 175cm thickness, provides the quantity of 1768.35 m<sup>3</sup>. Surface for the foundation contained in the contract notice is 678.59 m<sup>2</sup>, and on that basis the quantity should be  $678.59 * 1.75 = 1187.53 \text{ m}^3$ .

In item 25 relating to flooring and concrete laying of the foundation slab 50 cm thick, the amount given is 424.48 m<sup>3</sup>, while it should be  $678.59 * 0.50 = 339.295 \text{ m}^3$ . Even if it is calculated with the ground surface of 740.47 m<sup>2</sup>, again the quantity turns out to be less,  $740.47 * 0.50 = 370.235 \text{ m}^3$ .

The warranty was requested for one year, and given the importance of the facility and the work to be carried out, it should have been sought for longer.

**There are some items in the winning consortium's offer where the prices offered differ greatly from the prices on the market. For example:**

- In items 41, 42 and 43, relating to masonry works on interior walls with 25cm hollow clay blocks, the price is EUR 45, while the PPRC<sup>75</sup> list provides the price of EUR 57 m<sup>3</sup>.
- In items 73, 74 and 75 on plastering of walls, ceilings and staircases, the price is EUR 2 m<sup>2</sup>, while the PPRC<sup>76</sup> list provides the price of EUR 6.
- In items 76 and 77 on skim coating of walls and ceilings, price offered is EUR 0.50 m<sup>2</sup>, while the PPRC<sup>77</sup> list provides the price of EUR 4.5.
- In item 80, relating to supply of granite tiles of dimensions 60 x 60cm, the price is EUR 10 while the PPRC<sup>78</sup> list provides the price of EUR 37.
- In item 166 relating to supply with concrete C30, the price is EUR 45 m<sup>3</sup>, while the market prices range between EUR 50-60.
- In item 167 on supply of cobblestones with 8cm thickness, the price offered is EUR 4.80, which is the cost of production, and the market price is at least EUR 12 per m<sup>2</sup>.
- In the electrical installation section, item 114 requires a 3TB hard drive from Seagate. The offered price of EUR 25 is too low compared to the price of EUR 112 offered by Comtrade<sup>79</sup>.
- In item 115, a LED 27 monitor is required with full HD resolution, which is priced at EUR 25, while it costs at least EUR 250 on the market.
- Item 117 requires a network device, namely Switch SF500-48P of Cisco manufacturer, the price offered is EUR 25, but it costs USD 964, USD 1525, and USD 1165 in the three online stores (Amazon, Comelsoft, VoIP Supply).
- In the heating works section, items 1 to 6, for the supply and installation of radiators, prices range from EUR 30-80, while the prices on PPRC<sup>80</sup> list range from EUR 50-108.

In many sections the winner has offered abnormally low prices and the Municipality should have requested a detailed explanation. The reasoning behind it is that so many of the products cannot be produced but are usually bought from other companies. The Municipality should ensure that supplies for hard discs, monitors, and switches are brand new and unused, while based on the low price they are most likely used products.

75 List of average unit reference prices for construction and construction materials, PN0270 (2015). Public Procurement Regulatory Commission <https://rebrand.ly/krpp>

76 List of average unit reference prices for construction and construction materials, PN0372 (2015). Public Procurement Regulatory Commission <https://rebrand.ly/krpp>

77 List of average unit reference prices for construction and construction materials, PN0379 (2015). Public Procurement Regulatory Commission <https://rebrand.ly/krpp>

78 List of average unit reference prices for construction and construction materials, PN0347 (2015). Public Procurement Regulatory Commission <https://rebrand.ly/krpp>

79 "Barracuda Desktop 6Gb/S 3TB". Comtrade Computers. Accessed on 16 March 2018. <http://www.comtrade-ks.com/sq/product/8206>

80 List of average unit reference prices for construction and construction materials, PN0347 (2015). Public Procurement Regulatory Commission <https://rebrand.ly/krpp>

## ● Construction of streets with cobblestones (phase IV)

This tender foresees laying of cobblestones in selected streets. The estimated value of the contract is EUR 87,439.57 with a specific date when the works should be completed. Out of five bidders, all were responsive. Wenda was selected as the winner with the price of EUR 66,755.69, as the lowest bidder.

The warranty was required for one year. The technical description, which is very detailed, demanded the use of German DIN standards in some parts, which are not recognized by Kosovo legislation. However, the municipality could have required the equivalent ISO standards instead.

**Price list provides the dimensions of each street, length and width. According to the original street project, the following layers should be laid:**

- Buffer layer of fragmented limestone 0-60mm, t = 20cm
- Buffer layer of fragmented limestone 0-31mm, t = 10cm
- River gravel with fraction 4-8mm t = 5cm
- Concrete cobblestones t = 8cm
- Total - 43 cm

**For some streets, the quantity of cubic meters was calculated incorrectly:**

- In «Rafet and Burim Behrami» street, dimensions 110 x 4m, in item 6, supply of 10cm thick fragmented stone material was requested. The quantity given is 55 m<sup>3</sup>, but it should be  $110 * 4 * 0.1 = 44 \text{ m}^3$ .
- In the «Ditura» street, dimensions 277 x 3.5m, in item 4 the leveling of the substrate with gravel was requested, while the quantity given is 1264.5 m<sup>2</sup>. The quantity should be  $277 * 3.5 = 969.5 \text{ m}^2$ .
- In the same street, the item requesting supply of material of fragmented stone with a thickness of 20cm. The quantity given is 97 m<sup>3</sup>, while it should be  $277 * 3.5 * 0.2 = 193.9 \text{ m}^3$ . The quantity calculated is as if it was 10cm thick.

For laying 8cm thick cobblestones, Wenda offered a price of EUR 6.7. The other four companies also offered prices of EUR 6.5 - 8.7 for the laying of cubes.

Although most streets are well calculated, mistakes in calculation could enable companies to offer abnormally low prices when they notice that the quantity required is higher than the actual. The requesting unit should ensure that there are no errors in the calculation of quantities, whereas the procurement office should check them before the publication of the contract notice.

## CONTRACT IMPLEMENTATION

In order to monitor the implementation of this contract, only invoices, payments, and other documents were considered. The purchase order was issued before the work started, as required by the Financial Rule. Until 1 June 2018, only a part of the work was paid although the contract provides that the works be completed by 31 May 2018. The situation report attached to the invoice shows that out of ten streets that should have been laid with cobblestones, only four of them were completed. Despite that, Vushtrri/Vučitrn Municipality stands better than other municipalities, requesting that work is completed on a set date, the violation of the deadline for completion of works should result in penalties for the company.

### ● Re-asphalting of the local road Vushtrri/Vučitrn-Sllatinë

Both companies that bid for re-asphalting of the road Vushtrri/Vučitrn-Sllatina, were responsive. Bageri Company was selected as the winner with the price of EUR 18,966, while the estimated value was EUR 20,000. The road should be re-asphalted within 30 days. The shorter deadline for submission of bids was used with the reasoning that "the project is financed from own-source revenues, and could not be initiated until now with financial resources for this activity". This reason is not convincing to apply the shortened deadline, as re-asphalting of a road is not urgent. The municipality should have used the standard deadline consisting of 30 days.

Warranty of one year was required for defects, and three years for quality of work. Also the technical description of this road required German DIN standards and German regulations ZTV. As noted above, these standards are not applicable in Kosovo.

Given quantities in Items 5 and 6 of the technical specification for the supply and compression of a 10cm thick limestone buffer layer differ and are 260 and 225 m<sup>3</sup>, while they should be 225 m<sup>3</sup> for both.

Errors in the calculation of the quantity should not happen, although in this case the quantity is small, if it was 225 m<sup>3</sup> in item 5, the price of Bageri would be  $225 * 5 = \text{EUR } 1,125$  while the offer lists  $260 * 5 = \text{EUR } 1,300$ . The Municipality would save EUR 175 of its budget.

## CONTRACT IMPLEMENTATION

This tender, in addition to invoices and other documents, was also monitored by visiting the place where the works were performed. During the visit on 1 June 2018 the road was being re-asphalted. The purchase order was made about one month after the work was completed. The acceptance report of the works is more detailed and it provides information on days not worked and obstacles. From the bill of quantities, only two items were not completed worth EUR 550.

### ● Arrangement of the Cemetery

The bid for arrangement of the cemetery was canceled twice. There was an offer in the first tender which was considered non-responsive after the prices were given without VAT. There was an offer even in the second tender, but now from another company, which was considered non-responsive since there were arithmetical errors in it and after the correction the limit of

+ -2% was exceeded. The estimated value was EUR 15,000 with a deadline for the cemetery to be regulated within 40 days.

The deadline for receipt of tenders was 18 days, while it should have been 20 days, as the value is medium.

The cemetery project was also attached to the tender dossier, which provides an overview of how the cemetery would look when its regulation was completed. Warranty was requested for one year for defects and three years for quality of work.

Technical specifications, item 1 on digging the soil with a thickness of 10cm, provides the quantity in m<sup>2</sup>, whereas it should be m<sup>3</sup>.

Item 2 requested laying of concrete slabs and walls of 15 cm thickness and grave dimensions of 2.3 x 1.2 m with quantity given of 28.08 m<sup>3</sup>. Based on the dimensions given, the quantity should be  $2.3 * 1.2 * 0.15 = 0.414 \text{ m}^3$ . TD required arrangement of 24 graves, meaning that the total quantity is  $24 * 0.414 = 9.936 \text{ m}^3$ . The quantity given is much higher than the quantity calculated based on the dimensions given.

Item 3 provides data on all three dimensions, but the requested quantity is in m<sup>2</sup>.

The tender also contains errors, with incorrect quantity, although the dimensions were provided and at one item instead of using m<sup>3</sup> it used m<sup>2</sup>, while knowing that if the thickness is less than 1m, the quantity in m<sup>3</sup> is smaller. The municipality should correct the errors in quantities before re-announcing the tender for the arrangement of the cemetery.

### ● Widening, deepening and cleaning of the Llap Riverbed

Nine EOs bid for this tender, all of which were responsive. Wenda was selected as the winner with a price of EUR 81,554.01. Compared to the estimated value of EUR 160,909.35, the winner's price is lower by half. The municipality should have requested clarifications for the abnormally low price bid as the conditions under Form B57 of the PPRC were met.

- The average of the nine bids is EUR 115,783.75
- $115,783.75 - 81,554.01 = 34,229.74$
- $34,229.74 / 81,554.01 = 41.97\%$ , while the limit is 30%
- The second cheapest bid is EUR 93,236;  $93,236 - 81,554.01 = 11,681.99$
- $11,681.99 / 81,554.01 = 14.32\%$ , so it is more than 10% cheaper than the second bid.

It offered a price of EUR 0.15 per m<sup>3</sup> for item 8 related to digging of the soil at the bottom of the river bed, while the price ranges from EUR 2 to 5 on the PPRC list<sup>81</sup>

Considering that Wenda Company offered a price of about EUR 80,000 less than the estimated value, and after the conditions were fulfilled to request clarification for an abnormally low tender, the Municipality should have requested clarifications as required by law. Given that the tender is abnormally low, it is also reflected in the prices given. In this case, there is no production that would entail taking into account the cost incurred, while Wenda would find it difficult to justify the prices. Also, if the municipality had doubts about the successful performance of the works, it could have increased the security for execution of works up to 100% as needed. The latter could provide a greater assurance that the company would respect the contract and its deadlines.

<sup>81</sup> List of average unit reference prices for construction and construction materials, PN0009-0058 (2015). Public Procurement Regulatory Commission <https://rebrand.ly/kppp>





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