

FOL

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PUBLIC PROCUREMENT MONITORING IN KOSOVO: INCREASING INSTITUTIONAL ACCOUNTABILITY IN SPENDING PUBLIC MONEY

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“The relationship between transparency and corruption has become axiomatic over the years and the two terms have become almost inseparable from one another”

Summary

This report presents findings from the 3-month monitoring of high value contracts of the Ministry of Health, Ministry of Infrastructure and Ministry of Trade and Industry. During this period, FOL Movement has received responses from Ministry of Trade and Industry and Ministry of Health. The process of monitoring these three ministries is still ongoing, due to some findings in the Ministry of Health and the contact we managed to have with Ministry of Infrastructure.

The overall monitoring of procurement process resulted with the following findings:

1. Public procurement remains a non-transparent sector towards the public because the access to contract documentation remains limited. In many cases, institutions hesitate to open these documents, such is the case of Ministry of Health, which did not give us access to management plan of contract that we monitored. Whereas, Ministry of Infrastructure, on the other hand, did not provide access to any of the contracts requested by FOL Movement, thus ignoring the request for access to public documents;
2. Law on Public Procurement continues to not be respected by institutions and respective officers. Two contracts monitored by FOL in the Ministry of Health are signed by the acting head of procurement department, although he is suspected not to have a certificate from Public Procurement Regulatory Commission;
3. Lack of standard documents makes the assessment and comparison of documents more difficult and results become vaguer. In both ministries that we monitored, bid opening reports do not contain more detailed information on the evaluation of bids and economic operators;
4. Although in these two monitored contracts, the main contract awarding criterion remains the lowest price, many economic operators are disqualified from competition for procurement activity because they did not meet administrative criteria, including basic documents like copies of tender forms and business registration documents;
5. Contracting authorities in many cases are faced with misplanning of the procurement activity, followed by bids of economic operators exceeding drastically the estimated budget limits of contracting authorities. Consequently, this often leads to cancellation of lots, such is the case of the Ministry of Trade and Industry, where for such reason two lots foreseen in a contract were cancelled. We faced with the same situation in the Ministry of Health where the lot was cancelled after signing the contract, due to the claim of the Contracting Authority that the offered price was much higher than the market price.
6. Small competition between economic operators remains quite problematic for public procurement. Many economic operators are used to be the only operators in bidding for a specific product/work, so that time after time they do not change their product values.

Introduction

Public procurement presents a complex process which is used for spending the largest portion of public money. As such, it is considered one of most corruption-sensitive processes, whose weight and consequences are directly felt by the taxpayers (TI, 2004)

Perceived as the second biggest problem by the citizens of Kosovo (FOL, 2017), corruption has been nascent in the public procurement, boosted by the failure to uphold the Law on Public Procurement, but also due to low level integrity and accountability of procurement officers in contracting authorities.

Progress Report of 2016 highlights that although efforts have been made for approximation to the European Union criteria, Kosovo should continue to work in improving transparency in the entire process of public procurement activity, particularly in the phase of implementing public procurement tenders and in strengthening the compensation system and proper functioning of online procurement.

Furthermore, concerning is the fact that presence of corruption and abuses in public procurement impacts on the reduction of competition for specific works and services, helping in the creation of monopoly by specific companies and discrimination of other companies and businesses. The average number of bids per tender in 2015 fell to 5.8 compared to 2014, when the average number of bids per tender was 6,1¹.

Another element that impacts the emergence of abuses is the capacity of authorities to manage the procurement activity. Although under the Law on Public Procurement it is mandatory to have procurement officers certified in order for them to have the authority to sign the contract, in some occasions, as is also the case of monitored contract of Ministry of Health, the responsible procurement officer signs the contract despite not being certified by the PPRC.

It is a known fact that transparency is not easy to be achieved, while the hesitation of institutions to open documents is among the first challenges we face in the process of enhancing accountability and improving transparency. We have faced the same hesitation also in requests that we have sent to ministries for access to contracts. Only through the pressure that we put for respecting legal deadlines in responding to requests for access, we managed to have meetings with procurement officers in these ministries and then also to receive requested documents.

All these elements make institutions and civil society to engage more in finding more adequate ways for increasing transparency in this field. Amendments to the Law on Public Procurement are still required, especially in principles of transparency, while improvement of public officers' integrity is essential for smooth public procurement process. Increasing accountability in this sector is only possible when the legal aspect will be in harmoni with the responsibility of officials and when public enjoys access guaranteed under the law.

¹ Kosovo 2016 Report

FOL Movement continues its engagement to influence the improvement of public procurement situation through a project which aims to analyse methods how public money is spent, more specifically, monitoring contracts that Kosovo ministries have made with economic operators.

FOL has monitored high value contracts that were contracted by ministries during 2017, trying in this way to present contract award procedures to the public and influence so that the public procurement process becomes more open.

Three ministries were targeted by this project: Ministry of Health, Ministry of Trade and Industry and Ministry of Infrastructure. Law on Access to Public Documents stipulates that the entire file of a contract should be accessible to the public, giving us possibility to analyse each stage of procurement activity to see how much procedures are respected by economic operators, but also by the contracting authorities.

Online public procurement platform that is managed by the Public Procurement Regulatory Commission aims at publishing electronically all contracts and files that are contracted by institutions involved in procurement activities. According to monitored procurement activities, all documents of contract file are published in the online procurement platform. However, this platform currently provides access to these documents only for users who register as economic operators, thus making it impossible for citizens to have access to these documents.

FOL Movement, based on provisions of the Law on Access to Public Documents and Law on Public Procurement respectively, in promoting transparency has managed to get physical copies of files of selected contracts. When collecting the data, we have given importance to documents qualified as business secrets and any other document which in one way or another would have detrimental impact on economic operators. Procurement department officers have filtered these data by giving us access only to documents that are considered public under the law.

FOL findings point out once again the need for continuous monitoring of public procurement, in order to make way not only for upholding law on public procurement but also amenability of procurement officers and staff to perform the duty with integrity and upholding the law.

Methodology

Monitoring public procurement contracts was carried out through a methodology combining descriptive method and observation. Since a contract file contains a range of documents that include various development stages of procurement activity, it has enabled us to control the data also based on the data published on official website of Public Procurement Regulatory Commission, in order to continue with comparative analysis in the contract awarding stage.

The monitored contracts were selected based on their value and type of work for which they were contracted. The monitoring target were high value contracts, which according to the Law on Public Procurement are considered to be:

“(...).1.1. a supply contract or a service contract the estimated value of which is equal to or greater than, or can reasonably be expected to be equal to or greater than, one hundred twenty-five thousand (125.000) euro; or

1.2. works contracts the estimated value of which is equal to or greater than, or can be reasonably expected to be equal to or greater than, five hundred thousand (500.000) euro (...).”².

Since the number of high value contracts made by targeted ministries is very big, we have monitored only the large contracts which were made from January 2017 onwards. However, as stated above, FOL has received physical copies of contract documents and this made it impossible to monitor a large number of contracts during three months of project implementation, therefore FOL selected one contract from each ministry and continued analysing their implementation.

Requests for access to selected contract files were sent to ministries via email. Since the online public procurement platform (e-procurement) does not provide access for every user but only for users registered as economic operators, we had to take physical copies of all requested documents.

FOL, inter alia, held meetings with procurement officers of relevant ministries to obtain the requested documentation. Despite the hesitation of procurement officers to give us files of these contracts, FOL managed to have access to physical copies of requested contract files.

Being a public document, a contract file together with all documents it contains have to be accessible to the public according to the Law on Access to Public Documents. A contract file usually includes the following documents:

- *The contract made with the winner, including all its annexes and addenda*
- *All tender dossiers submitted in relation to a specific procurement, respectively tender dossiers of economic operators with which contracts are made, and tender dossiers of all economic operators*
- *Bid opening minutes*
- *Contract evaluation report*
- *Copies of complaints lodged in relation for these procurement activities*
- *Contract management plan*
- *Activities performed for management of these contacts:*
 - Contract Reviews*
 - Data on the use of correct quality standards*
 - Inspection of the working site and materials*
- *Payments made for the contract execution*

Contracts that were monitored by FOL were made in May-June 2017, whereas implementation of largest portion of contracts was foreseen for August-September, not making it possible for us to have the data on inspection of execution site or on payments for contract execution.

When monitoring contracts, we used the Public Procurement Regulatory Commission website to compare the data on the contract announcement, contract award and other notices with other

² Law No. 04/L-042, Article 19

documents we received from ministries. By comparing them we managed to understand whether contract award deadlines were respected, and we have received the necessary information on cases when various lots were sent for review.

Documents on cases of contract cancellation or on contract parts sent for review were received from Procurement Review Body to analyse reasons of cancellation/review, complaints and reactions of economic operators, and processing of these cases.

Further, through tender opening minutes we have managed to analyse the procedure for evaluating bids of economic operators and how precise the evaluation committees were in evaluating the promptness of economic operators. From these minutes we realized how much economic operators have respected administrative procedures, but also competition in the price and contract award criteria.

Regarding composition of evaluation committees, through monitoring we tried to assess objectiveness in the bid evaluation and any potential relation between members of evaluation committee with economic operators that would lead to discrimination of other operators. Furthermore, by establishing a connection between these committees and bid opening minutes we have analysed reasoning given by evaluation committees in awarding a contract, but also in cases when lots were cancelled or sent for review.

Economic operators, being the key point where the monitoring was focused, were analysed during all phases of the contract, starting from respecting the deadline for submitting the bid with all relevant documentation to setting the price and suitability of the contracted work.

Evaluation of economic operators as key process of entire monitoring is presented with graphical data for all lots of the contract, in order to clearly see what has influenced an operator to win the tender for a specific contract.

In contracts that we monitored we found a cancelled lot, which was followed by a complaint of economic operator for cancellation of contract award. This complaint addressed to Procurement Review Body was monitored in order to see the validity of decision of evaluation committee and PRB expert's explanation of decision for cancellation of the lot.

In public contracts made with economic operators were analysed all provisions related to legal deadlines and obligations that economic operator has towards contracting authority for contracted activity. In the monitored contract of the Ministry of Trade and Industry, contracts had also attached the contract management plan. However, since the execution of these contracts was still in early stages, this document was not completed with final data, but only the basic data on contract manager and deadlines related to contracted work.

Whereas in the Ministry of Health, we did not manage to get the contract management plan. Although FOL has contacted the procurement department officers and insisted to have access to this document, officers did not respond to our request.

Findings

Monitoring of contracts of Ministry of Health and Ministry of Trade and Industry found some irregularities that were present in every stage of procurement activity in question.

Contract notices in the e-procurement platform mix contract numbers, by posting the notice for same contract somewhere with procurement number and somewhere with internal procurement number. This caused confusion also for us as monitors, since the platform does not provide more detailed access, in procurement notices there were two contracts with different numbers. We found this issue in the contract of Ministry of Trade and Industry. In the meeting with officers of this ministry, we were explained that PPRC publishes contracts only with procurement number, while this ministry also uses the internal procurement number.

Deadlines set forth in LPP for procurement procedures are respected from both contracting authorities and economic operators. We have seen this in contract notices and from the data in bid opening minutes. Regarding the meeting of contract execution deadlines, we have not managed to verify it because contracts that we monitored had not finished the projected activities.

From contract monitoring we noticed that many economic operators were disqualified from tendering process for not fulfilling the criteria set by the contracting authority. In the Ministry of Trade and Industry, 3 out of 7 economic operators were disqualified for not meeting the administrative and formal requirements.

There was no response on the request for access to public documents by the Ministry of Infrastructure. FOL has filed a complaint with the Institution of Ombudsperson, which received the complaint and conducted necessary investigations in this ministry. After a period of three months, FOL Movement managed to contact the department of procurement in this ministry and is in phase of selecting the contract for monitoring.

Ministry of Health

In the Ministry of Health was analysed the contract with procurement number 206-17-452-1-1-1, with title “Supply with drugs of Essential List”. Being in the supply category, this contract was divided into 9 lots with main location of works in respective drug warehouses for primary and secondary healthcare. More precisely, Lots 1-8 in the Department of Pharmacy, while Lot 9 in the Health Financing Agency. Following an open procedure for all parts of the contract, the contract award criterion was the lowest price. The estimated contract value was 1,700,000 Euro.

Same as in the website of Public Procurement Regulatory Commission, contract award notice is prepared on 18 May 2017, while the date of contract award notice was 22 May 2017. All contracts with economic operators were signed on 29 May 2017.

The composition of bid evaluation committee in the tender “Supply with drugs of Essential List” included two pharmacists and a procurement officer. Proposal for composition of evaluation committee came from Alban Pozhegu, Acting Head of Procurement Department, who for some time was accused for exercising this function even though he did not have a licence for public procurement³, thus violating paragraph 2 and 3 of Article 23 of the Law on Public Procurement⁴. Whereas bid opening committee consisted of 5 people from procurement department of the ministry.

Bid opening, according to bid opening minutes, occurred on 24 May 2017, when the received bids and economic operators were evaluated for each part/lot of the contract. A total of five bids were received for this tender. In the documentation that we received from procurement department of the ministry, there were no bids from any economic operators for lots 2, 3 and 8. Whereas regarding Lot 9, from the emails exchange of between Department of Pharmaceutical Services - AFSH and Procurement Department of Ministry of Health, it was found that due to the need of health institution for product of Lot 9, contracting should be initiated with shorter deadline.

Lot	Type of medicine	Pharmaceutical form	The estimated amount per lot
1	Sodium Valporate	Susp	29,900.00€
2	Metronidazole	Tbl	656,000.00€
3	Haloperidol	Tbl	980€
4	Salbutamol	Sol	75,000.00€
5	Salbutamol	Plv for inh	195,200.00€

³ Zëri. (2017). *Ministri Rrahmani zgjedh shefin e prokurimit pa licencë prokurimi*. Accessed at: <http://zeri.info/aktuale/132698/ministri-rrahmani-zgjedh-shefin-e-prokurimit-pa-licence-prokurimi/>

⁴Levizja FOL has contacted PPRC to verify if the official mentioned, Acting Chief of Procurement in the Ministry of Health has a certificate that allows him to sign the contracts the Ministry contracts with economic operators. According to PPRC, this official does not possess a procurement certificate. In the current period FOL is investigating the professional background of this official to see verify if he has the required qualification to sign these contracts.

6	Bacitracin+Neomycin sulphate	Plv	79,800.00€
7	Procainebenzylpenicilin+Benzylpenicilin	Plv for sol for inj	142,000.00€
8	Ribavirin	Sol for inj	420,000.00€
9	Infliximab		170,000.00€

Table 1 Parts of the contracts with more detailed content

Economic operators that have submitted bids for this contract are: “Dreni Pharm”, “Exclusive”, “ICN&BM”, “PHOENIX PHARMA” and “Pharmex”. As such, these economic operators have bid for the following lots:

- Health Company “Dreni Pharm” has submitted bid for lot 4;
- “Exclusive” L.L.C. has submitted bid for lot 7;
- N.T.P. “ICN & BM” has submitted a bid for two lots, lot 6 and 7;
- “Phoenix Pharma” L.L.C. has submitted a bid for lot 4 and 5;
- “Pharmex” L.L.C. has submitted a bid for lot 1.

Economic operator	Lot	Bidding price
"Pharmex"	1	29,640.00€
"Dreni Pharm"	4	88,887.50€
"Phoenix Pharma"	4	80,784.46€
"Phoenix Pharma"	5	294,648.04€
"ICN & BM"	6	69,920.00€
"Exclusive"	7	156,860.00€
"ICN & BM"	7	141,174.00€

Table 2 Bidding prices from economic operators for each lot

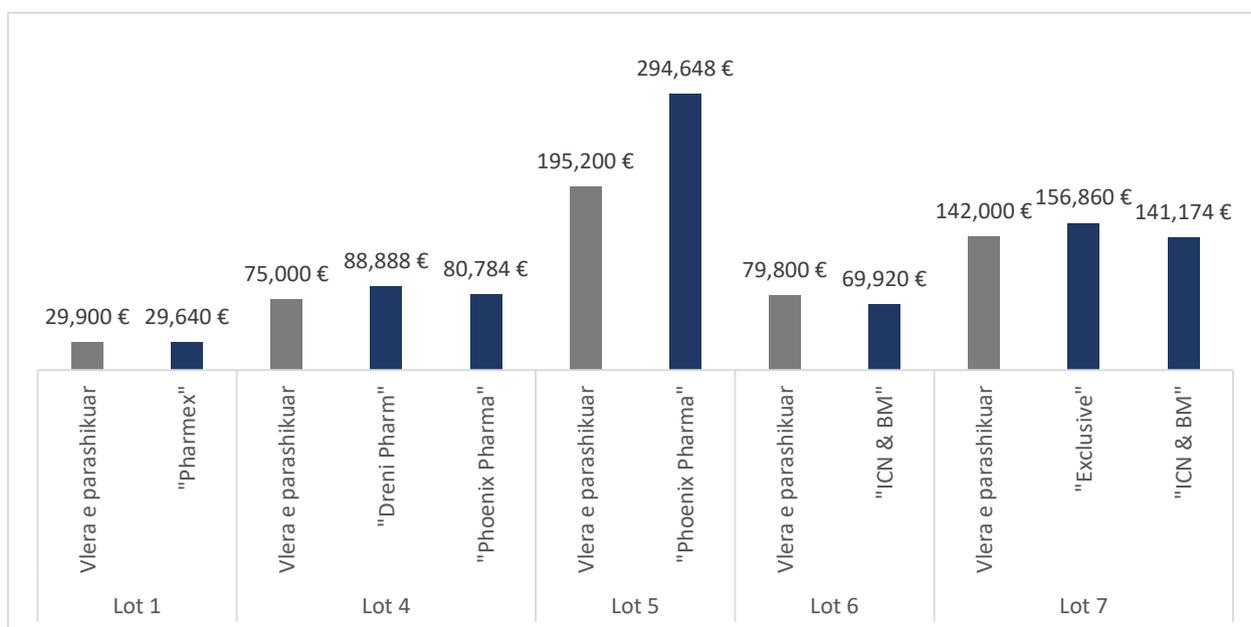


Table 3 Suitability of bids of economic operators compared to the criteria of contracting authority

According to the bid opening minutes, Lot 5 was cancelled during the tendering phase with explanatory information. As it can be seen from the graph, the bidding price for this Lot offered by economic operator “Phoenix Pharma” was for 99,448.04 € higher than the one foreseen by

Contracting Authority. Because of this only for Lots 4 and 7 there were more than one bid, whereas in other lots a single bidder was declared a winner.

Tender evaluation report

Lot 1

According to tender evaluation report, economic operator “Pharmex” L.L.C, was a single bidder for this lot. Concerning the administrative suitability, this bidder met all the criteria and submitted all required administrative documents, to be considered responsible in meeting administrative requirements.

Concerning admissibility requirements and professional suitability, this operator has submitted all required documents within the given deadline. Whereas regarding economic, financial, technical and professional requirements, this bid is considered as irresponsible because its documentation lacks Authorisation for Marketing in Kosovo, with the dose of requested products.

Although this tender meets the requirements related to administrative and professional suitability, the lot has been cancelled due to the non-compliance of the dose offered by Economic Operator with the one requested by the Contracting Authority.

Lot 4

In tender evaluation report, there are two bids in Lot 2 from two economic operators, N.SH. “Dreni Pharm” and “Phoenix Pharma” L.L.C,

Regarding administrative suitability, both bids result to be responsible, meeting all criteria set by the Contracting Authority and submitting all necessary documentation.

Also regarding Admissibility Requirement and Professional Suitability, both tenders are considered as responsible. Whereas in economic, financial, technical and professional requirements, the bid of “Phoenix Pharma” results as irresponsible compared to the bid of “Dreni Pharm”. This is because “Phoenix Pharma” lacks Authorisation for Marketing in Kosovo with the dose of requested products and Licence of AKPM as wholesale trader of pharmaceutical products.

Taking the lowest price as criterion, but also following suitability requirements set forth by Contracting Authority, contract is awarded to the economic operator “Dreni Pharm”.

Lot 5

Based on the tender evaluation report, there was only one bidder for Lot 5, “Phoenix Pharma”. This economic operator results as irresponsible in relation to administrative requirements and suitability and admissibility requirements and professional suitability.

All documents were submitted in time by this operator, whereas requirements for economic, financial, professional and technical requirements were also met.

Although as seen above, the bid price of this economic operator was significantly higher than the estimated value, this bid was anyway considered as responsible, whereas the lot in total is cancelled because the tender of 2016 for the same item was unfinished.

Lot 6

As stated above, Lot 6, respectively the part of contract with the product Bacitracin + Neomycinsulphate was won by the economic operator "ICN & BM". This operator's bid was considered as responsible and all criteria set by the Contracting Authority were respected.

Nevertheless, a contract award cancellation notice is issued on 09 June 2017, respectively, cancellation of Lot 6. From the email exchange between procurement officers, pharmaceutical representatives and representatives of economic operators, we understood that cancellation happened because the procurement department were guessing that bid price of economic operator is much higher than the cost of the product in the market.

According to our monitoring this is an irresponsible justification, since there are mismatches between the foreseen price (the foreseen price was 10,50 euros) and the market price that was declared by two pharmacists that were part of the evaluation commission (according to them the market price was 4 euros). However there is no document that shows the declarations of the two members of the commission, thus leading to the cancellation of the lot due to verbal declarations rather than official ones.

Representatives of economic operator, despite continuous communication with procurement department, did not manage to get the reply on the reasons for cancellation of one part of the contract. They lodged a complaint to Procurement Review Body stating legal provisions that were violated by the Contracting Authority and justifying the price and bid submitted to this authority.

On 11 July 2017, Ministry of Health receives the expertise from the PRB related to the complaint of Economic Operator "ICN & BM". According to this document, procurement office has acted in violation of the Law on Public Procurement cancelling Lot 6, since the price offered by the Economic Operator appears to be 15% lower than the estimated price. According to the opinion of Review Expert, the complaint of Economic Operator should be approved as grounded and that the decision for annulling the decision for cancellation of contract should be annulled.

Immediately after receiving the expertise from PRB, on 17 July 2017, Public Procurement Review Panel takes the decision to approve Economic Operator's complaint as grounded, annuls the contract award cancellation notice and returns the case for re-evaluation requesting the Contracting Authority during the bid re-evaluation to uphold the provisions of Law on Public Procurement.

Despite the events with the PRB, on 10 October 2017, the Contracting Authority Ministry of Health signed the contract with the same economic operator and with the same price. Although by cancelling the lot the Ministry of Health violates Act 62 of the LPP, the PRB did not take any punishment measures towards this Contracting Authority.

Lot 7

Two economic operators have bid for this part of the contract, “Exclusive” L.L.C and N.T.P “ICN & BM”.

The bids of both economic operators “Exclusive” were considered responsible concerning suitability of administrative requirements, professional suitability and economic, financial and technical condition.

However, as also indicated in the graph, these two bids had significant differences in the bid price. The price offered by “Exclusive” was for 15,686 € higher than the price of “ICN & BM”. Taking the cheapest price as contract award criterion, this lot was won by economic operator “ICN & BM”.

Lot 1	Lot 4		Lot 5	Lot 6	Lot 7	
"Pharmex"	"Dreni Pharm"	"Phoenix Pharma"	"Phoenix Pharma"	"ICN & BM"	"Exclusive"	"ICN & BM"

Table 4 Winners by contract lots

Public contracts

In the documents we received from the Procurement Department of Ministry of Health, there are 5 Public Framework Contracts. Three of them are made with EO Exclusive, one with EO Dreni Pharm and one with EO ICN & BM.

Although the analysis above shows that EO Exclusive has not managed to be successful in the lot for which it submitted the bid, in the contract file monitored by FOL there are three more contracts that this operator has had with Ministry of Health for other products from the Essential List, and which are not part of the contract that we have monitored. This comes as result of mixing files that appear in the procurement contract file. Be it as a consequence of manual collection of data and physical copies of documents, the problem here is with categorisation of documents and separation of documents between economic operators.

From these contracts it results that this economic operator, in the contract with procurement number 206-16-004-111, has won lots 27, 30, 39,51,62,72 and 77, with a total value of 128,875 € Whereas in the other contract with procurement number 206-16-003-111 this operator was declared the winner in lot 13 and 15, with a total value of 90,860 €

Ministry of Health has entered into a public contract with economic operator “Dreni Pharm” for Lot 4 - Salbutamol Sol, for which deadline for delivery was set to 30 days.

Whereas with economic operator “ICN & BM”, Ministry of Health has made a contract for Lot 7 - Procaine benzylpenicilin+Belnzylpenicilin, with the same deadline for delivering the contracted product.

Both these parts of the contract monitored by FOL were signed by the Acting Head of Procurement Department, who is suspected of not possessing the procurement officer certificate, thus violating the Law on Public Procurement.

Ministry of Trade and Industry

In the Ministry of Trade and Industry was examined the contract with procurement number 204-17-329-1-1-1 with the title “Supply with etalon and laboratory equipment for AMK needs⁵”. As category, this contract falls in the category of supplies with place of execution in the Ministry of Trade and Industry, more precisely, in the Kosovo Metrology Agency. The contract was divided into 7 lots, respectively 7 equipments were requested, with total estimated value of which results to be 300,000 €

Contract notice was prepared on 28 February 2017, while contract award notice was prepared on 26 May 2017. These same data appear also in the PPRC website. All contracts with economic operators were signed on 09 June 2017.

Three members of Kosovo Metrology Agency were part of the committee for evaluation of bids of the tender “Supply with etalon and laboratory equipment for AMK needs”. The bid opening committee had also three other members from the AMK.

According to tender opening minutes, the tender was opened on 11 April 2017, where the received bids as well economic operators were evaluated for each lot/part of the contract. A total of 7 bids were received for this contract. Based on the documentation we received from procurement department in the ministry, we have noticed that there was no economic operator that submitted a bid for lot 7, resulting in request of evaluation committee to cancel this lot. This lot now is announced for re-tendering with a projected value of 40,000 €

Lot	Name of the group	Estimated contract value
1	Equipment for laboratory of measurements	22,000
2	Equipment for laboratory of volume and flow	7,000 €
3	Equipment for measuring temperature and relative humidity	24,000 €
4	Equipment for laboratory of force	80,000
5	Equipment for laboratory of pressure	80,000
6	Equipment for laboratory of precious metals	40,000 €
7	Equipment for laboratory for electrical measurements - time and frequency	40,000

Table 5 Contract parts and name of each lot

A total of 7 economic operators have submitted bids for specific lots of this contract. Economic operators have submitted bids as follows:

- “KEIS” L.L.C. submitted bids for lots 1, 4 and 6;
- N.T.P. “EUROLAB” submitted a bid for lot 1;
- “UNION” L.L.C. submitted a bid for lot 6;
- “NOVAMAT” submitted bids for lots 3 and 4;
- “VITECH” L.L.C. submitted bids for lots 5 and 6;
- N.P.P.IT “SIERRA” submitted a bid for lot 4;
- N.T.P. “ERAMED” submitted bids for lots 1, 2, 3, 5 and 6

⁵ Kosovo Metrology Agency

EO	Lot	Bid price
"KEIS"	1	89,520 €
"ERAMED"	1	129,800 €
"EUROLAB"	2	43,000 €
"ERAMED"	2	93,338 €
"NOVAMAT"	3	69,775 €
"ERAMED"	3	44,840 €
"KEIS"	4	73,882 €
"NOVAMAT"	4	77,130 €
"SIERRA"	4	87,002.68 €
"VITECH"	5	69,840 €
"ERAMED"	5	77,290 €
"ERAMED"	6	29,500 €
"VITECH"	6	54,070 €
"KEIS"	6	77,830 €
"UNION"	6	106,790 €

Table 6 Prices of economic operators by lots



Table 7 Suitability of economic operators compared to the value given by Contracting Authority

According to the documentation we received from Ministry of Health, in the email exchange between procurement officers, cancellation of lots 1 and 2 was requested because bids that were received from economic operators for this two lots exceeded budget limits of the Contracting Authority. As it may be seen from the data, the bid that came for lot 1 is about four time higher than estimated value, whereas the bid for lot 2 is about six time higher than the estimated value.

Tender evaluation report

Different from the evaluation report of Ministry of Health where economic operators were evaluated and compared divided in lots, in the MTI evaluation report, all economic operators were evaluated in terms of administrative suitability, economic, technical and professional

suitability, whereas comparisons and recommendations for winners are then done by also including prices offered for each lot.

Economic operators

1. N.T.P “EUROLAB”, according to evaluation report, regarding formal and administrative requirements in the Tender Dossier, is considered irresponsible because in the requirement “*Original tender and two copies*” lacked a copy resulting with immediate disqualification from competition for winning the tender.
2. “UNION” L.L.C, according to evaluation report is considered irresponsible because under formal and administrative requirements, in the requirement “*Original tender and two copies*” lacked two copies, resulting in immediate disqualification:
3. NPPIT “SIERRA”, results as irresponsible because the criteria for formal and administrative requirements, in the requirement “*The tender presentation form properly completed and signed*” has failed to complete the form based on described technicalities and it lacked the signature.
4. “KIES” L.L.C., according to evaluation report but also based on documents that we have received from tender dossier, results responsible in terms of formal and administrative criteria defined in tender dossier. Also in terms of admissibility requirements and professional suitability defined in tender dossier, results as responsible although it lacks “*Evidence that company is not under bankruptcy or under enforced judicial administration issued by the Commercial Court*”. Same with economic, financial, technical and professional requirements, this operator has submitted every required document:
5. N.T.N B&D Engineering & “NOVAMAT” L.L.C, according to evaluation report is disqualified for not meeting the criteria in the economic, financial, technical and professional part. It is considered as responsive in terms of admissibility requirements and professional suitability although it lacked “*Evidence that company is not under bankruptcy or under enforced judicial administration issued by the Commercial Court*”. Whereas the reason for disqualification was lack of documents related to technical and professional requirements “*At least 1 contract of similar nature realized for each lot and with references for similar contracts in the period 2014-2016*”;
6. “VITECH” L.L.C, according to evaluation report results as responsible meeting all the criteria defined in the tender dossier, within deadlines and with all required documents;
7. N.T.P. “ERAMED”, according to evaluation report, this operator results to be responsible in terms of administrative and formal suitability. Under admissibility requirements and professional suitability, it lacks “*Evidence that the company is not under bankruptcy or under enforced judicial administration issued by the Commercial Court*” and “*A certificate issued by the Tax Administration in the country of establishment showing that you are not late in paying taxes, at least up to the last quarter*”, but even for this category it is considered responsible. Regarding economic, financial, technical and professional situation, operator has submitted all documents, apart for technical specification which applied only for Lot 6. Nevertheless, even in this category the committee evaluated it as responsible

Lot 3		Lot 4			Lot 5		Lot 6			
"Eramed"	"Novamat"	"Keis"	"Novamat"	"Sierra"	"Eramed"	"Vitech"	"Eramed"	"Vitech"	"Keis"	"Unic"

Table 8 Winners of contract lots

Public framework contracts

Following the evaluation of bids and economic operators by the evaluation committee, Ministry of Trade and Industry has made 3 public contracts with three different economic operators for parts of the contract “Supply with etalon and laboratory equipment for the KMA needs”.

A contract was made with economic operator “VITECH” L.L.C for Lot 5 - Equipment for pressure laboratory and Lot 6 - Equipment for laboratory of precious metals. A deadline of 90 days was defined as a condition for delivery. According to contract management plan, the contract starts on the day the project manager issues the order. As a project implementation activity, based on documents we have received from the email exchanges, it results that material for Lot 6 started to be installed within required deadline.

A contract was made with economic operator N.T.P “ERAMED” for Lot 3 - Equipment for measuring temperature and relative humidity, with the same deadline of 90 days to implement the contract. Whereas with economic operator “KEIS” L.L.C a contract was made for Lot 7 - Equipment for laboratory of force.

Conclusions and recommendations

The above given data are sufficient indicators to show that public procurement remains a sector that still requires transparency towards taxpayers. Starting from the Ministry of Infrastructure, which did not provide access to any of the requested contracts, to violation of the law on public procurement by officers of Ministry of Health, there is clearly a need for continuous monitoring of institutions in the field of public procurement.

The need to include the Institution of Ombudsperson in public procurement monitoring process shows once again that legal provisions are not sufficient for guaranteeing access to public documents. FOL Movement has closely monitored the conduct of investigations by this institution and remains committed to cooperate with this institution until it receives the requested contract from the Ministry of Infrastructure.

Implementation of the Law on Public Procurement remains a concerning issues, on which relevant institutions should work more. It is necessary for officers of procurement department to have the qualification defined in the law, in order for the procurement to be legitimate and contracted works to be completed through regular procedures.

Furthermore, perception on the presence of corruption is also justified with the fact that many officers of procurement department were involved in corruptive practices and court processes related to irregularities during procurement process and illegally awarding of tenders.

On the other hand, it is observed that economic operators do not uphold the law. Criteria that are set by contracting authorities derive from budget lines, the meeting of which is necessary in order to complete procurement activities in a responsible way. Therefore, meeting the criteria by economic operators results not only in increased competition but also would result in a more quality race where minor differences would make the difference between the winners of procurement activities.

Based on the findings above, but also on the entire monitoring process of these contracts, in order for public procurement to be more transparent and not be considered as source of corruption and abuses, FOL Movement makes the following recommendations:

1. To avoid the process of collecting contract documents and taking copies manually, e-procurement platform should be accessible also for users who are not economic operators,
2. To enhance transparency of entire procurement process and control of public money spending, access to e-procurement platform should be allowed also for citizens and not only for economic operators;
3. To promote and respect the Law on Public Procurement, institutions should make sure the procurement departments are led by qualified officers who have the required knowledge and skills but also sufficient experience to lead the procurement activity;
4. To precede a successful procurement procedure, contracting authorities should make an accurate planning of every part of the contract along with the budget it requires, in order to avoid cancellation of contract due to budget limits.

5. Public procurement should be constantly monitored by the Public Procurement Regulatory Commission, to avoid potential abuses and ensure proper flow and implementation of every contract.
6. Complaints of economic operators should be taken into consideration by Procurement Review Body and sanctions imposed on contracting authorities which in a discriminatory manner favour certain economic operators;
7. To draft criteria and technical specifications in such a way that would not favour/discriminate specific economic operators;
8. To define economic operators that bid with very high and irresponsible bids;
9. To allow participation of civil society organisations in the bid opening and evaluation process to ensure transparency in contract award process.