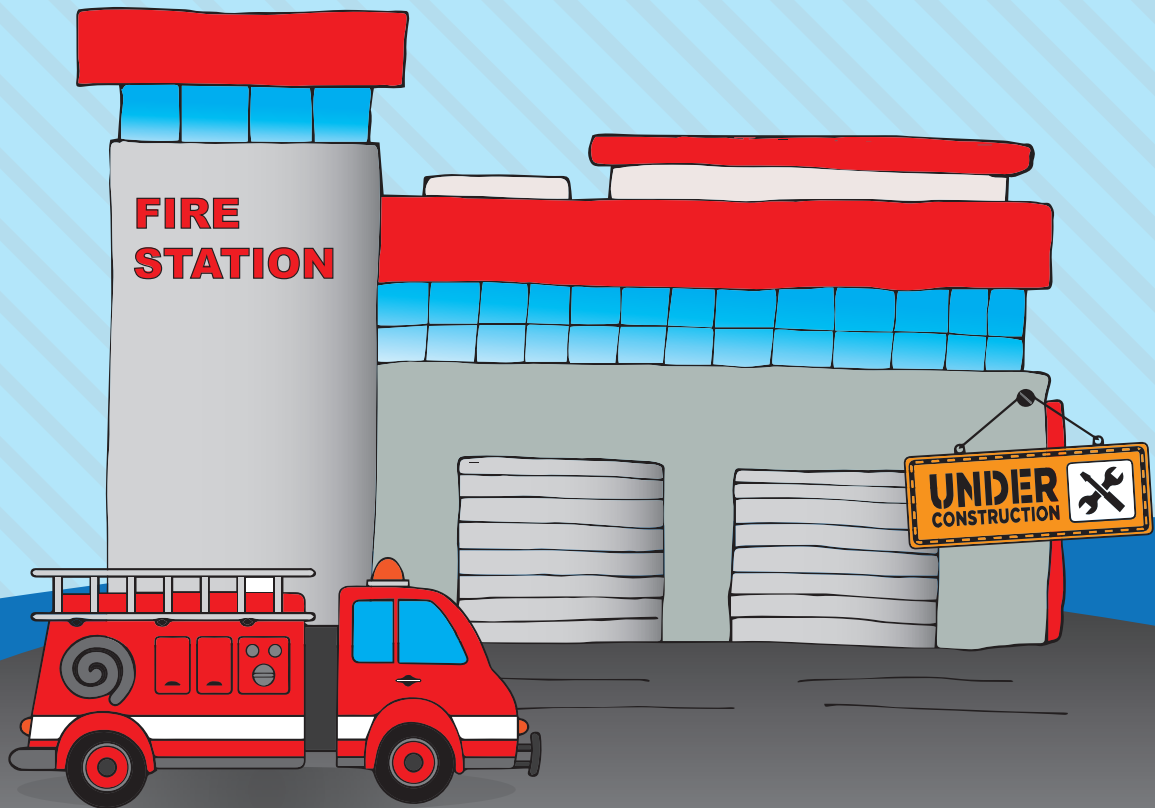


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MONITORING REPORT ON PROCUREMENT ACTIVITIES

**ANALYSES REPORT ON PROCUREMENT ACTIVITIES FOR
THE SECOND PHASE OF THE CONSTRUCTION OF
SPORTS HALL AND FIRE STATION IN NORTH MITROVICA**



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THE SECOND PHASE OF THE CONSTRUCTION OF SPORTS
HALL AND FIRE STATION IN NORTH MITROVICA**

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North Mirovica, July 2019

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INTRODUCTION

This report is prepared by the Monitoring group from Non-Governmental Organizations in the Region of North Mitrovica, with those that gained knowledge and practical skills through applied learning workshops on monitoring public procurement, organized by CiviKos Platform through USAID supported Project “Transparent, Effective and Accountable Municipalities - TEAM”.

The goals of these workshops are: (I) engaging local Non-Governmental Organizations to monitor tenders on municipal level; (II) enabling Non-Governmental Organizations to analyze the findings from tenders and identify potential abuse of public procurement directly supported by facilitators; and (III) enable Non-Governmental Organizations to be able to prepare and publish reports from the monitoring of public procurement on municipal level.

During the workshops, the Monitoring group selected to monitor two procurement activities (1) construction of the Fire Station in North Mitrovica - phase II, and (2) construction of the sports hall in North Mitrovica -phase II. The findings from monitoring the process of these procurement activities reveal several issues, starting from the procurement planning phase, up to the signing of the contract. There is a serious lack of transparency, especially of the development funds for the North, as there are no public data how this fund is managed. Additionally, there is lack of accountability of public officials who are directly or indirectly involved in the initiation and implementation of procurement, to the lack of competition in the Northern Mitrovica.

Public procurement still remains one of the main pillar for spending public money in Kosovo. Different international and local reports reveal different cases of abuse and mismanagement with these procedures on international level. Organization for Economic Cooperation and Development in its instruction “Corruption in Public Procurement” for 2014 says that 10%-30% of the public investments in the capital projects are lost through mismanagement and corruptive affairs. These losses are very concerning also in the local investments, especially considering the poor quality of works.

Over the last years, Government of Kosovo was focused on large capital investments, like construction of road infrastructure, building of business parks, investments in energy, as well as creating necessary infrastructure for development of sport activities inside the country and on the international arena.

Even though the market was not restricted, it was very worrying the fact that in both of the contracts, chosen for monitoring, there was one bid, and in both occasions’ same economic operator.

Monitoring group supported analyses the procurement procedures for these projects and concluded whether the procurement principles and project implementation were in accordance with the Law on Public Procurement.

METHODOLOGY

Monitoring group has used a unique methodology for monitoring of these procurement activities. The Monitoring group selected the tenders for monitoring according to the automatic selection indicators, like “value of project” and “relevance of the project for the community”. Research methodology of this report in general is based on analysis of primary data extracted from the documents related to planning, tendering and contract award, and by comparing those to provisions of the Law on Public Procurement.

SUMMARY

In November of 2018, municipality of North Mitrovica advertised two tenders, both for construction works. Neither of these projects was included in the budget of the municipality for 2018, nor for the procurement planning for the same year. It was a challenge for the Monitoring group to find funding sources. It was revealed that both of these projects were supported by the development funds for municipalities in northern Kosovo, and there are no information regarding the way these funds are managed, procedures on how the municipalities applied for funding or criteria how the projects are selected for their support.

The Development Fund is the result of the Belgrade-Pristina Dialogue. The fund is funded by taxes collected at the Jarinje / Rudnice and Tabavija / Brnjak crossing points.

Additionally, during the attempts to download all applicable laws, it was established that Public Procurement Regulatory Commission did not publish the latest version of the Rules and Operational Guidelines for Public Procurement in Serbian nor in English language¹.

Even though that during the analyses of the tender dossier, there were not found any discriminatory conditions, in both cases there was a single bid, submitted by the same economic operator. This is very surprising since we are talking here about the open procedure, where the tender dossier was downloaded from e-Prokurimi dozens of times in both cases, and according to the data from the Kosovo Business Registration Agency there are more than 350 active companies that provide construction services in Kosovo, out of which there are 15 in northern municipalities.

While the deadlines for application were met, municipality of Mitrovica North failed to comply with provisions of the Law on Public Procurement, respectively Article 108/A² to wait for 5 days for the potential complaints pertaining evaluation procedure of the stakeholders, before signing the contract. In both procurement activities the bids were opened, evaluated and contracts were signed on the same day, while the announcement of the contract award was published on e-Prokurimi three days later.

¹ Last day checked 31 July 2019

² Law Nr. 04 / L-042 on Public Procurement amended and supplemented by law Nr. 04 / L-237, Law no. 05 / L-068 and Law. 05 / L-092, Article 108 A, Paragraph 3

Surprising fact is that the monitoring team did not find any complaints filed to the Procurement Review Body regarding the activities of the public procurement in North Mitrovica.

This analysis does not deal with implementation of the contract, the decisive part in procurement, because municipality of North Mitrovica did not provide required documents under the justification that they are transferring their archive, so that was not possible for them.

TRANSPARENCY OF THE MUNICIPALITY

During this process, the Monitoring group comprised from a number of Non-Governmental Organizations from the territory of northern Kosovo filed only one request for access to documents with official importance to municipality of North Mitrovica. The dossiers for both tenders, which were considered during the preparation of this report, were available on the e-procurement Platform. However, other necessary documents such as procurement planning for year 2018 and year 2019, registry of economic operators that have downloaded tender documents, minutes from the tender opening, report on evaluation of the tender, contract with legal person that won the tender, copy of the bids of all legal persons that provided bids, bills for performed works, payment orders, were not available in the above mentioned platform. Therefore, the access to these documents were requested additionally, by filing the request in person in the municipality premises, because there is no email address provided where this type of request can be sent. The municipality responded to this request within legal time limits, however did not provide access to the requested documents (the documents that were not provided: bills for performed works, payment orders and payment receipts).

CONTRACT ANALYSES

FIRST PHASE- PLANNING

The group dealing with process of monitoring of the public procurement did not find any of the monitored infrastructural projects in the Law on the budget nor the procurement planning of municipality of North Mitrovica for the period 2017 to 2019. In the documents received from the municipality of North Mitrovica it appears that both infrastructural projects were funded from the Development Fund for the North. Management with these funds, as well as more information about it, is closed for public and not transparent enough. The group tasked with monitoring of public procurements process, respectively of the tenders, did not manage to confirm the procedure of application for sources from this fund, nor who and how the funds are managed, how the evaluation of the project is conducted for the ones that will be funded from this fund, nor it was possible to find some kind of reports on conclusion of the projects that are funded by this fund.

SECOND PHASE- PUBLISHING

With the purpose of comparative analyses, the group conducted analyses of two tenders that were published by the municipality of North Mitrovica, which were also of the same type and size. Below you can find the table with detailed information on both tenders.

	Tender 1	Tender 2
Description	Construction of fire station building in North Mitrovica - II phase	Construction of sports hall in North Mitrovica - II phase
Procurement no.	647-18-8761-5-2-1	647-18-8713-5-2-1
Date when notice was prepared B08	10.11.2018	04.11.2018
Date when the B08 formular was sent to PPRC for publishing	12.11.2018	07.11.2018
Date of notice on the e-Prokurimi site B08	15.11.2018	02.11.2018
Time limit for submission of tenders	03.12.2018	27.11.2018
Guarantees for execution of the works	none	10% of the contract value valid for 4 months
Contracting Authority	Municipality of Mitrovica North	Municipality of Mitrovica North
Type of the Procedure	Open	Open
Type of the contract	Work/execution	Work/execution
Location of the works	North Mitrovica	North Mitrovica
Criteria for award	Lowest price	Lowest price
Estimated value of the contract	€ 183,964.18	€ 325,432.61
Value of the contract according to the size	Medium value	Medium value
Division by groups	No	No

<p>Amount or general field</p>	<p>Construction of Fire Station II phase includes remaining works in relation to the previous project I; removing existing building around the newly constructed premise; excavation of land to create access to the basement in approximately 197.5m³; construction of concrete stairways in front of the main entrance to the building from 11m³ concrete, installation of reinforcement bars for previous positions from 15t; encasement of the internal walls with facade around the field total amount 800m²; encasement of the remaining part of the roof with 8cm sandwich panels in total surface 346m²; construction of the under floor membrane, under-construction and sports flooring for the pitch in surface of 1152m²; construction of leveling layer and anti-static epoxy floor on the stands in total surface of 745.46m²; construction and installation of the roof construction part from 18.3kg of steel bars; encasement of the part of the roof and plating with panel system in 40m² roof surface; construction of ALU BOND facade in surface of 682m², installation of the horizontal gutter in length of 46m and vertical gutters 60m and also supply and installation of the seats on the stands for 440 visitors.</p>	<p>Sport hall II phase includes remaining works in relation to the previous project I; removing existing building around the newly constructed premise; excavation of land to create access to the basement in approximately 197.5m³; construction of concrete stairways in front of the main entrance to the building from 11m³ concrete, installation of reinforcement bars for previous positions from 15t; encasement of the internal walls with facade around the field total amount 800m²; encasement of the remaining part of the roof with 8cm sandwich panels in total surface 346m²; construction of the underfloor membrane, under-construction and sports flooring for the pitch in surface of 1152m²; construction of leveling layer and anti-static epoxy floor on the stands in total surface of 745.46m²; construction and installation of the roof construction part from 18.3kg of steel bars; encasement of the part of the roof and plating with panel system in 40m² roof surface; construction of ALU BOND facade in surface of 682m², installation of the horizontal gutter in length of 46m and vertical gutters 60m and also supply and installation of the seats on the stands for 440 visitors.</p>
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From the above mentioned specifications we can see that in both cases the deadlines for publishing contract notices were respected, however, the report raises concerns pertaining to deadlines for publishing the contract award notices and contract signing notice, which do not meet legal conditions within five(5) days³ after the publication contract award till the date of signing of the contract so that enough time can be provided for potential complaints in relation to the tender procedures⁴.

THIRD PHASE- EVALUATION

In both tenders, on call for tendering, only one bid was submitted. This raises great concern pertaining the construction works and according to the data from the Kosovo Business Registration Agency, in the north of Kosovo there are dozen construction companies and many others all over Kosovo. Furthermore, tender dossier is downloaded from 11 companies for the contract on construction of fire station in Mitrovica North - II phase, and from 14 companies for contract on construction of Sports Hall in Mitrovica North - II phase.

Additionally, both bids were from the same economic operator and had very little difference with estimated price of the contract.

Description	Tender 1	Tender 2
	Construction of fire station building in Mitrovica North-II phase	Construction of sports hall in Mitrovica North- II phase
Estimated value of the contract	€ 183,964.18	€ 325,432.61
The name of the economic operator to whom contract has been awarded	PTP RAD & NNT A.B.C.	PTP RAD
Total final value of the contract	€ 183,834.30	€ 325,350.92
Difference	€ (129.88)	€ (81.69)

In both cases it was not possible to establish whether members of the tender evaluation committee were qualified to evaluate bids, since on the filled spaces on declaration under oath its written “civil servant of the municipality”, and their job titles are not listed in the evaluation report.

Both bids were considered as responsive by the Tender Evaluation Committee, even though the bid for construction of fire station in North Mitrovica - II phase did not fulfill all requirements from the tender dossier, respectively it was lacking declarations under oath from all members of the consortium⁵.

³ Law Nr. 04 / L-042 on Public Procurement amended and supplemented by law Nr. 04 / L-237, Law no. 05 / L-068 and Law. 05 / L-092, Article 108 A, Paragraph 3

⁴ In accordance with Article 108/A of the Law on Public Procurement of Republic of Kosovo No. 04/L-042 amended and supplemented with Law no. 04/L-237, Law No. 05/L-068 and Law no. 05 / I-092. it must wait 10 days for the appeals before its signing.

⁵ Law Nr. 04 / L-042 on Public Procurement amended and supplemented by law Nr. 04 / L-237, Law no. 05 / L-068 and Law. 05 / L-092, Article 66

In case of construction of fire station in Mitrovica North - II phase, the deadline for all bids was 3 December 2018, all bids were opened, evaluated, and the contract was awarded on 11 December 2018, while the contract award notice was published on procurement platform on 14 December 2018, respectively three days after the contract was signed.

The same situation is also with construction of sports hall in North Mitrovica - II phase. Bid Opening, evaluation of tenders and signing of the contract happened on the same day, 4 December 2018, while the notice on contract award was published on the e-procurement platform i on 7 December 2018.

In both cases, the legally defined deadlines from the Law on Public Procurement were not respected⁶.

FOURTH PHASE- COMPLAINTS

In both analyzed procurement activities there were no complaints related to the tender procedure, not on the municipal level, nor on Procurement Review Body. However, contracting authority failed to ensure time for potential complaints pertaining the evaluation of the procedure, by signing of the contract on the same day when the bids were opened and evaluation was completed. According to Article 108/A (preliminary resolution of disputes), paragraph 1. "Any interested party which considers his/her rights, as set forth in this Law, have been violated by a decision of a contracting authority during the performance of a procurement activity and who is damaged or risks being damaged by an alleged violation, may submit a request for review to that contracting authority."

FIFTH PHASE- CONTRACT MANAGEMENT

North Mitrovica municipality did not provide any documents related to the contract management phase under the excuse that they are in the process of relocating their archives. During the analyses it was impossible to schedule meeting with the representatives of the municipality in order to talk about implementation phase for two selected contracts.

⁶ Ibid

CONCLUSION

In conclusion, there is a serious issue with competition and transparency of sources of funding in Mitrovica North.

- While in both contracts the competition procedure was opened, and the tender dossier was downloaded more than ten times, there was only one bid by the same economic operator.
- There is a great deal of confusion regarding the sources of funding in the northern municipalities of Kosovo. There are three different lines of funding, however, there is no common information center and there is very little institutional transparency pertaining these funds. The biggest concern is related to the development fund for northern municipalities, for which there is no information available to the public pertaining the public procedures, the fund administration, nor the evaluation decisions on what projects are supported and why.
- Municipality of North Mitrovica did not respect the provisions from the Law on Public Procurement for potential complaints pertaining to the evaluation of bids by opening, evaluating and signing both contracts prior to the notice for contract award being published on the e-Prokurimi.
- Municipality of North Mitrovica did not respect the legal requirements from the Law on Public Procurement that all members of the consortium should sign Declaration under Oath. By not respecting the law requirements, in the tender for construction of fire station in North Mitrovica - II phase, instead of cancelling the call, the municipality has accepted and awarded the contract to an irresponsible bid.
- Public Procurement Regulatory Commission did not publish Rules and Operational Guidelines for Public Procurement in Serbian nor in English languages.

RECOMMENDATIONS

1. Municipality, Public Procurement Regulatory Commission, the Commission for Protection of Competition and the Anti-Corruption agency should closely examine the Tender Dossiers and also obtain information from the EOs on the reason for not expressing interest with a particular focus on whether there were any restrictive or favorable criteria in the dossier;
2. Municipality should engage in discussion with companies from all over Kosovo on tackling the lack of interest for participating in public procurement calls, and at the same time to extend their invitation to bid on the future municipal projects;
3. Ministry of Finances should provide instructions if the projects supported by the development fund should be part of the procurement planning, and also increase transparency of these funds;
4. The Public Procurement Lead should ensure that the Tender Evaluation report include professions of each of the evaluation committee members;
5. The municipality should strictly adhere to the requirements of the Law on Public Procurement and the professional suitability criteria of the tender dossier. The law regulates actions toward meeting the key public procurement principles and avoids awards to irresponsible operators;
6. Although it is not a mandatory requirement, Municipality of North Mitrovica shall start publishing data on public procurement on the website of the municipality;
7. Responsible authorities should engage in establishing a joint information center that would provide information to the citizens regarding all expenses from the Kosovo's Budget, and funding from the development funds for northern municipalities in Kosovo;
8. Supervisory Board for development fund should publish regulations, guidelines and evaluations of the projects that are supported by this fund, easy to access and understandable for citizens.

