

## MONITORING REPORT ON PROCUREMENT ACTIVITIES

### THE CONSTRUCTION OF THE SPORTS HALL FOR PHYSICAL EDUCATION IN GAÇKË VILLAGE SECOND PHASE



*This report was prepared by the Monitoring Group of Non-Governmental Organizations from Ferizaj region.*

Civil Society Organizations:  
INPO, CEDF, LDA dhe Gjethi

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**THE CONSTRUCTION OF THE SPORTS HALL  
FOR PHYSICAL EDUCATION IN GAÇKË VILLAGE  
SECOND PHASE**

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# INTRODUCTION

This report is drafted by the Monitoring group by Non-Governmental Organizations from the Region of Ferizaj, with those that gained knowledge and practical skills through applied learning workshops on monitoring public procurement, organized by CiviKos Platform supported by USAID Transparent, Effective and Accountable Municipalities activity in Kosovo (USAID TEAM).

Participants who benefited from the series of workshops were:

Arbenita Topalli – INPO

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Qendrim Hoxha – LDA

Tringa Raka – Gjethi

Valentina Abazi - INPO

The goals of these workshops are: (I) Engaging local NGOs to monitor tenders on the municipal level; (II) developing NGOs to analyze the findings from tenders and identify potential abuse of public procurement supported directly by the employed facilitators; and (III) enable NGOs to prepare and publish reports of their findings during the monitoring of public procurement on the municipal level.

During the workshops, Monitoring group selected to monitor the procurement activity titled “Construction of the hall for physical education in Gaçkë village - second phase” bearing the procurement number 656-18-1767-5-2-1, with an anticipated value of contract of 100,000.00 €.

The findings from monitoring the implementation of this procurement activity reveal the need to strengthen the rule of law, starting from the procurement planning phase, up to the signing of the contract. Furthermore the findings indicate the need to increase the accountability of public officials who are directly or indirectly involved in the initiation and implementation of procurement.

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# METHODOLOGY

Monitoring group used a combined methodology for monitoring the procurement activity. Initially, the selection of tender for monitoring was made using automatic selection indicators, such as “the price of the winning bid higher than the anticipated value of the contract” and “relevance of the project for the community”. During the monitoring phase, Monitoring group conducted qualitative analysis of relevant documents containing primary official data of the procurement activity, interviews with the officer in charge of procurement, and also monitoring of the worksite (the site, where the project is implemented/contract, is accomplished).

Monitoring group assessed the implementation of the law and the public procurement regulation based on a key indicator, where sixteen (16) documents were reviewed and analyzed.

Indicator: Procurement activity includes all the required data according to the Law on Public Procurement (LPP) and Rules and Operational Guidelines on Public Procurement (ROGPP).

Evaluation of the activity through this indicator is made by analyzing the contents of the following documents:

- Final procurement planning;
- Request for initiation of a procurement activity by the requesting unit;
- Statement of needs and definition of availability of funds (B04);
- Contract Notice (B05);
- Tender Dossier (B17);
- Bill of Quantity and Pre-calculation;
- List of economic operators (EO-s) that have received the tender dossier (B13);
- List of submitted tenders;
- The decision for appointment of the Opening Committee;
- Minutes of tender opening (B12);
- Decision on appointment of the Tender Evaluation Committee;
- Report of Tender Evaluation (B36);
- Notification for contract award (B08);
- Contract;

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- Decision for appointment of project manager;
  - Contract Management Plan.

Monitoring group acquired these documents through requests for access to public documents and the electronic platform for public procurement. Monitoring group met five times in the offices of the NGO INPO on the following dates:

- Day I - 06.09.2018;
- Day II - 20.09.2018;
- Day III - 05.10.2018;
- Day IV - 10.10.2018; and
- Day V - 20.10.2018.

Monitoring group, facilitated by Albulena Nrecaj, downloaded the documents from the electronic procurement platform, and they jointly analyzed all documents. Monitoring Group also performed worksite visits. Their preliminary report of findings was sent to the Municipality of Ferizaj for their feedback, and after this process, the report was finalized.

The report did not include analysis of the implementation of the contract since the contract started implementation in September 2018 and is expected to be implemented throughout a two (2) year period (2018–2019).

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# ANALYSIS

## I. EXCESS OF VALUE OF THE CONTRACT IN RELATION TO THE PROCUREMENT PLANNING AND BUDGET FRAMEWORK

In August, the municipality of Ferizaj concluded a contract for construction of the hall for physical education in an elementary school in Gaçkë village, with a consortium composed of “G7A Advisor” and “Pro&Co Group” in the value of €117,209.95, through an open procedure. Monitoring group found that:

- The municipality has concluded a contract for a tripled value compared to one estimated in the final procurement planning, where the estimated value of the contract was 40,000 €. <sup>1</sup>
- Discrepancy is also found between the budget framework of the municipality for the years 2018–2021 and final procurement plan.

In the budget framework for capital projects 2018–2020, the municipality projected 90,000 € for construction of the hall for physical education, respectively 40,000 € in 2018 and 50,000 € in 2019<sup>2</sup>. This amount has not been reflected in the final procurement plan. Therefore, the municipality has failed to make the plan in accordance with the budget.

In the contract notice the estimated value of the contract was 100,000€<sup>3</sup>, whereas the winning bid price is 117,209.95 €. Therefore, the municipality has concluded a contract over 17,000 € higher than the estimated value according to the contract notice, whereas the difference with the municipal budget for this project is 27,000€.

Procurement plan	Budget 2018 - 2020	Contract notice	Contract
40 000 €	90 000 €	100 000 €	117 209.95 €

*Figure I. Disparity between planning documents and contract price.*

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<sup>1</sup> Final procurement plan for fiscal year 2018, Municipality of Ferizaj, available at: <https://kk.rks-gov.net/ferizaj/category/prokurimi/plani-i-prokurimit/>

<sup>2</sup> Budget 2018–2020, Municipality of Ferizaj, available at: <https://kk.rks-gov.net/ferizaj/ep-content/uploads/sites/31/2018/03/BUXHETI-2018-FINAL.pdf>

<sup>3</sup> Contract Notice, available at: [https://e-prokurimi.rks-gov.net/SPIN\\_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=125828](https://e-prokurimi.rks-gov.net/SPIN_PROD/APPLICATION/IPN/DocumentManagement/DokumentPodaciFrm.aspx?id=125828)

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Entering into contractual relations in amounts higher than available financial funds of the municipality is prohibited under Article 9 of the Law on Public Procurement<sup>4</sup> and the Law on Public Financial Management and Accountability of the Republic of Kosovo. Therefore, the municipality had to provide additional funds in order to continue with the procurement activity. However, the monitoring group did not find any document proving the provision of additional funds for this contract in the Procurement Register of this subject.

Contracting projects in value much higher compared to the budget framework of capital investments, respectively available financial means raise the risk for increasing the contractual obligations which later can cause financial difficulties for the municipality. Furthermore it increases the risk of payments through enforcement, which would then certainly affect and jeopardize the financing of other projects as a result of enforcement.

Monitoring group found that the Procurement Officer in charge, Chief Financial Officer and the Mayor, before the publication of the Notice of contract award, failed to confirm that the financial information is accurate and did not change it materially, as required under Article 9 of the Law on Public Procurement.

In the B04 form, Statement of Needs and Determination of Availability of Funds, dated 20.03.2018, the signatures of these three (3) officials are non-existent. Additionally, there were no commitment and payment orders in the procurement registry; therefore, we have not been able to identify that actually, the funds

## II. DELAYS IN EVALUATION OF THE TENDERS CAUSE LOSS OF THE VALUE FOR MONEY

Due to the delays with the tender evaluations and expiry of the validity of the bids, the municipality lost the opportunity to conclude the contract with economic operator that offered the lowest price for the contract and which was responsible and suitable according to the law and regulations. As a consequence of the delays in evaluation, the municipality concluded a contract that is 28% higher.

Monitoring group found that:

- Tenders' submission and opening took place on 11.04.2018. Six economic operators bid for this contract.

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<sup>4</sup> **Remark:** If the contracting authority is a public authority or budget organization and the concerned procurement will give rise to financial obligations that are to be satisfied from appropriations expected in future fiscal years, the CFO shall "(i) ensure that the schedules attached to the Law on Appropriation provide a reasonable basis to expect that sufficient funds will be appropriated to it in such future fiscal years for the purpose of satisfying such obligations, and (ii) include in the concerned public contract a provision that clearly conditions the enforceability of such obligations on the availability, under future appropriations legislation, of funds for the purpose of satisfying, and in an amount sufficient to satisfy, such obligations.

<sup>5</sup> Contract Notice, available at: <https://e-prokurimi.rks-gov.net/Home/ClanakItemNew.aspx?id=327>

Bidder	Price with VAT €
ARDRITI N.N.P dhe ATC COM Sh.PK	122,777.13 €
G&A CONSULTING dhe PRO&CO	117,849.95 €
€ \$ COMERCE	117,500.00 €
AGONI	117,524.50 €
OLTAND Group	84,720.40 €
ART PORJECT	154,797.91 €

- The Tender Evaluation Committee was appointed on 18.04.2018<sup>6</sup>. According to this decision, the committee was obliged to start the work on the same day the appointment decision was made.
- It took 63 days for the evaluation committee to evaluate six (6) bids<sup>7</sup>, which was the total submitted for this procurement activity. Delays with tender evaluation constitute a violation of the Article 41.2 of the Rules and Operational Guidelines on Public Procurement, which expressly obliges contracting authorities that the procedure for examination, evaluation and comparison of the tenders shall be conducted within the shortest possible period of time and no later than 30 days from the opening of the tenders.

Due to delays with the evaluation of tenders, the validity of the tender had expired. According to the tender dossier, the validity of tender security was 60 days<sup>8</sup>. Two days prior to the date of publication of the notice for the decision of the Contracting Authority for the winning bid, Contracting Authority published a request for the extension of the bid for an additional 30 days<sup>9</sup>. However, according to this request, the economic operators running for this tender had only 24 hours to confirm through email the ex-extended validity of the tender. For any changes or additional requests, rules require the provision of at least 48 hours for EOs to take action.

Therefore, according to the report on tender evaluation, two (2) out of six (6) economic operators did not extend the validity of the offer<sup>10</sup>. One of the two (2) offers which had expired validity was the bid with the lowest price of 84,720.10 €, meaning for 32,489.85 € lower than the winning bid.

However, the economic operator that offered the lowest price did not extend the validity of the offer since it lost interest in this tender due to delays with evaluation. Monitoring group contacted the economic operator via telephone<sup>11</sup> to inquire about

<sup>6</sup> Decision No. 01–45 A/2018, for establishment of the commission for evaluation of the bids, dated 18.04.2018.

<sup>7</sup> Remark: According to the minutes from tender opening, dated 11.04.2018, six (6) economic operators submitted bids for the tender, “Construction of the Hall for Physical Education in the Village of Graçkë - Second Phase”.

<sup>8</sup> Tender dossier, available at: <https://e-prokurimi.rks-gov.net/Home/ClanakItemNew.aspx?id=327>

<sup>9</sup> Request for extension of the validity of the tender, available at: <https://e-prokurimi.rks-gov.net/Home/ClanakItemNew.aspx?id=327>

<sup>10</sup> Report on evaluation of tenders, dated 29.06.2018, Municipality of Ferizaj.

<sup>11</sup> Interview with the representative of the “OLTAND Group” sh.p.k, Afrim Kolgeci, 10/10/2018

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reasons that contributed to the discontinuation of the validity of the tender. The economic operator mentioned that they had lost interest in it, because the Municipality had delays in the evaluation process and during that period of time the economic operator had contracted other works and had no benefit to entering into contractual relations with the Municipality of Ferizaj. He also told the Monitoring group that some of the positions in the project had problems and has not been well detailed by the municipality, and therefore would have caused problems during the execution of the contract.

For the award of contract, the Contracting Authority did not receive any requests to review the decision from the economic operators; consequently, there were no complaints in the PRB.

### **III. PRICES OF WORKING POSITIONS MORE EXPENSIVE THAN MARKET PRICES**

During the analyses of the contract and the pre-measurements, Monitoring group found that:

- In position D - Reinforcing works, it required to supply, installation of rebar with different profiles weighing 14,980 kg. However, in this position, the municipality did not specify the necessary profile of the rebar as requested by the construction and procurement rules. For this position the winning operator offered a price of 0.69 € per kilogram, a total of 10,336.20 € for the entire position.

Based on the market price, one kilogram of rebar costs around 0.65 €. In addition, companies<sup>12</sup> that provide supply with enforcement rods, in the condition of anonymity, said to the Monitoring group that in the last few years the price of rebar has never been 0.69 € per kg. Consequently, the municipality has contracted work that in certain positions the prices are higher than market prices.

In addition, another weakness is that failure to specify the necessary profile of the rebar and placement of the adequate enforcement rods for the building may affect the quality of the construction. This will make it difficult for worksite supervisors to assess whether the reinforcement rods are adequate because they lack descriptions.

### **IV. TERMS AND MANAGEMENT OF THE CONTRACT**

After the analyses of the contract, Monitoring group found that:

- Within the terms and conditions and the contents of the contract the duration and deadline of completion of the contract is not specified. According to Article 10.2 of part III of the contract “Special Terms”, completion of the works is foreseen to be done within 90 days. However, it does not specify if the contract

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<sup>12</sup> Remark: Interviewed companies requested that their identities remain anonymous.

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is for two (2) years, as it was foreseen during the initiation of the procurement activity.<sup>13</sup>

- Furthermore, the security of execution of the contract, which is an amount of 10% according to the contract, is valid until 30.12.2018<sup>14</sup>. According to the public procurement rules, the validity of the security of execution of the contract shall be 30 days after the completion of the contract<sup>15</sup>. If we are to refer to this rule, the contract should have been implemented by November 30, 2018. However, as it was explained in Chapter I of this report, funding of this project, respectively the contract, according to the budget of the municipality is foreseen to be executed within two (2) fiscal years, 2018–2019. Monitoring group visited the worksite, and the project is still at the early stages of implementation and completion of the works is not expected to take place within this year.

Furthermore, the municipality has no Contract Management Plan. Monitoring group found that:

- In the procurement registry, there is no Contract Management Plan. Officials in charge of procurement provided justification that this plan is in the possession of the Contract Manager. The Contract Manager refused to provide to participants access to this plan, with the justification that the request shall be addressed to the procurement office.

Despite the lack of willingness of the Contract Manager to provide access, according to the rules of procurement, the manager is obliged to forward a copy of the contract management plan to the procurement official in charge. The procurement official then places a copy of this document in the contract and it becomes an integral part of the contract.<sup>16</sup>

This rule is decided pursuant to the Article 81, Law on Public Procurement, which obliges the municipality that for the medium and large value contract, after the contract is signed, produce a contract management plan, in particular matters of organizational, economic, technical and legal aspects of contract management including as appropriate: (I) project management teams; (II) frequent review of the contract; (III) protocols for the handover of commissioned equipment; (IV) regular dialogue with the contractor; (V) use of correct quality standards; (VI) management of payments/claims; (VII) complaints procedures; (VIII) control remedies specified in the contract, and (IX) performance security is held for defects/corrections and establishes procedures for the following whenever appropriate: (I) inspection of worksites, materials and production facilities; (II) ensuring effective delivery, storage and security of the items covered by the contract; (III) scheduling handovers; (IV) variation/changes.

<sup>13</sup> Statement of needs and definition of availability of funds (B04), signed on 20.03.2018.

<sup>14</sup> Contract "Construction of the hall for physical education in the village of Gaçkë - second phase", available at: <https://kk.rks-gov.net/ferizaj/ep-content/uploads/sites/31/2018/08/52-Ndertimi-i-Salles-se-edukates-fizike-ne-fsh.-Ga%C3%83%C2%A7ke.pdf>.

<sup>15</sup> Rules and Guideline for public procurement, article 30.6, available at: <https://krpp.rks-gov.net/krpp/PageFiles/File/2018/04/rruopp13042018.pdf>

<sup>16</sup> Rules and Guideline for public procurement, Article 61.9 and 61.11, available at: <https://krpp.rks-gov.net/krpp/PageFiles/File/2018/04/rruopp13042018.pdf>

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However, such a plan was not found in the procurement registry. Only the appointment of a project manager was made in a timely manner and according to the law. Consequently, the lack of clarification of the terms in the contract and the lack of a contract management plan increases the risk of the prolongation of contract implementation, control and ineffective supervision. It bears enough potential for failure of quality contract implementation, which prevents the municipality from achieving its goals and purpose of procurement.

## **RECOMMENDATIONS**

**The findings of this survey indicate an immediate need for intervention in addressing the problems and legal violations during the execution of procurement activities. To this end, the Monitoring group recommends that:**

1. The Mayor and the Procurement Manager should ensure that the estimated value of the projects in the Municipality budget is the same as in the procurement plan.
2. The Mayor should ensure that each unit within the municipality makes approximate project cost estimates in order to avoid the budget surplus or the need to receive funds from other budget lines.
3. Since the delays in the evaluation of the bids resulted in the withdrawal of one of the tenders and consequently increased the project cost by 30%, the Mayor should request responsibility from the members of the committee for delays in the assessment.
4. The Mayor should ensure that each Evaluation Committee initiates Bid Evaluation immediately after commission was established to prevent cases where an Economic Operator that has submitted a Low Bid is withdrawn without being penalized or has 'bargain' between bidding businesses to determine the winner.
5. The Municipality should more accurately compile the terms of the contract in order to avoid the consequences and the risk of non-fulfillment.
6. The Mayor should ask from Contract Manager, the contract management plan, and at the same time hold the procurement officer responsible.





