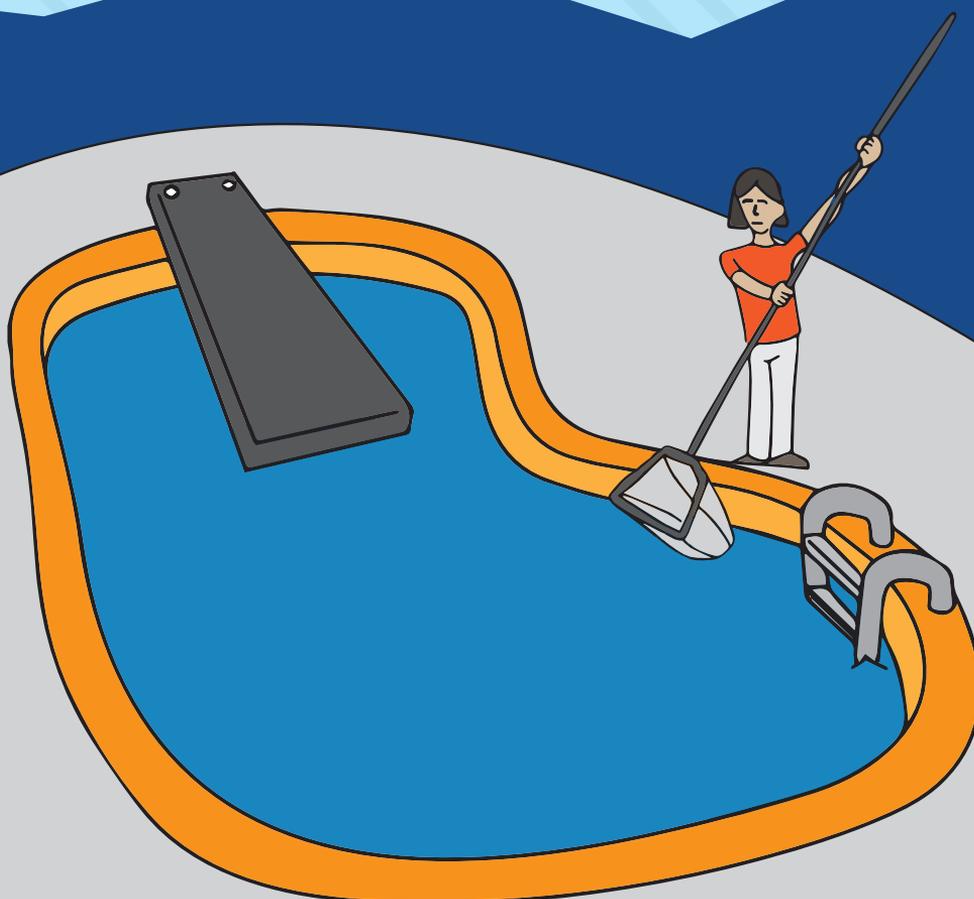


## MONITORING REPORT ON PROCUREMENT ACTIVITIES

### “POOL OF IRREGULARITIES” (Report of the analyses of the procurement process for construction of the Olympic pool in Prizren)



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

Civil Society Organizations:  
EC Ma Ndryshe, ISDY, KDI, OJQ Avoko dhe PRAK Kosova

## MONITORING REPORT ON PROCUREMENT ACTIVITIES

### **“POOL OF IRREGULARITIES”** **(Report of the analyses of the procurement process for construction of the Olympic pool in Prizren)**

**Monitors and authors:** Jeton Qengaj, Anesa Berisha, Edona Muqaj, Erolina Morina,  
Eroll Shabani

**Fasilitator:** Diana Metushi Krasniqi

Prizren, May 2019

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# INTRODUCTION

This report is drafted by the Monitoring group by Non-Governmental Organizations from the Region of Prizren, 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 of the series of workshops were:

<b>NAME AND SURNAME</b>	<b>ORGANIZATION</b>
Jeton Qengaj	AVOKO - Dragash
Anesa Berisha	KDI - Prizren
Edona Muqaj	PRAK - Prizren
Erolina Morina	ISDY - Prizren
Eroll Shabani	Ec Ma Ndryshe - Prizren
<b>Diana Metushi Krasniqi</b>	<b>Facilitator</b>

## The goals of these workshops are:

The goals of these workshops are: (I) Engaging local NGOs to monitor tenders on municipal level; (II) increasing capacities of 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 be able to prepare and publish reports of their findings during the monitoring of public procurement on municipal level.

During the workshops, the Monitoring Group selected to monitor procurement activity: “Construction of Olympic Pool in Prizren”. The findings from monitoring the implementation of this procurement activity reveal the need of strengthening the rule of law, starting from the stage of procurement planning, up to the signing of the contract, and also increasing the accountability of public officials who are directly or indirectly involved in the initiation and implementation of procurement.

Public procurement remains one of the main pillars for spending public money in Kosovo.<sup>1</sup> Different international and local reports present to us affairs of different abuse and mismanagement of these procedures on international level. The Organization for Economic Cooperation and Development in the instruction “Corruption in Public Procurement” for 2014 says that 10%-30% of the public investments in the capital projects are lost through mismanagement and corruption affairs. These losses are very concerning

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<sup>1</sup> Public procurement consists a series of activities conducted by Contracting Authority with purpose of selection of Economic Operators, with whom they conclude a public contract for provision of goods, service or works (construction), against a payment financed by state budget. Hereto expenses become Capital Expenditures, Salaries and per diem, Grants and and Goods and Services.

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in the local investments, especially considering the poor quality of works.<sup>2</sup>

Over the last few years, the government of Kosovo has focused on large capital investments, such as 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 field. As part of the Strategic Plan for Sports in Republic of Kosovo 2017-2021, Ministry of Culture, Youth and Sports, for the mentioned period has foreseen construction of two Olympic Pools, one in Prishtina and another one in Prizren. In 2017, the Ministry of Culture, Youth and Sports and Municipality of Prizren reached an agreement for construction of the Olympic Pool in Prizren.

Organizations EC Ma Ndryshe, ISDY, KDI, OJQ Avoko and PRAK Kosova supported by USAID activity for Transparent, Effective and Accountable Municipalities analyzed processes of procurement for this project to see if the procurement principles and implementation of the project are in accordance with Law on Public Procurement.

## METHODOLOGY

Monitoring Group used a combined methodology for monitoring of the procurement activity. Initially, Monitoring Group selected the tender for monitoring according to the automatic selection indicators, the likes of “*the price of the winning bid*” 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. The secondary sources were also analyzed, as activities of the monitoring organizations and media articles. After that, members of this consortium also conducted interviews with public officials and other stakeholders in order to validate the findings of the report.

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<sup>2</sup> Patched investments – KDI <http://kdi-kosova.org/wp-content/uploads/2018/01/152-investimet-e-arnu-ara-7-11-2017-shq-32-fq.pdf>,

Public procurement challenges in the Municipality of Prizren – EC ma ndryshe [https://www.ecmandryshe.org/repository/docs/190110095518\\_ENG.pdf](https://www.ecmandryshe.org/repository/docs/190110095518_ENG.pdf)

Preventing Corruption in Public Procurement – OCDE <http://www.oecd.org/gov/ethics/Corruption-Public-Procurement-Brochure.pdf>

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## EXECUTIVE SUMMARY

In 2016, the Strategy for Development of the Ministry of Culture, Youth and Sports had foreseen for the construction of two Olympic Pools. These swimming pools will be built in Pristina and in Prizren, in cooperation and co-funding with the municipalities. For this purpose, in February 2017, Ministry and the Municipality of Prizren signed a cooperation agreement for the implementation of this project. This agreement obliged the municipality to provide €200,000.00 in 2017, and to develop the procurement procedures, whereas the Ministry will also provide another €200,000.00, and would also deal with contract management issues.

According to the above mentioned Memorandum and decision of the Mayor<sup>3</sup>, Municipality started procurement procedures with a delay. The tender was prepared on 19.07.2017, but it was not published until 24.07.2017, and the date when the bids were received was 28.08.2017, therefore violating legal requirements that the high value tender with regular procedure to be opened for at least for 40 days<sup>4</sup>. According to the announcement for signing the contract, the tender dossier was withdrawn by 138 Economic Operators, whereas only 11 of them submitted the bids.

The Evaluation Committee met on the 30th day, or at the deadline defined by law<sup>5</sup>, for the evaluation of received bids. This committee composed of three members of the Prizren Municipal Assembly concluded that out of 11 received bids, only five were responsive. However, the evaluation report did not provide reasons why six other operators were technically unqualified. Apart from this, the summary table of the general bids had written bid price of an operator evaluated as not responsive for administrative eligibility requirements, whereas did not include the price of an economic operator who in all technical requirements was evaluated as responsive.

There was a complaint about this evaluation<sup>6</sup> in the first instance, but the procurement office of the Municipality of Prizren rejected it as unfounded. After this decision, the complainant filed a complaint to the PRB. The complaint was about violations of the law in regards to equal treatment and fair evaluation of the bids. This request was partially approved, and the Municipality of Prizren was asked to re-evaluate the bids. Commission met for re-evaluation on 22.11.2017. The composition of the commission was the same as the previous one, and the evaluation was conducted as in the previous one<sup>7</sup>; the only one that was corrected was the price list of the general bids, where the price of the bidder evaluated as non-responsive was removed, and the price for the responsive one was added. After the publication of this evaluation, two complaints were filed in

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<sup>3</sup> Decision of the Municipality Mayor, dated 23 May 2017.

<sup>4</sup> Law No. 04/L-042 on Public Procurement in Republic of Kosovo, amended and supplemented with Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092; Article 44 - General Rules for Setting a Time Limit for the Receipt of Tenders or Requests to Participate; paragraph 2: In a procurement using open procedures, the contracting authority shall set a time limit for the receipt of tenders that is: (2.1) if the concerned contract is not a large value public contract, **not less than forty (40) day**.

<sup>5</sup> RULES AND OPERATIONAL GUIDELINES FOR PUBLIC PROCUREMENT: <https://krpp.rks-gov.net/krpp/PageFiles/File/A01%202019/Rregullat%20dhe%20Udhezusi%2010%2004%202019%202.pdf>

<sup>6</sup> Contract Award Notice dated 02.10.2017

<sup>7</sup> Contract Award Notice dated 27.11.2017

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PRB whereby alluding that winning Economic Operator attached a fictitious contract as a proof. PRB made a request from the Municipality of Prizren that pursuant to legal provisions, ask for additional information (in form of bank transactions) that would prove conclusion of the suspicious contract. During the re-evaluation process, Municipality of Prizren asked for additional, previously mentioned information, and as response received a few bank transactions that were for the construction of a swimming pool, and receipts in amount over €550,000.00. PRB accepted these documents as evidence and instructed municipality to continue with the signing of the contract.

Contract for construction of the Olympic swimming pool was signed on 25.04.2018<sup>8</sup>. Contract Management Plan was signed only by an economic operator and not by the Ministry of Culture, Youth and Sports as it was agreed in the Memorandum of Understanding, from February 2017. Furthermore, not even a contract manager was appointed. The decision dated 23.05.2017, made by the actual Municipality Mayor, among others, responsibility for the implementation of this project was given to the Directorate of Urbanism and Spatial Planning. From January 2018 until March 2019, monitoring organizations noticed that within this project only preparatory works and works on soil/ground were done, whereas in the same period of the time, Municipality of Prizren released two payments in value of €177,915.30, for completion of the position I (€98,309.50) and completion of the position II (€79,605.50). Two receipts provided did not have relevant documents, such as of description of the works completed within invoiced positions and reports of contract management that prove completion of this works in accordance with the contract.

## **TRANSPARENCY OF THE MUNICIPALITY**

For purposes of this analysis, the Monitoring Group filed to the Municipality of Prizren a total of five requests for official documents and the municipality has provided answers within foreseen time limits. However, the Municipality of Prizren did not provide access to bids of all bidders for this contract. Regarding the tender dossier, documents were available in the E-Procurement Platform; however other documents like budget/funding commitment, access to bids, evaluation reports, contract, management plan and receipts, had to be requested through requests for access to official documents. Failure to publish these documents caused delays in relation to analysis of the procedures. Furthermore, the Municipality of Prizren recognizes only physical copies of the requests for access to public documents, and does not accept requests via email as official requests.

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<sup>8</sup> Contract with procurement number 622-17-106-511

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# CONTRACT ANALYSES

## First phase: PLANNING

MCYS Strategy for Sports in Republic of Kosovo 2017-2021, as strategic objectives within modernization of the sport infrastructure in accordance with international standards, had foreseen also construction of the pools in the regional centers. Under the sub-objective of this objective, it was foreseen that determination of the locations to be done in 2017, and implementation of the pool's projects to be concluded during the period 2017-2021.

In the Memorandum of Cooperation<sup>9</sup> between Municipality of Prizren and the Ministry of Culture, Youth and Sports, this capital project is defined as joint investment, and determines the responsibilities of the parties of the agreement for implementation of this project.

According to this document, MCYS committed to fund/provide €200,000.00, whereas the municipality for 2017 would provide €200,000.00.

According to this agreement, MCYS would also appoint project manager to monitor the contract for implementation of the project, commit the funds for the municipality, as well as in cooperation with the Municipality of Prizren ensure implementation of the project.

On the other hand, the Municipality of Prizren would take over management and execution of all procurement procedures for implementation of this memorandum, and reach the overall goal. The next obligation for the Municipality of Prizren was to submit a copy of the project with CD to the MCYS and in cooperation with MCYS to ensure the implementation of the project.

In addition, according to the above mentioned agreement, Municipality of Prizren, in cooperation with the contracted companies was obliged that latest by 20 November of 2017, submit the report, together with stations of the accomplished works that are for payment in the MCYS, in accordance with the Law on Budget for 2017. Pursuant to this point, Municipality of Prizren had to submit the following documentation:

- Respective position with approved receipt by the Supervisory Body assigned by the Municipality of Prizren through a decision;  
Technical report by the supervising body with description of the works completed according to the respective project, contract with economic operator with pre-measurements and pre-calculations according to the main project;
- Support letter by the Municipality Mayor as a signatory of the Memorandum on processing of payment in the MCYS.

During the analyzes of the budgets in municipality and MCYS for years 2017-2019, Monitoring Group found that the MCYS until now allocated €1.3 million, out of which €900,000.00 are from the funds of the Kosovo Privatization Agency, while MA of Prizren for the same period allocated only €20,000.00 in 2019.

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<sup>9</sup> Memorandum of Cooperation, Republic of Kosovo, Protocol No. MKRS 336/2017, dated 06.02.2017

Statement of Needs and Determination of Availability of Funds at the municipal level was adopted on 22.06.2017, while Request Commitment for Purchase from MCYS was adopted by the Ministry of Economy and Finance on 21.09.2017, in the amount of €130,000.00 for the year 2017.

Even though this agreement had foreseen that the reports on accomplished positions and bills were supposed to be sent latest by 20 November 2017, the contract for construction of the pool was signed on 25.04.2018, which means that defined obligations in the agreement between the two institutions for 2017 were not executed.

## Second phase: PUBLICATION

Municipality of Prizren on 24 July 2017, in the E-Procurement platform published a Contract Notice with number 622-17-3318-5-1-1 for Construction of the Olympic Pool. Type of contract was Works and the procedure was opened. The estimated value of the contract was €4,000,000.00 (large value) whereas the deadline for submission of bids was by 28 August 2017, a total of 24 days.

The scope of the contract (including all parts and options) was the construction of the Olympic Pool, which would include a surface of 5000 m<sup>2</sup>, were the following materials would be used: crushed stones about 6000 m<sup>3</sup>, soil about 16000 m<sup>3</sup>, high quality concrete about 20000 m<sup>3</sup> and many other materials that are essential part of the project for the Olympic Pool

The Tender Dossier foresaw the criteria of tender responsiveness and eligibility of the contract as follows:

#	Criteria	Description
	Value	4,000,000.00
	Duration	36 months
I	Eligibility Requirements	<ul style="list-style-type: none"> <li>- Economic Operator must meet the requirements on eligibility in accordance with Law No.04/L-042 for Public Procurement of the Republic of Kosovo, as amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092. Article 65</li> <li>- In the document by the Tax Administration of your country of establishment, that you are not delinquent in the payment of taxes until at least the last quarter prior to the date of publication of the Contract Notice</li> <li>- A document issued by a competent court certifying that the economic operator "Meets eligibility requirements" be issued until at least the last quarter before the date of the publication of a Contract Notice</li> <li>- As a proof that you have fulfill obligations of property tax until at least the previous month from the date for the opening of the bids</li> </ul>

2	Professional Suitability	Registration as an Economic Operator, Register for VAT, Registration of a Fiscal Number
3	Economic and financial capacity	Annual turnover during the last 3 years not less than 8,000,000.00
4	Technical and professional capacity	EO to provide evidence on the management of construction projects not less than €6,000,000.00 Manager be Graduated Construction Engineer with 5 years of experience, EO to have proof on management of the construction of a swimming pool Within its staff must have at least one Electro Engineer with three years of working experience, A Mechanical Engineer with at least three years of professional experience, A Hydro Engineer with at least five years of professional working experience, have at least 40 employees with different adequate profiles for implementation of the contract EO must have property or possess technical equipment as follows At least four trucks of tonnage over 10 cubic e. at least three excavators with medium digging tonnage f. at least two road rollers, one medium tonnage and one large tonnage.
cvc	Award Criteria	Lowest price

This call for tender require security for the tender, whereas security of execution 10% of the contract value for the period of 37 months.

Monitoring Group found that this notification was published with 16 days of delay from the date of preparation of tender dossier; in which occasion the date for submission of tenders was not updated in the tender dossier by failing to fulfill the legal requirement that large value tenders be opened for 40 days from the notice, until publication of the tender. This means that publication did not met the criteria for the time limit of sending bids, where the requirement for large value contracts (in this instance €4,000,000.00) has the time limit of 24 days, and according to the PPL it should be 40 days.

According to the Announcement for Signing the Contract, published on 30.04.2018, tender dossier was withdrawn by 138 Economic Operators.

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### Third phase: EVALUATION

Municipality of Prizren received a total of 11 bids in response to this contract notice. 9 economic operators were present during the opening of the bids. Commission for opening of the bids was composed of three members, and there were no registered violations during this process. The Evaluation Commission was gathered a month after the opening of the bids and it was composed of three members from the Municipality of Prizren<sup>10</sup>.

The Municipality of Prizren gathered Evaluation Commission for bids on 27 September 2017, respectively one month after the opening and reading the prices of the bids<sup>11</sup> which is contrary to the applicable law, where initially the technical bids are evaluated and then financial bids are opened<sup>12</sup>.

According to the report of the evaluation of tenders, out of the 11 bids received, the Commission evaluated only five bids as responsive, where 6 economic operators were irresponsible, following various violations. From 11 bidders only 7 fulfilled the administrative eligibility requirements, 9 out of 11 fulfilled the professional suitability and eligibility requirements criteria. Additionally, 8 out of 11 bidders fulfilled the requirements for economic and financial standing, and only 6 out of 11 bids met the requirements for professional capability eligibility.

In general, from 11 received bids, Evaluation Commission assessed that only five bids were responsive.

The following table reflects responsiveness of the individual bids for each criterias:

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<sup>10</sup> Tender Evaluation Report date. 27.09.2017

<sup>11</sup> Minutes from the opening of the bids, dated 28.08.2017

<sup>12</sup> ROGPP, Article 48, paragraphs 48.7 (Initially only the technical proposals are evaluated,) and 48.8 (At the end of the evaluation of the Technical Proposals, the Contracting Authority shall invite tenderers who have submitted responsive Technical Proposals and who have been determined as being qualified for award to attend the opening of the Financial Proposals.)

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	Olti Trasing SH.p.k , Konstruktori ing. I 1969, SH.p.k SINANI ING SH.p.k Prishtinë	Raf II sh.p.k, Benita Company sh.p.k ,Xhelal Hajda Toni sh.p.k	KAG – Asphalt Company sh.p.k , Powatec GmbH & Co.KG	N.P.N Albing sh.p.k	N.P.N ÇLIRIMI Korishë- Prizren	SEDTOURS SH.P.K , EUROVIA SH.P.K	I Seferi SH.p.k, ALBOS SH.P.K , N.T.P Nirci Gjinoc Suharek	N.T.P Thesar , A.L ASFALT shpk Suharekë	DAKI SH.P.K Prishtinë	AL – TRADE SH.P.K Magj. Prishtinë- Ferizaj	Tekno ing consulting shpk , CONEX Group SH.P.K , Rexha SH.p.k, OCEAN PISHINË& SPA SH.P.K Prishtinë
Administrative Eligibility Requirements	YES	NO	YES	YES	YES	NO	YES	YES	NO	YES	NO
Tender Security	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Professional Eligibility Requirements	YES	YES	YES	NO	YES	YES	YES	YES	NO	YES	YES
Suitability Eligibility Requirements	YES	YES	YES	NO	YES	YES	YES	YES	NO	YES	YES
Economic and financial standing requirements	YES	YES	YES	NO	YES	NO	YES	YES	NO	YES	YES
Professional Capability Eligibility Requirements	YES	YES	YES	NO	YES	NO	NO	YES	NO	YES	NO
Responsive EO	YES	NO	YES	NO	YES	NO	NO	YES	NO	YES	NO
Financial Bid	2,784,667.78 €	3,389,021.32€	3,577,777.77 €		2,499,570.30€					3,137,212.07€	

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Based on the evaluation report, Monitoring Group found that the evaluation for administrative eligibility requirements lacked clarifications regarding the non-fulfillment of the criteria for three economic operators<sup>13</sup>.

Additionally, even though the report reflects that the bid of the consortium “N.T.P The-sari dhe A.L ASFALT SH.PK” fulfilled technical eligibility criteria, however the financial proposal was not presented at the price criteria.

In addition to the financial bids, it was listed also the price of consortium Raffi II sh.p.k, Benita Company sh.p.k , Xhelal Hajda Toni sh.p.k, even though it did not fulfilled all the eligibility criteria.

During analyzes of the documents, Monitoring Group found that Evaluation Commission did not provide explanation for administrative unsuitability (disqualification) of the three consortium<sup>14</sup>. In the report on the evaluation of bids it can be observed that there is a generalized assessment and without explanations about elimination of the tenderers. Municipality of Prizren did not provide access to the bids of all economic operators, therefore we were not able to figure out if the prices of eliminated Economic Operators were more favorable.

In the response at Contract Award Notification published by the Municipality, there were many requests from economic operators to access the documents for tendering procedure, which were rejected with justification that those were ungrounded claims.

After the complaints from EO<sup>15</sup>, with the decision of the PRB, Evaluation Commission was re-met again on 22.11.2017. The members of the Evaluation Commission during the first evaluation were from Prizren MA with the following qualifications: Professor of physical education, Traffic Engineer and an Architect, whereas during the re-evaluation, members from Prizren MA were with the following qualifications: one was a professor of physical education, and two other members were Traffic Engineers. Based on the fact that the construction of the Olympic Pool is a complex work, the monitoring team raises concerns that none of the members of the Evaluation Commission is a civil engineer or engineer of hydro-technician / hydro-sanitary engineer, who would be familiar with the building criteria of the Olympic Swimming Pools. Although Procurement Review Body had sent the case for re-evaluation, the commission’s decision remained the same, and as in the foregoing assessment, lack of explanations for the classification of non-responsive economic operators.

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<sup>13</sup> KAG – Asphalt Company sh.p.k , Powatec GmbH & Co.KG, N.PN Albing sh.p.k

<sup>14</sup> (1) Raf II sh.p.k, Benita Company SH.PK, Xhelal Hajda Toni sh.p.k; (2) SEDTOURS SH.PK , EUROVIA SH.PK, and (3) Tekno Ing consulting SH.PK , CONEX Group SH.PK , Rexha SH.PK, OCEAN PISHINË& SPA SH.PK Prishtinë.

<sup>15</sup> See Phase Four: Complaints

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## Fourth phase: COMPLAINTS

For this tender, Economic Operators filed three complaints in PRB; the first was made by “KG ASPHALT COMPANY” Sh.p.k & POWATEC & GMBH, seven days after the publication of the contract award notification. The same one complained on the first instance, in which occasion Municipality of Prizren rejected the appeal as ungrounded. Through this complaint “KG ASPHALT COMPANY” Sh.p.k & POWATEC & GMBH claimed that MA violated general principles of public procurement, by violation criteria of fair evaluation of bids while failing to fairly evaluate bids vs. eligibility criteria and also failing to treat abnormally low bid.

After reviewing the complaint from “KAG ASPHALT COMPANY” Sh.p.k & POWATEC GMBH”, the PRB expert was of an opinion that Prizren MA did not fully respect the provisions of LPP, therefore recommended annulment of the decision of the MA for contract award and approve the complaint of the EO as partially grounded and at the same time propose that such procurement activity to be reevaluated. This recommendation was supported by the first decision of the PRB, which returns the case for reevaluation.

After the reevaluation of the bids by the Municipality of Prizren and the second publication of the contract award, two complaints were filed in PRB regarding the decision of the MA, respectively from “KG ASPHALT COMPANY” Sh.p.k & POWATEC & GMBH and “Rafii sh.p.k”, expressing their concerns regarding the responsiveness of the selected bidder for this project. Concerns of these EOs continued to be related to the violations of the general principles of public procurement, by violation criteria of fair evaluation of bids while failing to fairly evaluate bids vs eligibility criteria and also failing to treat abnormally low bid.

Complaints of these EOs continued by expressing their concerns regarding the validity of a contract that was provided by winning EO for construction of a private pool, used as proof of experience, which was used as basis for professional qualification selection criteria.

However, during the review of the complaint and evaluation of the expert, the fact that the contract was made with a private individual, between PCC, was not taken into consideration. “Çlirimi” and Sejdi Rexha were not listed in the list for similar projects submitted by the same bidder.

Also in the minutes of session prior to the decision number 378-17 of the PRB, representative of the Prizren MA stated that: “It completed a swimming pool in 2014, and provided one more contract with a reference and with a proof that the owner of the pool, Sejdi Rexhaj, has a contract with “Çlirimi”, it completed a swimming pool in 2014 and it is satisfied with the works that were made by this EO.” This statement is inconsistent with the contract and presented proof, since the contract was signed in 2014 and according to the presented reference it was completed in 2015, and not as stated by the representative of MA in 2014. Decision of the PRB 378-17 requires from the MA of Prizren to corroborate bank transactions (evidence) regarding this project. As a response

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to this request, Prizren MA received and presented as evidence in PRB receipt in the amount of €550,000.00, 161,900.00, of which are compensation with heavy machinery, which had not been presented in documentation for change of ownership, as well as for the rest of the payments in cash, for which there is no banking report presented. During the session held regarding the complaint 502-17, and the decision issued for the same, even though PRB did provide a decision, which was fulfilled only partly, took it as acceptable, by recommending that Prizren MA continue with awarding the contract as initially selected.

During this research regarding the concerns raised about the above mentioned contract, monitoring organizations asked from the Directorate for Urbanism and Spatial Planning decision for legalization of the property herein, and in this occasion the Directorate responded<sup>16</sup> that there is no such a decision as there was no such a request made by the owner for legalization.

### **Fifth phase: CONTRACT MANAGEMENT**

As part of the preparation for the procurement activity, Contracting Authority has to develop a plan for contract management, so that the implementation is according to the contract objectives.

Contract Management Plan for the Olympic Pool was not fulfilled according to the legal requirements, it did not provide details of the Implementation of the contract, and the plan was signed only by the EO's Project Manager. This fact proves that the existing plan is not valid since it lacks an agreed willingness between the parties herein. Following up,

In September 2018 the MCYS and MCYS Directorate in Prizren have inspected the works of the Olympic Pool. According to inspections, they stated that the works are ongoing according to the dynamic plan.<sup>17</sup>

Due to the unfavorable weather, by the time this research is prepared (31 March 2019), there were no other works<sup>18</sup>.

According to the signed contract, pre-measurements and pre-calculations predicted five implementation phases:

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<sup>16</sup> Response by the Directorate of Urbanism and Spatial Planning, No. 04-034/01-136216, dated: 20.03.2019

<sup>17</sup> <https://kallxo.com/pishina-olimpike-ne-prizren-po-ndertohet-sipas-planit/>

<sup>18</sup> At the time when this monitoring is going on, the only thing done on the construction site was cleaning of the part of it, and the whole of the pool is opened.

#	Description of works	Value in Euro
<b>a. Building works</b>		<b>€ 1,253,343.70</b>
1	Preparatory works	€ 6,905.00
2	Soil works	€ 102,238.50
3	Building walls	€ 107,155.00
4	Concrete and reinforced concrete works	€ 542,533.20
5	Steel constructions	€ 243,216.00
6	Roof construction works	€ 154,296.00
7	Covering works	€ 97,000.00
<b>b. Craft works</b>		<b>€ 675,625.00</b>
8	Insulation works	€ 107,430.00
9	Carpentry works	€ 15,360.00
10	Mechanic works	€ 241,010.00
11	Metal works	€ 9,120.00
12	Tile works	€ 159,770.00
13	Marble works	€ 43,260.00
14	Painting and coloring works	€ 13,440.00
15	Flooring works	€
16	Facade works	€ 49,200.00
17	Different works	€ 37,035.00
c	Water, wastewater and filtering installation works	€ 79,266.66
d	Electrical installations works	€ 100,575.00
e	Heating and ventilation installations works	€ 293,040.94
f	Pool 01	€ 97,899.00
<b>Total value</b>		<b>€ 2,499,750.30</b>

By the end of March 2019, Municipality of Prizren executed two payments in value of €177,915.30 for implementation of this project.

The first bill with number 106/01-10F dated 19.12.2018 in amount of €98,309.50 (with VAT) was for completion of position 1, and;

The second bill with number 106/02-10F dated 21.10.2018 in amount of €79,605.50 (with VAT) was for completion of position 2.

Those bills that monitoring organizations had access to, did not constitute the report of completed works. Based on the above mentioned descriptions in the pre-measurements and pre-calculations of the prices in the contract, it was impossible to prove whether billed works were completed, and also paid bills do not match with the aforementioned parts of pre-measurements and pre-calculation.

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## CONCLUSION

This contract faced problems since the very beginning.

- Tender was opened in June 2017 and because of the complaints in this process, signing of the contract was made with 10 months delay. This has caused difficulties to accomplish the strategy and the agreement between the Ministry of Culture, Youth and Sports and Municipality of Prizren, foreseeing for the project to start in the fourth quarter of 2017.
- Publishing of the tender faced delays. According to the contract notice, published in E-Procurement, dossier was prepared on 19.07.2017, but it was not published until 24.07.2017, and the last date for receipt of bids was of 28.08.2017. Law on public procurement, for the large value contracts with regular open procedure, foresees the deadline for the submission of tenders within 40 days from the publication. Lack of a proper planning of the time limits for fulfilling the legal requirements had resulted in failure to meet legal requirements<sup>19</sup> for the time limit four days less than it is required.

During the evaluation process it was also noticed that there were different irregularities, starting from:

- Irresponsible evaluation of the administrative eligibility criteria for four companies, without providing reasons for this evaluation. Furthermore, in the list with five companies evaluated as responsive, the price also appears in one evaluated EO as irresponsible, whereas the price of the bid from EO that is evaluated as responsive is missing. Municipality of Prizren did not provide explanations about these changes. The complaints regarding this process were filed in the Municipality of Prizren and also in PRB. Complaints were related to the responsiveness of the selected EO as winner of the tender. The complainants have expressed doubts over a contract that was presented by winning EO, between them and an private person, which was the basis of the its responsiveness to fulfill eligibility for professional capability criteria.
- Municipality of Prizren had failed to take the complaint into account, and it is also considered that PRB did not show a high level of professionalism hosted by accepting partial evidence, and by failing to verify them further.
- Later on, Monitoring Group found that the contract was also subject to suspicions by TAK and by rule of law bodies. Furthermore, Directorate of Urbanism and Spatial Planning from the same municipality of Prizren, declared that they never received a request for construction permit or request for legalization of the property which was the object of this suspicious contract.

There were also problems in management phase.

- Agreement between MCYS and Municipality of Prizren had foreseen that MCYS appoint the contract manager, but contract management, including also payments remained on informal level and that in responsibility of the municipality.

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<sup>19</sup> Law on Public Procurement

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- This contract doesn't have a management plan, which is mandatory according to the Law on Public Procurement, it was signed only by an Economic Operator, but it was not signed by contracting level, respectively municipality or the Ministry.

## RECOMMENDATIONS

1. Procurement office of the Municipality of Prizren, in the future procurements should pay attention to the time lines set out by law, and in cases of delays to update the dates accordingly.
2. Head of Procurement should not accept incomplete reports from Evaluation Commission.
3. Evaluation committees shall provide detailed clarification to each Economic Operator who was eliminated in terms of the unfulfilled bids of the Bidders.
4. The Mayor and Head of Procurement should carefully consider each request for reconsideration from the businesses in order to prevent the cases from going to the Public Review Body and causing unnecessary delays. Eventual violations should be identified by the Municipality and addressed immediately.
5. Public Review Body must be more dedicated in eliminating irregularities, especially by increasing cooperation with relevant institutions. If Public Review Body was to communicate with Tax Administration Office or justice bodies, it could have proved before entry into obligations, if the winning bid, contested by the complainants in PRB, was responsive or not. Lack of cooperation could endanger the implementation of the contract.
6. Basic Prosecution Office in Prizren shall as soon as possible investigate the allegations raised regarding the contract with private individual, which was used for the benefit of public funds.
7. Ministry of Culture, Youth and Sports should communicate with the Municipality of Prizren, and shall create coordination lines for the management of the contract.
8. Municipality of Prizren must keep attached to the bill the description of completed position and report of manager for the completion of works.





