



NGO - Network of Peace Movement (NOPM)



## MONITORING REPORT ON PROCUREMENT ACTIVITIES

### CONSTRUCTION OF THE SQUARE OVER THE RIVER MIRUSHA-SOUTH



Gjilan  
June 2019

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

Civil Society Organizations:  
NOPM, DardanPress, KCIC, KAND and TM

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**CONSTRUCTION OF THE SQUARE OVER THE RIVER  
MIRUSHA-SOUTH**

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# INTRODUCTION

This report is drafted by the Monitoring group by Non-Governmental Organizations from the Region of Gjilan, 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:

1. Ardianë Ahmeti - KCIC - Gjilan
2. Vjose Avdiu - KCIC - Gjilan
3. Sherafedin Vranja - Dardana Press - Kamenicë
4. Vjollca Ramabaja - Transparency, Monitorim - Gjilan
5. Besime Maliqi - NOPM-Kamenicë
6. Valentina Veseli – KAND - Gjilan

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

During the workshops, Monitoring Group monitored the procurement activity titled **“Construction of the Square over the River Mirusha-South”** with procurement number 651-18-5661-5-2-1, and predicted value of the contract 294.894,40 Euro.

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 importance of the project to 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 (site where the project is implemented/contract is applied).

Monitoring Group assessed the implementation of the law and the public procurement regulation based on a key indicator to assess the implementation of the law on the procurement procedures and phases, where the following 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 following documents:

1. Final procurement planning;
2. Request for initiation of a procurement activity by requesting unit;
3. Statement of needs and definition of availability of funds (B04;)
4. Contract Notice (B05);
5. Tender Dossier (B17);
6. Pre-measurements and predictions;
7. Registry of economic operators (OE) that have accepted the tender dossier (B13);
8. Registry of submitted tenders;
9. Decision for establishing of the opening Commission;
10. Minutes of the opening of tender (B12);
11. Decision on establishing the commission for evaluation of tenders ;
12. Report of tender assessment (B36);
13. Notification for contract award (B08);
14. Contract.

Monitoring Group acquired all these documents through requests for access to public documents and the public procurement electronic platform.

Monitoring Group met six times at the offices of NGO KCIC on the following dates:

Day I - 2.10.2018

Day IV - 7.12.2018

Day II - 8.11.2018

Day V - 20.12.2018

Day III - 16.11.2018

Day VI - 20.02.2019

# ANALYSIS

## I. LACK OF BUDGET PLANNING FOR THE PROJECT AND INEFFICIENT PLANNING

In October 2018 Gjiilan Municipality entered a contract for the regulation of the square above the river Mirusha-South with economic operator (OE) EL BAU in the amount of 294,894.40 Euro through open procedure.

Monitoring Group found that:

- The municipality didn't plan the project cost according to the legal and practical standards. Pursuant to the LPP, the Municipality should carefully analyze its needs for the amount of goods, works and services so that they meet, in the longest possible time, its needs and to have a vision during their planning. The calculation of the contract value is an important element in the planning process. The CA should carefully analyze all the options defined by the LPP and the secondary public procurement legislation and to calculate the value of the contract in order to have a real overview of the cost of projects so that the same don't experience fictional increases or procedural failures due to the cheap price.
- In this case, in the final 2018 Procurement Planning, the Municipality planned the Regulation of Mirusha River in the amount of 100,000 Euro. Whereas, in the Statement of Needs and Availability and the Contract Notice, the estimated contract value was 350,000 Euro.<sup>1</sup>
- In the 2018-2021 Municipal Midterm Budgetary Framework and the 2018 budget there is no project at all.<sup>2</sup> Consequently, the Municipality has acted in violation of the Law on Procurement (LPP) and the Law on Public Finances and Accountability (LPFA), because it has entered in contractual relationship without having a special project code in the municipal budget.

Procurement planing	Budget 2018 - 2020	Contract Notice	Contract
100 000 €	No planning	350 000 €	294 894.40 €

*Figure 1. Discrepancy between planning documents and contract price.*

<sup>1</sup> Final procurement planning for fiscal year 2018, Municipality of Gjiilan, available at: <https://kk.rks-gov.net/gjilan/wp-content/uploads/sites/11/2018/07/Planifikimi-perfundimtar-i-prokurimit-2018.pdf>

<sup>2</sup> 2018-2020 Budget, Municipality of Ferizaj, available at: <https://kk.rks-gov.net/gjilan/wp-content/uploads/sites/11/2018/01/Planifikimii-buxhetit-2018-dhe-vlersimet-e-hershme-2019-20-punuar-15.08.2017.pdf>

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- On the other hand, in the contract notice the estimated value of the contract was 350,000 €<sup>3</sup>, whereas the winning bid price is 294,894.40 €. Therefore, the municipality has failed to make the planning pursuant to the legal provisions of the LPP.
  - The Procurement Planning is not in compliance with the 2018 Municipal Budget, namely the list of capital investments. Since this project was not approved in the Municipal Budget by the Municipal Assembly it is in violation of Article 17 of the Law on Public Finances and Accountability, which mandates that public money shall only be used for approved public goals. No public authority, budget organization, person or enterprise cannot deviate, misimplement, expose or use irregularly public money. In addition, this project was never discussed or voted on by the Municipal Assembly, as the highest Municipal decision making body, responsible to adopt the budget.
  - Entering into a contractual relationship without a special code destined for specific projects is in violation of Financial Regulation 02/2013. Since the initiation of expenses pursuant to this rule should be done only after identifying correctly among others; the source of the fund, the program code, and project code. Further, paragraph 4 of Article 18 of this Regulation obliges the Municipality to review seriously the proposed expenses while taking care especially that the expenses are in line with the Budget and the Procurement Plan.
  - However, according to the Municipality this contract is financed from the project “Rehabilitation of Roads, Sidewalks and Parks in the Town and Villages”. The Monitoring Group has analyzed the 2018 Midterm Budgetary Framework and found that for this project 114,000 € had been approved in 2018, and the estimates for 2019 and 2020 together reached the amount of 290,000 €. <sup>4</sup>
  - Consequently, contracting projects unplanned in the budget framework of capital investments raises the risk for the increase of contractual obligations which later can cause financial difficulties for the Municipality, and also increases the risk of payments through enforcement, which would then affect and jeopardize the financing of other projects as a result of enforcement.
  - On the other hand Monitoring Group found that the responsible procurement officer, chief financial officer and the Mayor, before the publication of the contract award notice, confirmed that the financial information is accurate and has not changed materially, as required under Article 9 of The Law on Public Procurement. Thus it may be concluded that the financial data provided in the Statement of Needs and Availability of Funds are not real and are not grounded on strategic municipal documents such as the budget and procurement plan.
  - In B04 form Statement of Needs and Availability of Funds of 03.07.2018 it is stated that the project is multi-annual but doesn't specify the years and doesn't contain the information on the financing of the project in the next fiscal years. Pursuant to LPP if the concerned procurement will increase financial obligations that are to be satisfied from appropriations expected in future fiscal

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<sup>3</sup> Contract Notice, available at: <https://e-prokurimi.rks-gov.net/Home/ClanakItemNew.aspx?id=327>

<sup>4</sup> 2018-2020 Midterm Expenses Frame, available at <https://kk.rks-gov.net/gjilan/wp-content/uploads/sites/11/2018/01/Planifikimii-buxhetit-2018-dhe-vlersimet-e-hershme-2019-20-punuar-15.08.2017.pdf>



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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>

## **II. THE MUNICIPALITY SHORTENS TENDERING DEADLINES AND SETS DISCRIMINATING CRITERIA**

The deadline for submitting tenders was set in violation of Article 44 of the LPP. Pursuant to the law the contracting authorities shall set reasonable deadlines to give the interested economic operators sufficient time to prepare and submit the required documents according to the tender dossier. In open procedure procurement for medium value contracts the deadline for tenders is not less than 20 days. In addition, all the selection criteria shall be restricted only in the criteria necessary to ensure that only the economic operators that have the necessary professional, financial and technical skills to meet the conditions of the respective contract. In no circumstance shall the contracting authority include, specify or use selection criteria based on other considerations besides the ones permitted by the provisions of Articles 65-70 of the LPP. However Gjilan Municipality acted in violation of of Articles 65-70 of the LPP.

### **Monitoring Group found that:**

- The Municipality gave only an 18 day deadline for submitting tenders.<sup>6</sup>
- Only two (2) Economic Operators applied for this tender.
- On the demands for technical and professional capacities in the Contract Notice and Tender Dossier the Municipality specified - one engineer or Bachelor of Arts in Managing Emergencies with a minimum of 2 years of working experience after graduation.<sup>7</sup> The Monitoring Group has not managed to identify this profession branch “Bachelor of Arts in Managing Emergencies” in any of the faculties accredited in Kosovo, they haven’t even encountered this demand in any other tender dossier for similar contracts.
- In addition, the Monitoring Group found that in 2017 the Municipality under technical and professional criteria for the tender “regulation of the Square of River Mirusha” procurement no. 651-17-2098-5-2-1, did not include this criteria, although the nature of the work is almost identical with the contract “Regulation of the Square of River Mirusha-South”.

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<sup>5</sup> Article 9 of the Law on Public Procurement, available at <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2772>

<sup>6</sup> The contract notice and tender dossier, available at: <https://e-prokurimi.rks-gov.net/Home/Cla-nakItemNew.aspx?id=327>

<sup>7</sup> Ibid.

- Due to this discriminating criteria, EO “GLOBI-MI” who had the cheapest bid was declared Irresponsible because the same did not provide the required evidence for an engineer or Bachelor of Arts in Managing Emergencies with a minimum of 2 years of work experience after graduation.<sup>8</sup> The EO eliminated from the tender was the winner of the contract “Regulating the Square over Mirusha River” procurement no. 651-17-2098-5-2-1 in 2017. This EO did not submit any appeals on the tender results although it was notified in time by the Municipality through the standard letter. Then the same was sub-contracted by the winning EO to implement the contract.
- In addition, no document has been presented in the e-procurement to prove that the EO has requested clarification on the tender dossier demands or any reassessment. However, the Municipality should have implemented the provisions of the LPP by setting minimum legal and non-discriminating criteria in the tender dossier with the aim of increasing maximally the interest of EO on the tender and to ensure the lowest responsible bid.
- This way, the Municipality entered a contract for about 60,000 Euro higher than the price of the bid of the EO eliminated due to the discriminating criteria.

### **III. THE IRRESPONSIBLE EO BECOMES THE SUBCONTRACTOR**

During visits at the work-site participants found that:

- EO “GLOBI-MI” who was deemed ineligible to be awarded the contract was participating in performing the work, namely as a subcontractor. Pursuant to the contract notice, Gjiilan Municipality declared it was not permitted for the contract to be subcontracted.<sup>9</sup>
- Municipal officers stated that they were not informed that GLOBI-MI has been subcontracted by the contract winning EO-EL BAU and that the municipality doesn’t care who is subcontracted, but rather that the work is performed pursuant to the contract and that they hold EL BAU accountable for the execution of the contract<sup>10</sup>.

<sup>8</sup> Report on evaluation of tenders, of 13.09.2018, Gjiilan Municipality

<sup>9</sup> Contract Notice, available at: <https://e-prokurimi.rks-gov.net/Home/ClanakItemNew.aspx?id=327>

<sup>10</sup> Interview with the Acting Director of the Procurement Office, director of Public Services and director of Economic Development by the participants on 20.02.2018.



#### IV. THE CONTRACT DOESN'T HAVE AN EXECUTION DEADLINE

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. In part III of the contract “**Special Terms**”, completion of the works is foreseen to be done within 180 days. However, it does not specify if the contract is for two (2) years, as it was foreseen during the initiation of the procurement activity.<sup>11</sup>
- Furthermore, the security of the contract execution in the amount of 10% according to the contract is valid for a 7 month period from the day the con-

<sup>11</sup> Statement of needs and definition of availability of funds (B04), signed on 03.07.2018.

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tract is signed.<sup>12</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>13</sup> If we are to refer to this rule, the contract should have been implemented by February 2018, and it should be an annual contract. However, as it was explained in Chapter I of this report, the funding of this project, respectively the contract, according to the municipal budget is not foreseen. The Monitoring Group has visited the work-site and the project is still in the process of execution.

## V. 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 should ensure that there will be no initiations of projects that have not been foreseen or planned in the budget.
2. All projects intended to be Initiated should be part of the budget planning and part of the procurement planning.
3. The Mayor should ensure that all units of the request units and the procurement office do not apply discriminatory criteria during the tender process; that will decrease competition and will lead to the overall loss of value for the public money.
4. Municipality should set clear deadlines to receive the tendering offers in accordance with the law in order to ensure that Economic Operators have enough time to prepare their offers.
5. The municipality should accurately set the terms of the contract in order to avoid the risk and consequences of non-fulfillment of the contract.

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<sup>12</sup> Contract available at: <https://kk.rks-gov.net/gjilan/ep-content/uploads/sites/11/2018/10/Kontrata-dhe-per-shkrimi-i-cmimeve-Rregullimi-mbi-lumin-mirusha-jug.pdf>

<sup>13</sup> Rules and Guideline for public procurement, article 30.6, available at: <https://krpp.rks-gov.net/krpp/Page-Files/File/2018/04/rruoppl3042018.pdf>



