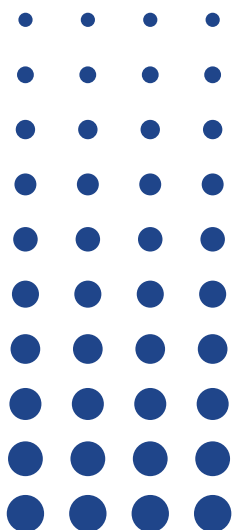
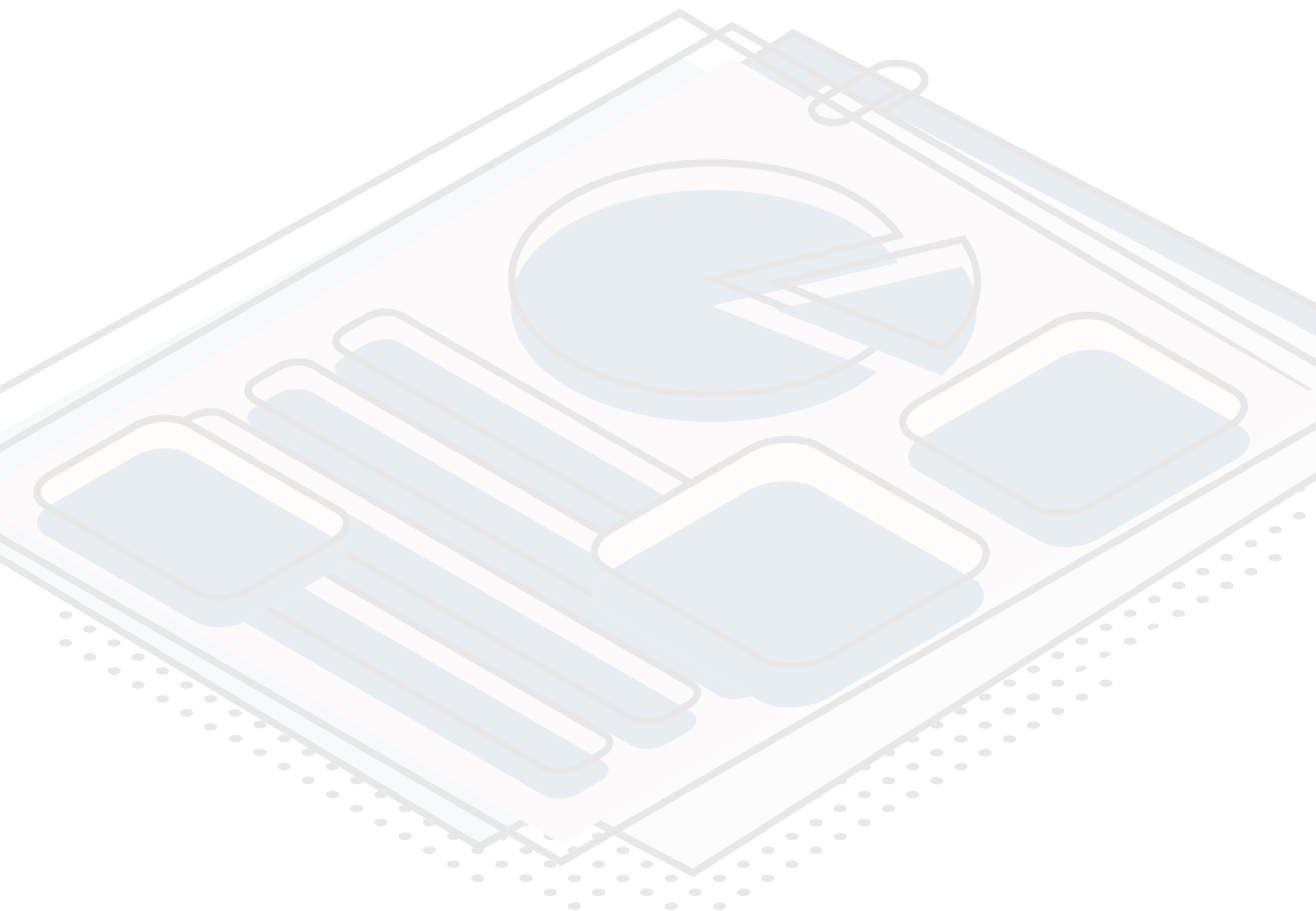




HANDBOOK ON INVESTIGATIVE JOURNALISM IN **PUBLIC PROCUREMENT**



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Acronyms

Ministry of Finance, Labor and Transfers

[MFLT]

Budget organization

[BO]

Public Procurement Regulatory Commission

[PPRC]

Procurement Review Body

[PRB]

Central Procurement Agency

[CPA]

National Audit Office

[NAO]

Contracting Authority

[CA]

Economic Operator

[EO]

Chief Administrative Officer

[CAO]

Responsible Procurement Officer

[RPO]

Information and Privacy Agency

[IPA]

Public Procurement Law

[PPL]

Medium-term expenditure framework

[MTEF]

Medium-term budget organization framework

[MTBF]

1. Context and purpose of the handbook for journalists

The institutions of the Republic of Kosovo, including public enterprises, sign an average of 11,425 contracts per year through procurement that amounts to an average value of around 585.5 million euros¹.

All these contracts must be concluded through procurement procedures, with the exception of contracts for which procurement procedures are not applied based on Article 3 of the Public Procurement Law [PPL], i.e., the contracts of defense and security institutions.

Public procurement, through which about 585.5 million euros are spent, has been one of the most affected points by corruption in Kosovo. In the European Union report² of 2022, it is said that Kosovo is averagely prepared in public procurement. According to this report, the new legislation on public procurement and concessions, which is intended to be aligned with EU legislation, has not yet been finalized. “Two e-procurement modules have been introduced to increase transparency and monitor the contract implementation. Public procurement remains prone to irregularities and vulnerable to corruption during the procurement process and contract implementation”.

On the other hand, Transparency International has estimated that in 2022, Kosovo has improved with regards to the perception of corruption, being ranked 84th, with 41 points in the ranking list of 180 countries. Compared to the Western Balkans countries, Kosovo ranks second after Montenegro, which has 45 points, and is followed by North Macedonia with 40 points, and Albania with 36 points, the same with Serbia³.

The index lists the actions taken by the executive power that influenced the improvement of the corruption perception, while on the other hand, the lack of corruption scandals relates to the low level of expenditures and capital investments. Therefore, it is concluded that the Government should increase public investments for the needs of citizens at a time when high levels of inflation prevail, always ensuring that public procurements are carried out in full transparency and accountability.⁴

For several years now, international institutions have invested in the advancement of transparency in procurement, its digitalization, but also in increasing the monitoring of tenders announced by Kosovo institutions. Through the USAID TEAM project and the work of civil society and the readiness of the heads of institutions, the open procedure of public contracts has been made possible.

¹ <https://e-prokurimi.rks-gov.net/HOME/Documents/Legislation/Raportet%20Vjetore/shq/>

² <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Kosovo%20Report%202022.pdf>

³ https://images.transparencycdn.org/images/Report_CPI2022_English.pdf

⁴ <https://kdi-kosova.org/aktivitetet/>

Many important documents and information about tenders can be found in Open Procurement. Whereas, through the request for access to public documents, other necessary documents can be easily obtained, especially when it comes to contract implementation.

Investigative journalism is effective only when it elicits public response. In democratic societies, investigative journalism is considered one of the main pillars of democracy, although sometimes investigation results may be excruciating.

Despite the increasing transparency and easy access to documents, in Kosovo's media you can find very little investigations related to public procurement activities and the exposure of violations in this field. In addition to the great dynamics of the media and the lack of staff, one of the reasons for the lack of investigation is also the lack of knowledge about procurement by journalists.

This handbook is designed so that any journalist who wants to investigate a procurement topic can obtain basic information, sufficient to produce a story about procurement. This handbook is designed in such a way that it can also serve as a guide for journalists who wish to cover topics related to procurement.

2. Budgeting

A budget is a plan of income and expenditure for a certain period of time. The state budget is prepared for a 12-month budget period, otherwise known as "budget year". The budget of the Republic also includes the budgets of each budget organization, i.e., the income and expenditures of each ministry, agency or municipality appear there. Unlike budget organizations, public enterprises have separate budgets, which are approved by their boards.

The budget of Kosovo is prepared by the Ministry of Finance, Labor and Transfers [MFLT], in coordination with budget organizations and is approved by the Assembly of Kosovo at the end of the year. By May 15, the Minister of Finance sends the first budget circular⁵ to all budget organizations, which sets out the expenditures ceiling and the expenditure level determined by the Medium-Term Expenditure Framework [MTEF].

Thus, on May 15 of each year, the budgeting process begins, i.e., the determination of projects and expenditures to be made in the following year. Budgeting is a very important process as it reflects citizens' voices about projects and community needs, which are transformed into projects and placed in the budget for implementation in the following year or years. The most important part of budgeting, particularly for municipalities, are the public hearings, during which the municipality and its citizens discuss the projects and priorities that will be financed with the following year's budget.

⁵ LAW NO. 03/L-048 ON PUBLIC FINANCIAL MANAGEMENT AND ACCOUNTABILITY, Article: 20.1, 20.2, 20.3

Medium-Term Expenditure Framework

Institutions	Projections for 2022	Projections for 2023	Projections for 2024
Assembly of Kosovo	9,500,105	9,536,141	9,572,356
Presidency	3,498,710	3,504,263	3,509,844
The Office of Prime Minister	12,861,795	11,900,973	11,970,593
Ministry of Health	61,696,320	51,742,546	79,789,002
Ministry of Economy	53,373,553	92,041,601	77,447,636

The process of budget proposals begins on June 15 and ends on October 31. During the July-August period, MFLT examines proposals and organizes budget hearings with budget organizations. No later than October 31, the Ministry prepares the budget with allocations for each budget organization, and submits it to the Government for approval.

After the budget approval by the Government, the budget is sent to the Assembly of Kosovo for approval. In the session of the Assembly of Kosovo, the Minister of Finance, Labor and Transfers proposes the budget to the deputies of the Assembly. The budget must be approved by the Assembly no later than December 31.

After the approval of the Law on Budget Appropriations by the Assembly, within 30 days, the Minister must publish the budget together with the explanations in the Official Gazette of Kosovo as well as on the Ministry's website.

In case of non-approval of the Law on Budget Appropriations for the next fiscal year, before the beginning of the respective year, then the Law on Budget Appropriations which was in force during the previous year, with the authorization and decision of the Assembly of Kosovo, can be extended but no more than three months.

In addition to the Law on Budget Appropriations, the Government and the Assembly annually approve the Medium-Term Expenditures Framework [MTEF], which sets out income and expenditures for three years. MTEF is the main document on the basis of which the budget is drafted, and the purpose of MTEF is to provide informed macroeconomic analysis, as a basis for budget planning. Among other things, it includes policy priorities, income forecasting and the expenditure budget plan, assessment of capital investments and grants for all budget organizations.

Dear,

Let me thank you for your contribution for drafting the Medium Term Expenditure Framework (MTEF) 2023-2025, which is the basis for drafting the budget for 2023.

Below you can find the Budget Circular 2023/01, which provides the initial budget limits for each Budgetary Organization at the central level and the budget limits of the municipal level for 2023-2025. The Ministry of Finance, Labor and Transfers remains at your disposal to provide the necessary support during the process of drafting the Draft Law on Budget Appropriations for the Budget of the Republic of Kosovo for 2023.

With respect!

Hekuran Murati
Minister of Finance, Labor and Transfers

[.Budget circularMFLT](#)

2.1. Municipal budget

Kosovo municipalities must also follow legal procedures in the budget process. After the Ministry issues the first budget circular, as mentioned above, the chief financial officer [CFO] must send to each director in the municipality, no later than July 1, the municipal budget circular with specific information and the expenditure ceiling for the next fiscal year and estimates for the next two years.

After the expiration of the deadline set in this internal circular, the CFO of the municipality must review the proposals - budgets submitted by the municipal directorates and then hold meetings with each municipal directorate-requesting unit to discuss their needs and concerns about the budget.

The CFO, as required, sends the second municipal circular containing additional information and instructions on expenditure limits to the municipal directorates.

After the public and budget hearings, the CFO must prepare and submit to the mayor the budget for the next fiscal year and the estimates for the next two years⁶.

In order to ensure the final budget guidelines and the final grant levels in accordance with the Medium-Term Budget Framework [MTBF], the Ministry of Finance issues the second budget circular no later than August 15 of the respective year⁷.

⁶ Law No. 03/L-48 on Public Financial Management and Accountability, Article 60.1, 60.2, 60.3

⁷ Law No. 03/L-48 on Public Financial Management and Accountability, Article 20.2. Law No. 03/L-221 on Amendment and Supplement to Law No. 03/L-48 on Public Financial Management and Accountability, Article 20.3

To refer back to the procedure in the municipality, after the approval of the budget, the Mayor of the municipality must submit the proposed budget together with the documents required by law to the municipal assembly no later than September 1 of the respective year.

After the public hearings have been completed, the municipal assembly must evaluate, approve, amend the proposed municipal budget, and submit it to the Ministry of Finance, Labor and Transfers no later than September 30.

The budget is divided into five economic categories of expenditures: wages and salaries, goods and services, municipal expenditures, subsidies and transfers and capital expenditures.

The period of time of the public budget hearings shall be considered, as well as whether the municipality is being transparent and inclusive in the organization of the budget hearings, whether NGOs have been invited and participated, whether marginalized groups of society and minority communities have been invited and participated.

Debat publik	Vendi	Koha
Debat publik – buxhetimi gjinor me gratë e Komunës së Novobërdës	Bostanë – Salla e Kuvendit	29.08.2022 10:00h
Debat publik - Prekovcë me banorët	Prekovcë – Sh. F . Dositej Obradovic	29.08.2022 13:00h
Debat publik - Jasenovik me banorët	Prekovcë – Sh. F. Sveti Sava	29.08.2022 15:00h
Debat publik - Bostanë me banorët	Bostanë – Salla e Kuvendit	30.08.2022 10:00h
Debat publik – Kufcë e epërme me banorët	Restorant “ Splav “	30.08.2022 14:00h
Debat publik - Stanishor me banorët	Stanishor – dom kulture	31.08.2022 10:00h
Debat publik - Koretishtët me banorët	Koretishtë – dom kulture	31.08.2022 12:00h
Debat publik – Kufcë e epërme, me OJQ, grupe joformale	Restorant “ Splav “	31.08.2022 15:00h
Debat publik - Llabjanë me banoret	Labljane – Sh.F. . Asdreni	26.08.2022 11:00h
Debat publik - Pasjak me banorët	Pasjak – Sh.F. Nushi dhe Tefiku	26.08.2022 13:00h

Novobërdë, gusht 2022

Drejtoria për Buxhet dhe Financa



Calendar of budget public hearings_Municipality of Novobërdë

It is also important to consider the schedule of the budget hearings and how suitable that schedule is to ensure participation, through which means of information, or what actions the municipality has taken to inform citizens, the place where the public hearings were organized and how the municipality acted to ensure maximal participation of citizens, with special emphasis on citizens from remote villages.

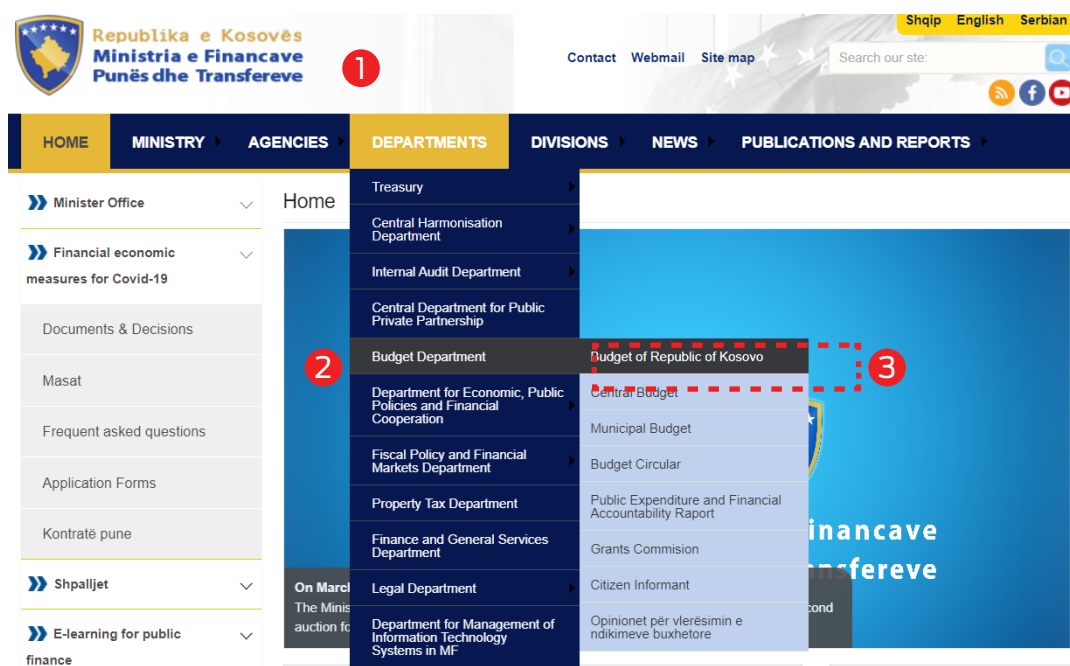
The municipality is obliged to publish the schedule of public budget hearings on its official website, so it should be checked whether such an action has been undertaken, and whether minutes of participation in these public budget hearings with the necessary data have been kept.

2.2. How and where can we find the Law on the State Budget?

Following the approval by the Assembly and publication by the Ministry of Finance, Labor and Transfers, the budget of Kosovo is open to the public.

There are two ways according to which we can find the state budget.

First option: By directly visiting the official website of MFLT: <https://mf.rks-gov.net/>, then clicking on Departments - Budget Department - Budget of the Republic of Kosovo, where the budget for the next fiscal year as well as the budgets for previous years are displayed.



The budget of the Republic of Kosovo on the MFLT website

Second option: By visiting the webpage - Official Gazette, in this link <https://gzk.rks-gov.net/default.aspx?index=1>, then in the search tool, we search for the budget.



The screenshot shows the official website of the Republic of Kosovo. At the top left is the coat of arms of Kosovo. To its right is the text "OFFICIAL GAZETTE OF THE REPUBLIC OF KOSOVA". In the top right corner, there are language options: Shqip, English, Srpski, Türkçe, Bosanski, and a search icon. Below the language options are links for "About us", "Subscribe", and "Statistics". There are two main navigation buttons: "HOME" and "CATEGORIES OF ACTS". The main content area features the title "LAW NO. 08/L-193 ON BUDGET APPROPRIATIONS FOR THE BUDGET OF THE REPUBLIC OF KOSOVO FOR YEAR 2023" with PDF and TXT download icons. Below the title is a table with the following information:

Type of act:	Laws	Published:	30.12.2022
Act number:	08/L-193	Official Gazette:	38/2022
Institution:	Assembly of the Republic of Kosovo		

Below the table, the text "The budget of the Republic of Kosovo in the Official Gazette" is displayed with a dashed line pointing to the right.

2.3. Why do we need to know about the budget?

In the Law on the Budget of the Republic of Kosovo, you can find all the capital projects that will be implemented during a year. There, in addition to the projects being presented by title, the funds that are planned to be spent in the current year and the forecasting for the next two years are set out.

The total value of the project, depending on the size, can extend over only one budget year, but mainly it extends over more than one year.

Journalists should check whether the tender they are investigating was included in the budget planning (Budget Law) of that institution, as well as whether the value contracted for this tender was in line with the budget planning. In the Budget Law, you can be informed whether the municipality or the Government (contracting authorities) have provided enough funds to finalize that project within the contracted period. For example, you may come across cases where a certain municipality has signed a 2-year contract for the construction of a school, but only 10% of the contract cost is planned in the budget. In all cases, the journalist must first seek clarification from the contracting authority [CA] and then also from the MFLT if more funds will be provided/allocated for that project in subsequent years.

For about 13 years now, Kosovo has initiated two projects: the construction of the highway to Peja and the other to Mitrovica. Both have started at the same time, but they are still not finalized. The main problem here is that multi-million tenders have been initiated even though the funds have not been secured. Although the MFLT has advanced the system to prevent the opening of tenders without ensuring that the financial means are guaranteed, journalists should always check if the necessary funds are guaranteed.

You cannot find a lot of information about goods and services in the budget of the Republic of Kosovo. Goods and services are mainly provided through procurement procedures and fall under the category of supply and service contracts.

2.4. Reporting budget expenditures

The budget expenditure report is a very important document that shows how much the budget has been received and spent by each institution. This document is first drafted based on the reports of budget organization organizations in MFLT, and then MFLT reports to the Assembly of Kosovo. This report documents on a quarterly basis the expenses incurred and the budget spending trends by each institution.

Municipalities must prepare and submit to the municipal assemblies' quarterly reports that cover the respective year until the end of the quarter that has ended. The reports are submitted to the municipal assemblies and a copy to the Minister of Finance within 30 days after the end of the respective quarter. Also, these reports must be published on the municipalities' website.

3. Public procurement institutions

The most important public procurement institutions in Kosovo are: the Central Procurement Agency, the Public Procurement Regulatory Commission, and the Procurement Review Body.

3.1. Central Procurement Agency

Central Procurement Agency [CPA]⁸, within the Ministry of Finance, Labor and Transfers, was established according to the Public Procurement Law [PPL].

CPA is responsible for the joint procurements of the Contracting Authorities. The duty and responsibility of CPA is to carry out procurements on behalf of CAs and in case of request for assistance from CAs, CPA helps them in carrying out procurements⁹.

This Agency has its official website where data is provided on the public procurements it carries out. On this webpage, journalists can find documents such as: centralized supply and service contracts, decisions and various announcements about procurement activities and reports on the work of the CPA.

⁸ <https://aqp.rks-gov.net/>

⁹ Law on Public Procurement of the Republic of Kosovo no. 04/L-042 amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092, Article 94, Article 95

3.2. Public Procurement Regulatory Commission

According to PPL, the Public Procurement Regulatory Commission¹⁰ (PPRC) is responsible for the development, operation and general supervision of the public procurement system in Kosovo and exercises the functions entailed by this Law.

The Public Procurement Regulatory Commission of Kosovo was established based on Article 81 of the PPL, which entered into force on June 9, 2004, then amended by Regulation no. 2007/20.

The PPRC is an independent regulatory agency, which means that no public official may exercise or attempt to exercise influence over the PPRC in relation to any particular operational or regulatory decision of the PPRC.

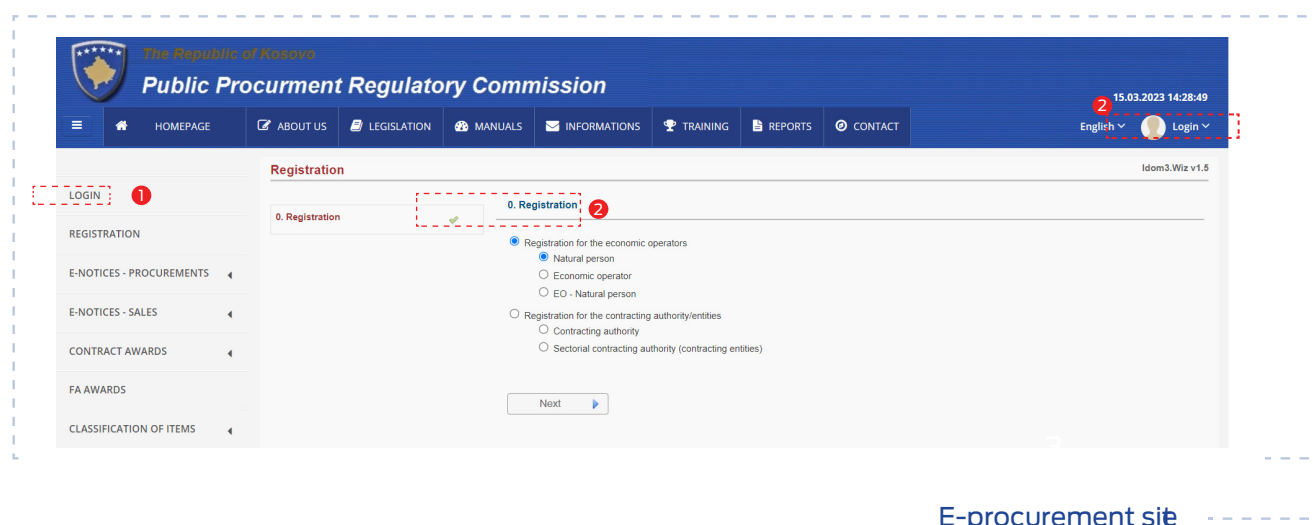
According to the PPL, PPRC:

- It is responsible for the overall development of the public procurement system in Kosovo, as well as the implementation of the PPL;
- It is responsible for monitoring, supervising and controlling the implementation of the PPL;
- Ensures that such a system operates in order to achieve the highest possible, rational, efficient and transparent use of public funds, encouraging competition, and respecting the equality of participants in the public procurement process.

PPRC manages the Electronic Procurement, namely the website “E-Procurement”, in which all tenders, contract signing notices, contracts, procurement plans are published and through which CAs can manage contracts.

Journalists also have access to this platform, and must open their own account in order to have access to the procurement documents, such as a contract.

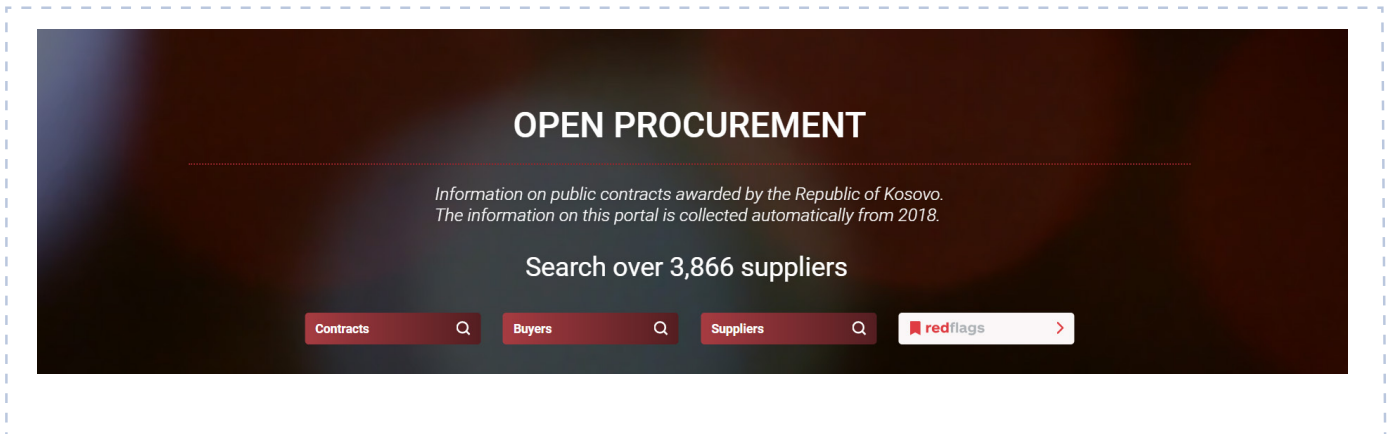
You may open your account by clicking [HERE](#).



E-procurement site

¹⁰ <https://e-prokurimi.rks-gov.net/HOME/ClanakItemNeë.aspx?id=327>

In addition to the publication of tenders in PPRC, you have the opportunity to search a specific tender on the webpage “Open Procurement”, which was created by the USAID TEAM project. This page enables you to find the contracts that an economic operator has been awarded, or the contracts that a contracting authority has awarded. In addition, you can also find information about business owners who have been awarded contracts.



Open Procurement Webpag

3.3. Procurement Review Body

The Procurement Review Body¹¹ (PRB) was established by the Assembly of the Republic of Kosovo on July 31, 2008. PRB, through its review panels, which are appointed by the Chair of PRB, is responsible for implementing the procurement review procedures established in Title IX of the present law and shall have the authorities and responsibilities specified in that Title.

On the basis of a written complaint submitted by an EO, the PRB is authorized to review the performance of the relevant procurement activity as well as the complaint claims submitted in the complaint, as well as issue a written decision on that case in accordance with the legal deadlines.

The decisions taken by the PRB are:

- Decisions on procurement review;
- Decisions on punitive measures;
- Decisions on rejected (incomplete) complaints;
- Decisions on the Black List;
- Decisions on fines.

No appeal is allowed against the decisions of the PRB, but the dissatisfied party may submit a claim to the Basic Court - Department for Administrative Affairs within 30 days from the date of reception of this decision. The Procurement Review Body reports on its work once a year to the Assembly of the Republic of Kosovo.

¹¹ <https://oshp.rks-gov.net/sq/Default/Home>

4. Public procurement

Public procurement refers to the purchase of goods, services and works by governments and state-owned enterprises. The public procurement process is a sequence of activities starting with needs assessment through contract award to contract management and final payment. Public procurement means the set of legal acts through which the field of procurement is regulated as well as the institutions that have the obligation to set the rules and ensure that they are respected by the contracting authorities¹² as well as by economic operators¹³.

There are some terms that journalists must know or at least some basic issues regarding terms and procedures. The PPL aims to ensure the most efficient, transparent and fair way of using public funds, as well as to ensure the integrity of the entire process.

Whereas, the principles of the PPL are:

- Economy and efficiency;
- Equal treatment/non-discrimination;
- Transparency;
- Responsibility and professionalism.

The institutions of Kosovo, based on the procurement legislation, can sign several types of contracts that differ depending on the projects and the needs of the institutions. For example, in cases where institutions wish to purchase certain products, such as various goods, then, they can sign a **supply contract**.

Whereas, a **service contract** is signed in cases where institutions contract any service, such as the case of physical security of facilities. Meanwhile, **the work contract** is signed when certain works are planned to be carried out, i.e. construction of buildings, construction of roads, etc. In cases where institutions cannot accurately predict the amount of supplies or services, then they choose to sign a **framework contract**. The characteristic of framework contracts is that the institutions must set an indicative amount, which can vary during the implementation of the contract up to +/- 30%. So, if the municipality sets 1,000 liters of milk as an indicative quantity, then during the implementation of the contract between 700 and 1,300 liters of milk can be purchased, if this is defined in the tender dossier.

¹² Contracting Authority – Ministries, Municipalities, Public Enterprises, Agencies and other public institutions

¹³ Economic Operators – businesses

4.1. Classification of contracts by value

According to the estimated value, contracts are divided into four types: high value contracts, medium value contracts, low value contracts and minimal value contracts.

ESTIMATED VALUE	SUPPLY	SERVICES	DESIGN CONTEST		WORKS
			<i>Award of a service contract</i>	<i>Prizes and payments to participants</i>	
HIGH VALUE	≥ 125,000 €		≥ 125,000 €	≥ 100,000 €	≥ 500,000 €
MEDIUM VALUE	< 125,000 € ≥ 10,000 €		< 125,000 € ≥ 10,000 €	< 100,000 € ≥ 10,000 €	< 500,000 € ≥ 10,000 €
LOW VALUE	< 10,000 € ≥ 1,000 €		< 10,000 €		< 10,000 € ≥ 1,000 €
MINIMAL VALUE	< 1,000 €		*		< 1,000 €

Classification of public contracts according to value

Meanwhile, the procurement legislation has foreseen various procedures that institutions can follow up to the signing of a contract. When procurement activities leading to the award of a public contract are undertaken, a CA will use one of the following procedures: a) Open procedure, b) Restricted procedure, c) Competitive negotiated procedure, d) Negotiated procedure without publication of a contract notice, e) Price quotation procedure, or f) Minimal value contract procedure. The most frequent and preferred procedure is **the open procedure**, which allows any business that meets the defined criteria to bid in a tender.

The following is the **Restricted procedure**, which has two stages. In the first stage, EOs which meet the criteria defined in the tender are selected, while in the second stage, up to a maximum of 6 EOs that have met those criteria are invited to bid. The characteristic of this procedure is that after the first stage is over, EOs in the second stage compete only on price and technical specifications.

- In the first stage, namely the pre-qualification stage, all economic operators are invited to submit requests to participate in the procedure. The Contracting Authority selects the Economic Operators who meet the minimum requirements of the selection criteria specified in the contract notice. This stage is used to assess the financial, technical and/or professional ability and capacity of the EO. This has nothing to do with how economic operators will fulfill the request.
- The second stage is contract award, where only selected EOs are allowed to tender for the contract. The CA invites the selected EOs to bid and then evaluates the tenders using the award criteria specified in the invitation to tender.

There are two other procedures that are negotiated. The first is the competitive **negotiated procedure**. In this procedure, the contract notice is published. Meanwhile, there is another procedure which is **negotiated** without publication of the contract notice, that is, when the CA directly contacts the EOs that believes can perform a certain work or supply. There are also emergency procurements, which take place with a **negotiated procedure** without publishing the contract notice. This procedure has been used a lot in times of COVID-19 supplies.

4.2. Planning the procurement of a contracting authority

This part of the handbook will briefly present the entire procurement process. But each of the stages will also have the context of why it is important for journalists and what are the most common violations that can be evidenced in each stage and how they should be investigated.

Within fifteen (15) days after the approval of the budget, each institution is required to prepare and submit to the CPA a final written plan that identifies in reasonable detail all supplies, services and works that the CA intends to procure during the fiscal year, a procurement plan based on budget lines. This procurement planning should be done for a period of 12 months.

The procurement plan is published on the e-procurement platform and each institution is obliged to publish the procurement plan.

Procurement planning is done to reduce the number of unplanned procurement activities as well as to inform all EOs about the procurement activities to be announced. The National Audit Office annually reports on the percentage of implementation of the procurement plan.

Some of the violations committed in the public procurement plan are related to shortages, inconsistencies between quantities, prices, values and deadlines with the tenders announced by the institutions.

Therefore, in each procurement activity that is investigated by a journalist, one must consider:

- If the same is part of the procurement plan;
- If the same project is not part of the procurement plan, then it is the duty of the journalist to explore what are the reasons for opening a tender that is not foreseen in the procurement plan;
- If the same tender is part of the procurement, then journalists should explore if the data planned at the beginning of the year are the same or approximately the same as those announced in the tender.

4.3. Procurement stages

The PPL foresees three stages: the pre-tendering stage, the tendering stage and the post-tendering stage (contract management).

The pre-tendering stage includes the Statement of Needs and Determination of Availability of Funds, the preparation of technical specifications and other documents that are needed for the initiation of the procurement activity.

The tendering stage includes the publication of the contract notice and the tender dossier, requests for clarifications and eventual complaints, the submission/opening of offers, the evaluation stage and the contract award stage.

A large part of the documents related to the procurement process is published on the [e-procurement](#) website. For each tender which is identified by a procurement number, the institutions are obliged to indicate the estimated value of the tender. Please be attentive that the estimated value is the amount that the institution has estimated that a work, supply or service can cost, but it is not the price of the tender. The tender opening date and the scheduled time for tender submission are also displayed there.

In addition to this information, there are also some documents that can be published on the day of the tender announcement, such as the technical specifications as an attachment document.

The first document is the **Contract Notice**, which is published when the procedure is open, restricted or negotiated after the publication of the contract notice or Price Quotation. All the necessary information that an EO must fulfill must be published in the contract notice. The information of the institution that announces the tender, information about the tender, technical and professional conditions and technical specifications, as well as the time and conditions of bidding, are published in the contract notice.

What do we need to know?

Estimated contract value: Too often journalists confuse the estimated value of the contract with the value of the awarded contract.

The estimated value is the amount of money allocated by the municipality/ministry for a tender.

Whereas, the value of the contract is the offer submitted by an EO that the municipality recommends for the contract and then signs the contract. Thus, the value of a project is not determined by the state (municipality, government or public enterprise), but is determined by the market, namely by the businesses that are bidding.

DEADLINES: Depending on the type of contract that is planned to be signed and the amount of money that will be spent, the PPL has foreseen different deadlines for how long a tender should remain open. Example, if a tender is announced for works

with an estimated value of over 500,000 euros (i.e. a large contract), the tender must remain open for a period of 40 days.

The deadlines are defined in such a way as to give sufficient time to the EO/businesses to prepare all the documents required for bidding in a tender. Therefore, whenever we come across that institutions have given less time for bidding, it is a signal for journalists to request clarifications as to why was a shorter deadline given and why is there an emergency in shortening a tendering deadline. In cases where the bidding deadline is shortened, priority will be given to businesses that have prior information on tender details, including technical specifications.

Normal time limits

	Procedures		
	Open	Restricted	Competitive with negotiations
High value	40 days	20 days receiving of requests 40 days receiving of tenders	10 days receiving of requests 20 days receiving of tenders
Medium value	20 days	15 days receiving of requests 20 days receiving of tenders	10 days receiving of requests 20 days receiving of tenders
Low value	5 days	/	/
Minimal value	1 day	/	/

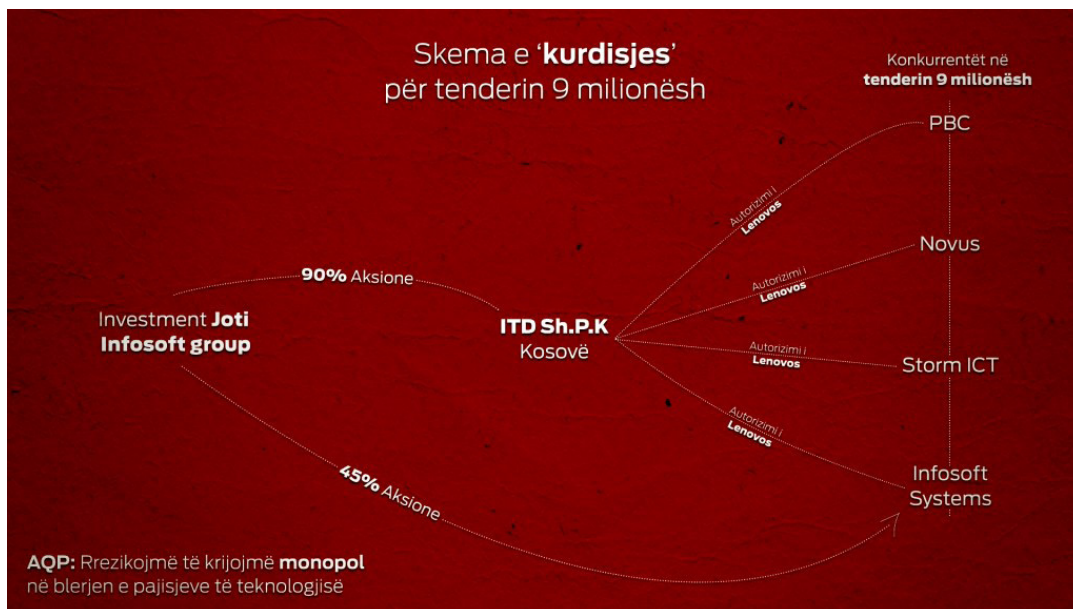
Deadlines for submission of tender

Selection criteria: The most important part to investigate is the selection criteria. Taking into account the investigations published by the media as well as the monitoring reports published by civil society organizations, it turns out that the most sensitive point to violations is precisely the selection criteria. The selection criteria include “Eligibility Requirements” as well as “Minimum qualification requirements”. So, in this part, the CAs indicate what requirements must be met by the EOs bidding in a tender as well as the documents that must be submitted to prove that they meet those criteria.

Another important point in the selection criteria is the technical and professional capacity. In this part, CAs can make requests that suit any particular EO. For example, in this part, a person who has managed a similar tender or who has a certain professional training that suits only a company can be requested.

Then there is the economic and financial capacity. For all these requests, the CA is obliged to indicate what are the evidences that must be submitted in order to consider that the same criterion has been met.

In addition to the selection criteria, the CAs define in the tender dossier the minimal specifications that must be met by the EOs. In many tenders, CAs define technical specifications that in specific cases can eliminate a business from competition or favor a certain EO. An example of this is a case of 2019, when a tender worth 9 million euros for the supply of laptops and other information technology equipment was canceled by the Central Procurement Agency, as it was tailored to only one manufacturer. The CPA concluded that the competition was restricted as the technical specifications of the tender were contrary to the PPL. The specifications as drafted in the beginning had only been fulfilled by the manufacturer ‘Lenovo’.



Typologies of violations in the first stage of procurement:

- Adaptation of technical specifications to a specific manufacturer;
- Designation of a particular product or brand. According to the PPL, CAs do not have to name the product they will buy based on the brand. Such a thing is allowed only in cases where it cannot be explained otherwise, but always by adding the word EQUIVALENT;
- Requirements of certain standards (ISO Standards, etc.) that have no direct relationship with the nature of the project;
- Purchase of patented products, i.e. produced by only one manufacturer (this happens mainly in medicine);

How are the violations committed at this stage identified?

After the announcement of the tender, i.e. the publication of the contract notice, the EOs download the tender dossier through the electronic platform and are informed of the criteria and conditions they must meet in order to be responsive for bidding in a tender. The best identifier of violations are precisely the businesses that will bid in a tender, because they have knowledge of how a specification is translated into a product, that is, to which manufacturer it is adapted.

In addition, it is the businesses that bid in a tender that require clarification, based on the law. The CA is obliged to publish all eventual corrections of the tender dossier. In any correction, the journalist must raise a doubt: why did the error occur and why was the correction made? Journalists must follow all requests and questions made by EOs about a procurement process. The CA publishes the questions from the EOs and their answers in electronic procurement, which is not accessible to journalists, therefore these must be requested through access to public documents.

In case EOs make a request for clarification and receive an answer, but are not satisfied with that answer and claim that the CA is restricting competition, then they have the right to requesting a review. After the answer given by the CA to the request for review, the EO, if not satisfied with the answer of the CA, has the right to continue with the complaint to the PRB. So, there will be cases where there are some complaints that have been made by the EO in a tender before the bids have been submitted.

Another way to identify the requirements in the tender that can eliminate or favor any EO is by looking at what ISO standard is required, that is, for what nature of work is required. This can be easily assessed on the ISO standards web page.

What should be taken into consideration during other stages of tendering?

There is usually the impression that procurement officers have the sole and main role in tenders. However, it should be borne in mind that the drafting of technical specifications is not done by procurement officers, but by experts of the field. So, if a tender is announced for the construction of a school, then the technical specifications should be drafted by a civil engineer, the request regarding the size of the school comes from the education department, while the electrical and water issues should also be drafted by the experts of this field.

If the municipality seeks to be supplied with laptops or other information technology equipment, then the technical specifications are drafted by the person responsible for information technology. Whereas, if the tender is about the supply of medicines, then the requesting unit is the doctors who work at the MFMC of the municipality.

So, it is always necessary and mandatory to know who was requesting unit and who developed the technical specifications. There are cases when people who are involved in the drafting of the specifications later take responsibility for managing the contract, which is a violation of the law.

Therefore, during investigation, it is necessary to know:

- Who drafted the technical specifications?
- Who was on the evaluation commission?
- Who is managing the contract?
- What are the connections of the members of the evaluation commission, those who drafted the specifications or those who manage the contracts, with businesses and decision-makers/politics?

4.4. From the opening to the evaluation of offers

In the tendering stage, during the evaluation of the offers, various anomalies may appear, which give signals that the tenders may be hiding something behind. This is the stage of procurement in which the largest number of violations can be encountered, mainly due to violations that are made during the evaluation of offers. For example, in 2020 alone, more than half of PRB decisions¹⁴ have found violations during the bid evaluation process.

The bidding is now done in electronic form. One of the most important documents of this stage is the tender opening minutes. In this document you can find the names of the businesses that have bid with a tender and their financial offers. Usually, when this document is opened, the resulting impression is that the company offering the lowest price is the winner, but this is NOT the case.

¹⁴ <https://oshp.rks-gov.net/sq/Pages/Details?id=18>

In cases where the criterion for awarding the contract is the responsive tender with the lowest price, then it should be taken into account that the most responsive offer is the one recommended for the contract. So, all the criteria set forth in the tender dossier must be met and the lowest price must be recommended for the contract.

The evaluation report of the offers is not published in E-procurement, therefore this document must be requested through the “Request for access to public documents”. This document is drafted by members of the tender evaluation commission where you can find comments why a company has been disqualified, that is, the entire process of evaluation of offers is described in detail there.

After the evaluation of the offers by the evaluation committee, a document entitled “Notice on the CA decision “ is published in E-procurement. This document includes the name of the company that has been recommended for the contract, as well as the reasons for the disqualification of other EOs from the competition, as well as the notices for unsuccessful EOs (EOs that have met all the criteria, but have bid with a price higher than that of the winning company).

This stage of procurement is more sensitive to violations; therefore it is difficult to make only a list of typologies of violations at this stage. However, we will compile some of the violations that have been identified. However, each tender may have unique violations that are committed and that are characteristic only for that procurement process.

- In the first group of violations is the case when the evaluation commission does not take into account the documents submitted by the EOs. So, in cases where the CA says that the EO has not provided the required evidence.
- The second group of violations also includes cases where authorizations submitted by EOs are disputed. This applies especially in cases where services or product supplies are required for which authorization from the manufacturer or distributor is required.
- The most frequent cases of violations are when CAs recommend the irresponsible operator for a contract. This is mainly identified by EOs that are disqualified or unsuccessful through access to public documents. There are even cases where CAs eliminate a responsive EO while awarding a contract to someone lacking basic documents.

What the journalists should look at and confirm regarding the evaluation commission is:

- Members of the evaluation commission;
- Their professional background and comparison of their professions with the nature of the projects (there are cases when infrastructure projects are evaluated by lawyers or doctors);

- Potential conflict of interest; An example of a conflict of interest is the investigation carried out by BIRN in the Municipality of Malisheva in December 2020, entitled “Suspicions of a conflict of interest in the tender for the construction of the school in Gurbardh”¹⁵. The municipality of Malisheva, which was governed by the Social Democratic Initiative, had awarded “Themeli” company a tender worth about 400,000 euros for the construction of the school building in the village of Gurbardh. The data show that Isuf Krasniqi, the owner of “Themeli” company, was the brother of the then Minister of Trade and Industry, Vesel Krasniqi, who was also a member of the Social Democratic Initiative. Ahmet Morina, who was director of Urbanism in the Municipality of Malisheva was the chairman of the evaluation commission in the tender for the construction of the school in Gurbardh in 2019. According to the tender dossier, a commission was appointed to assess the bidder who met the criteria, headed by Ahmet Morina. On the evaluation table was also the application of the company “Themeli”, which was recommended by the commission to be awarded this tender. Part of the criteria to win the tender was also the presentation of documentation on who are the engineers whom the company would engage in the implementation of the works in this tender. The investigation shows that Ahmet Morina’s diploma was in the dossier of “Themeli” company. The company, owned by the then minister’s brother Vesel Krasniqi, had engaged Ahmet Morina as an emergency management engineer. Morina was an employee of the Municipality of Malisheva and was designated as the main person who would evaluate this tender.

Whereas, when it comes to competition, the following should be considered:

- How many companies have bid? If there is a small number of bidders, then the analysis of the CA as to why there was a lack of competition should be considered. Is it likely that a requirement in the tender dossier has prevented other EOs from bidding.
- There are cases when there are many offers, but the CA has disqualified most of them. In such cases, the reasons for their disqualification should be analyzed. Even at this stage, the tenders that have been designed for a certain operator are exposed.
- The best way to identify violations is through contact with disqualified businesses.
- There are cases when EOs that have bid the lowest price withdraw from the competition or simply fail to fulfill any request for extension of the bid deadline or similar. In such cases there is a high possibility that there is a tie between the lowest price bidder and other more expensive bidders.
- A typology of violations at this stage was explained in the indictment against the former Mayor of Gjilan, Qemajl Mustafa. There it was explained how through the correction of arithmetic errors there was an increase in the price of the initial offer. Now with the PPL, arithmetical errors up to +/- 2% are allowed, but in cases where there are such corrections, clarifications must be sought and each error/improvement that has been made must be analyzed.

¹⁵ <https://kallxo.com/lajm/dyshimet-per-konflikt-interesi-ne-tenderin-per-ndertimin-e-shkolles-ne-gurbardh/>

What are the other violations or facts that should be a signal that a tender should be investigated more thoroughly?

- When an evaluation report is not signed by all members of the evaluation commission.
- In cases where the responsible procurement officer rejects the recommendation of the evaluation commission and decides to award a contract to another company.
- Business history. Thus, it is very important to see how many tenders a company has been awarded in a municipality. What are the business connections with the heads of the municipality, etc.

Which documents can be downloaded in E-procurement and which should be requested with a request for access?

- Some documents for the bid evaluation stage can be downloaded from the electronic procurement website, but there are also some documents that must be requested through the request for access to public documents, such as:

- The full report of the evaluation commission;
- The persons who comprise the evaluation commission (must be requested by the institution, including their professional preparation and current engagement);
- Documents that the evaluation commission exchanges for the purpose of the project: including communications with the head of the institution, EOs, other businesses, security institutions, Customs or Tax Administration of Kosovo;
- Bids of economic operators.

4.5. Contract management

Contract management is a key part of a procurement process. If a tender has been conducted in the best possible way, and a model contract has been signed, in the end the contracted project may still not be implemented. Thus, if the contract management is not performed as provided in the law, then we will have a school or road that does not meet the standards or we will receive services and products of poor quality.

It is therefore very important to focus on contract management. In the last stage, i.e. contract management, all omissions made during the tendering stage can be discovered. So, if incorrect values of a project have been set in a tender in order to favor a certain company, then this can definitely be evidenced during the contract management stage when the works must be carried out and received.

While in other stages of procurement most of the work is related to analyzing documents and procedures, in contract management the approach is different. In this stage of procurement, in addition to the analysis of the documents, the physical assessment of the products, services or works that have been carried out in the field must be performed.

Journalists are recommended to always visit projects that have been implemented, especially when it comes to capital projects implemented through work contracts. Therefore, it is recommended to understand the project, seek clarifications from the contract manager for each part of the contract and the works that have been carried out in the field.

Journalists should always:

- require explanations for each part of the contract from the CA, namely the contract manager. It is very important that the professional terms are translated into the language that the journalist understands, who must explain simply when broadcasting the news to the public in such a way that every citizen can understand, regardless of the level of education.
- visit workplaces, in order to be able to assess the work that has been performed.

PPL has set out several steps of contract management. One of the first steps is the obligation of the chief administrative officer of the CA to appoint a contract manager. The same should draft a contract management plan.

Therefore, journalists should ask for the name of the person who will manage the contract, that is, the contract manager appointed by the head of the CA. The chief administrative officer (mayor of the municipality) can appoint a contract manager from the requesting unit, from other departments, or the contract management team, but there are cases when the contract manager can also be outside the institution, provided that the same is controlled by the CA. Journalists should focus on the contract manager's professional training and potential conflict of interest.

Before starting the implementation of the contract, the contract manager must login to the electronic procurement system and prepare and create a contract management plan. In cases where this contract management plan is not published, journalists should request it through the "Request for access to official documents".

The contract manager is the key person/team that must ensure that the contract that has been signed is fully implemented, i.e. on time and with the contracted quality. The manager must ensure that there is adequate control of costs, quality, and time where appropriate. In addition, he must submit reports on the progress or completion of a contract as required by the Procurement Department or the NAO.

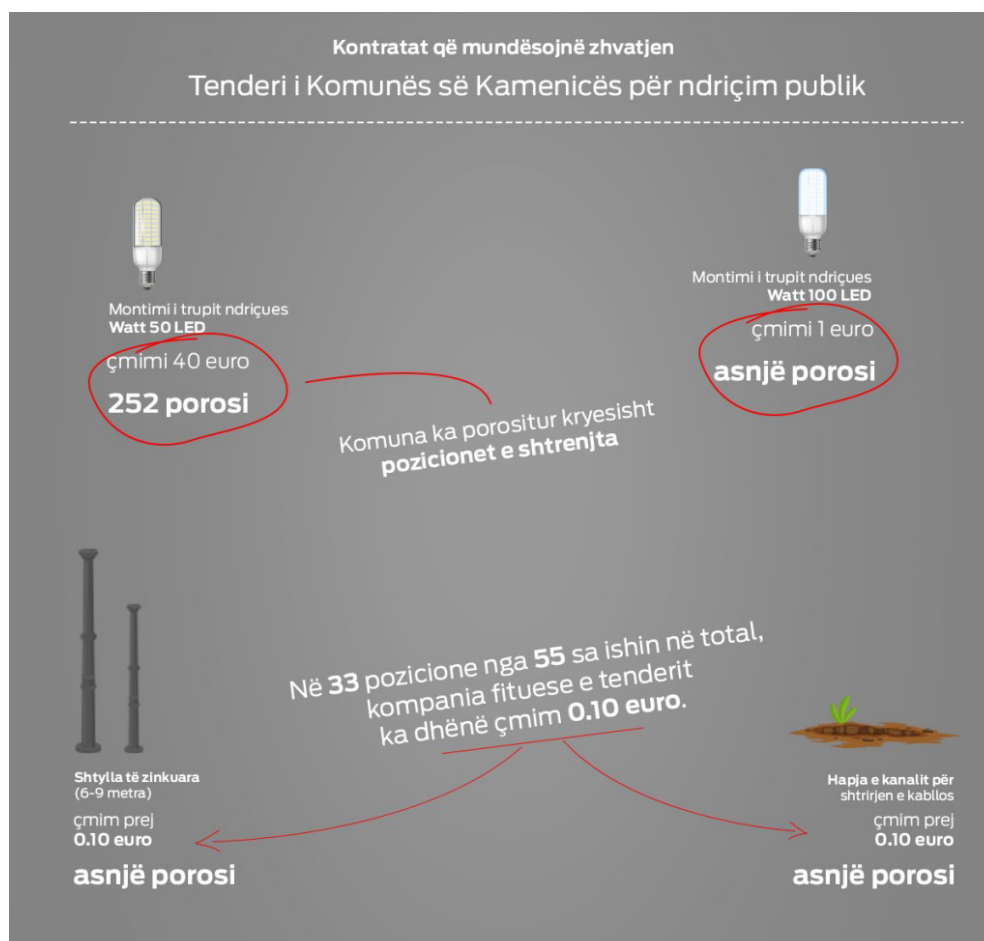
Therefore, it is important that journalists, through the request for access to public documents, request:

- All communications that the contract manager had with the EO and with the NAO (the institution that awarded the contract);
- All project progress reports including work log sheet;
- Any report or request made by the contract manager to NAO or the Procurement Office;
- Minutes from all meetings held related to contract management;
- Documents proving reception of supplies, services or works;
- Copy of all invoices for works.

What are the most frequent violations that are committed during contract management?

Changing the project during the procurement stage is often necessary due to mistakes in the design. But, in many cases, project changes are made to enable misuse of public funds. In the middle of the implementation of the contract, the CA and the EOs agree not to implement any part of the project for which an abnormally low price has been bid, while the same amount of money is decided to be spent on any new position of the contract or any other part of the contract.

An example of a tender with abnormally low prices is the contract of the Municipality of Kamenica, signed in June 2020. The Municipality of Kamenica purchased only 14 of 51 products and services¹⁶ that were part of the one-year contract for the maintenance of public lighting in the amount of 25 thousand euros. Until December 2020, the Municipality had ordered only 14 products, spending 23,499 euros from the contract signed with the company "Anesi". These funds were spent even though the other 37 products and services that were contracted had not been ordered. Among the 37 products and services contracted were 33 items that were bid and contracted at a price of only 10 cents.



¹⁶ <https://kallxo.com/gjate/hulumtim/kontrata-per-mirembajtjen-e-ndricimit-me-33-pozicione-me-cmime-10-cente/>

In addition, works, services or supplies that are not in line with the contracted standard are accepted.

In cases where there is a change of positions, the reason why those changes take place must be considered. These documents must be requested through **a request for access to public documents.**

- Request for change of contract;
- Any changes to the terms of the contract;
- Approval by NAO for contract changes;
- Document for commitment of funds of the amended contract;
- Changing the contract should not have a cost higher than 10% of the initial contract.

4.6. Complaints

The PPL enables all EOs to file a complaint at each stage of the procurement, if they consider and believe that their rights have been violated or claim that the acts that regulate public procurement have been violated.

EOs have the right to appeal at any stage of the procurement.

In public procurement, there is a two-tier complaint procedure. Complaining EOs must first complain to the CA by submitting a request for review. This request for review is reviewed and decided by the Responsible Procurement Officer of the relevant institution¹⁷.

After receiving the request for review, the EOs, if not satisfied with the response, can complain to the Procurement Review Body, otherwise known as the Tender Court. PRB issues supreme decisions, i.e. with the effect of immediate implementation. So, even if the parties do not agree with a decision of the PRB, they must implement it, but they have the legal option to take the case to court.

The complaints process is the main stage during which violations that have been committed in a tender are discovered and resolved.

During 2021¹⁸, PRB received 881 complaints in total. The review panel made decisions on only 255 complaints, of which 110 cases were returned for re-evaluation after it was determined that the evaluation commissions had wrongly evaluated the offers, encountering certain violations of the PPL and public procurement rules.

¹⁷LAW ON PUBLIC PROCUREMENT OF THE REPUBLIC OF KOSOVO NO. 04/L-042 AMENDED AND SUPPLEMENTED BY LAW NO. 04/L-237, LAW NO. 05/L-068 AND LAW NO. 05/L-092, ARTICLE 108/A AND PUBLIC PROCUREMENT REGULATION NO. 001/2022, ARTICLES 59, 60, 61 AND 63.

¹⁸ <https://oshp.rks-gov.net/sq/Pages/Details?id=18>

5. Requests for access to public documents

Most of the tender documents are accessible on the E-procurement webpage¹⁹ or even through the pages of public institutions, in this case, CAs. But there are also some other documents important for the realization of investigation in the field of public procurement, but which are not accessible. To obtain such documents, journalists may use their right to send a request for access to public documents to the relevant institutions. First, the documents that must be requested by the CAs are identified and then specifically listed in the request for access to public documents. The detailed specification of the required documents should be done to avoid misunderstandings and to accept the correct documents.

According to the Law on Access to Public Documents²⁰, the public institution, within 7 days from the time of registration of the request, is obliged to issue a decision to allow access to the requested document or issue a reasoned decision for full or partial rejection. The public institution can extend the deadline for making a decision on access to public documents for a maximum of 15 additional days, if: the document must be sought within a large number of documents or outside the public institution; or if through a request a large number of public documents is requested from the same party. When access to the document is granted, the journalist has the right to choose whether to inspect the original or the copy, or to accept a copy of the document in whatever form or format is available.

In case the public institution has rejected entirely or in part the request for access to public documents or in case of non-response of the public institution, the journalist may file a complaint at the Information and Privacy Agency [IPA] within the period of 15 days from acceptance of the decision to reject or the decision to partially approve the request for access. IPA communicates the received complaint to the public institution that has decided on the request for access, which must provide a written response to the claims raised by the complainant within 7 days after receiving the complaint. After receiving the response from the public institution or in case of non-response, IPA decides on the complaint within 30 days. The public institution is obliged to act according to the Agency's decision within 7 days.

The agency is competent for imposing fines on public institutions and responsible officials. The funds collected from the imposition of fines are poured into the budget of the Republic of Kosovo. Before the imposition of any of the provided fines, the Agency informs the public institution of the purpose and reason for the imposition of the fine and a deadline, no longer than 7 days, to mend the recorded violation, so that the fine is not imposed. In case that the public institution does not ameliorate the evidenced violation according to the Agency's instructions, the Agency decides to impose a fine.

¹⁹ <https://e-prokurimi.rks-gov.net/HOME/ClanakItemNeë.aspx>

²⁰ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=20505>

Mbështetur nga:

