



Directorate B

Director

Brussels

AS/JS/OCM(2017)4243

OLAF Investigations

FINAL REPORT

Case No OF/2015/0034/B4

Type of case	Investigation
Legal basis for the opening decision	Article 3 of Regulation (EU, Euratom) No 883/2013
OLAF Staff	[REDACTED]
Date of creation of OLAF case	12/01/2015
Date of opening decision	30/01/2015
Person(s) concerned	Beneficiaries (Municipality of): <ul style="list-style-type: none"> - Hódmezővásárhely MJV - Paks - Siófok - Cegléd - Tapolca - Kecskemét MJV - Zalaegerszeg MJV - Mezőhegyes - Hévíz - Vác - Kalocsa - Szekszárd MJV - Szolnok MJV - Keszthely - Balatonfüred - Hatvan - Sárvár - Jászberény

	<ul style="list-style-type: none"> - Alsópáhok - Tamási - Gyál - Szigetszentmiklós - Bácsalmás - Miskolc MJV - Hajdúböszörmény - Kiskunfélegyháza - Mórahalom - Siklós <p>Other persons concerned:</p> <ul style="list-style-type: none"> - [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] (notified as initially considered as person concerned, but finally not named in the legal evaluation)
Source of information	Directorate General for Regional and Urban Policy of the European Commission (DG REGIO) Elected public representatives of Hungary Private sources
Fraud Notification System (FNS)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Offence category	Fraud Cartel Other irregularities
Area concerned	Cohesion Fund
Investigative or Coordination activities carried out	Interviews with person concerned On-the-spot-checks in Member State under regulation 2185/96, Analysis of documents collected and received Operational meetings with Hungarian administrative and judicial authorities
Has the person concerned been	<input checked="" type="checkbox"/> Yes

notified of the opening of an investigation? Reason(s) for deferral?	<input type="checkbox"/> No	OCM(2022)3243 - 31/01/2022
	Notification of on-the-spot check, or opportunity to comment letters	
Has the person concerned been given the opportunity to comment on facts concerning him? Reason(s) for deferral?	<input checked="" type="checkbox"/> Yes	
	<input type="checkbox"/> No	See chapter 5 of the Final Report
Evidence of irregularity or fraud	<input checked="" type="checkbox"/> Yes	
	<input type="checkbox"/> No	

Financial and other impact	
Impact on EU financial interests	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Serious matters relating to discharge of professional duties	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Amounts to be recovered	The total estimated financial impact is 43 744 938 EUR (13 123 481 467 HUF) composed as follows: <ul style="list-style-type: none"> - KEOP-2009-5.3.0/A: 534 655 EUR (3 irregular projects) - KEOP-2012-5.5.0/A: 29 000 000 EUR (all public lighting projects of this call for project applications) - KEOP-2014-5.5.0/K: 14 210 283 EUR (15 irregular projects)
Amounts prevented from being unduly spent	N/a
Judicial proceedings	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No There was a judicial procedure ongoing under reference number KÜ. 29022-44/2015 but was dismissed.

Summary
<p>This investigation covers 35 LED public lighting projects financed entirely or partly by the Cohesion Fund under the Hungarian Environment and Energy Operational Program (KEOP): 3 projects under call KEOP-2009-5.3.0/A, 17 projects under KEOP-2012-5.5.0/A and 15 projects under KEOP-2014-5.5.0/K. In all of the projects, the main contractor, or one of the the members of the main contractor consortium, was the company [REDACTED]</p> <p>OLAF had received information from various sources alleging that the company [REDACTED] manipulated the award procedures, especially through [REDACTED]</p>

collusion with an engineering consultancy company, [REDACTED].

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[REDACTED] provided services to several beneficiaries of EU projects for public lighting renovation in which [REDACTED] became the works contractor. The two companies were linked through their previous owners, [REDACTED] and [REDACTED].

The results of the investigation established that :

- in relation to three projects of call KEOP-2009-5.3.0/A, several serious tender irregularities occurred;
- the call for project applications KEOP-2012-5.5.0/A and KEOP-2014-5.5.0/K was irregular because the Managing Authority did not respect the principles of non-discriminatory treatment of applicants and their right to fair treatment. The Managing Authority modified substantially the content of the call without properly informing all of the applicants and extending the deadline to apply. This irregularity affects all of the call, not only the projects investigated.
- In relation to the 17 KEOP-2012-5.5.0/A projects investigated, the Managing Authority accepted ineligible applications on the basis of considerations other than the content of the documentary evidences provided by the applicants in relation to the presumable operational life-time of the LED lamps to be supplied.
- In relation to the 32 KEOP-2012-5.5.0/A and KEOP-2014-5.5.0/K projects investigated, numerous tender irregularities occurred, such as for example lack of publication of tender procedure, selection criteria not related and proportionate to the subject of the contract, discriminatory technical specification having as consequence the orientation of the tender in favour of a given manufacturer and conflict of interests.
- In case of KEOP-2012-5.5.0/A projects, an organised fraud scheme is identified, involving an artificial increase of the cost estimation through the use of falsified documents during the project application, the illegal participation of the staff of the works company to the drafting of the project application, tender orientation in view to award the contract to a company linked to one of the consultants, possible illegal agreement between the works contractor and one of the manufacturers.

The total estimated financial impact is **43 744 938 EUR (13 123 481 467 HUF)** composed as follows:

- KEOP-2009-5.3.0/A: 534 655 EUR (3 irregular projects)
- KEOP-2012-5.5.0/A: 29 000 000 EUR (all public lighting projects under this call for project applications)
- KEOP-2014-5.5.0/K: 14 210 283 EUR (15 irregular projects)

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1. BACKGROUND INFORMATION

1.1 ALLEGATIONS RECEIVED

OLAF received information from various sources alleging that the company [REDACTED] (previously called [REDACTED]) was irregularly awarded with large contracts financed by EU-funds, mainly through renewable energy projects belonging to the Environment and Energy Operational Program (KEOP).

The initial information was received from Directorate General for Regional and Urban Development Policy of the European Commission (hereafter: DG REGIO)¹.

Additional information was received from different public representatives in Hungary, the OLAF Fraud Notification System², citizens and open source information, in particular press articles.

According to the allegations received, the company [REDACTED] had nearly no revenue before 2009. From 2009 to 2010 its annual revenue increased to [REDACTED] HUF (approximately [REDACTED] EUR), through revenue generated almost exclusively from EU co-financed energy projects according to the allegations.

The allegations further claimed that [REDACTED] used its connections to manipulate the award procedures, especially through collusion with [REDACTED]

[REDACTED] was the consultant of several beneficiaries of EU projects for public lighting renovation in which [REDACTED] became the works contractor. The two companies were linked through their previous owners, [REDACTED] and [REDACTED].

[REDACTED] was the consultant of several beneficiaries of EU projects for public lighting renovation in which [REDACTED] became the works contractor.

The investigation was opened on 30/01/2015 on the basis of Article 3 of Regulation (EU, Euratom) No 883/2013 into suspicion of undue influence in awarding the EU co-financed projects in Hungary identified in the course of the investigation, where the company [REDACTED] (currently [REDACTED]), has been awarded the tender.

1.2 THE PROJECTS CONCERNED BY THE INVESTIGATION

The investigation was opened in relation to the projects named in the allegations as well as to "any further EU co-financed projects in Hungary identified in the course of the investigation, in which the company [REDACTED] (currently called [REDACTED]), has been awarded the tender."

During the investigation, OLAF received the list of all KEOP projects where [REDACTED] was works contractor. After the first investigation activities and analysis of documents, the number of projects to be investigated was reduced to 35 public lighting projects.

The following table contains the total eligible project amount and the amount of grant as foreseen in the initial Grant Agreement. For the data on the amounts finally paid and the detailed calculation of the financial impact, see Chapter 4 of this Final Report.

Table 1 : list of projects subject to this investigation

	Project reference and Beneficiary	Project amount HUF	Project amount EUR	Amount of grant CF HUF	Amount of grant CF EUR	Grant (%)
1	KEOP-5.3.0/A/09-2010-0137 HÓDMEZŐVÁSÁRHELY MJV	749,502,000	2,498,340	374,751,000	1,249,170	50%

¹ THOR(2014)36883 registered on 23/12/2014.

² FNS, THOR(2015)10218 registered on 23/03/2015.

	Project reference and Beneficiary	Project amount HUF	Project amount EUR	Amount of grant CF HUF	Amount of grant CF EUR	Grant (%)
2	KEOP-5.3.0/A/09-2010-0357 PAKS	138,476,822	461,589	69,238,411	230,795	50%
3	KEOP-5.3.0/A/09-2010-0358 SIÓFOK	412,409,722	1,374,699	206,204,861	687,350	50%
4	KEOP-5.5.0/A/12-2013-0168 CEGLÉD	392,099,507	1,306,998	333,284,581	1,110,949	85%
5	KEOP-5.5.0/A/12-2013-0169 CEGLÉD	310,532,600	1,035,109	263,952,709	879,842	85%
6	KEOP-5.5.0/A/12-2013-0175 TAPOLCA	351,601,487	1,172,005	298,861,264	996,204	85%
7	KEOP-5.5.0/A/12-2013-0180 KECSKEMÉT MJV	413,000,000	1,376,667	351,050,000	1,170,167	85%
8	KEOP-5.5.0/A/12-2013-0182 ZALAEGERSZEG	581,631,193	1,938,771	494,386,514	1,647,955	85%
9	KEOP-5.5.0/A/12-2013-0184 MEZŐHEGYES	192,000,000	640,000	163,200,000	544,000	85%
10	KEOP-5.5.0/A/12-2013-0186 KECSKEMÉT MJV	575,000,000	1,916,667	488,750,000	1,629,167	85%
11	KEOP-5.5.0/A/12-2013-0191 ZALAEGERSZEG MJV	577,653,361	1,925,511	491,005,357	1,636,685	85%
12	KEOP-5.5.0/A/12-2013-0194 HÉVÍZ VÁROS ÖNKORMÁNYZAT	186,500,814	621,669	158,525,692	528,419	85%
13	KEOP-5.5.0/A/12-2013-0202 VAC	583,999,998	1,946,667	496,399,998	1,654,667	85%
14	KEOP-5.5.0/A/12-2013-0226 KALOCSA VÁROS	566,920,052	1,889,734	481,882,044	1,606,273	85%
15	KEOP-5.5.0/A/12-2013-0235 SZEKSZÁRD MJV	381,928,215	1,273,094	324,638,983	1,082,130	85%
16	KEOP-5.5.0/A/12-2013-0239 SZEKSZÁRD MJV	367,476,635	1,224,922	312,355,140	1,041,184	85%
17	KEOP-5.5.0/A/12-2013-0313 SZOLNOK MJV	582,905,908	1,943,020	495,470,022	1,651,567	85%
18	KEOP-5.5.0/A/12-2013-0320 KESZTHELY	428,000,000	1,426,667	363,800,000	1,212,667	85%
19	KEOP-5.5.0/A/12-2013-0325 SZOLNOK MJV	584,169,698	1,947,232	496,544,243	1,655,147	85%
20	KEOP-5.5.0/A/12-2013-0491 BALATONFÜRED	290,715,700	969,052	247,108,345	823,694	85%
21	KEOP-5.5.0/K/14-2014-0001 HATVAN	314,549,652	1,048,499	314,549,652	1,048,499	100%
22	KEOP-5.5.0/K/14-2014-0002 SÁRVÁR	385,857,677	1,286,192	385,857,677	1,286,192	100%
23	KEOP-5.5.0/K/14-2014-0003 JÁSZBERÉNY	410,093,083	1,366,977	410,093,083	1,366,977	100%

	Project reference and Beneficiary	Project amount HUF	Project amount EUR	Amount of grant CF HUF	Amount of grant CF EUR	Grant (%)
24	KEOP-5.5.0/K/14-2014-0004 ALSÓPÁHOK	44,848,861	149,496	44,848,861	149,496	100%
25	KEOP-5.5.0/K/14-2014-0005 TAMÁSI	258,963,030	863,210	258,963,030	863,210	100%
26	KEOP-5.5.0/K/14-2014-0006 BALATONFÜRED	134,900,000	449,667	134,900,000	449,667	100%
27	KEOP-5.5.0/K/14-2014-0019 GYÁL	260,488,240	868,294	260,488,240	868,294	100%
28	KEOP-5.5.0/K/14-2014-0021 SZIGETSZENTMIKLÓS	226,691,190	755,637	226,691,190	755,637	100%
29	KEOP-5.5.0/K/14-2014-0027 BÁCSALMÁS	155,544,830	518,483	155,544,830	518,483	100%
30	KEOP-5.5.0/K/14-2014-0028 MISKOLC MJV	451,358,000	1,504,527	451,358,000	1,504,527	100%
31	KEOP-5.5.0/K/14-2014-0035 SIÓFOK	426,004,641	1,420,015	426,004,641	1,420,015	100%
32	KEOP-5.5.0/K/14-2014-0039 HAJDÚBÖSZÖRMÉNY	460,435,179	1,534,784	460,435,179	1,534,784	100%
33	KEOP-5.5.0/K/14-2014-0040 KISKUNFÉLEGYHÁZA	487,740,505	1,625,802	487,740,505	1,625,802	100%
34	KEOP-5.5.0/K/14-2014-0070 MÓRAHALOM	88,117,243	293,724	88,117,243	293,724	100%
35	KEOP-5.5.0/K/14-2014-0071 SIKLÓS	245,533,014	818,443	245,533,014	818,443	100%
	TOTAL ALL PROJECTS	13,017,648,857	43,392,163	11,262,534,309	37,541,781	

1.3 CRIMINAL PROCEDURE IN HUNGARY

The Hungarian judicial authorities conducted an investigation³ in relation to five projects (four beneficiaries) also concerned by the OLAF investigation:

- KEOP-5.5.0/A/12-2013-0184 MEZŐHEGYES
- KEOP-5.5.0/A/12-2013-0226 KALOCSA
- KEOP-5.5.0/A/12-2013-0194 HÉVÍZ
- KEOP-5.5.0/A/12-2013-0235 SZEKSZÁRD MJV (I)
- KEOP-5.5.0/A/12-2013-0239 SZEKSZÁRD MJV (II)

The legal basis of the investigation was Article 420 of the Criminal Code on illegal agreements during public procurement procedures (cartels).

The investigation was dismissed by the Hungarian judiciary, because no evidence of an illegal agreement between bidders was produced.

The case file of this investigation includes a voice record, which proves that on 21 August 2012, even before the call for project applications KEOP-2012-5.5.0/A was published, the mayor of Szekszárd was advised by phone to contact [REDACTED] in order to help

³ Készenléti Rendőrség, Nemzeti Nyomozó Iroda, Korruptió és Gazdasági Bűnözés Elleni Főosztály, KÜ. O 29022-44/2015; Pest Megyei Főügyészség, NF1137/2015.

with the project preparation. ⁴ The registration was certified as original by the expert, meaning it was not recut or mounted artificially.

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██████████ was Director for Public Lighting at ██████████. She was the contact person of ██████████ in the bid ██████████ submitted later on to the Municipality of Szekszárd.

2. INVESTIGATIVE ACTIVITIES CARRIED OUT AND EVIDENCE COLLECTED

2.1. INVESTIGATIVE ACTIVITIES

The external investigation was opened on 30/01/2015.

The following OLAF investigative activities took place⁵

- Regular exchange of information with the Commission services, in particular Directorate General for Regional and Urban Development Policy;
- Regular exchange of information with the Managing Authorities through the Hungarian Anti-fraud Coordination service (AFCOS) of the documentation related to the Projects;
- On-the-spot checks on Municipality of Kecskemét MJV, Municipality of Cegléd, ██████████, ██████████ (including computer forensic operation), ██████████, ██████████ (including computer forensic operation), ██████████, ██████████,
- Interviews with the representative of the legal persons concerned, or with natural persons concerned: ██████████
- Operational meetings with different national authorities: judicial investigation authorities, managing authorities, authority in charge of the data base EMIR.

2.2. FACTS EVIDENCED

2.2.1. THE MAIN ACTORS OF THE DIFFERENT PROJECTS

2.2.1.1. MANAGING AUTHORITY, INTERMEDIATE BODY

Where the call for project applications was first launched, the project awarding authority was the National Development Agency (NFÜ) of Hungary in its role as Managing Authority, represented by the Intermediate Body "Energia Központ" Energiahatékonysági, Környezetvédelmi és Energia Ügynökség Nonprofit Kft. (later called Nemzeti Környezetvédelmi és Energia Központ Nonprofit Kft. or NKEK Nonprofit Kft.).

As part of a reorganisation of public services in Hungary, in January 2014 the tasks of Managing Authority were transferred to the Ministry for National Development (NFM, Nemzeti Fejlesztési Minisztérium). The Directorate in charge of the projects investigated was the Directorate "Kiemelt Energetikai Projektek Végrehajtási Főosztály/Távhőrendszer Fejlesztési Projektek Osztály", under the responsibility of the Head of the Managing Authority.

NKEK Nonprofit Kft. ceased to exist on 15.04.2014, its tasks were transferred to the NFM.

At the time of the call for project applications KEOP-5.3.0-2009/A and KEOP-2012-5.5.0/A, the Head of the Managing Authority was ██████████. At the time of the call KEOP-2014-5.5.0/K the Head of the Managing Authority was ██████████.

⁴ THOR(2015)31600.

⁵ For references of the on-the-spot check reports, reports of interviews, minutes of operational meetings etc., see list of annexes.

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██████████ was the administrator ("*energetikai referens*") in charge to prepare the templates for the calls for project applications under KEOP-2012-5.5.0/A and KEOP-2014-5.5.0/K in the Intermediate Body. She was the "author" of most of the template documents to be filled in for the project application according to the documents' properties. She was also the author of the last modifications in the templates of call for project applications under KEOP-2012-5.5.0/A. According to ██████████ statement, she performed this task on the basis of contributions received from the desk officers in charge of the substantial content. ██████████ left the Intermediate Body in September 2014 and was not involved with the call KEOP-2014-5.5.0/K after this date.

2.2.1.2. ██████████

The company ██████████ was created on ██████████. Originally the company's name was ██████████, which changed on ██████████ to ██████████, which was changed on ██████████ to the current name, ██████████ (hereafter: ██████████)

This company was the main contractor or member of the consortium which signed the main contract in all projects investigated. According to the allegations received by OLAF, it won most of the tenders because it had an undue influence on the contract award procedure. OLAF conducted an on-the-spot check on this company on 09.10.2015.

According to the company registry data, the company had very little revenues before 2009. From 2009 to 2010 its annual revenue increased to ██████████ (approximately ██████████). In 2015 the annual revenue was ██████████ (approximately ██████████), through revenue generated almost exclusively from EU co-financed energy projects.

For the needs of the OLAF investigation it was important to establish who were the real owners of ██████████, as one of the main allegations was that ██████████ obtained most of the contracts through illegal influence because of personal and commercial links between its owners and persons entitled to sign on their behalf and the owners and persons entitled to sign on behalf of the consultancies which participated in the preparation and implementation of the EU financed projects.

Legal owners of ██████████

The owners of the company on 18.05.2010 were:

- ██████████
- ██████████
- ██████████

On ██████████ the company ██████████ bought ██████████ shares from ██████████

On ██████████, which was also the situation on 09.10.2015 (date of OLAF on-the-spot check on ██████████) the shares were as follows:

- ██████████
- ██████████

charge of the drawing up the execution designs only, but in most of the cases (2022)3243 - 31/01/2022 was also responsible for the works.

or its owner and manager²⁰, also issued several "indicative" offers directly to the beneficiary before the Grant Agreement. The indicative offers became annexes to the different project applications and were used to justify the cost estimation. In several projects the indicative offers of and the other "independent" companies were drafted on the same computer. The author of the pdf file is

In one case (KEOP-5.5.0/K/14-2014-0070 Mórahalom public lighting) issued a bid as competitor of signed -alone, or as consortium member - contracts for the maintenance of public lighting with several Municipalities: Zalaegerszeg, Tapolca, Hévíz, Szekszárd, Siklós.

The manager of is Dezső. was also manager of in the past. is one of the owners of.

is a natural person concerned in this investigation. He signed several tender designs which were part of the project application of the Municipality, and these were also used later on as part of the tender documentation. He also signed most of the implementation designs (*kiviteli tervek*).

2.2.2. THE PROJECTS FINANCED UNDER KEOP-2009-5.3.0/A

2.2.2.1. THE CALL FOR PROJECT APPLICATION KEOP-2009-5.3.0/A

The Managing Authority, located in the National Development Agency (NFÜ), was represented by the Intermediate Body

The call for project applications KEOP-2009-5.3.0/A was published on 11.03.2009. The scope was to improve the energy efficiency and energy saving in the whole energetics chain: production, distribution, transport and final use, the last one being the most critical part of the chain.²² The call targeted various types of energy efficiency development projects, such as renovation of public lighting, installation or public buildings with environmental friendly solutions which would considerably reduce energy consumption and its costs.

The applications could be submitted from 01/09/2009.

According to the call for applications, under point C.8 it was possible to initiate the project implementation, in particular to conduct a public procurement procedure before the Grant Agreement but after the reception of the grant application by the NFÜ, at the risk of the applicant.

The amount of grant was 50% of the total eligible project amount, 100% financed by the European Cohesion Funds.

The OLAF investigation concerns 3 projects financed under the particular call KEOP-5.3.0-2009/A.

²⁰ "Cégvezető" and later on "ügyvezető".

²¹ According to the property of documents collected during two forensic operations in May 2016

²² "A pályázati konstrukció célja az energiahatékonyság és az energiatakarékosság fokozása az energetika teljes vertikumában, azaz az energia termelése, elosztása, szállítása és - a vertikum legkritikusabbnak ítélt szegmense - a végfelhasználás területén."

2.2.2.2. FACTS CONCERNING PROJECT KEOP-5.3.0/A/09-2010-0137 - Public Lighting Modernisation Project in Hódmezővásárhely OCM(2022)3243 - 31/01/2022

Public lighting modernisation in Hódmezővásárhely was the first big project of this type in Hungary which used LED technology.

This project was used at a later stage by [REDACTED] to demonstrate the experience in LED technology required to present a bid in the call for tender procedures conducted under KEOP-2012-5.5.0/A.

Project key data:

(1) Project reference and title: KEOP-5.3.0/A/09-2010-0137 - "A közvilágítás korszerűsítése Hódmezővásárhelyen"

Beneficiary: Municipality of Hódmezővásárhely, represented at the time of the signature of the Grant Agreement by [REDACTED], [REDACTED]

Project application: 05.05.2010

Grant decision: 23.12.2010

Grant Agreement: 05.05.2011

Total eligible project amount: 749 502 000 HUF

Own financing according to the Grant Agreement: 50%

Total amount of grant paid (entirely financed from European Cohesion Fund): 366 142 644 HUF

Main contract for the project implementation: design and works contract signed on [REDACTED] between [REDACTED] and the Municipality for 577 004 129 HUF.

Implementation design: by the works contractor. Sub-contractor for this task: [REDACTED]

Supervisor Engineer: [REDACTED]

Public Procurement consultant: [REDACTED]

Public procurement procedure

Before the grant application, on 30.12.2009 the Municipality of Hódmezővásárhely published a simple procurement procedure for **works contract** according to chapter VI of the Public Procurement Code (Kbt.) of 2003.

The call for tender was published at national level in the Hungarian Public Procurement Journal under reference KÉ 28531/2009 (date of request for publication: 22 December 2009). There was no publication at EU level.

The CPV²³ Codes mentioned in the call for tender were:

- 50232110-4 Commissioning of public lighting installations (*Közvilágítási berendezések, üzemkészsé tétele*)
- 50232100-1 Street-lighting maintenance services (*Közvilágítás-karbantartási szolgáltatások*)
- 34928500-3 Street-lighting equipment (*Közvilágítási berendezések*) (supply)

The technical specifications did not identify the exact technology to be used; it was left to the bidder to propose to the contracting authority a "new" technical solution for the modernisation of the public lighting of the city, with the aim to reduce energy consumption. It was also up to the bidder to make the calculation for the energy economy and the cost benefit analysis of the project, according to what was foreseen in the future

²³ Common Procurement Vocabulary (CPV) first established by Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV), OJ L 340, 16.12.2002, p. 1. Amended by Commission Regulation (EC) No 213/2008 of 28 November 2007, OJ L74 of 15.3.2008, p.1.

project application KEOP-5.3.0-2010/A. The cost benefit calculation and annual LED saving rate offered was one of the tender evaluation criteria. LED experience was not a requirement.

According to point IV.2, the tender evaluation criteria were as follows:

Table 2 – tender criteria KEOP-5.3.0/A/09-2010-0137

Criteria	Weighting
Technical quality	58
Price offered (HUF)	30
Deadline for payment (days)	4
Annual saving rate offered (%)	4
Penalty if annual saving rate not respected (%)	4

The financial and technical minimum requirements were as follows:

Table 3 - financial and technical minimum requirements KEOP-5.3.0/A/09-2010-0137

Annual income in 2008 and 2009, together with the sub-contractor foreseen for more than 10%	100 000 000HUF
Annual income from similar projects (public lighting) in 2008 and 2009, together with the sub-contractor foreseen for more than 10%	30 000 000HUF
Public procurement related experience (public lighting)	At least one project of 50 000 000HUF in the last 3 years (2007, 2008 and 2009)
Key experts	1 "A" category electric engineer, 1 "V" category electric engineer (1 fő "A" kategóriás villamos műszaki vezetői jogosultsággal rendelkező mérnök, 1 fő "V" kategóriás villamosmérnöki tervezési jogosultsággal rendelkező mérnök)
Staff	4 people, minimum 2 with qualification in building industry
Machines	1 lifting car (1 db személy emelésére alkalmas emelőkaros gépjarmű)

The deadline to tender was 19 January 2010. The contracting authority received three bids:

- [REDACTED] Price: 779 555 555 HUF, guarantee 72 months, deadline for implementation 180 months, late implementation penalty 100 000 HUF/day, non-execution penalty 10 000 000 HUF.
- [REDACTED] Price: 577 004 129 HUF, guarantee 48 months, deadline for implementation 150 months, late implementation penalty 100 000 HUF/day, non-execution penalty 10 000 000 HUF.
- [REDACTED] Price: 575 825 093 HUF, guarantee 60 months, deadline for implementation 180 months, late implementation penalty 100 000 HUF/day, non-execution penalty 10 000 000 HUF.

The bid of [REDACTED] was deemed to be the only compliant bid.

According to the company registry, 2008, [REDACTED] had no income. In 2009, the total income was [REDACTED]. The company had no experience in

public lighting projects. In order to demonstrate the minimum financial and expertise-related capacity requirements for the Hódmezővásárhely project, [REDACTED] had to rely on its sub-contractor foreseen for more than 10% of the total contract amount.

Initially, in its bid, [REDACTED] has foreseen two "sub-contractors for more than 10%":

- [REDACTED] which would supply the street lighting equipment from the Swiss company [REDACTED].
- [REDACTED]

[REDACTED] introduced an appeal at the Procurement Arbitrary Board (KDB) for different reasons, amongst which was the inappropriate qualification of the contract as "works contract" as in its opinion it should have been qualified as "supply contract".

The Public Procurement Arbitrary Board (KDB) rejected this request not on legal grounds, but because according to the KDB, the appeal was out of deadline. [REDACTED]

[REDACTED] did not introduce an appeal in the national courts against the decision.

Works contract:

On [REDACTED] signed a **design and works contract** with the Municipality for 577 004 129HUF. The estimated amount of the contract according to the cost benefit calculation was 940 000 000 HUF. The contract contained a suspension clause referring to the signing of the Grant Agreement.

After the signature of the works contract, [REDACTED] changed its supplier. Instead of [REDACTED] became the supplier of the lamps.

This was a result of a negotiation between [REDACTED] and [REDACTED]. Between 01.02.2011 and 25.05.2011 [REDACTED] requested and received 21 different offers from [REDACTED] for the supply of street-lighting equipment.

The contract for **supply** between [REDACTED], represented by [REDACTED] and [REDACTED], and [REDACTED], represented by [REDACTED], was signed on 11 May 2011. The contract amount was 341 727 507HUF, nearly 60% of the total amount of the contract signed between [REDACTED] and the Municipality.

According to the comments received from the legal representative of [REDACTED] and [REDACTED], the supply contract was not negotiated by [REDACTED], but by [REDACTED], [REDACTED], with the participation of [REDACTED].

Consultants of the Municipality:

The main consultant of the Municipality of Hódmezővásárhely in charge of project management was [REDACTED].

On 19.10.2011 [REDACTED] signed a project management consultant contract with the Municipality. The amount of the contract between [REDACTED] and the Municipality was 50 000 HUF/month. [REDACTED] received access to the project documentation on the side of the beneficiary, in order to prepare the project implementation reports and other documents required.

According to the representative of [REDACTED] this contract was signed following the suggestion of [REDACTED]. This is not the opinion of [REDACTED] (see opportunity to comment letter).

On 29.10.2011 [REDACTED] signed a project management consultancy contract with [REDACTED]. The aim of these contracts was also to collect all the project documentation in order to prepare the project implementation reports and other documents required for EU financed projects.

This was the first project where [REDACTED] and [REDACTED] worked together.

2.2.2.3. FACTS CONCERNING PROJECT KEOP-5.3.0/A/09-2010-0357 Paks OCM(2022)3243 - 31/01/2022**Project key data:**

(2) Project reference and title: KEOP-5.3.0/A/09-2010-0357 "A közvilágítás korszerűsítése Pakson"

Beneficiary: Municipality of Paks, represented at the date of the signature of the Grant Agreement by [REDACTED], [REDACTED]

Project application: 30/06/2010

Grant decision: 02/07/2011

Grant Agreement: 28/03/2011

Total eligible project amount: 138 476 822HUF

Own financing according to the Grant Agreement: 50%

Total amount of grant paid (entirely financed from European Cohesion Fund): 69 238 411 HUF,

Main contract for the project implementation: Supply contract signed on 11.06.2013 between [REDACTED] and the Municipality for an amount of 104 990 608HUF.

Sub-contractors, suppliers: The consortium leader, [REDACTED] signed a sub-contract with the consortium member [REDACTED]. The sub-sub-contractor was [REDACTED], 16 544 402HUF. Supplier: [REDACTED], 58 984 934HUF

Implementation design: [REDACTED]

Public Procurement consultant: [REDACTED]

Public procurement procedure

The initial design in the project application of 30 June 2010 provided for a replacement of most of the lamps by [REDACTED] lamps. The Grant Agreement was signed on 28 March 2011 on the basis of the design contained in the project application.

On 01.02.2012 the Municipality of Paks published an **international open call for tender for supply** of public lighting equipment. The estimated amount of contract was 148 557 585 HUF, which was above the threshold of Directive 2004/18, therefore the call was published at EU level under reference TED 2012/S 99-164878 (reference in the national OJ: KÉ 10747/2012). According to this call for tender, most of the lamps to be supplied were manufactured by [REDACTED], "equivalent" was accepted. LED experience was not a requirement. The tender evaluation criteria were the price offered (70) and the number of months for the guarantees (30). Several potential bidders requested clarifications on the call for tender.

In order to clarify the different criteria and the technical specifications, the beneficiary cancelled the call for tender. The technical specifications were re-drafted and **a new call for tender was published on 01.02.2013** under reference TED - 2013/S 021-032576 (reference in the national OJ: KÉ-1385/2013), modified on 16.04.2013 (TED 2013/S 034-052740, KÉ 2145/2013)

In particular, "in order to ensure the equal opportunity", the exact lamp type were not included anymore in the call. ²⁴

²⁴ See the beneficiary's request for modification of Grant Agreement of 28.09.2012 asking to prolong the deadline for implementation and containing the modified technical specifications.

Table 4 - Some examples of technical specification in the first and second calls for tender by Paks: OCM(2022)0243 - 31/01/2022

First call of 05.07.2012, TED 2012/S 99-164878	Second call of 30.01.2013, TED - 2013/S 021-032576
<p>Lamp body: [REDACTED]. Equivalence conditions listed, corresponding to the [REDACTED] characteristics.</p> <p>Light source: [REDACTED]. Equivalent: maximum 45W, minimum 4050lm</p>	<p>Lamp body: same description as first call, but in addition the lampshade should be in <u>tempered glass</u>, possibility to regulate the lumen power between 25%-50% for the night. All qualities had to be justified via statement of the manufacturer or a measurement report of an accredited laboratory (not required in the first call).</p> <p>Light source: [REDACTED]. Equivalent: maximum 45W, minimum 4300lm</p>
<p>Lamp body: [REDACTED]. Equivalence conditions listed, corresponding to the [REDACTED] characteristics.</p> <p>Light source: [REDACTED]. Equivalent: maximum 60W, minimum 6600lm</p>	<p>Lamp body: same as above.</p> <p>Light source: [REDACTED]. Equivalent: maximum 45W, minimum 4300lm</p>
<p>Lamp body: [REDACTED]. Equivalence conditions listed, corresponding to the [REDACTED] characteristics.</p> <p>Light source: [REDACTED]. Equivalent: maximum 90W, minimum 9900lm</p>	<p>Lamp body: same as above.</p> <p>Light source: [REDACTED]. Equivalent: maximum 90W, minimum 10400lm</p>
<p>Lamp body: [REDACTED]. Equivalence conditions listed, corresponding to the [REDACTED] characteristics.</p> <p>Light source: [REDACTED] compact fluorescent tube lamp. Equivalent: maximum 36W, minimum 2880lm</p>	<p>Lamp body: same description as first call, in particular the lampshade should be in <u>high impact resistance, UV protected plastic</u>.</p> <p>Light source: [REDACTED]. Light source: 36W maximum 2900lm minimum</p>
<p>Lamp body: [REDACTED]. Equivalence conditions listed.</p> <p>Light source: 42W, with minimum 3150lm power was required</p>	<p>Lamp body: Compact fluorescent circle symmetric lampshade in <u>PC (polycarbonate)</u>.</p> <p>Light source: 42W, with minimum 2800lm</p>

The technical specifications of the lamp bodies were exactly those of the [REDACTED] lamps. For example, the possibility to replace the light source manually without any tool, that the lampshade should be in tempered glass for the first three lamptypes, but in plastic in the last two lamp types has no apparent reason but it does describe [REDACTED] lamp structures.

In the tender documentation attached to the new call for tender published on 30.01.2013 there was also a new paragraph requesting the bidders to prove that **the conditions,**

parameters should be proved via the certification report of measurement (az OCM(2022)3243 - 31/01/2022 jegyzőkönyv) issued by an accredited laboratory²⁵ and not only via the statement (nyilatkozat) of the manufacturer.

In the version of the tender documentation available in the EMIR database, there is the following comment near this paragraph "it came out good ☺ - really good!".²⁶ This was the paragraph used later on to exclude the bid of [REDACTED].

The CPV codes used in the call for tender were:

- 34928500-3 (main subject)
- 34928530-2 (other subject)
- 50232110-4 (other subject)

No works related CPV code (code beginning with "45", see above) was used.

Preliminary offers from the potential supplier

Before sending their bid, the potential bidders requested offers from [REDACTED]

The lead member of [REDACTED], [REDACTED] received several offers from [REDACTED]. [REDACTED] received several offers, the price decreased during the negotiations (reference number of offer, date of issuing, date of validity, amount of offers) :

- [REDACTED]
- [REDACTED] (amount of the supply contract finally signed between [REDACTED] and [REDACTED])
- [REDACTED]

The other member of [REDACTED], [REDACTED] also received three offers:

- [REDACTED]
- [REDACTED]
- [REDACTED]

The competitors of [REDACTED] received during the same period different offers for the same quantity and quality of equipment for a much higher amount than [REDACTED]:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

²⁵ "Az ajánlati felhívás II.2.1) pontjában szereplő, a lámpatestekkel és a fényforrásokkal szemben elvárt követelmények, paraméterek a lámpatest és fényforrás gyártója által tett nyilatkozattal (ny) illetve, akkreditált mérő labor által kiállított mérési jegyzőkönyvvel (jky) igazolandók, melyeket az ajánlatba be kell nyújtani."

²⁶ See document "2adpakskozvilagitas20121108" on the CD received from the Managing Authority, registered under reference OLAF.C.1(S)(2015)37643, folder OLAF-PEP-KEOP-5_CD2 \ KEOP-5.3.0A09-2010-0357 \ 3sz "kérem véleményezni" " Jó lett ☺ - tényleg!".

- [REDACTED]

[REDACTED] :

- [REDACTED]

| [REDACTED]

| [REDACTED]

| [REDACTED]

[REDACTED]

| [REDACTED]

| [REDACTED]

| [REDACTED]

The competitors of [REDACTED], if they planned to supply [REDACTED] products, had a clear commercial disadvantage because the lowest offer they received from the supplier was between 20-25 million HUF more expensive than the lowest offer [REDACTED] proposed to [REDACTED]

The two valid bids ([REDACTED] and [REDACTED]) proposed both lamps from [REDACTED], but the bid of [REDACTED] was 24,3 million HUF cheaper than the bid of its competitor. The offer of [REDACTED] to [REDACTED] was 20 million HUF cheaper than its offer to [REDACTED] for the same lamps.

The representatives of [REDACTED] stated (see OLAF on-the-spot check report) that they knew that [REDACTED] would order big quantities, and they already had commercial relations in the past and had a good experience. They also added (see opportunity to comment letter) that in case of [REDACTED] lamps, they received several orders and because the increased quantity to be produced, the cost of raw material supply could be reduced. The [REDACTED] lamp was in the end of its life-cycle and therefore a better price could be proposed to [REDACTED] as privileged commercial partner. The representatives of [REDACTED] explained, in order to justify the discriminatory offers issued, that they suspected [REDACTED] to ask for [REDACTED] offers only in order to provide information on commercial secrets to the competitors of [REDACTED]. Also, the quantity of orders received from [REDACTED] had declined considerably. Therefore [REDACTED] was obliged to provide an offer including catalogue prices or with little discount.

Bids received:

7 companies bought the tender documentation, 6 bids were received:

[REDACTED]

The bids of [REDACTED] (more expensive) and [REDACTED] were qualified as compliant. All the other bids were deemed to be non-compliant.

The bid of [REDACTED] contained the best economic offer, taking into account the price and the duration of the guarantee. However, the bid of [REDACTED] was deemed to be as non-compliant with the selection criteria for the following reason.

The measurement reports in relation to the dust and water penetration protection of the "Hofeka" lamps were not issued by an accredited (certified) laboratory as requested in the call for tender.

During the clarification procedure the contracting authority requested the evidence that [REDACTED], the laboratory which provided the measurements was an accredited laboratory. This laboratory was **not listed on the webpage of the National Accreditation Body (NAT – Nemzeti Akkreditáló Testület).**

[REDACTED] did not provide such evidence, but **provided a new measurement report from a different laboratory, [REDACTED], an accredited laboratory, containing the same figures and conclusions.**

In parallel [REDACTED] initiated a preliminary conciliation procedure (*előzetes vitarendezési kérelem*) because the contracting authority requested such evidence. The contracting authority rejected the conciliation procedure.

[REDACTED] also introduced an appeal at the Public Procurement Arbitration Board (KDB) which rejected the request in its decision D.166/10/2013 of 14.05.2013 stating that according to Hungarian law, the contracting authority had the right to request the evidence of the accreditation. The KDB decision did not include into its scope the result of the clarification procedure and the final decision on the tender evaluation.

The reason for non-compliance was formal: the contracting authority did not accept the new measurements issued by [REDACTED] because it was a new measurement report, and not the evidence that the laboratory which issued the first measurement report in the original bid was a certified company. **There was no evidence offered that the Hofeka products would not be technically compliant.**

In the case also of the other companies proposing Hofeka products, the reason for non-compliance was the absence of answer to a clarification request in relation to the same measurement reports.

[REDACTED] provided statements from the manufacturer [REDACTED], and a certification of the measurements by CEBEC, accredited by BELCERT (Belgium).

Works contract:

The contract was signed on 11.06.2013 with [REDACTED], which provided the best economic offer out of the two compliant bids.

The sub-contractor of [REDACTED] was [REDACTED]. The sub-sub-contractor was [REDACTED] (later called [REDACTED]), the amount of its contract was 16 544 402 HUF.

The total amount of the supply contract between [REDACTED] and [REDACTED] was 58 984 934 HUF, nearly 60% of the total amount of the contract signed between [REDACTED] and the Municipality (104 990 608HUF).

2.2.2.4. FACTS CONCERNING PROJECT KEOP-5.3.0/A/09-2010-035 - SIÓFOK

Project key data:

(3) Project reference and title: KEOP-5.3.0/A/09-2010-035 "Közvilágítás korszerűsítése Siófokon"

Beneficiary: Municipality of Siófok, represented at the date of the signature of the Grant Agreement by [REDACTED], [REDACTED]

Project application: 30.06.2010

OCM(2022)3243 - 31/01/2022

Grant decision: 22.02.2011

Grant Agreement: 11.07.2011

Total eligible project amount: 412 409 722HUF

Own financing according to the Grant Agreement: 206 204 861HUF

Total amount of grant paid (entirely financed from European Cohesion Fund):
206 204 861HUF

Works contract: On 25.02.2015 [REDACTED] signed a **works and design contract** with the Municipality for an amount of 421 185 900 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] was [REDACTED] (later called [REDACTED]), 24 486 960HUF. Supplier: [REDACTED] (221 004 759 HUF, contract signed by [REDACTED], [REDACTED])

Implementation design: Included into the works contract of [REDACTED]

Public Procurement consultant: [REDACTED]

Project management consultant : [REDACTED]

Public procurement procedure:

The call for tender was published on 13.07.2012 under reference KÉ-11746/2012.

It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

The subject of tender was design and works in relation to the supply and installation of 1 501 LED lamps and 328 fluorescent lamps.²⁷

On 14.08.2012 the contracting authority modified the call (KÉ 12722/2012). The modification meant that instead of 1 501 LED lamps and 328 compact fluorescent tube lamps, the supply of 2 192 LED lamps and 328 compact fluorescent tube lamps was required. In the description of some of the LED lamps, the colour was added to the description.

The technical description of all the lamps described in the call was exactly the technical description of [REDACTED] lamps of that category. For example, the description of the 356 lamps of minimum 2650 lm, maximum 29W LED corresponded to the [REDACTED] model.

According to chapter III. 2.3) of the call, the bidder was eligible only if it could prove it had the following experience during the last 5 years:

- during the last 5 years one single finished works contract with minimum 800 **LED** lamps installed (design authorisation, light source installation)
- had to have one expert, who had MV-EP authorisation according to Annex 1 of Government Decree 244/2006 (XII.5).²⁸

The call for bid listed 2 192 LED lamps to be supplied with the exact technical description of [REDACTED] lamps.

The Municipality received one bid during the public procurement procedure, the bid of [REDACTED]

On 25.02.2015 [REDACTED] signed a **works and design contract** with the Municipality for an amount of 421 185 900 HUF. The estimated amount of contract according to the cost benefit calculation was 421 238 688 HUF.

²⁷ 1.501 LED világítotestek beszerzése, felszerelése és üzembehelyezése és 328 kompakt fénycsöves világítotestek fejfényforrás és előtét cseréje és üzembehelyezése.

²⁸ A felhívás III. 2.3) pontja szerint alkalmatlan az ajánlattevő, ha

- M.1) az eljárást megindító felhívás feladásától visszafelé számított 5 évben nem rendelkezik egy szerződés keretén belül egy projektben megvalósított műszaki átadás átvétellel lezárt közvilágítás korszerűsítésre vonatkozó referenciával, amely legalább 800 db LED fényforrással üzemelő lámpatest generál kivitelezésben (tervezés, engedélyezés, fényforrás felszerelés és üzembe helyezés) történő megvalósítását tartalmazta.

- a szerződés teljesítésébe bevonni kívánt szakemberei között nem rendelkezik legalább az alábbi szakemberekkel: a) legalább 1 fővel, aki rendelkezik érvényes MV-ÉP/ÉV felelős műszaki vezetői jogosultsággal a 244/2006. (XII.5.) Korm. rendelet 1. melléklete szerint.

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 provided 3 preliminary offers to 3 potential bidders. The prices of the offers were different while it concerned the same list of lamps:

- 221 004 759 HUF,
- 260 451 937 HUF
- 260 451 937 HUF

The Municipality received 3 bids:

- 294 499 978 HUF, total guarantee 60 months, lamp guarantee 180 months, late execution penalty 1 %;
- 309 930 271 HUF, total guarantee 60 months, lamp guarantee 120 months, late execution penalty 0.2 %
- 342 037 000 HUF, total guarantee 60 months, lamp guarantee 180 months, late execution penalty 0.65 %

The bids of [redacted] and [redacted] were declared non-compliant, because the bidders did not send the requested documents during the clarification procedure, in particular the documents justifying the LED experience required.

On 12.10.2012 [redacted] signed a **design and works contract** with the Municipality for an amount of 294 499 978. The estimated amount of contract according to the cost benefit calculation was 294 799 213 HUF.

2.2.3. THE PROJECTS FINANCED UNDER KEOP-2012-5.5.0/A

2.2.3.1. THE CALL FOR PROJECT APPLICATION KEOP-2012-5.5.0/A

Main data of the initial call, documents to be provided in the application

The Managing Authority, located in the National Development Agency (NFÜ), was represented by the Intermediate Body [redacted]

Call No. KEOP-2012-5.5.0/A was published on 12.12.2012. The call targeted various types of energy efficiency development projects including also public lighting projects. The total value of the projects amounts to HUF 23.28 billion (approximately 77.6 million EUR), thereof the value of the projects including public lighting amounts to HUF 8.7 billion (29 million EUR).

The amount of grant was 85% of the eligible project amount. 100% financed by the Cohesion Fund in relation to the 17 projects investigated. Considering all the call, the participation of the Cohesion Fund amounts 98% (approximately 28.42 million EUR). For the 17 projects investigated by OLAF, the grant was 100% financed by the European Cohesion Funds.

OLAF investigation relates to 17 public lighting projects under this call. In all cases, the beneficiaries were Municipalities, the works contractor was [redacted]. In all cases, except the 2 Zalaegerszeg and the Balatonfüred projects, the supplier and manufacturer was [redacted]. The total amount of grant for the 17 public lighting projects investigated under this call was 6.2 billion HUF (approximately 20.6 million EUR).

The Municipalities had to provide 15% of own part. However, in most of the KEOP-5.5.0/A the beneficiaries introduced a request for State Grant for the own part and received it during the project implementation period. Project preparation costs, management costs, public procurement consultancy services were eligible under the projects.

In their project applications, the beneficiary had to explain how the renovation would influence the energy consumption.

According to the call for project applications, a project was eligible if the internal return rate (*Belső megtérülési ráta*) was more than 0,5% but less than 15%. This means that a project could not be a source of loss, but also the annual return rate could not exceed 15%.

The internal return rate calculation included the amount of energy consumption (2022) of the beneficiary before the grant application, the estimated future cost of energy, the maintenance cost before and after the project, the residual value of the equipment at the end of the project period and the cost of the project (amount of grant requested).

In all the projects concerned by investigation, the own part of 15% was covered by a grant attributed by decision of the Minister in charge of the Prime Minister's Office in July 2015.

All the Municipalities signed one or several consultancy service contracts (*megbízási szerződés*) for the drafting of the technical documentation needed for the project application. The technical documentation included in particular:

- Study of the energy loss of the infrastructure concerned (*Energetikai Veszteségfeltáró Vizsgálat*). In case of public lighting projects, this contains the list of lamps to be replaced and their characteristics, the energy consumption, the proposed technical solutions, the technical details characteristics of the new lamps proposed.
- Calculation for the status before and after the planned development (*Számítás a fejlesztés előtti és a tervezett állapotra- Tenderterv*)
- Annex IV (Audit műszaki melléklet), which is an excel table containing the key data from the previous two documents and a list of lamps before and after the project in a street by street breakdown.
- Annex III to the application form: Energetics study (*Energetikai tanulmány*), limited to the streets to be renovated under the EU financed project. Annex III contains in particular the number of lamps proposed for replacement as in Annex IV, but with their estimated costs. It includes also a cost benefit analysis (CBA) and calculates the Internal Rate of Return (BMR, in Hungarian *Belső megtérülési Ráta*).

The beneficiaries could submit their applications at earliest on 11.02.2013. The eligible applications would receive a grant in the order of arrival if they reached at least 50/100 of points according to the evaluation criteria and if they did not receive 0 point in any of the exclusive evaluation criteria.²⁹

Modification of the call on 08.02.2013

On Friday 08.02.2013 the excel table for Annex III of the application was modified by the Managing Authority. The beneficiaries had therefore a very short period in which modify their applications.

██████████ was the administrator ("*energetikai referens*") in charge to prepare the templates for the calls for project application KEOP-2012-5.5.0/A. She was the "author" of the template documents to be filled in for the project application according to the documents' properties. According to ██████████ statement, she performed this task on the basis of contributions received from the desk officers in charge of the substantial content. ██████████ was also the person who last modified the templates according to the properties of the documents published on 08.02.2013.

The modification had to be authorised by the head of the Managing Authority, at that time ██████████.

The modification of Annex III allowed the potential beneficiaries to calculate with 100.000 hours of life-time duration of the lamps in case of LED lamps if they provided sufficient justification. Before the modification, only 50.000 hours life-time could be taken into account keeping the minimum acceptable level of remaining lumen power.

The applicants had only one week-end to recalculate figures and to be able to present the applications on Monday 11.02.2013 at 9.00 if they wanted to be the first on the list. All the applicants concerned by the investigation submitted their applications by Wednesday 13.02.2013.

²⁹ So called "continuous evaluation procedure", 2§(1) alinea of Gov. Decree 4/2011 : "7. folyamatos elbírálás: olyan eljárás, amely során a támogatásra vonatkozó döntés előkészítése és meghozatala a beérkezés sorrendjében a rendelkezésre álló forrás kimerüléséig történik,"

Estimated cost of the main contract

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The project application had to establish the estimated amount of each project element.

In relation to the main (works) contract, the estimated value was established on the basis of:

- The unpriced itemised budget (árzatlan költségvetés) made by the technical consultant (in 11 projects, [REDACTED]), listing which existing lamp should be replaced by which type of lamp (in the case of Zalaegerszeg and Balatonfüred, [REDACTED], in all the other projects [REDACTED])
- The "independent indicative offers" given by three companies on the basis of the unpriced itemised budget. This was requested by the call in order to guarantee that the best value for EU money, i.e. the market price would be guaranteed. The three offers were requested in each project by the beneficiary itself. The estimated amount in the project application was the amount of the lowest offer.

In all the 17 projects the original project applications only contained the amount of the estimated cost of works, but no copy of the indicative offer used for the estimation was attached as annex, despite the fact that it was compulsory, according to point E.II/8 and F12/5 of the call for applications.³⁰

The Municipalities provided the three indicative offers later on to the Managing Authority, on the CD attached to the submission of missing documents procedure. The creation dates of these files are months later than the date of the application (March, April or May 2013), but all the documents mentions as date of signature 11 February 2013. The creation date is the date of transformation of the word file into pdf.

Most of the persons concerned argued that the Beneficiaries received the offers before the project application on paper, and the scanning was done later on during the "missing document" procedure.

However, the transformation into pdf (or scanning) was done in most of the cases by [REDACTED] and not by the Beneficiary.³¹ The Beneficiary received the electronic documents submitted on the "missing documents" CD only after the project application.

In all projects under call for project application KEOP-2012-5.5.0./A except one (Balatonfüred) the three indicative offers used to establish the market price of the works were issued by [REDACTED] and [REDACTED].

The three offers were drafted by [REDACTED] following the same common methodology for the three offers in one project, but a different methodology used for each project. **The company giving the best offer was alternating but the two weaker offers always gave amounts 5% and 7% higher than that of the best offer not only regarding the total amount of the offer, but also for each item, for all cost lines and lamp types (while the offers from project to project varied significantly for any lamp type).**

All the three indicative offers for works ([REDACTED]) attached to the project application KEOP-5.5.0/A/12-2013-0226 (Kalocsa) contain the same calculation error. indication on the possible market price. According to [REDACTED] (see opportunity to comment letter) this is due to the fact that the initial excel table containing all items without the price contained a mistake. The excel table was sent to the 3 companies and they used it for their calculation without noticing the mistake.

In the case of Balatonfüred the three companies to give offer were [REDACTED], [REDACTED] and [REDACTED]. **The three offers are also linked as for each item the weaker offers were exactly 12% and 21% higher than the best offer respectively.**

The cost benefit calculation

³⁰ However, unlike the annexes listed in point E.I, the indicative offers could be subject to submission of missing documents procedure ("hiánypótlás").

³¹ According to the property of documents collected during two forensic operations in May 2016 (collection of documents REQ 9094, indexation of documents REQ9394, analysis and bookmarking REQ9402).

In all 17 project applications investigated by OLAF under call KEOP-2012-5.0/2012/2012 - OCM(2022)3243 - 31/01/2022 benefit analysis was calculated with the maximum life-time newly allowed after the last minute modification of the call by the Managing Authority, i.e. 100.000 hours (see above).

There was no document provided in the project application in which the manufacturer guaranteed unequivocally that the life duration at the maximum allowed decrease of lumen power would be 100.000 hours.

According to the technical description of the lamps provided by the manufacturer for the project applications in 2013, as well as the technical description of the lamps attached to the bids of [REDACTED] during the public procurement procedures in 2013 and 2014, the life duration at the maximum allowed decrease of lumen power accepted was estimated less than 100 000 hours.

The [REDACTED] 2012 catalogue provided by the Managing Authority to OLAF on 02 October 2017 reinforces this data.

For example:

- For [REDACTED] lamps after 60 000 hours 80% of the initial lumen power was expected
- For [REDACTED] lamps after 80 000 hours 80% of the initial lumen power was expected
- For [REDACTED] lamps after 60 000 hours 90% of the initial lumen power was expected, while after 100 000 hours 70% of the initial lumen power was expected (the maximum allowed decrease of lumen power accepted was 75%).

The manufacturer's guarantee was 5 years for all type of lamps.

In the first projects, the external technical auditors at first issued a negative opinion on the eligibility of the projects. According to the original opinion, the 100.000 hours life duration was unfounded according to the documentation provided in the project application file, on the basis of which only a 60.000 hours lifetime could be established, and asked for further clarification.

It is OLAF's view that according to the statement of [REDACTED] (see letter providing comments on the facts established by OLAF), only some evaluators did not agree to consider 100.000 hours lifetime duration, other evaluators found it realistic. "Out of the 17 projects investigated by OLAF, in 6 projects there was at least one technical evaluator who did not mention as a problem the 100.000 hours lifetime duration". "The Managing Authority noted therefore, also following secondary examination of the scientific literature, that there is no professional consensus on the basis of which the 100.000 hours lifetime duration could be challenged"³²

According to the call for project application, it was the task of the applicant to evidence that the 100.000 hours lifetime could be reached - and not the task of the evaluators to evidence that it could not be reached.³³

In their final opinion for all 17 projects (second modified opinion if there was a first negative opinion, first opinion for the other projects), the technical auditors stated that there will be additional costs because the necessary replacement of some components after 60 000 hours. Therefore, according to their opinion, the Internal Rate of Return can be considered as being in the eligibility range **only if there is no additional maintenance cost increase after 60 000 hours**, and suggested the additional requirement of having a fixed price maintenance contract for 25 years for all beneficiaries. Without this guarantee, at the moment of the evaluation of the applications there was not sufficient evidence that the life time duration would be at least 100.000 hours.

The solution applied by the Managing Authority was to add a condition into the Grant Agreement (annex "list of deviations" - "*eltérések listája*") that the beneficiary commits itself to conduct lighting measurements between the 16 and 25 years of the project. If the

³² "A közreműködő szervezet/IH ebből, a szakmai irodalom szekunder vizsgálatával egyezően - azt a következtetést vonta le, hogy nincs egységes szakmai konszenzus, mely alapján a 100.000 üzemóra realitása kétségbe vonható lenne".

³³ "FIGYELEM! 50.000 üzemóra felett indoklás szükséges az energetikai veszteségfeltáró összefoglalója c. dokumentumban"

lighting data fall under the required lighting power, the Municipality took the necessary measures to reach the required lighting power but keep the cost of maintenance under the limit foreseen in the project application. OCM(2022)3243 - 31/01/2022

The Municipalities did not sign any maintenance contract covering the 25 year period. The current maintenance contract of the Municipalities only covers the first years of the project, its conditions include that the replacement parts are provided for free by the works contractor under the 5 years guarantee. No valid contract exists beyond the guarantee period of 5 years.

By taking into account 100.000 hours, the 17 beneficiaries could calculate with a 40% residual value of the lamps after the 15 years period taken into account for the BMR calculation. Calculating with 60.000 hours (minimum lifetime considered as established by all the evaluators), the project should have returned its full investment cost in the first 15 years.

Because this residual value was taken into account, the project was considered eligible (the value of Internal Rate of Return - BMR exceeded 0,5%).

If the residual value had been lower, but the estimated works contract amount and the other parameters of the cost benefit analysis had been the same, the projects would not have been eligible.

Without the modification of the call by the Managing Authority three days before the application, allowing the taking into account of a 100.000 hours lifetime, none of the project would have been financially eligible given the estimation of the costs of works provided by the beneficiaries.

Consultants:

With the exception of Zalaegerszeg, Szolnok and Balatonfüred, in all cases the coherence between the data provided in the supporting documents and the cost benefit calculation was certified by the same Energy Engineer, [REDACTED], which signed a contract for independent audit with the beneficiary or the consultant in charge to prepare the project application.

The final audits of all projects were made by [REDACTED], as independent auditor.

The offers in view to sign the contracts between the Municipalities and [REDACTED] for the final audits were all drafted in the name of [REDACTED] by [REDACTED], the Director for Public Lighting at [REDACTED], and [REDACTED], manager of [REDACTED]. According to the different persons concerned, [REDACTED] helped [REDACTED] to prepare a contract template word document and filled it himself at a later stage. [REDACTED] stated that he was not involved at all in the drafting of the document.

However, it is evidenced that all of the following were involved, on the basis of³⁴

- 15 different contracts drafted in a word document (author: [REDACTED]. Last modified by [REDACTED])
- an exchange of emails which took place on 8 and 9 February 2013 between [REDACTED] and [REDACTED], with [REDACTED] in copy.

The contracts were signed by the Municipalities (or their consultant in charge to prepare the project application) and [REDACTED]

The involvement of [REDACTED] and [REDACTED] in the project applications

In 11 projects, [REDACTED] was in charge to prepare the Study of the energy loss of the infrastructure concerned (annex IV) and/or the Energetics study (Annex III) of the project application. These studies contained the expected energy and maintenance cost saving.

[REDACTED] signed a contract with the beneficiary and was representing it.

³⁴ Documents collected during two forencis operations in May 2016 (collection of documents REQ 9094, indexation of documents REQ9394, analysis and bookmarking REQ9402, bookmarking [REDACTED])

The project application contained already the tender designs: the list of lamps to be changed and the replacement lamps were the same in the project application than later on, after the signature of the Grant Agreements, in the calls for tenders.

In 12 cases the project application was coordinated and introduced on CD by [REDACTED]. [REDACTED] also coordinated the collection of documents to be provided in the clarification stage (*hiánypótlás*).

[REDACTED] filled in the table in Annex III of the project application, on the basis of Annex IV, and the price estimation based on the three "independent indicative offers". [REDACTED] staff had to work all the week-end of 9-10 February in order to modify all the project applications because the excel template was modified on 8 February.

The involvement of the Director for Public Lighting at [REDACTED] in the project applications

In all 17 projects investigated by OLAF under call KEOP-2012-5.5.0/A [REDACTED] was author or co-author of Annex III and Annex IV of the project application. It is established on the basis of the properties of the excel files that she worked on those annexes during the week-end of 9-10 February 2013.

[REDACTED] was Director for Public Lighting at [REDACTED], which was awarded later on with the works contract.

According to the statement of [REDACTED], because her important technical background and experience in the field of public lighting (she provided the list of her educational and professional background to OLAF) the different actors of the public lighting field used to ask her advice. She also stated that she knew [REDACTED] from previous projects. It is therefore "possible" that she provided help to [REDACTED] to fill in the excel tables for Annexes III and IV. It is "conceivable" that a download copy of Annex III and IV were saved on her computer and was filled in by [REDACTED] and [REDACTED] together. [REDACTED] "could" use that original core table to fill in later on all project applications. [REDACTED] prepared the individual excel tables for the different Beneficiaries himself, [REDACTED] did not participate to it.

According to the statement of [REDACTED], it was him who asked [REDACTED] to provide assistance to fill in the excel tables for Annexes III and IV, because her professional competences and their previous professional relations. She helped to prepare a core document, adapted later on by [REDACTED] to each single project.

The above statements can not be considered as completely conform to the reality, because it results from the property of the different excel files submitted by the Beneficiaries that in most of the cases [REDACTED] **was the last person who modified those files** during the week-end before the submission of the project applications, when the BMR had to be re-calculated based on 100.000 hours lifetime duration instead of 50.000 because the modification of the call by the Managing Authority.³⁵

Summary concerning call KEOP-2012-5.5.0/A

On Friday 8 February 2013 the call for project applications was modified in relation to public lighting projects, it allowed to calculate with a life-time duration of 100.000 hours instead of the 50.000 hours initially foreseen. The condition was that if the lifetime taken into account exceeds 50.000 hours, the Beneficiary provides evidence that such calculation is realistic. This new condition applied only to **public lighting LED** projects.

- 1) **None of the beneficiaries could provide sufficient evidence that the lifetime of all LED lamps would be at least 100.000 hours.** Even the documents provided to OLAF by the Managing Authority and the Manufacturer at a later stage can not provide such evidence for all type of lamps supplied. Even if this

³⁵ See property of the excel files provided by the Managing Authority, OLAF.C.1(S)(2015)37209 (in each project, see 1sz \ 1. Pályázatás \ CD \ II. Mellékletek \ 9. ET \ 01. ÉP1, III Energetics study. For some project, the excel file is on the hp CD).

According to the property of documents collected during two forencis operations in May 2016 (collection of documents REQ 9094, indexation of documents REQ9394, analysis and bookmarking REQ9402).

would be the case, evidence provided today can not replace the OCM(2022)3843 - 31/01/2022 provide evidence at the moment of the project application. OLAF is not questioning if the lamps will last 25 years, but the fact that the beneficiaries did not provide it at the moment of the project application that the 25 years lifetime duration is realistic. The fact that the Managing Authority considered that "there is no professional consensus on the basis of which the 100.000 hours lifetime duration could be challenged" is not sufficient. The burden of proof that the 100.000 hours were realistic was on the applicant, it was not on the Managing Authority to prove the opposite.

- 2) The Managing Authority proposed to the Beneficiary to commit itself to sign maintenance contracts in the future for a maximum given price. As underlined by several Municipalities in their opportunity to comment letters, the Managing Authority requested practically all the Beneficiaries to engage themselves to conclude contracts in the future with third parties on conditions that they would not be able to accurately gauge, as those contracts will be negotiated according to the market prices applicable at that time in the future. In effect this constitutes a condition that is impossible to fulfil. **The Managing Authority gave the Beneficiaries a choice between two options: commit themselves to an impossible obligation, or receive a refusal of grant.** All 17 beneficiaries accepted the commitment in relation to the 25 years maintenance price, while such prices will clearly depend on the future evolution of market prices in the sector.
- 3) Even if the market price for maintenance would stay stable, the price of the maintenance contracts for the 17 projects would raise after 5 years, because for instance, the maintenance contract takes into account the fact that during the guarantee period, the pieces are furnished for free by the works company (which receives it under guarantee from the manufacturer).

██████████ stated that its staff had to work all the week-end of 9-10 February in order to modify the excel templates of all Beneficiaries. This means that the Beneficiaries filled in the tables taking into account 50.000 hours until 8 February, but then increased this to 100.000 hours.

██████████, who was involved in this huge amount of work during the week-end of 9-10 February, had no contract with the Beneficiary, or with any of the consultants to do this job. This would imply that she was asked unofficially to contribute to preparing and amending the applications. Later in the tender process the company, for which she was working, won all the tenders where she prepared the annexes to the project applications. This constitutes a serious conflict of interests.

The public procurement procedures conducted during the project implementation

In the 17 KEOP-2012-5.5.0./A projects, the beneficiaries published the call for tenders for works contract. The winner was in all 17 projects was ██████████

The threshold of Directive 2004/18 for works contracts was not reached, the tender was published only at national level and no publication took place at EU level.

During the implementation, the cost of the supply of lamps exceeded each time 60% of the works contract.

In relation to the 17 projects, 11 public procurement procedures were conducted (in the case of Cegléd, Zalaegerszeg, Kecskemét and Szekszárd, one procedure was conducted for the two projects of the same beneficiary), and 2 "3 offers procedures" were conducted (Mezőhegyes and Hévíz).

In all the 11 public procurement procedures, the beneficiaries required experience relating to LED public lighting projects (and not simply public lighting projects).

In the 2 "3 offers procedures", only public lighting project related experience was required (not necessarily LED). OCM(2022)2243 - 31/01/2022

Out of the 11 public procurement procedures, in 10 cases only one bid was received.

In one case (Cegléd) two bids were received, but the second bid (██████████) was declared non-compliant, because the certification of lighting measurement was not compliant with the required formalities, and the bidder did not send the required documents after the request for clarification.

In the 2 "3 offers procedures", the offers received were linked (not independent).

2.2.3.2. FACTS CONCERNING KEOP-5.5.0/A/12-2013-0168 – CEGLÉD I

(4) Project reference and title: KEOP-5.5.0/A/12-2013-0168 – Cegléd I "Közvilágítás energiatakarékos átalakítása (Belváros, Északi lakótelep, Öregszőlő-Kertváros)"

Beneficiary: Municipality of Cegléd, represented at the date of the signature of the Grant Agreement by ██████████ ██████████

Project application: 12.02.2013

Grant decision: 15.10.2013

Grant Agreement: 11.12.2013

Total eligible project amount: 392 099 507 HUF

Own financing according to the Grant Agreement: 15%, financed by own part grant ("önerő támogatás"), decision of the Prime Minister's Office of 20.07.2015.

Total amount of grant paid (entirely financed from European Cohesion Fund): 328 967 160 HUF

Main contract for the project implementation:

The call for tender was published on 07.01.2015 under reference KÉ-130/2015 with the deadline to tender set as 26.01.2015.

It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

According to chapter III. 2.3) of the call, the bidder was eligible only if it could prove that:

- P3) that during the last 2 years its income generated from contracts related to the subject of the public procurement (public lighting renovation with **LED** technology) was at least 370 000 000 HUF in total³⁶ (if company created since more than 2 years)
- M1/a) The bidder had an experience during the preceding 60 months of one single finished works contract of 370 000 000 HUF in the field of public lighting works, with minimum 2 800 **LED** lamps installed³⁷

³⁶ "P3) Az előző három üzleti évre vonatkozóan a közbeszerzés tárgya szerinti (közvilágítás kivitelezési-korszerűsítési munkák megvalósítása LED-es világítótestekkel) tevékenységből származó - általános forgalmi adó nélkül számított - árbevétele a vizsgált időtartamban összesen nem éri el legalább a nettó 370.000.000,-Ft-ot"

³⁷ "M.1.) a) az eljárást megindító felhívás feladásától visszafelé számított 60 hónapban nem rendelkezik, sikeres műszaki átadás-átvétellel lezárult, összesen egy darab közvilágítás kivitelezés tárgyában elvégzett LED fényforrással üzemelő világítótest kivitelezési (közvilágításkivitelezési munkák keretében a LED fényforrással üzemelő világítótest-lámpatest és fényforrás-egysége- szállítása és felszerelése, és üzembe helyezése) referenciával, amely referenciamegvalósítási értéke elérte minimum a nettó 370.000.000,-Ft összeget, és legalább 2.800 db LEDfényforrással üzemelő világítótest kivitelezésben (közvilágítás kivitelezési munkák keretében a LED fényforrással üzemelő világítótest-lámpatest és fényforrás-egysége- szállítása és felszerelése, és üzembe helyezése) történő megvalósítását tartalmazta."

- M1/b) during the preceding 60 months there was a period of consecutive weeks when the bidder installed minimum 168 lamps/week (LED or other lamps)³⁸
- "M2/a) it could propose an expert with the qualification of technical manager (műszaki vezető) which had the experience necessary to obtain the qualification as foreseen in the applicable Government Decree.³⁹

The call for bid listed the following requirements:

- Project Ceglég I: [REDACTED] lamps to be supplied and installed (different models, in total [REDACTED], 29 Budavár LED and [REDACTED] compact fluorescent lamp)
- Project Cegléd II: 1928 [REDACTED] lamps to be supplied and installed: [REDACTED] fluorescent lamps and [REDACTED] fluorescent lamps.
- The supply of "equivalent" lamps was also accepted.

The weighting was as follows: price for project I (40); price for project II (40); guarantee, maximum 60 months (10), late delay penalty (5), cancelled implementation penalty (5).

The Municipality received two bids during the public procurement procedure:

- [REDACTED] 282 715 300 HUF Cegléd I, 220 619 000 Cegléd II, 60 months guarantee, 0.80% late delay penalty, 7.99% cancelled implementation penalty
- [REDACTED] 294 650 150 HUF Cegléd I, 226 300 000 Cegléd II, 60 months guarantee, 0.45% late delay penalty, 10% cancelled implementation penalty

The bid of [REDACTED] was declared non-compliant because the bidder did not provide several documents requested during the clarification procedure, in particular statements from its bank, the correct format of certificates of measurement and certificates in relation to the LED experience.

On 10.04.2015 [REDACTED] signed a **works contract** with the Municipality for an amount of 282 715 300 HUF. The contract did not include planning, the authorised execution plans were provided by the Municipality. The estimated amount of contracts for Cegléd I + II according to the cost benefit calculation was 503 632 778 HUF, the final amount of Contract I + II signed was 503 334 300 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] was [REDACTED] (28 572 000 HUF). Supplier: [REDACTED], amount for projects Cegléd I + II 293 327 170 HUF (contract signed by [REDACTED])

Tender design: Tender plans signed [REDACTED] (see project application CD/Annexes/09.ET, plans)

Authorised execution plans: [REDACTED] (other 2 offers: [REDACTED])

Public Procurement consultant: no external consultant.

Project management consultant : [REDACTED]

Maintenance contract: The Municipality signed a maintenance contract with [REDACTED] on 1.8.2003, which was updated by amendment on 26.01.2016. According to the

³⁸ b) az eljárást megindító felhívás feladásától visszafelé számított 60 hónapban nem rendelkezik sikeres műszaki átadás-átvétellel lezárult, összesen egy darab közvilágítás kivitelezés-korszerűsítés tárgyában elvégzett olyan referenciával, ahol a szerződésteljesítésének ideje alatt minimum 4 naptári héten keresztül átlagosan heti legalább 168 db közvilágítási világítótest - fényforrás és lámpatest - felszerelését kellett elvégezni.

³⁹ "a) minimum 1 fő, legalább a 266/2013 (VII.11.) Korm. rendelet 1. melléklet/IV/3. rész/22. pontjában előírt felelős műszaki vezetői jogosultság megszerzéséhez szükséges, legalább az MV-VI-R névjegyzékbe vételi követelménynek megfelelő végzettséggel, illetve azzal egyenértékűnek tekintett végzettséggel, és a jogosultság megszerzéséhez szükséges szakmai gyakorlattal (tapasztalattal) rendelkező szakemberre."

updated contract, valid until 31.7.2018, the maintenance of the lamps concerning the KEOP projects of Cegléd is 1 050 HUF excl. VAT. OCM(2022)3243 - 31/01/2022

According to the cost benefit calculation of the two projects, in KEOP-5.5.0/A/12-2013-0168 the maintenance cost was estimated to 3 186 430 HUF (incl. VAT) for 2 381 lamps (1 054 HUF/lamp + 27% VAT) and in KEOP-5.5.0/A/12-2013-0169 it was estimated to 2 854 440 HUF (incl. VAT) for 2 000 lamps (1 136 HUF/lamp + 27% VAT). The cost of 1 050 HUF of the current maintenance contract is slightly under what was foreseen as maximum average annual cost in the cost-benefit calculation. The number of lamps installed is also finally slightly lower for project II.

The project is still in the guarantee period of 5 years, which means that in case of malfunction the components to be replaced are provided by the works contractor for free. There is no evidence that at the end of the guarantee period of 5 years [REDACTED] will accept to provide the maintenance for the same amount while it will have to pay the replacement components in addition. After 15 years, the costs of components to be replaced should increase even more.

2.2.3.3. FACTS CONCERNING KEOP-5.5.0/A/12-2013-0169 – CEGLÉD II

(5) Project reference and title: KEOP-5.5.0/A/12-2013-0169 – Cegléd II “közvilágítás energiatakarékos átalakítása (Keleti kertváros, Cifrakertdűlő, Nyugati Kertváros)”

Beneficiary: Municipality of Cegléd, represented at the date of the signature of the Grant Agreement by [REDACTED], [REDACTED]

Project application: 12.02.2013

Grant decision: 15.10.2013

Grant Agreement: 11.12.2013

Total eligible project amount: 310 532 600 HUF

Own financing according to the Grant Agreement: 15%, financed by own part grant (“önerő támogatás”), decision of the Prime Minister’s Office of 20.07.2015.

Total amount of grant paid (entirely financed from European Cohesion Fund): 259,638,644.

Main contract for the project implementation:

The call for tender was published on 07.01.2015 under reference KÉ-130/2015 (see above).

On 10.04.2015 [REDACTED] signed a **works contract** with the Municipality for an amount of 220 619 000 HUF. The estimated amount of contracts for Cegléd I + II according to the cost benefit calculation was 503 632 778 HUF, the final amount of Contract I + II signed was 503 334 300 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] was [REDACTED] (23 136 000 HUF). Supplier: [REDACTED], amount for projects Cegléd I + II 293 327 170HUF (contract signed by S [REDACTED] [REDACTED])

Tender design: Tender plans signed [REDACTED] [REDACTED] [REDACTED] (see project application CD/Annexes/09.ET, plans)

Authorised execution plans: [REDACTED] other 2 offers: [REDACTED]

Public Procurement consultant: no external consultant.

Project management consultant : [REDACTED]

Maintenance contract: see above, Cegléd I.

2.2.3.4. FACTS CONCERNING KEOP-5.5.0/A/12-2013-0175 TAPOLCA OCM(2022)3243 - 31/01/2022

(6) Project reference and title: KEOP-5.5.0/A/12-2013-0175 "Közvilágítás korszerűsítése Tapolca városában"

Beneficiary: Municipality of Tapolca, represented at the date of the signature of the Grant Agreement by [REDACTED], [REDACTED]

Project application: 12.02.2013

Grant decision: 15.10.2013

Grant Agreement: 17.12.2013

Total eligible project amount: 351 601 487 HUF

Own financing according to the Grant Agreement: 15%, financed by own part grant ("önerő támogatás"), decision of the Prime Minister's Office of 18.06.2014.

Total amount of grant paid (entirely financed from European Cohesion Fund): 298 861 265 HUF.

Main contract for the project implementation:

The call for tender was published on 20.12.2013 under reference KÉ-22926/2013 with deadline to tender on 07.01.2014.

It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

According to chapter III. 2.3) of the call, the bidder was eligible only if it could prove that:

- P3) that during the last 2 years its income generated from contracts related to the subject of the public procurement (public lighting renovation with **LED** technology) was at least 200 000 000 HUF/year (if company created since more than 2 years)
- M1/a) The bidder had an experience during the preceding 60 months of one single finished works contract of 200 000 000 HUF in the field of public lighting works, with minimum 1 500 **LED** lamps installed
- M1/b) during the preceding 60 months there was a period of consecutive 3 weeks when the bidder installed minimum 200 lamps/week (LED or other lamps)
- M2/a) it could propose an expert with the qualification of technical manager (műszaki vezető) which had an experience of one single finished works contract of minimum 200 000 000 HUF in the field of public lighting works (not necessary LED).

The call for bid listed 1838 lamps to be supplied with the exact technical description of [REDACTED] lamps ([REDACTED]).

The Municipality received one bid during the public procurement procedure, the bid of [REDACTED]

On 13.02.2014, [REDACTED] signed a **design and works contract** with the Municipality for an amount of 249 568 610 HUF. The estimated amount of the contract according to the cost benefit calculation was 249 917 783 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] was [REDACTED] (22 704 000 HUF). Supplier: [REDACTED], 167 168 851 HUF (contract signed by [REDACTED])

Tender design: Tender plans signed [REDACTED] [REDACTED] [REDACTED] (see project application CD/Annexes/09.ET, plans)

Public Procurement consultant: no external consultant.

Project management consultant : [REDACTED]

Project preparation consultant (preliminary study, project application): [REDACTED] and its sub-contractor, [REDACTED]

2.2.3.5. FACTS CONCERNING KEOP-5.5.0/A/12-2013-0180 - Kecskemét II. Ütem - OCM(2017)3243 - 31/01/2022

(7) Project reference and title: KEOP-5.5.0/A/12-2013-0180 - Kecskemét II Ütem- "közvilágítási hálózat korszerűsítése - Bethlenváros, E 75-ös út, Ipari Park, Katonatelep, Máriaváros, Szent István város"

Beneficiary: Municipality of Kecskemét, represented at the date of the signature of the Grant Agreement by [REDACTED], [REDACTED]

Project application: 12.02.2013

Grant decision: 15.10.2013

Grant Agreement: 30.12.2013

Total eligible project amount: 413 000 000 HUF

Own financing according to the Grant Agreement: 15%, financed by own part grant ("önerő támogatás"), decision of the Prime Minister's Office of 17.03.2014.

Total amount of grant paid (entirely financed from European Cohesion Fund): 346 027 762 HUF.

Main contract for the project implementation:

The call for tender was published on 11.12.2013 under reference KÉ-22762/2013.

It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

According to chapter III. 2.3) of the call, the bidder was eligible only if it could prove that:

- P3) that during the last 2 years its income generated from contracts related to the subject of the public procurement (public lighting renovation with **LED** technology) was at least 200 000 000 HUF (if company created since more than 2 years)
- M1/a) the bidder had the experience during the preceding 60 months of two finished works contracts amounting in total 630 000 000 HUF in the field of **LED** public lighting works, and one of them should amount to at least 450 000 000 HUF with minimum 4 500 **LED** lamps installed
- M1/b) during the preceding 60 months there was a period of consecutive 5 weeks when the company installed minimum 400 lamps/week (LED or other lamps)
- M2/a) it could propose an expert with the qualification of technical manager (műszaki vezető) which had an experience of one single finished works contract of 200 000 000 HUF in the field of public lighting works (not necessary LED).⁴⁰

The call for tender listed 3053 lamps (first project) and 2239 lamps (second project) to be supplied with the exact technical description of [REDACTED] lamps ([REDACTED]).

The Municipality received one bid during the public procurement procedure, the bid of [REDACTED]

On 22.04.2014 [REDACTED] signed a **works contract** with the Municipality for an amount of 290 996 671 HUF. The estimated amount of the contract according to the cost benefit calculation was 291 099 050 HUF. The design was not included into the works contract, the design was provided by the Municipality.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] was [REDACTED] (28 384 000 HUF excl. VAT). Supplier: [REDACTED] 176 007 904 HUF (contract signed by [REDACTED])

⁴⁰ "a) legalább 1 fő legalább a 244/2006 (XII.5.) Korm. rendelet 1. melléklet/II. Rész/8.2. pontjában előírt felelős műszaki vezetői jogosultság megszerzéséhez szükséges a b) pont szerinti névjegyzékbe vételi követelménynek megfelelő végzettséggel és szakmai gyakorlattal (tapasztalattal) rendelkező szakemberrel. A szakembernek rendelkeznie kell legalább 1 db minimum nettó 200.000.000,-Ft-os összeget elérő közvilágítás korszerűsítés kivitelezése során szerzett szakmai tapasztalattal."

Tender design: Tender plans signed [REDACTED] [REDACTED] (see project application OCM(2022)3243 - 31/01/2022 CD/Annexes/09.ET, plans)

Authorised execution plans: [REDACTED] [REDACTED] (other two offers: [REDACTED])

Public Procurement consultant: [REDACTED]

Project management consultant : [REDACTED]

Project preparation consultant (preliminary study, project application): [REDACTED]

Maintenance contract: according to the cost benefit calculation, the average annual cost of the maintenance was planned to be maximum 6 953 250 HUF incl. VAT for projects Kecskemét I and II.

The Municipality signed the maintenance contract with [REDACTED] and [REDACTED] for a period of 2 years, the contract is valid until 31.12.2018. The project is still in the guarantee period of 5 years, which means that in case of malfunctioning the works contractor should provide for free the components to be replaced. However, the price of the current maintenance contract for the two projects foresees a cost of 85.6HUF + 27% VAT/months/lamp. Taking into account 3053 new lamps + 3 renewed in project Kecskemét I, and 2239 + 43 in project Kecskemét II, there is a total of 5338 modernised lamps concerned by the maintenance contract. Counting with 85.6HUF + 27% VAT/months this means 6 963 656 HUF/year, which already exceeds what was foreseen in the BMR (6 953 250 HUF/year in total for the two projects).⁴¹

In its opportunity to comment letter the Beneficiary explained that after 31.12.2018 a new contract will be signed following a tender procedure, probably for 2-3 years. After the 15 years period, as foreseen in the Grant Agreement, the Beneficiary will make the lumen measurements and according to the results foresees additional maintenance works contracts.

Such works, if needed, will necessarily be in addition to the basic maintenance costs.

2.2.3.6. FACTS CONCERNING PROJECT KEOP-5.5.0/A/12-2013-0182 - ZALAEGRSZEG II

(8) Project reference and title: KEOP-5.5.0/A/12-2013-0182 - "Közvilágítás energiatakarékos átalakítása Zalaegerszegen, II. ütem"

Beneficiary: Municipality of Zalaegerszeg, represented at the date of the signature of the Grant Agreement by [REDACTED], [REDACTED]

Project application: 12.02.2013

Grant decision: 15.10.2013

Grant Agreement: 20.12.2013

Total eligible project amount: 581 631 193 HUF

Own financing according to the Grant Agreement: 15%, financed by own part grant ("önerő támogatás"), decision of the Prime Minister's Office of 18.06.2015.

Total amount of grant paid (entirely financed from European Cohesion Fund): 493 414 918 HUF.

Main contract for the project implementation:

The call for tender was published on 31.10.2014 under reference KÉ-23119/2014 with deadline to tender on 18.11.2014, to award the works and design contracts for both projects of Zalaegerszeg.

⁴¹ According to the letter of opportunity to comment of the Beneficiary, there are 5 393 LED lamps concerned by the maintenance contract. The total cost of maintenance is 7 035 405 HUF incl. VAT (5 540 000 HUF + 27% VAT).

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 It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

According to chapter III. 2.3) of the call, the bidder was eligible only if it could:

- P3) that during the last 3 years its income generated from contracts related to the subject of the public procurement (public lighting renovation with **LED** technology) was at least 50 000 000 HUF/year (if company created since more than 3 years)
- M1/a) The bidder had an experience during the preceding 60 months of one single finished works contract of 500 000 000 HUF in the field of public lighting works, with minimum 4 500 **LED** lamps installed
- M1/b) during the preceding 60 months there was a period of consecutive 4 weeks when the company installed minimum 300 lamps/week (LED or other lamps)
- M2/a) it could propose an expert with the qualification of technical manager (műszaki vezető) which had an experience of one single finished works contract of 200 000 000 HUF or at least 1.500 lamps in the field of public lighting works (not necessary LED).

The call for bid listed 2935 lamps (project I) and 2942 lamps (project II) to be supplied and installed with the exact technical description of [REDACTED] lamps. The tender documentation contained an excel table to be filed in by the bidder, with the detailed budget items and it named the exact type of [REDACTED] lamps (different [REDACTED] lamps).

The Municipality received one bid during the public procurement procedure, the bid of [REDACTED]

On 23.01.2015 [REDACTED] signed a **design and works contract** with the Municipality for an amount of 425 216 000 HUF (estimated amount of contract according to the cost benefit calculation: 425 267 317 HUF).

Sub-contractors, suppliers: The sub-contractor of [REDACTED] was [REDACTED] (46 344 720 HUF: 40 794 172 HUF works + 1 100 000 HUF lighting measurements+ 4 450 000 HUF design). Supplier: [REDACTED] the total amount of supply for Zalaegerszeg I + II was 660 006 099 HUF.

Tender design: [REDACTED] signed a contract with the beneficiary to draft the tender plans (annex to the project application and used for the tender procedure). The tender plans were signed by [REDACTED] [REDACTED] as independent electricity engineer (see project application CD/Annexes/09.ET, plans).

Authorised execution plans: included into the works contract, drafted by [REDACTED] [REDACTED] as sub-contractor of [REDACTED]

Public Procurement consultant: [REDACTED]

Project management consultant and supervisor engineer : Consortium composed by [REDACTED] and [REDACTED]

Project preparation consultant (preliminary study, project application): 1st contract [REDACTED] [REDACTED] (project documentation) and 2nd contract [REDACTED] (tender plans).

The beneficiary had to provide 3 independent indicative offers in the project application from 3 designers, in order to establish the market price of the design contract in view of the Grant Agreement. Those 3 indicative offers were submitted by [REDACTED] [REDACTED] (independent designer), [REDACTED] and [REDACTED]. The offers of [REDACTED] [REDACTED] were drafted on the same computer.⁴²

The beneficiary had to provide 3 independent indicative offers in the project application from 3 supervisor engineers, in order to establish the market price of the supervisor

⁴² All "indicative offers" are on the CDs received from the Managing Authority, OLAF.C.1(S)(2015)37209. Under each project, the 3 "indicative offers" are on the missing documents "HP" CD, 1. Pályáztatás \ HP_CD \ Pályázat \ II. Mellékletek \ 5. AJÁNL.

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 engineer contract in view of the Grant Agreement. Those 3 indicative offers were submitted by [REDACTED] (later called [REDACTED]) are both partially owned by [REDACTED].

The beneficiary had to provide 3 independent indicative offers in the project application from 3 project management consultants, in order to establish the market price of the project management contract in view of the Grant Agreement. Those 3 indicative offers were submitted by [REDACTED]. All three offers were also printed on a paper with the footer of [REDACTED].

It should be pointed out in its letter of comments on the facts concerning it, the Beneficiary stated that it was included into the tasks of [REDACTED] to provide the three offers for the costs estimation of the works contract and for the above mentioned service contracts.

Several indicative offers, annexes to the project application, were not signed but accepted by the Managing Authority to establish the market price.

Maintenance contract:

According to the project application (Annex III, Energetics study), the maintenance cost before the renovation was 5 164 414 HUF/year incl VAT, after the renovation it should be maximum 1 098 550 HUF/year incl VAT for each project. This means that the maximum cost according to the BMR calculation should be 374.3 HUF/lamp/year incl VAT in Project II (2935 lamps) and 373.4 HUF/lamp/year incl VAT in Project I (2942 lamps).

On 04.12.2015 the Municipality signed the maintenance contract with [REDACTED] and [REDACTED] following a national open tender. The contract is valid until 31.12.2020. The cost of maintenance for LED lamps is 990 HUF + 27% VAT/lamp/year. The total amount is 3 690 175 HUF/year incl VAT (2 905 650 HUF + 27% VAT) for Project II and 3 698 977 HUF/year incl VAT (2 912 580 HUF/year + 27% VAT) for Project I. This is nearly three times the estimated amount compared to the one used in the BMR calculation, while the project is still in the guarantee period of 5 years, which means that in case of malfunctioning the replacement of components is provided by the works contractor for free.

The Municipality stated to the Managing Authority (letter to the NFM of 29.6.2017) and to OLAF (letter OCM(2017)22499 of 31.10.2017) that the current maintenance contract is less than 50% of the maximum estimated cost, which was 1864 HUF + 27% VAT/lamp. However, this constitutes an erroneous statement, because according to the BMR calculation, the maximum maintenance costs was estimated to 374.6 HUF and 373 4 HUF (see above).

2.2.3.7. FACTS CONCERNING PROJECT KEOP-5.5.0/A/12-2013-0184 – MEZŐHEGYES

(9) Project reference and title: KEOP-5.5.0/A/12-2013-0184 – Mezőhegyes közvilágítás energiatakarékos átalakítása”

Beneficiary: Municipality of Mezőhegyes, represented at the date of the signature of the Grant Agreement by [REDACTED], [REDACTED]

Project application: 12.02.2013

Grant decision: 15.10.2013

Grant Agreement: 13.12.2013

Total eligible project amount: 192 000 000 HUF

Own financing according to the Grant Agreement: 15%, financed by own part grant (“*önerő támogatás*”), decision of the Prime Minister’s Office of 18.06.2014.

Total amount of grant paid (entirely financed from European Cohesion Fund): 161 218 486 HUF.

Main contract for the project implementation:

The Municipality conducted a procurement procedure without publication according to **Article 122/A of the Kbt.** (so called “3 offers procedure”) in view to sign a **works**

contract (only works, no design included). The result of the procedure was published under reference KÉ 18435/2014.

According to chapter n.M1 of the invitation to bid, the bidder was eligible only if it could prove that it implemented during the preceding 60 months one experience of works in the field of public lighting (**not necessarily LED technology**) amounting at least to 70 000 000 HUF.

The call for bid listed 1 274 [REDACTED] lamps to be supplied ([REDACTED]). The supply of "equivalent" lamps was accepted.

The invitation to bid was sent on 7.7.2014 to [REDACTED] and [REDACTED]. [REDACTED] is also the company which provided the preliminary offer for the price estimation in the project application.

[REDACTED] provided two preliminary offers to two of the potential bidders. The proposed price for the same list of lamps was:

- Offers to [REDACTED] 75 304 852 HUF, offers issued under reference number SO14003060-1 and SO14003060-2 on 14.07.2014 valid until 29.08.2014.
- Offer to [REDACTED] 112 162 665 HUF offer issued under reference number SO14003142-1 on 17.07.2014 and valid until 29.08.2014

The Municipality received two bids:

- [REDACTED] 135 625 838 HUF
- [REDACTED] 136 311 272 HUF.

The two bids were compliant.

Both [REDACTED] calculated their item prices based on the item prices contained in the offers issued by [REDACTED] to [REDACTED] (reference number SO14003060-1 and SO14003060-2).

Considering that the price of [REDACTED] to [REDACTED] is the reference price (100%), the price of [REDACTED] was calculated by multiplying the cost lines with 1,37; while the [REDACTED] multiplied the same lines with 1,38 and 1,39. So [REDACTED] did not use as a base the offer they have received from [REDACTED] but the one [REDACTED] has received from [REDACTED]

On 19.08.2014 [REDACTED] signed a **works contract** with the Municipality for an amount of 135 625 838 HUF. The estimated amount of contract according to the cost benefit calculation was 136 341 552 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] was [REDACTED] (15 313 000 HUF). Supplier: [REDACTED] 75 304 852 HUF (contract signed by [REDACTED])

Tender design: Tender plans signed [REDACTED] (see project application CD/Annexes/09.ET, plans)

Project preparation consultant 1: [REDACTED] (preparation of technical documentation in view of the project application, authorised execution plans).

Project preparation consultant 2.: [REDACTED] (Project application drafting)

Authorised execution plans: Execution plans signed by [REDACTED]

Public Procurement consultant : [REDACTED]

Project management consultant : [REDACTED]

Maintenance contract: On 15.01.2008 the Municipality signed a maintenance contract with [REDACTED] valid until 30.11.2018. On 15.06.2015 the Municipality and [REDACTED] signed an amendment integrated into a new consolidated contract (*egységes szerkezetbe foglalt módosítás*), valid until 30.11.2018.

The project is still in the guarantee period of 5 years, which means that in case of malfunction the components to be replaced are provided by the works contractor for free. However, the price of the maintenance contract already exceeds by more than 17% what was foreseen as maximum average annual cost in the cost-benefit calculation for the 25 years after the project implementation. It was planned to be 1 944 370 HUF/year and

Mezőhegyes has a maintenance contract for 2 280 697 HUF/year at the time of the tender (the contract prescribes an additional fee of 19545 HUF/replacement work in its articles).

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According to the consolidated amended contract, the cost of "standby service" (*készenléti szolgáltatás*) is:

- for the LED lamps of the KEOP project ("KEOP LED fejlesztésben érintett LED típusú lámpatestek üzemeltetési átalánydíja") is 97 558 HUF + 27% VAT/month, i.e. 1 170 696 HUF+ 27% VAT/year (1 486 784 HUF incl VAT).
- For the non LED lamps of the KEOP project ("KEOP LED fejlesztésben érintett NEM LED típusú lámpatestek üzemeltetési átalánydíja") is 52 094 HUF + 27%VAT/month, i.e. 793 913 HUF/year incl. VAT
- Any reparation of LED lamps of the KEOP project ("KEOP LED fejlesztésben érintett LED típusú lámpatestek egyedi hibajavítás díja") would be in addition 15 390 HUF + 27% VAT, only cost of the work excluding replacement pieces.

Not counting any reparation fee, the total maintenance cost of the KEOP project lamps is 2 280 697 HUF/year.

In the project application data file ("*pályázati adatlap*"), under chapter 5.1. Scope of the project, the Beneficiary planned that the maintenance cost would be 1 000 HUF + 27% VAT/month/LED lamp and 2 000 HUF+ 27% VAT /month/Non LED lamp, exactly as it was calculated in the BMR (1017 LED lamps and 257 non LED lamps, 1 944 370 HUF/year incl VAT).

In the letter of opportunity to comment on the facts concerning it stated (no supporting document provided) that the energy consumption costs (*közvilágítási díj*) of the year after the project implementation were 8 Million HUF lower than the yearly cost before the renovation.

This does not contradict the fact that the maintenance cost (*üzemeltetési és karbantartási díj*) is already 17% higher of what it was planned to be.

2.2.3.8. FACTS CONCERNING PROJECT KEOP-5.5.0/A/12-2013-0186 KECSKEMÉT (I ÜTEM)

(10) Project reference and title: "Kecskemét Megyei Jogú Város közvilágítási hálózatának korszerűsítése I Ütem - Árpád város, Belváros, Homokbánya, Hunyadváros, Kisfái, Nagykörúton belül, Talfája, Ürgés"

Beneficiary: Municipality of Kecskemét, represented at the date of the signature of the Grant Agreement by [REDACTED], [REDACTED]

Project application: 12.02.2013

Grant decision: 15.10.2013

Grant Agreement: 30.12.2013

Total eligible project amount: 575 000 000 HUF

Own financing according to the Grant Agreement: 15%, financed by own part grant ("*önerő támogatás*"), decision of the Prime Minister's Office of 17.03.2014.

Total amount of grant paid (entirely financed from European Cohesion Fund): 483 799 887 HUF.

Main contract for the project implementation:

Following the public procurement procedure KÉ 22762/2013 (see above), on 22.04.2014 [REDACTED] signed a **works contract** with the Municipality for an amount of 413 238 884 HUF. The estimated amount of contract according to the cost benefit calculation was 413 136 645 HUF. The design was not included into the works contract, the design was provided by the Municipality.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] was [REDACTED] 43 - 31/01/2022 (37 732 000 HUF excl. VAT). Supplier: [REDACTED] 251 732 198 HUF (contract signed by [REDACTED])

Tender design: Tender plans signed [REDACTED] (see project application CD/Annexes/09.ET, plans)

Authorised execution plans: [REDACTED] (other two offers: [REDACTED])

Public Procurement consultant: [REDACTED]

Project management consultant : [REDACTED]

Project preparation consultant (preliminary study, project application): [REDACTED]

2.2.3.9. FACTS CONCERNING PROJECT KEOP-5.5.0/A/12-2013-0191 ZALAEGERSZEG I

(11) Project reference and title: KEOP-5.5.0/A/12-2013-0191 "Közvilágítás energiatakarékos átalakítása Zalaegerszegen, I. ütem"

Beneficiary: Municipality of Zalaegerszegen MJV, represented at the date of the signature of the Grant Agreement by [REDACTED], [REDACTED]

Project application: 12.02.2013

Grant decision: 15.10.2013

Grant Agreement: 20.12.2013

Total eligible project amount: 577 653 361 HUF

Own financing according to the Grant Agreement: 15%, financed by own part grant ("önerő támogatás"), decision of the Prime Minister's Office of 18.06.2015.

Total amount of grant paid (entirely financed from European Cohesion Fund): 489 489 261 HUF.

Main contract for the project implementation:

The call for tender was published on 31.10.2014 under reference KÉ-23119/2014 with deadline to tender on 18.11.2014, to award the works and design contracts for both 2 projects of Zalaegerszeg (for the details of the procedure, see above).

On 23.01.2015 [REDACTED] signed a **design and works contract** with the Municipality for an amount of 425 412 000 HUF. The estimated amount of contract according to the cost benefit calculation was 426 135 166 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] was [REDACTED] (46 719 140 HUF = 41 119 140 HUF works + 1 100 000 HUF lighting measurements + 4 500 000 HUF design). Supplier: [REDACTED], the total amount of supply for Zalaegerszeg I + II was 660 006 099 HUF.

Tender design: [REDACTED] signed a contract with the beneficiary to draft the tender plans (annex to the project application and used for the tender procedure). The tender plans were signed by [REDACTED] [REDACTED] as independent electricity engineer (see project application CD/Annexes/09.ET, plans)

Authorised execution plans: the implementation design was included into the works contract, drafted by [REDACTED] [REDACTED] as sub-contractor of [REDACTED]

Public Procurement consultant: [REDACTED]

Project management consultant : Consortium composed by [REDACTED] [REDACTED] And [REDACTED]

Maintenance contract: see above, 2.2.3.6.

Project preparation consultant (preliminary study, project application) OCM(2022)3243 - 31/01/2022
 contract [REDACTED] (project documentation) and
 2nd contract [REDACTED] (tender plans).

The comments related to the "independent indicative offers", as well as the comments in relation to the maintenance contract for project Zalaegerszeg II applies also for project Zalaegerszeg I.

2.2.3.10. FACTS CONCERNING PROJECT KEOP-5.5.0/A/12-2013-0194 - HÉVÍZ

(12) Project reference and title: KEOP-5.5.0/A/12-2013-0194 - Hévíz város, közvilágítás energiatakarékos átalakítása

Beneficiary: Municipality of Hévíz, represented at the date of the signature of the Grant Agreement by [REDACTED], [REDACTED]

Project application: 12.02.2013

Grant decision: 15.10.2013

Grant Agreement: 09.12.2013

Total eligible project amount: 186 500 814 HUF

Total eligible project amount: 577 653 361 HUF

Own financing according to the Grant Agreement: 15%, financed by own part grant ("önerő támogatás"), decision of the Prime Minister's Office of 27.05.2014.

Total amount of grant paid (entirely financed from European Cohesion Fund): 158 192 636 HUF.

Main contract for the project implementation:

The Municipality conducted a procurement procedure without publication according to Article 122/A of the Kbt. (so called "3 offers procedure") in view to signing a **works contract**.

The "three offers procedure" of **Article 122/A of the Kbt.** was applicable to procedures for which the estimated amount did not exceed 25 000 000 HUF in case of supply or service contracts, or 150 000 000 HUF for works contracts.

The call for tender was sent on 15.01.2014 to [REDACTED] and [REDACTED]

The call for bids listed 885 lamps to be supplied. The manufacturer was not mentioned, but all the different lamps described had exactly the characteristics of [REDACTED] lamp types.

The bidder was eligible only if it could prove that it implemented during the preceding 60 months, one single project experience of works in the field of public lighting (**not necessarily LED technology**) amounting at least to 70 000 000 HUF.

On 28.01.2014 [REDACTED] provided three preliminary offers to the three potential bidders. The proposed price for the same list of lamps was:

- [REDACTED] 81 327 775 HUF (offer SO14000368-1)
- [REDACTED], 91 296 025 HUF (offer ref. SO14000385-1), 2014.01.28, 2014.02.28
- [REDACTED] 91.296.025HUF (offer ref. SO14000407-1)

The Municipality received three bids:

- [REDACTED] 132 742 860 HUF (excl. VAT)
- [REDACTED] 142 034 860 HUF (excl. VAT)
- [REDACTED] 144 689 717 HUF (excl. VAT)

Considering that the price of [REDACTED] is the reference price (100%), the two other competitors price is increased respectively by 7% ([REDACTED]) and 9% ([REDACTED]) not only regarding the total amount of the offer, but also for each

item, for all 48 cost lines including work items, measurements and each lamp type. A detailed analysis of how those offers were drafted necessarily by the same person.⁴³

On 25.02.2014 [REDACTED] signed a **works contract** with the Municipality for an amount of 132 742 860 HUF. The estimated amount of contract according to the cost benefit calculation was 132 971 955 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] was [REDACTED] (10 320 000 HUF). Supplier: [REDACTED] 81 327 881 HUF (contract signed by [REDACTED])

Project preparation consultant 1, including tender design: [REDACTED] signed a contract with the beneficiary to prepare the energetics study and to draft the tender plans (both were compulsory annexes of the project application and used for the tender procedure). The tender plans were signed by [REDACTED] [REDACTED]'s independent electricity engineer (see project application CD/Annexes/09.ET, plan [REDACTED])

Project preparation consultant 2.: [REDACTED] (Project application drafting)

Authorised execution plans: [REDACTED] signed a contract with the beneficiary to draft the authorised execution plans.

Public Procurement consultant: [REDACTED],

Project management consultant : [REDACTED]

2.2.3.11. FACTS CONCERNING PROJECT KEOP-5.5.0/A/12-2013-0202 - VÁC

(13) Project reference and title: KEOP-5.5.0/A/12-2013-0202 - Vác Város, közvilágítás energiatakarékos átalakítása

Beneficiary: Municipality of Vác, represented at the date of the signature of the Grant Agreement by [REDACTED]

Project application: 12.02.2013

Grant decision: 15.10.2013

Grant Agreement: 17.12.2013

Total eligible project amount: 583 999 998 HUF

Own financing according to the Grant Agreement: 87 600 000 HUF (there is no data available in Emir if this was provided through an additional grant or other sources).

Total amount of grant paid (entirely financed from European Cohesion Fund): 489 348 153 HUF.

Main contract for the project implementation:

The call for tender was published on 31.10.2014 under reference KÉ-23109/2014 with deadline to tender on 20.11.2014.

It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

According to chapter III. 2.3) of the call, the bidder was eligible only if it could prove that:

- P3) that during the last 3 years its income generated from contracts related to the subject of the public procurement (public lighting renovation with **LED** technology) was at least 350 000 000 HUF/year (if company created since more than 3 years)
- M1/a) The bidder had an experience during the preceding 60 months of one single finished works contract of 350 000 000 HUF in the field of public lighting works, with minimum 3 100 **LED** lamps installed
- M1/b) during the preceding 60 months there was a period of consecutive 4 weeks when the company installed minimum 250 lamps/week (LED or other lamps)

⁴³ See note to the file OCM(2017)7940.

- M2/a) it could propose an expert with the qualification of technical manager (műszaki vezető) which had an experience of 12 months in the field of public lighting works (not necessary LED).

The call for bid listed 3 260 lamps to be supplied with the exact technical description of [REDACTED] lamps.

The Municipality received one bid during the public procurement procedure, the bid of [REDACTED]

On 25.02.2015 [REDACTED] signed a **works and design contract** with the Municipality for an amount of 421 185 900 HUF. The estimated amount of contract according to the cost benefit calculation was 421 238 688 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] [REDACTED] was [REDACTED] [REDACTED] (22 416 000 HUF). Supplier: [REDACTED] 238 644 663 HUF (contract signed by [REDACTED])

Tender design: Tender plans signed [REDACTED] [REDACTED] [REDACTED] (see project application CD/Annexes/09.ET, plans)

Project preparation consultant: [REDACTED] [REDACTED] Preliminary study, project preparation and Energetics study. The Energetics study was drafted by the sub-contractor [REDACTED]

Public Procurement consultant: None.

Project management consultant : None.

Supervisor Engineer : [REDACTED]

Maintenance contract: The Municipality of Vác did not provide a maintenance contract covering the 25 years period. Instead, it provided on 25.11.2013 a statement, in which it took the engagement that after 15 years (end of the project maintenance period, 60.000 hours life time of the lamps), it will do measurements of the lamps and it will change some components if needed to ensure the life-duration of 100.000 hours. Vác promised that the change of such components will be done without increasing the maintenance cost above the amount foreseen.

No supporting document, no maintenance contract, no offer from maintenance companies was attached to the statement.

2.2.3.12. FACTS CONCERNING PROJECT KEOP-5.5.0/A/12-2013-0226 - KALOCSA

(14) Project reference and title: KEOP-5.5.0/A/12-2013-0226 - Kalocsa város, közvilágítás energiatakarékos átalakítása

Beneficiary: Municipality of Kalocsa, represented at the date of the signature of the Grant Agreement by [REDACTED]

Project application: 13.02.2013

Grant decision: 15.10.2013

Grant Agreement: 20.12.2013

Total eligible project amount: 566 920 052 HUF

Own financing according to the Grant Agreement: 15%, financed by own part grant ("önerő támogatás"), decision of the Prime Minister's Office of 18.06.2014.

Total amount of grant paid (entirely financed from European Cohesion Fund): 479 440 391 HUF.

Main contract for the project implementation:

The call for tender was published on 29.08.2014 under reference KÉ-17731/2014 with deadline to tender on 15.09.2014.

It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

According to chapter III. 2.3) of the call, the bidder was eligible only if it could prove that:

- P3) that during the last 3 years its income generated from contracts (OCM(2022)3243 - 31/01/2022) subject of the public procurement (public lighting renovation with **LED** technology) was at least 330 000 000 HUF/year (if company created since more than 3 years).
- M1/a) The bidder had an experience during the preceding 60 months one or maximum two finished works contract of which the total amount was at least 330 000 000 HUF in the field of public lighting works, with minimum 2 800 **LED** lamps installed.
- M1/b) during the preceding 60 months there was a period of consecutive 4 weeks when the company installed minimum 250 lamps/week (LED or other lamps) within one or maximum two works contracts.
- M2/a) it could propose an expert with the qualification of technical manager (műszaki vezető) which had an experience of one single finished works contract of 200 000 000 HUF or at least 1.500 lamps in the field of public lighting works (not necessary LED).

The call for bid listed 2 998 lamps to be supplied with the exact technical description of [REDACTED] lamps.

The weighting was as follows: price (60); guarantee, maximum 60 months (10), late delay penalty (15), cancelled implementation penalty (15).

The Municipality received only one bid during the public procurement procedure, the bid of [REDACTED]

On 05.11.2014 [REDACTED] signed a **works contract** with the Municipality for an amount of 409 552 136 HUF. The estimated amount of contract according to the cost benefit calculation was 409 985 912 HUF.

Sub-contractors, suppliers: The sub-contractors of [REDACTED] were [REDACTED] (29 106 734 HUF) and [REDACTED] (11 900 000 HUF). The supplier was [REDACTED], 266 423 204 HUF (contract signed by [REDACTED])

Tender design: Tender plans signed [REDACTED] (see project application CD/Annexes/09.ET, plans)

Authorised execution plans: [REDACTED], signed a contract with the beneficiary to draft the authorised execution plans.

Public Procurement consultant: [REDACTED]

Project management consultant : [REDACTED]

Project preparation consultant 1, including tender design: [REDACTED] signed a contract with the beneficiary to prepare the energetics study and to draft the Technical documentation for project application, including the tender plans (both were compulsory annexes of the project application, and used for the tender procedure). The tender plans were signed by [REDACTED] independent electricity engineer (see project application CD/Annexes/09.ET, [REDACTED])

Project preparation consultant 2.: [REDACTED] Project application drafting)

2.2.3.13. FACTS CONCERNING PROJECT KEOP-5.5.0/A/12-2013-0235 - SZEKSZÁRD I

(15) Project reference and title: KEOP-5.5.0/A/12-2013-0235 - Szekszárd I - Szekszárd Megyei Jogú Város Közvilágítása energiatakarékos átalakítása I (Alsó-Páskum, Alsóváros, Bakta, Bartina, Bottyánhegy, Cinka, Csatár, Előhegy, Északi kertváros, Felsőváros, Hosszúvölgy, Palánk, Parászta, Séd-völgy, Szőlőhegy városrészek)

Beneficiary: Municipality of Szekszárd MJV, represented at the date of the signature of the Grant Agreement by [REDACTED]

Project application: 13.02.2013

Grant decision: 15.10.2013

Grant Agreement: 30.12.2013

OCM(2022)3243 - 31/01/2022

Total eligible project amount: 381 928 215 HUF

Own financing according to the Grant Agreement: 57 289 232 HUF (there is no data available in Emir if this was provided through an additional grant or other sources).

Total amount of grant paid (entirely financed from European Cohesion Fund): 320 122 450 HUF.

A voice record of a meeting which took place at the Municipality on 21 August 2012, proves that the mayor of Szekszárd was advised by phone to contact [REDACTED] in order to prepare the preparation of the two Szekszárd projects already before the call for project application KEOP-2012-5.5.0/A was published.⁴⁴

Main contract for the project implementation:

The call for tender was published on 07.03.2014 under reference KÉ-4245/2014. It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

According to chapter III. 2.3) of the call, the bidder was eligible only if it could prove that:

- P3) that during the last 2 years its income generated from contracts related to the subject of the public procurement (public lighting renovation with **LED** technology) was at least 380 000 000 HUF/year (if company created since more than 2 years)
- M1/a) The bidder had an experience during the preceding 60 months of one single finished works contract of 390 000 000 HUF in the field of public lighting works, with minimum 3 100 **LED** lamps installed
- M1/b) during the preceding 60 months there was a period of consecutive 4 weeks when the company installed minimum 200 lamps/week (LED or other lamps)
- M2/a) it could propose an expert with the qualification of technical manager (műszaki vezető) which had an experience of 12 months in the field of public lighting works (not necessary LED).

The call for bid listed 2 455 lamps to be supplied for phrase I of the works, with the exact technical description of [REDACTED] lamps.

Table 5: Some example of lamp types required in the call, and the lamps supplied according to the contract between [REDACTED] and [REDACTED]

Lamp types required in the call for tender	Lamps supplied according to the contract between [REDACTED] and [REDACTED]
Maximum 10 W, minimum 1000 lm LED lamp	[REDACTED]
Maximum 14 W, minimum 1300 lm LED lamp	[REDACTED]
Maximum 20 W, minimum 1900 lm LED lamp	[REDACTED]
Maximum 29 W, minimum 2500 lm LED lamp	[REDACTED]
Maximum 40 W, minimum 3700 lm LED lamp	[REDACTED]
Maximum 41 W, minimum 4100 lm LED lamp	[REDACTED]
Maximum 58 W, minimum 5300 lm LED lamp	[REDACTED]
Maximum 60 W, minimum 5500 lm LED lamp	[REDACTED]
Maximum 65 W, minimum 6700 lm LED lamp	[REDACTED]
Maximum 95 W, minimum 8400 lm LED lamp	[REDACTED]
Maximum 113 W, minimum 10100 lm LED lamp	[REDACTED]

⁴⁴ THOR(2015)31600, information received from the police. The registration was certified as original by the experts, meaning it was not recut or mounted artificially.

Maximum 78 W, minimum 8100 lm LED lamp	[REDACTED]	22)3243 - 31/01/2022
Maximum 130 W, minimum 11800 lm LED lamp	[REDACTED]	

The Municipality received only one bid during the public procurement procedure.

On 15.05.2014 [REDACTED] signed a **design and works contract** with the Municipality for an amount of 278 695 500 HUF. The estimated amount of contract according to the cost benefit calculation was 278 773 328 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] was [REDACTED] (30 730 000 HUF sub-contract for works, 1 185 000 HUF sub-contract for authorised execution plans). The supplier was [REDACTED] the total amount of the contract for the two projects Szekszárd I + II is 339 331 028 HUF (contract signed by [REDACTED])

Tender design: Tender plans signed [REDACTED] [REDACTED] (see project application CD/Annexes/09.ET, plans)

Authorised execution plans: included into the works contract, drafted by [REDACTED] [REDACTED] as sub-contractor of [REDACTED]

Public Procurement consultant: [REDACTED]

Project preparation consultant: [REDACTED] signed a contract with the Municipality to prepare the Technical documentation for the project application (energetics study, loss identification document, cost benefit calculation) and in case the Grant Agreement was signed, to conduct the lighting measurements.

Project management consultant : [REDACTED]

Maintenance contract: one of the annexes to the Grant Agreement (annex "list of deviations" – "*eltérések listája*") foresees that the beneficiary commits itself to conduct lighting measurements between the 16 and 25 years of the project. If the lighting data fall under the required lighting power, the Municipality shall take the necessary measures to reach the required lighting power. The cost of maintenance shall not exceed the amount foreseen in the project application.

According to the standard MSZ EN 13 201, the yearly lighting is 3.990 hours, which is 60.000 calculated for 15 years. On the basis of the measurement reports attached [to the project application] in case of small number of breakdowns it can be supposed, that the Beneficiary can keep to the cost limit.⁴⁵

2.2.3.14. FACTS CONCERNING PROJECT KEOP-5.5.0/A/12-2013-0239 - SZEKSZÁRD II

(16) Project reference and title: KEOP-5.5.0/A/12-2013-0239 - Szekszárd II - Szekszárd Megyei Jogú Város Közvilágítása energiatakarékos átalakítása Szekszárd II (Városközpont, Mérey ltp., Miklósváros, Tambov és Újváros városrészek)

Beneficiary: Municipality of Szekszárd MJV, represented at the date of the signature of the Grant Agreement by [REDACTED], [REDACTED]

Project application: 13.02.2013

Grant decision: 15.10.2013

Grant Agreement: 30.12.2013

Total eligible project amount: 367 476 635 HUF

⁴⁵ "A pályázó kötelezettséget vállal, miszerint a 16-25 intervallum között fénytechnikai mérések rögzítésre kerülnek. Amennyiben az értékek a megfelelési szint aká csökkennek, a karbantásra fordított költségek nem haladhatják meg a pályázatban vallalt összeget. A pályázó vállalja, hogy a közbeszerzési kiírásban feltételként kerül rögzítésre a költségkorlát. Indoklás: MSZ EN 13 201 szabvány szerint az éves előírt közvilágítási óraszám 3.990 óra. Ez 15 évet vizsgálva 60.000 óra. A vállalt 100.000 óra (16-25 év) üzeidőig a csatolt jegyzőkönyvek alapján a kis százaléku meghibásodás alapján feltételezhető, hogy a pályázó tudja tartan a karbantartási költségkorlátot."

Own financing according to the Grant Agreement: 57 289 232 HUF (OCM(2022)3243 - 31/01/2022) available in Emir if this was provided through an additional grant or other sources).

Total amount of grant paid (entirely financed from European Cohesion Fund): 307 882 009 HUF.

Main contract for the project implementation:

The call for tender was published on 07.03.2014 under reference KÉ-4245/2014 (see above, Szekszárd I). It was conducted according to the rules of open national public procurement procedure foreseen by Article 121 of Kbt.

The call for bid listed 1 866 lamps to be supplied for phrase II of the works, with the exact technical description of [REDACTED] lamps.

The Municipality received only one bid during the public procurement procedure.

On 15.05.2014 [REDACTED] signed a **design and works contract** with the Municipality for an amount of 269 750 700 HUF. The estimated amount of contract according to the cost benefit calculation was 269 844 132 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] was [REDACTED] (26 100 000 HUF sub-contract for works, 1 901 000 HUF sub-contract for authorised execution plans). The supplier was [REDACTED] the total amount of the contract for the two projects Szekszárd I + II is 339 331 028 HUF (contract signed by [REDACTED])

Tender design: Tender plans signed [REDACTED] [REDACTED] [REDACTED] (see project application CD/Annexes/09.ET, plans)

Authorised execution plans: included into the works contract, drafted by [REDACTED] [REDACTED] as sub-contractor of [REDACTED]

Public Procurement consultant: [REDACTED]

Project preparation consultant: [REDACTED] signed a contract with the Municipality to prepare the Technical documentation for the project application (energetics study, loss identification document, cost benefit calculation) and in case the Grant Agreement was signed, to conduct the lighting measurements.

Project management consultant : [REDACTED]

2.2.3.15. FACTS CONCERNING PROJECT KEOP-5.5.0/A/12-2013-0313 SZOLNOK II

(17) Project reference and title: KEOP-5.5.0/A/12-2013-0313 "Szolnok város, közvilágítás energiatakarékos átalakítása II. Ütem"

Beneficiary: Municipality of Szolnok MJV, represented at the date of the signature of the Grant Agreement by [REDACTED], [REDACTED]

Project application: 14.02.2013

Grant decision: 15.10.2013

Grant Agreement: 23.10.2013

Total eligible project amount: 582 905 908 HUF

Own financing according to the Grant Agreement: 15%, financed by own part grant ("önerő támogatás"), decision of the Prime Minister's Office of 18.06.2015.

Total amount of grant paid (entirely financed from European Cohesion Fund): 483 967 163 HUF.

Main contract for the project implementation:

On 24.02.2015 [REDACTED] signed a **design and works contract** with the Municipality for an amount of 438 510 000 HUF. The estimated amount of contract according to the cost benefit calculation was 438 926 730 HUF.

The call for tender was published on 27.10.2014 under reference KÉ-2250/2014/2014 - 31/01/2022 conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

According to chapter III. 2.3) of the call, the bidder was eligible only if it could prove for Szolnok I and II projects together:

- P3) that during the last 3 years its income generated from contracts related to the subject of the public procurement (public lighting renovation with **LED** technology) was at least 400 000 000 HUF/year (if company created since more than 3 years)
- M1/a) The bidder had an experience during the preceding 60 months of one single finished works and design contract of 400 000 000 HUF in the field of public lighting works, with minimum 2 600 **LED** lamps installed
- M2/a) it could propose an expert with the qualification of technical manager (műszaki vezető) which had an experience of a project of 200 000 000 HUF or at least 1 500 lamps in the field of public lighting works (not necessary LED).

The call for bid listed 2 667 lamps to be supplied for phrase II of the works, with the exact technical description of [REDACTED].

The Municipality received only one bid during the public procurement procedure.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] for works was [REDACTED], 34 032 000 HUF, and [REDACTED] For the authorised execution plans, 3 200 000 HUF. The supplier was [REDACTED] the total amount of supply contract for the two projects Szolnok I + II was 457 302 013 HUF (contract signed by [REDACTED])

Tender design: Tender plans signed [REDACTED] (see project application CD/Annexes/09.ET, plans)

Authorised execution plans: included into the works contract, drafted by [REDACTED] as sub-contractor of [REDACTED]

Public Procurement consultant: None.

Project management consultant : [REDACTED] and its subcontractor, [REDACTED]

2.2.3.16. FACTS CONCERNING PROJECT KEOP-5.5.0/A/12-2013-0320 - KESZTHELY

(18) Project reference and title: KEOP-5.5.0/A/12-2013-0320 - Keszthely város közvilágításának korszerűsítése

Beneficiary: Municipality of Keszthely, represented at the date of the signature of the Grant Agreement by [REDACTED], [REDACTED]

Project application: 14.02.2013

Grant decision: 15.10.2013

Grant Agreement: 21.12.2013

Total eligible project amount: 428 000 000 HUF

Own financing according to the Grant Agreement: 15%, financed by own part grant ("önerő támogatás"), decision of the Prime Minister's Office of 17.03.2014.

Total amount of grant paid (entirely financed from European Cohesion Fund): 363 766 349 HUF.

Main contract for the project implementation:

The call for tender was published on 19.03.2014 under reference KÉ-5021/2014. It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

According to chapter III. 2.3) of the call, the bidder was eligible only if it could prove that:

- P3) that during the last 2 years its income generated from contracts (OCM(2022)3243 - 31/01/2022) subject of the public procurement (public lighting renovation with **LED** technology) was at least 250 000 000 HUF/year (if company created since more than 2 years)
- M1/a) The bidder had an experience during the preceding 60 months of one single finished works contract of 270 000 000 HUF in the field of public lighting works, with minimum 2 300 **LED** lamps installed
- M1/b) during the preceding 60 months there was a period of consecutive 4 weeks when the company installed minimum 200 lamps/week (LED or other lamps)

The call for bid listed 2 623 lamps to be supplied, with the exact technical description of [REDACTED] lamps.

The Municipality received only one bid during the public procurement procedure.

On 03.06.2014 [REDACTED] signed a **design and works contract** with the Municipality for an amount of 318 487 700 HUF. The estimated amount of contract according to the cost benefit calculation was 318 564 651 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] was [REDACTED] (33 304 000 HUF sub-contract for works, 2 107 200 HUF sub-contract for authorised execution plans). The supplier was [REDACTED] the total amount of the contract was 233 849 737 HUF (contract signed by [REDACTED])

Tender design: Tender plans signed [REDACTED] (see project application CD/Annexes/09.ET, plans)

Authorised execution plans: included into the works contract, drafted by [REDACTED] as sub-contractor of [REDACTED]

Public Procurement consultant: [REDACTED]

Project preparation consultant : [REDACTED]

2.2.3.17. FACTS CONCERNING PROJECT KEOP-5.5.0/A/12-2013-0325 SZOLNOK I

(19) Project reference and title: KEOP-5.5.0/A/12-2013-0325 "Szolnok város, közvilágítás energiatakarékos átalakítása I. ütem"

Beneficiary: Municipality of Szolnok MJV, represented at the date of the signature of the Grant Agreement by [REDACTED], [REDACTED]

Project application: 14.02.2013

Grant decision: 15.10.2013

Grant Agreement: 23.12.2013

Total eligible project amount: 584 169 698 HUF

Own financing according to the Grant Agreement: 15%, financed by own part grant ("önerő támogatás"), decision of the Prime Minister's Office of 18.06.2015.

Total amount of grant paid (entirely financed from European Cohesion Fund): 484 363 662 HUF.

Main contract for the project implementation:

The call for tender was published on 27.10.2014 under reference KÉ-22574/2014. It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.** For the details of the public procurement procedure, see above, Project Szolnok II.

On 24.02.2015 [REDACTED] signed a **design and works contract** with the Municipality for an amount of 438 877 300 HUF. The estimated amount of contract according to the cost benefit calculation was 439 910 840 HUF.

Sub-contractors, suppliers:

The sub-contractor of [REDACTED] for works was [REDACTED] 32 832 000 HUF, and [REDACTED] For the authorised execution plans, 3 200 000 HUF. The supplier was [REDACTED], the total amount of supply contract for the two projects Szolnok I + II was

457 302 013 HUF (contract signed by [REDACTED] 43 - 31/01/2022
[REDACTED])

Tender design: Tender plans signed [REDACTED] [REDACTED] [REDACTED] (see project application CD/Annexes/09.ET, plans)

Authorised execution plans: included into the works contract, drafted by [REDACTED] as sub-contractor of [REDACTED]

Public Procurement consultant: None.

Project management consultant : [REDACTED] [REDACTED] [REDACTED] and its subcontractor, [REDACTED]

2.2.3.18. FACTS CONCERNING PROJECT KEOP-5.5.0/A/12-2013-0491 - BALATONFÜRED

(20) Project reference and title: KEOP-5.5.0/A/12-2013-0491 - Balatonfüred Város közvilágításának korszerűsítése

Beneficiary: Municipality of Balatonfüred, represented at the date of the signature of the Grant Agreement by [REDACTED]

Project application: 15.02.2013

Grant decision: 12.10.2013

Grant Agreement: 04.03.2014

Total eligible project amount: 290 715 700 HUF

Own financing according to the Grant Agreement: 15%, financed by own part grant ("önerő támogatás"), decision of the Prime Minister's Office of 18.06.2014.

Total amount of grant paid (entirely financed from European Cohesion Fund): 247 102 357 HUF.

Main contract for the project implementation:

The call for tender was published on 23.12.2013 under reference KÉ-23408/2013 with deadline to tender on 09.01.2014.

It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

According to chapter III. 2.3) of the call, the bidder was eligible only if it could prove that:

- P3) during the last 2 years its income generated from contracts related to the subject of the public procurement (public lighting renovation with **LED** technology) was at least 200 000 000 HUF/year (if company created since more than 2 years)
- M1/a) The bidder had an experience during the preceding 60 months of one single finished works contract of 200 000 000 HUF in the field of public lighting works, with minimum 1 300 **LED** lamps installed
- M1/b) during the preceding 60 months there was a period of consecutive 3 weeks when the company installed minimum 200 lamps/week (LED or other lamps)
- M2/a) it could propose an expert with the qualification of technical manager (műszaki vezető) which had an experience of a contract of at least 200 000 000 HUF in the field of public lighting works (not necessary LED).

The call for bid listed 1 325 lamps to be supplied and installed with the exact technical description of [REDACTED] lamps. The tender documentation contained an excel table to be filled in by the bidder, with the detailed budget items and it named the exact type of [REDACTED] lamps (different [REDACTED] lamps).

The Municipality received one bid during the public procurement procedure, the bid of [REDACTED]

The weighting was as follows: price (60); guarantee, maximum 60 months (10), late delay penalty (15), cancelled implementation penalty (15).

On 26.02.2014 [REDACTED] signed a **design and works contract** with the [REDACTED] for an amount of 212 917 050 HUF. The estimated amount of contract according to the cost benefit calculation was 216 160 000 HUF. OCM(2022)3243 - 31/01/2022

Sub-contractors, suppliers: The sub-contractor of [REDACTED] for works was [REDACTED] 34 032 000 HUF excl. VAT, for authorised execution plans it was [REDACTED], 3 950 000 HUF. The supplier was [REDACTED] 150 050 285 HUF incl. VAT.

Tender design: Tender plans not attached to the project application, lighting design (*megvilágítási terv*) signed [REDACTED] (see project application CD/Annexes/09.ET, plans).

Authorised execution plans: included into the works contract, drafted by [REDACTED] as sub-contractor of [REDACTED]

Public Procurement consultant: [REDACTED]

Project management consultant : [REDACTED]

In the case of Balatonfüred (KEOP-5.5.0/A/12-2013-0491), in the project application the estimated costs for the six tasks below were estimated based on the 3 indicative offers from the same three Budapest located company, [REDACTED], [REDACTED] and [REDACTED]

1. Preparation of the Construction Plan (Kiviteli terv),
2. Technical Inspection (Műszaki ellenőrzés)
3. Transparency (Nyilvánosság)
4. Final Audit (Záróaudit)
5. Public Procurement (Közbeszerzés)
6. Project Management (Projektmanagement)

The best offer was given by [REDACTED] for all the six tasks.

2.2.4. THE PROJECTS FINANCED UNDER KEOP-2014-5.5.0/K

2.2.4.1. THE CALL FOR PROJECT APPLICATION KEOP-2014-5.5.0/K

Main data of the initial call, documents to be provided in the application.

The Managing Authority responsible for the Energy and Environment Operational programmes, "KEHOP HÁT" located within the Ministry for National Development (NFM), published on 22 September 2014 call No. KEOP-2014-5.5.0./K. The call targeted only public lighting projects of municipalities.

The total available amount of grant for the call was 10.23 billion HUF (approximately 34 million EUR).

The total eligible project amount was financed by the grant (no own financing), the grant was entirely financed by the Cohesion Fund, there was no participation from the national budget for this call.

OLAF investigation is related to 15 KEOP-2014-5.5.0./K projects, amounting in total approximately 14.5 million EUR.

In all cases, the beneficiaries were Municipalities. [REDACTED] was the works contractor or member of the works contractor consortium.

The supplier and manufacturer was always [REDACTED] except in three projects: Miskloc, Kiskunfélegyháza and Szigetszentmiklós.

The technical documentation included in particular Annex III to the application form, 'Energetics study' (Energetikai tanulmány), this contains the list of lamps to be replaced by streets and their characteristics, with their estimated costs. It includes also a cost benefit analysis (CBA) and calculates the Internal Rate of Return (BMR, in Hungarian *Belső megtérülési Ráta*)

The beneficiaries could submit their applications between Thursday 02.10.2014 and Tuesday 07.10.2014. The applications were subject to "periodic evaluation procedure" ("szakaszos elbírálás"), which means that all the applications received in the given timeframe were subject to the same evaluation, independently in relation to the date of application.

Modification of the on 01.10.2014

On Wednesday 01.10.2014 the excel table for Annex III of the application was modified by the Managing Authority.

The last modification had to be authorised by the head of the Managing Authority, at that time [REDACTED].⁴⁶

The modification of Annex III allowed the potential beneficiaries to calculate with 100.000 hours of life-time duration of the lamps in case of LED lamps.

According to point C.12 of the call, the maximum allowed decrease of lumen power was 75%. The applicant had to include into the project application a **statement from the manufacturer justifying the life time calculation**.

It was also foreseen that in case the lumen power decreases under 75% during the project life time, the beneficiary has to make an additional investment **at its own costs** to ensure the life-time duration used for the cost benefit calculation.⁴⁷

Estimated cost of the main contract

The cost benefit analysis is calculated with the maximum life-time newly allowed after the last minute modification of the call by the Managing Authority, i.e. the change to 100.000 hours (see above), with the exception of one project (Szigetszentmiklós, 80 000 hours).

According to the technical description of the lamps provided by the manufacturer for the project applications in 2014, as well as the technical description of the lamps attached to the bids of [REDACTED] during the public procurement procedures, the life duration was estimated to be 100 000 hours.

For example:

- For [REDACTED] lamps after 60 0000 hours 80% of the initial lumen power was expected
- For [REDACTED] lamps after 80 000 hours 80% of the initial lumen power was expected
- For [REDACTED] lamps after 60 000 hours 90% of the initial lumen power was expected, while after 100 000 hours 70% of the initial lumen power was expected (the maximum allowed decrease of lumen power accepted was 75%).

⁴⁶ [REDACTED] was the administrator ("energetikai referens") in charge to prepare the templates for the calls for project application KEOP-2014-5.5.0/K. She was the "author" of most of the template documents to be filled in for the project application according to the documents' properties. According to [REDACTED] statement, she performed this task on the basis of contributions received from the desk officers in charge of the substantial content. From September 2014 she changed post within the Ministry and was not in charge anymore of call KEOP-2014-5.5.0/K after this date.

⁴⁷ „6. A LED-es technológiát alkalmazó beruházások esetében a világítótestek kezdeti fényárama a beruházás működési időtartama alatt nem csökkenhet 75% alá. A pályázónak az általa beadott pályázati dokumentációban gyártói nyilatkozatokkal, hitelesen igazolnia kell, hogy az alkalmazott világítótestek mennyi üzemidőt követően érik el az előírt 75%-os értéket.

Amennyiben a fényáram a beruházás élettartama alatt a referenciaérték alá csökken, a pályázónak pótló beruházást kell eszközölnie saját költségén.

7. A beruházás élettartamának meghatározásakor a figyelembe vehető maximális üzemórák:

- Kompakt fénycső alkalmazása esetén: 15 000 üzemóra;
- LED alkalmazása esetén: 100 000 üzemóra;
- DML alkalmazása esetén: 60 000 üzemóra."

However, in some of the projects the manufacturer issued a statement justifying the calculation with 100 000 hours life duration of the lamps, which means that after 100 000 hours the maximum decrease of lumen power would be 75%.

The manufacturer's guarantee was 5 years (20 000 hours) for all type of lamps.

By taking into account 100.000 hours, the beneficiaries could calculate with a 40% residual value of the lamps after the 15 years period used for the BMR calculation. Calculating with 60.000 hours, the project should have returned its full investment cost in the first 15 years. In case of Szigetszenmiklós, based on 80.000 hours lifetime 25% residual value could be taken into account after the 15 years period used for the BMR calculation.

Because this residual value was taken into account, the projects was considered eligible (the value of Internal Rate of Return - BMR exceeded 1%).

If the residual value had been lower, but the estimated works contract amount and the other parameters of the cost benefit analysis had been the same, the projects would not have been eligible.

Without the modification of the call by the Managing Authority three days before the application, allowing taking into account 100.000 hours lifetime, the project would not have been financially eligible given the estimation of the costs of works provided by the beneficiaries.

Consultants:

With the exception of Balatonfüred and Szigetszentmiklós, in all cases the correctness of the Energetics study was certified by the same Energy Engineer, [REDACTED], as independent auditor. It was also [REDACTED] who signed the final audits.

In 11 projects, [REDACTED] was in charge to prepare the Energetics study (Annex III) of the project application. These studies contained the expected energy and maintenance cost saving. [REDACTED] signed a contract with the beneficiary and was representing it.

The project application already contained the tender designs: the list of lamps to be changed and the replacement lamps were the same in the project application as later on, after the signature of the Grant Agreements, in the calls for tenders.

In 6 cases the project manager was [REDACTED]

2.2.4.2. FACTS CONCERNING PROJECT KEOP-5.5.0/K/14-2014-0001 - HATVAN

(21) Project reference and title: KEOP-5.5.0/K/14-2014-0001 - Hatvan Város közvilágítás energiatakarékos átalakítása

Beneficiary: Municipality of Hatvan, represented at the date of the signature of the Grant Agreement by [REDACTED], [REDACTED]

Project application: 03.10.2014

Grant decision: 17.12.2014

Grant Agreement: 30.01.2015

Total eligible project amount and total amount of grant according to the Grant Agreement (100%): 314 549 652 HUF

Total amount of grant paid (entirely financed from European Cohesion Fund): 308 199 653 HUF.

Main contract for the project implementation:

The call for tender was published on 04.09.2014 under reference KÉ-18112/2014. It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

According to chapter III. 2.3) of the call, the bidder was eligible only if it could prove that:

- P3) during the last 2 years its income generated from contracts related to the subject of the public procurement (public lighting renovation with **LED** technology) was at least 200 000 000 HUF/year (if company created since more than 2 years)

- M1/a) The bidder had an experience during the preceding 60 months of at least one finished works contract of 390 000 000 HUF in the field of public lighting works, with minimum 3 100 **LED** lamps installed
- M1/b) during the preceding 60 months there was a period of consecutive 3 weeks when the company installed minimum 200 lamps/week (LED or other lamps)
- M2/a) it could propose an expert with the qualification of technical manager (műszaki vezető) which had an experience of a contract of at least 200 000 000 HUF or 2 300 lamps in the field of public lighting works (not necessary LED).

The call for bid listed 2 455 lamps to be supplied for phrase I of the works, with the exact technical description of [REDACTED] lamps.

The Municipality received only one bid during the public procurement procedure.

Before the Grant decision, on 02.10.2014 [REDACTED] signed a **works and design contract** with the Municipality for an amount of 228 129 456 HUF. The estimated amount of contract according to the cost benefit calculation was 228 139 796 HUF.

Sub-contractors, suppliers: The sub-contractors of [REDACTED] were [REDACTED] and [REDACTED]. The supplier was [REDACTED] the total amount of the contract was 167 887 029 HUF.

Tender design: The tender plans were signed [REDACTED] (see project application CD/Annexes/4.TPONT, tender plans).

Authorised execution plans: included into the works contract.

Public Procurement consultant: [REDACTED]

Public management consultant: [REDACTED]

Supervisor Engineer : [REDACTED]

Project preparation consultant : [REDACTED] signed a contract with the Municipality to draft the Energetics study (other offers for this contract: [REDACTED]), and also for the final energy audit of the project.

2.2.4.3. FACTS CONCERNING PROJECT KEOP-5.5.0/K/14-2014-0002 - SÁRVÁR

(22) Project reference and title: KEOP-5.5.0/K/14-2014-0002 - Sárvár Város közvilágítás energiatakarékos átalakítása

Beneficiary: Municipality of Sárvár, represented at the date of the signature of the Grant Agreement by [REDACTED]

Project application: 03.10.2014

Grant decision: 17.12.2014

Grant Agreement: 05.02.2015

Total eligible project amount and total amount of grant according to the Grant Agreement (100%): 385 857 677 HUF

Total amount of grant paid (entirely financed from European Cohesion Fund): 385 334 753 HUF.

Main contract for the project implementation:

The Municipality published the call for tender on 19.12.2014 under reference KÉ-25418/2014. It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

The call for bid listed 1932 [REDACTED] lamps to be supplied (mainly [REDACTED]). It was stated that "equivalent" would be accepted in case the technical specifications were the same.

According to chapter III. 2.3) of the call, the bidder was eligible only if it could prove that:

- P3) during the last 2 years its income generated from contracts related to the subject of the public procurement (public lighting renovation with **LED** technology) was at least 202 000 000 HUF/year (if company created since more than 2 years)
- M1/a) The bidder had an experience during the preceding 60 months of one single finished works contract of 202 000 000 HUF in the field of public lighting works, with minimum 1 449 **LED** lamps installed
- M1/b) during the preceding 60 months there was a period of consecutive 4 weeks when the company installed minimum 157 lamps/week (LED or other lamps)
- M2/a) it could propose an expert with the qualification of technical manager (műszaki vezető) which had an experience of a contract of at least 200 000 000 HUF or 1 449 lamps in the field of public lighting works (not necessary LED).

Between 06.01.2015 and 02.03.2015 [REDACTED] provided 4 offers to [REDACTED] for the supply of the 1932 lamps. [REDACTED] did not provide offer to any other companies for the implementation of this project.

The Municipality received two bids during the public procurement procedure:

- [REDACTED] [REDACTED] 279 248 000 HUF, 0.5% late delay penalty, 15% cancelled implementation penalty
- [REDACTED] 279 604 500 HUF, 0.6%/day late delay penalty, 12% cancelled implementation penalty

The bid of [REDACTED] was declared non-compliant because the bidder did not provide several documents requested during the clarification procedure, in particular statements form its bank, and certificates in relation to the LED experience.

On 26.02.2015 [REDACTED] signed a **works and design contract** with the Municipality for an amount of 279 248 000 HUF. The estimated amount of contract according to the cost benefit calculation was 279 606 299 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] was [REDACTED] (Authorised execution plans: 3 398 000 HUF, works 26 776 520 HUF). The supplier was [REDACTED] the total amount of the contract was 148 518 830 HUF (contract signed by [REDACTED]).

Tender design: Tender plans signed by [REDACTED] [REDACTED] (see project application CD/Annexes/4.TPONT, tender plans)

Authorised execution plans: included into the works contract, drafted by [REDACTED] [REDACTED] as sub-contractor of [REDACTED]

Public Procurement consultant: [REDACTED]

Project preparation consultant : [REDACTED] signed a contract for preparation of project application, the energetics study, lighting measurements, cost benefit analysis.

The sub-contractor of [REDACTED] was [REDACTED] The contract of [REDACTED] included the Energetics study, tender design and authorised execution plans. [REDACTED] signed also a sub-contract with [REDACTED] for the lighting measurements.

Project management consultant : [REDACTED]

2.2.4.4. FACTS CONCERNING PROJECT KEOP-5.5.0/K/14-2014-0003 - JÁSZBERÉNY

(23) Project reference and title: KEOP-5.5.0/K/14-2014-0003 - Jászberény közvilágítás energiatakarékos átalakítása

Beneficiary: Municipality of Jászberény, represented at the date of the signature of the Grant Agreement by [REDACTED] [REDACTED]

Project application: 04.10.2014

Grant decision: 17.12.2014

Grant Agreement: 30.01.2015

OCM(2022)3243 - 31/01/2022

Total eligible project amount and total amount of grant according to the Grant Agreement (100%): 410 093 083 HUF

Total amount of grant paid (entirely financed from European Cohesion Fund): 404 963 580 HUF.

Main contract for the project implementation:

The call for tender was published on 15.05.2015 under reference KÉ-8163/2015. It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

The call for tender listed 2789 [REDACTED] lamps to be supplied (mainly [REDACTED]). It was stated that "equivalent" would be accepted in case the technical specifications were the same.

According to chapter III. 2.3) of the call, the bidder was eligible only if it could prove that:

- P3) during the last 2 years its income generated from contracts related to the subject of the public procurement (public lighting renovation with **LED** technology) was at least 220 000 000 HUF/year (if company created since more than 2 years)
- M1/a) The bidder had an experience during the preceding 60 months of one single finished works contract of 220 000 000 HUF in the field of public lighting works, with minimum 2 000 **LED** lamps installed
- M2/a) it could propose an expert with the qualification of technical manager (műszaki vezető) which had the experience necessary to obtain the qualification as foreseen in the applicable Government Decree.

[REDACTED] issued 3 preliminary offers (reference SO15002498-1, 2 and 3) to [REDACTED] for the 2789 lamps, the amount proposed in the offers was always 174 143 010 HUF.

[REDACTED] issued also one offer for the supply of the same lamps to [REDACTED] amounting to 238 425 595 HUF (reference SO15002495-1)

The Municipality received three bids during the public procurement procedure:

- [REDACTED] [REDACTED] [REDACTED] 215 464 000 HUF, 0.60%/day late delay penalty, 15% cancelled implementation penalty, proposed [REDACTED] lamps as equivalent
- [REDACTED], 249 397 000 HUF, 0.60%/day late delay penalty, 15% cancelled implementation penalty, proposed [REDACTED] lamps as equivalent.
- [REDACTED] [REDACTED] 306 053 149 HUF, 0.50%/day late delay penalty, 15% cancelled implementation penalty, proposed [REDACTED] lamps.

The Municipality requested the bidders to provide some missing documents ("hiánypótlás").

The bid of [REDACTED] was declared non-compliant because the following reasons:

- The bidders should attach to their bid a **certification** proving that the place of manufacturing of the lamps complied with standard MSZ EN 61340 in relation to the protection against electrostatic discharge (ESD). [REDACTED] attached a certification of compliance issued not by the manufacturer, but a third party, [REDACTED]. During the second clarification procedure, the contracting authority requested to attach a document proving that [REDACTED] was a company "authorised" to certify, i.e. an accredited certifying body. [REDACTED] argued in a preliminary dispute settlement that according to the webpage of the National Accreditation Body (NAT – *Nemzeti Akkreditáló Testület*) **there was no company in all Hungary which was allowed to issue such a certification** according to the MSZ EN 61340 standard. **The contracting authority replied that this can not be an obstacle, because the certification of non-Hungarian companies**

would be accepted. [REDACTED] finally did not answer the clarification request.⁴⁸ OCM(2022)3243 - 31/01/2022

- **The lampshade of the [REDACTED] lamps proposed as equivalent were not in glass but in polycarbonate.** This was allowed, according to the technical specifications, only if it was evidenced that during the life duration calculated for 25 years the light passing will not decrease under 95%. [REDACTED] did not attach a certification proving the equivalence in relation to this condition.
- **The power consumption of the proposed [REDACTED], [REDACTED] [REDACTED] and [REDACTED] lamps were 14.2W, 19.3W and 54.1W, which is above of the requirement of 14W, 19W and 54W of the reference [REDACTED] lamps.**
- The powder and water intrusion resistance (IP – Ingress Protection) of the reference [REDACTED] lamps was IP66, while the [REDACTED] lamps proposed by [REDACTED] were IP65. It is noted that in the international requirements usually IP65 or IP67 is required.
- The contracting authority considered that [REDACTED] should justify that its offer did not contain an unreasonably low price, because the price proposed was more than 31% cheaper than the estimated contract amount. [REDACTED] did not provide explanation on its price within the given deadline.
- The contracting authority considered that [REDACTED] should justify that its offer did not contain an unreasonably low late implementation (0.6%) and cancelled implementation penalty (15%). [REDACTED] did not provide and explanation within the given deadline. [REDACTED] asked for a preliminary settlement and argued that the penalties of 0.6% and 15% were identified by the contracting authority itself as acceptable maximum amounts, therefore it is not possible later on to ask justification on why the bidder proposed those amounts. Also, [REDACTED] argued that there was a non-equal treatment of bidders, because the contracting authority did not ask [REDACTED] for an explanation on the cancelled implementation penalty, while [REDACTED] also proposed 15%. The contracting authority refused the preliminary settlement.

The bid of [REDACTED] was declared non-compliant because the following reasons:

- In relation to 6 equivalent lamps proposed [REDACTED] did not attach the technical description of the lamps
- The bidders should attach to their bid a certification proving that that the place of manufacturing of the lamps complied with standard MSZ EN 61340 in relation to the protection against electrostatic discharge (ESD). [REDACTED] attached a document certifying that the manufacturer [REDACTED] complied with the standard. The contracting authority requested during the second clarification procedure explanation if several [REDACTED] lamps proposed were manufactured by [REDACTED]. [REDACTED] did not answer the question within the given deadline.
- The lampshade of the [REDACTED] lamps proposed as equivalent were not in glass but in polycarbonate. This was allowed, according to the technical specifications, only if it was evidenced that during the life duration calculated for 25 years the light passing will not decrease under 95%. [REDACTED] did not attach a certification proving the equivalence in relation to this condition.

⁴⁸ Ajánlattevőknek csatolni kellett ajánlatukhoz egy akkreditált szervezet által kiállított tanúsítványt arról, hogy a megajánlott termék ESD elleni védelmi rendszere megfelelő az MSZ EN 61340 szabványsorozat értelmében. A tanúsítványt [REDACTED] csatolt egy tanúsítványt az ajánlatához, melyet a [REDACTED] a gyártón kívül álló harmadik fél állított ki, de abból nem lehetett megállapítani, hogy a tanúsítványt kiállító fél akkreditált-e szervezet-e. Ajánlatkérő a második hiánypótlás során kérte, csatolja a [REDACTED] akkreditációjának bizonyítékát. [REDACTED] előzetes vitarendezés keretében azzal érvelt, hogy a NAT (Nemzeti Akkreditáló Testület) honlapja szerint Magyarországon nincs olyan szervezet, ami az MSZ EN 61340 szabványsorozat értelmében jogosult tanúsítványt kiállítani. Ajánlatkérő elutasította az előzetes vitarendezési kérelmet azzal, hogy nem volt kikötve, hogy csak magyar vállalat állíthatja ki a tanúsítványt. A [REDACTED] végül nem nyújtotta be a második hiánypótlást.

- The power consumption of the 3 [REDACTED] lamps was 51.62W (2022) and not comply with the reference power consumption (50W) of the 3 [REDACTED] lamps requested in the call for tender. OCM(2022)3243 - 31/01/2022

On 04.08.2015 [REDACTED] signed a **works and design contract** with the Municipality for an amount of 306 053 149 HUF. The estimated amount of contract according to the cost benefit calculation was 310 092 128 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] was [REDACTED]. The supplier was [REDACTED], the total amount of the contract was 174 143 010 HUF (contract signed by [REDACTED]).

Tender design: Tender plans signed by [REDACTED] [REDACTED] (see project application CD/Annexes/4.TPONT, tender plans)

Authorised execution plans: included into the works contract.

Public Procurement consultant: [REDACTED]

Project preparation consultant : on 26.08.2014 [REDACTED] signed a contract to draft the Energetics study (other offers: [REDACTED]). [REDACTED] drafted several documents for the project application which were also used later on as such for the public procurement procedure. For example, the author of the document⁴⁹ "budget without item prices" used for the public procurement procedure is [REDACTED], manager of [REDACTED].

Project management consultant : [REDACTED] [REDACTED] [REDACTED]

2.2.4.5. FACTS CONCERNING PROJECT KEOP-5.5.0/K/14-2014-0004 - ALSÓPÁHOK

(24) Project reference and title: KEOP-5.5.0/K/14-2014-0004 - Alsópáhok közvilágítás energiatakarékos átalakítása

Beneficiary: Municipality of Alsópáhok, represented at the date of the signature of the Grant Agreement by [REDACTED], [REDACTED]

Project application: 02.10.2014

Grant decision: 31.12.2014

Grant Agreement: 02.02.2015

Total eligible project amount and total amount of grant according to the Grant Agreement (100%): 44 848 861 HUF

Total amount of grant paid (entirely financed from European Cohesion Fund): 44 844 160 HUF.

Main contract for the project implementation:

The Municipality conducted a procurement procedure without publication according to Article 122/A of the Kbt. (so called "3 offers procedure") in view to sign a **works and design contract** (*tervezéssel egybekötött kiviteli szerződés*).

The call for tender was sent on 25.11.2014 to [REDACTED] and [REDACTED].

The "three offers procedure" of **Article 122/A of the Kbt.** was applicable to procedures for which the estimated amount did not exceed 25 000 000 HUF in case of supply or service contracts, or 150 000 000 HUF for works contracts.

The result of the procedure was published on 10.4.2015 under reference KÉ-3809/2015.

⁴⁹ "jaszberenyarazatlnakoltsegvetes", evidence OF_2015_0034 \ OLAF.C.1(S)(2015)37643 \ DVD-R_AOAT_1 \ KEOP-5.5.0-K-14-2014-0003 Jászberény Város Önkormányzata \ Közbeszerzés \ EMIR-ből letöltött \ 2014_11_É_09577 \ Beérkezett_2014_11_É_09577.

The bidder was eligible only if it could prove one of several experiences in the field of public lighting (**not necessarily LED technology**) during the preceding 60 months amounting at least to 20 000 000 HUF.⁵⁰

The call for bid listed 313 [REDACTED] lamps to be supplied. It was stated that "equivalent" would be accepted in case the technical specifications were the same.

[REDACTED] provided several preliminary offers to [REDACTED] [REDACTED] between 3.12.2015 and 2.3.2015. No preliminary offer was provided to any other potential bidder for this project.

The Municipality received two bids, both were declared compliant after the clarification procedure:

- [REDACTED] 37 419 000 HUF, proposing [REDACTED] lamps
- [REDACTED] 37 609 000 HUF, proposing [REDACTED] lamps. The statement of [REDACTED] attached to the bid of [REDACTED] on the quality of its lamps, issued for this specific project, was the same as the statement attached to the bid of [REDACTED]

On 18.02.2015 [REDACTED] signed the works and design contract with the Municipality for an amount of 37 419 000 HUF. The estimated amount of contract according to the cost benefit calculation was 37 682 000 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] was [REDACTED] (4 268 309 HUF). The supplier was [REDACTED] the total amount of the contract was 23 667 319 HUF (contract signed by [REDACTED]).

Tender design: Tender plans signed by [REDACTED] [REDACTED] (see project application CD/Annexes/4.TPONT, tender plans)

Authorised execution plans: included into the works contract, drafted by [REDACTED] as sub-contractor of [REDACTED]

Public Procurement consultant: [REDACTED]

Project preparation consultant: on 16.09.2014 [REDACTED] signed a contract to prepare the Energetics study, lighting measurements and preliminary design (other offers: [REDACTED])

Project management consultant: [REDACTED]

2.2.4.6. FACTS CONCERNING PROJECT KEOP-5.5.0/K/14-2014-0005 - TAMÁSI

(25) Project reference and title: KEOP-5.5.0/K/14-2014-0005 - Tamási Város közvilágításának energiatakarékos átalakítása

Beneficiary: Municipality of Tamási, represented at the date of the signature of the Grant Agreement by [REDACTED]

Project application: 02.10.2014.

Grant decision: 17.12.2014

Grant Agreement: 02.02.2015

Total eligible project amount and total amount of grant according to the Grant Agreement (100%): 258 963 030 HUF

Total amount of grant paid (entirely financed from European Cohesion Fund): 258 932 704 HUF.

Main contract for the project implementation:

The call for tender was published on 30.1.2015 under reference KÉ-1429/2015. It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

⁵⁰ Alkalmatlan az ajánlattevő, ha „az eljárást megindító felhívást megelőző 60 hónapban nem rendelkezik sikeres műszaki átadás-átvétellel zárult, összesen legalább nettó 20 000 000 HUF megvalósítási értéket elérő, közvilágítás kivitelezés, kivitelezési munka megvalósítására vonatkozó referenciával vagy referenciákkal.”

The tender evaluation criteria were: proposed price (75), late delay penalty (2) and cancelled implementation penalty (12). OCM(2022)2243 - 31/01/2022

According to chapter III. 2.3) of the call, the bidder was eligible only if it could prove that:

- P3) during the last year its income generated from contracts related to the subject of the public procurement (public lighting renovation with **LED** technology) was at least 40 000 000 HUF/year, and amounted in total 180 000 000 HUF.
- M1/a) The bidder had an experience during the preceding 60 months of one single finished works contract of 144 000 000 HUF in the field of public lighting works, with minimum 1 083 **LED** lamps installed
- M1/b) during the preceding 60 months there was a period of consecutive 4 weeks when the company installed minimum 168 lamps/week (LED or other lamps)
- M2/a) it could propose an expert with the qualification of technical manager (műszaki vezető) which had the experience necessary to obtain the qualification as foreseen in the applicable Government Decree.

The call for bid listed 1445 lamps to be supplied, mainly [REDACTED] lamps. It was stated that "equivalent" would be accepted in case the technical specifications were the same.

The Municipality received two bids:

- [REDACTED] 193 287 500 HUF
- [REDACTED] 144 741 500 HUF

In the clarification request the contracting authority requested [REDACTED] in particular to provide the evidence that the company was certified MSZ EN ISO 50001:2012, to provide some statements from the bank of the company, as well as evidence that the company had the requested experience in the field of LED technology. The company was also requested to provide some missing compulsory statements, justification of experience of the company and the key staff proposed. If any of those documents was missing, the bid was non-compliant. It is not known which supporting documents [REDACTED] could provide and which documents it could not, [REDACTED] abandoned the procedure at this stage and did not answer within the deadline the clarification request, therefore its bid was declared non-compliant.

On 01.04.2015 [REDACTED] signed a **works and design contract** with the Municipality for an amount of 193 287 500 HUF. The estimated amount of contract according to the cost benefit calculation was 193 311 378 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] was [REDACTED] (24 929 392 HUF). Supplier: [REDACTED] (open source information. OLAF did not receive data on the amount).

Tender design: Tender plans signed by [REDACTED] [REDACTED] (see project application CD/Annexes/4.TPONT, tender plans)

Authorised execution plans: included into the works contract, drafted by [REDACTED] [REDACTED] as sub-contractor of [REDACTED]

Public Procurement consultant: [REDACTED]

Project preparation consultant : on 08.07.2014 [REDACTED] signed a contract to prepare the Energetics study, lighting measurements and preliminary design. [REDACTED] Signed a sub-contract with [REDACTED] on 08.07.2014 for the lighting measurements.

2.2.4.7. FACTS CONCERNING PROJECT KEOP-5.5.0/K/14-2014-0006 - BALATONFÜRED

(26) Project reference and title: KEOP-5.5.0/K/14-2014-0006 - Balatonfüred Város Közvilágításának Korszerűsítése.

Beneficiary: Municipality of Balatonfüred, represented at the date of the signature of the Grant Agreement by [REDACTED]

Project application: 04.10.2014

OCM(2022)3243 - 31/01/2022

Grant decision: 31.12.2014

Grant Agreement: 02.02.2015

Total eligible project amount and total amount of grant according to the Grant Agreement (100%): 134 900 000 HUF

Total amount of grant paid (entirely financed from European Cohesion Fund): 134 898 395 HUF.

Main contract for the project implementation:

The Municipality conducted a procurement procedure without publication according to **Article 122/A of the Kbt.** (so called "3 offers procedure") in view to sign a **works and design** contract (*tervezéssel egybekötött kiviteli szerződés*). The result of the procedure was published under reference KÉ 7301/2015.

The call for tender was sent on 26.02.2015 to [REDACTED] and [REDACTED]

The "three offers procedure" of Article 122/A of the Kbt. was applicable to procedures for which the estimated amount did not exceed 25 000 000 HUF in case of supply or service contracts, or 150 000 000 HUF for works contracts.

The call for bid listed 991 [REDACTED] lamps to be supplied ([REDACTED] lamps). It was stated that "equivalent" would be accepted in case the technical specifications were the same.

The Municipality received three bids:

- [REDACTED] 97 888 500 HUF
- [REDACTED] 98 029 500 HUF
- [REDACTED] 99 736 200 HUF

On 13.04.2015 [REDACTED] signed a **works and design contract** with the Municipality for an amount of 97 888 500 HUF. The estimated amount of contract according to the cost benefit calculation was 98 031 496 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] was [REDACTED] (authorised executive plans 2 750 000 HUF, works 9 376 000 HUF). The main supplier was [REDACTED] [REDACTED] (89 575 768 HUF), [REDACTED] supplied few smaller items (2 663 323 HUF).

Tender design: Tender plans signed [REDACTED] (see project application CD/Annexes/4.TPONT, tender plans)

Authorised execution plans: included into the works contract, drafted by [REDACTED] as sub-contractor of [REDACTED]

Public Procurement consultant: [REDACTED]

Project preparation consultant : [REDACTED] signed a consultancy contract with the Municipality to prepare the lighting plan, the engineer in charge was [REDACTED]

Project management consultant: [REDACTED]

Supervisor Engineer: [REDACTED]

2.2.4.8. FACTS CONCERNING PROJECT KEOP-5.5.0/K/14-2014-0019 - GYÁL

(27) Project reference and title: KEOP-5.5.0/K/14-2014-0019 - Gyál közvilágítás energiatakarékos átalakítása

Beneficiary: Municipality of Gyál, represented at the date of the signature of the Grant Agreement by [REDACTED]

Project application: 03.10.2014

Grant decision: 31.12.2014

Grant Agreement: 02.02.2015

Total eligible project amount and total amount of grant according to the Grant Agreement (100%): 260 488 240 HUF

Total amount of grant paid (entirely financed from European Cohesion Fund): OCM(2022)2243 - 31/01/2022
260 192 019 HUF.

Main contract for the project implementation:

The call for tender was published on 09.01.2015 under reference KÉ-129-2015. It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

According to the call, the bidder was eligible only if it could prove that:

- P3) during the last 2 years its income generated from contracts related to the subject of the public procurement (public lighting renovation with **LED** technology) was at least 144 000 000 HUF/year (if company created since more than 2 years)
- M1/a) The bidder had experience during the preceding 60 months of one single finished works contract of at least 144 000 000 HUF in the field of public lighting works, with minimum 1 467 **LED** lamps installed
- M1/b) during the preceding 60 months there was a period of consecutive 4 weeks when the company installed minimum 186 lamps/week (LED or other lamps)
- M2/a) it could propose an expert with the qualification of technical manager (műszaki vezető) which had a 12 months experience in the field of public lighting works (not necessary LED).

The call for bid listed 1956 [REDACTED] lamps to be supplied (mainly [REDACTED]). It was stated that "equivalent" would be accepted in case the technical specifications were the same.

[REDACTED] issued 6 preliminary offers for the supply of the 1956 lamps to [REDACTED], all amounting 107.609.839HUF (references SO15000520-1, 2 and 3 and SO15001101-1, 2 and 3).

[REDACTED] also issued two preliminary offers to [REDACTED] for the supply of the same lamps for the amount of 148.742.290HUF.

The Municipality received two bids: [REDACTED] and [REDACTED]. The bid of [REDACTED] was declared non-compliant.

On 24.03.2015 [REDACTED] signed a **works and design contract** with the Municipality for an amount of 193 620 000 HUF. The estimated amount of contract according to the cost benefit calculation was 193 543 307 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] were [REDACTED] (15%) and [REDACTED]. The supplier was [REDACTED], the total amount of the contract was 107 609 839 HUF (contract signed by [REDACTED]).

Tender design: Not in the data received from the Managing Authority.

Authorised execution plans: included into the works contract.

Public Procurement consultant: [REDACTED]

Project preparation consultant : On 15.09.2014 [REDACTED] signed a consultancy contract with the Municipality in order to draft the Energetics study.

Project management consultant: [REDACTED] and its sub-contractor: [REDACTED]

2.2.4.9. FACTS CONCERNING PROJECT KEOP-5.5.0/K/14-2014-0021 - SZIGETSZENTMIKLÓS

(28) Project reference and title: KEOP-5.5.0/K/14-2014-0021 - Szigetszentmiklós közvilágításának energiatakarékos átalakítása

Beneficiary: Municipality of Szigetszentmiklós, represented at the date of the signature of the Grant Agreement by [REDACTED]

Project application: 07.10.2014

OCM(2022)3243 - 31/01/2022

Grant decision: 17.12.2014

Grant Agreement: 02.02.2015

Total eligible project amount and total amount of grant according to the Grant Agreement (100%): 226 691 190 HUF, decreased to 220 684 168 HUF following modification of the Grant Agreement.

Total amount of grant paid (entirely financed from European Cohesion Fund): 220 684 167 HUF.

Main contract for the project implementation:

The call for tender was published on 03.04.2015 under reference KÉ-5027/2015. It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.** The deadline to tender was 22.04.2015.

On 04.05.2015 the Municipality modified the call for tender (KÉ-7205/2015). The deadline was prolonged to 12.05.2015.

The tender evaluation criteria were the price (70 points), the number of days foreseen for the implementation less than the required minimum (maximum 20 days less, 20 points) and the daily penalty for late execution (10 points).

- According to the last version of the P3) during the last 3 years its income generated from contracts related to the subject of the public procurement (public lighting renovation with **LED** technology) was at least 120 000 000 HUF/year (if company created since more than 3 years)
- M1/a) The bidder had an experience during the preceding 60 months of finished works contracts amounting in total to at least 250 000 000 HUF in the field of **LED** public lighting works.
- M2/a) it could propose an expert with the qualification of technical manager (műszaki vezető) which the necessary experience.

The call provided that the bidder should provide a certification from the manufacturer that the capacity of lamps will not decrease under 75% of the initially required capacity⁵¹. Such requirement was not included in the other calls for tender.

The call for tender requested the supply and installation of:

- 1826 [REDACTED] LED 20W/4000K lamps (or equivalent)
- 616 [REDACTED] LED 30W/4000K lamps (or equivalent)

13 companies requested the tender documentation: [REDACTED]

The Municipality received three bids until 12.05.2015:

- [REDACTED] 157 311 156 HUF, 10 days, 1%/day late execution penalty (proposed lamps: [REDACTED]), sub-contractor: [REDACTED]
- [REDACTED], 169 770 192 HUF, 10 days, 1%/day late execution penalty,
- [REDACTED] 149 750 500 HUF, 20 days, 0.6%/day late execution penalty (proposed lamps: [REDACTED], 16W/2138 lumen and 22W/2630 lumen)

⁵¹ „A LED-es világítótestek kezdeti fényárama a beruházás működési időtartama alatt nem csökkenhet 75% alá. Ajánlattevő az ajánlatában gyártói nyilatkozatokkal, hitelesen igazolnia kell, hogy az általa megajánlott, alkalmazott LED-es világítótestek mennyi üzemidőt követően érik el az előírt 75%-os értéket. Amennyiben az Ajánlattevő által megajánlott, alkalmazott LED-es világítótestek kezdeti fényárama a beruházás működési időtartama alatt 75% alá csökken, úgy az ajánlatot az Ajánlatkérő érvénytelennek minősíti.”

During the clarification procedure, the Beneficiary requested several missing documents from all three bidders, such as statements, certification of the experience, documents containing the experience of the staff proposed, and for all three bidder the missing professional offer (*szakmai ajánlat*) and organisation plan (*organizációs terv*). Only [REDACTED] provided the requested clarifications within the deadline, the two other bids were therefore considered as non-compliant.

On 06.07.2015 [REDACTED] signed a **works and design contract** with the Municipality for an amount of 152 182 965 HUF, out of which the cost of the design preparation was 5 128 200 HUF. The estimated amount of contract according to the cost benefit calculation was 162 000 000 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] for design was [REDACTED], 3 810 000 HUF, the sub-contractors for works were [REDACTED] 37 216 080 HUF. The supplier was [REDACTED]

Tender design: Tender plans signed [REDACTED]

Authorised execution plans: including into the contract of [REDACTED]

Public Procurement consultant: [REDACTED]

Project preparation consultant : On 7.10.2014 [REDACTED] signed a contract with the Municipality to draft the Energetics study necessary for the project application.

2.2.4.10. FACTS CONCERNING PROJECT KEOP-5.5.0/K/14-2014-0027 - BÁC S A L M Á S

(29) Project reference and title: KEOP-5.5.0/K/14-2014-0027 - Bácsalmás közvilágítás energiatakarékos átalakítása

Beneficiary: Municipality of Bácsalmás, represented at the date of the signature of the Grant Agreement by [REDACTED]

Project application: 02.10.2014

Grant decision: 31.12.2014

Grant Agreement: 02.02.2015

Total eligible project amount and total amount of grant according to the Grant Agreement (100%): 155 544 830 HUF

Total amount of grant paid (entirely financed from European Cohesion Fund): 155 044 731 HUF.

Main contract for the project implementation:

The Municipality conducted a procurement procedure without publication according to **Article 122/A of the Kbt.** (so called "3 offers procedure") in view to sign a **works and design contract** (*tervezéssel egybekötött kiviteli szerződés*).

The call for bid listed 925 [REDACTED] lamps to be supplied ([REDACTED] lamps). It was stated that "equivalent" would be accepted in case the technical specifications were the same.

According to the call, the bidder was eligible only if it could prove that:

- P2) during the last 3 years its income generated from contracts related to the subject of the public procurement (public lighting renovation, **not necessarily LED technology**) was at least 60 000 000 HUF/year (if company created since more than 3 years)
- M1 The bidder had an experience during the preceding 60 months of one or more finished works contract(s) of at least in total 60 000 000 HUF in the field of public lighting works (**not necessarily LED technology**)
- M2 it could propose an expert with the qualification of technical manager (műszaki vezető) which had an experience of at least one contract in the field of public lighting works (not necessary LED).

The call for bid was sent to [REDACTED] and [REDACTED] OCM(2022)3243 - 31/01/2022

The Municipality received two bids:

- [REDACTED] 112 797 480 HUF
- [REDACTED] 114 835 878 HUF

In the bid of [REDACTED] all the 12 item prices relating to lamps were increased by exactly 1.167% compared to the item prices of [REDACTED]. Only the price of the design (-0.33%) and the price of the demolition of the old lamps (+8.3%) did not follow this linear logic.

[REDACTED] proposed some lamps to be replaced, because some of the types requested were obsolete and was not manufactures anymore by [REDACTED] due to the technical evolution of LED technology. For example, instead of [REDACTED] [REDACTED] proposed [REDACTED].

[REDACTED] proposed however the old models.

[REDACTED] issued several preliminary offers to [REDACTED] but did not issue any preliminary offer to [REDACTED]

On 05.11.2014 [REDACTED] signed a **works and design contract** with the Municipality for 112 797 480 HUF. The estimated amount of contract according to the cost benefit calculation was 111 811 024 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] for light measurements was [REDACTED] 1 000 000 HUF, the sub-contractors for works was [REDACTED]

The supplier was [REDACTED] the total amount of the contract was 77 227 511 HUF (contract signed by [REDACTED])

Tender design: Tender plans signed by [REDACTED] [REDACTED] as controller (see project application CD/Annexes/4.TPONT, tender plans)

Authorised execution plans: included into the works contract, drafted by [REDACTED] [REDACTED] as sub-contractor of [REDACTED] was in charge of the lighting measurements, [REDACTED] was the plan controller ("terv-ellenőr").

Public Procurement consultant: [REDACTED]

Project preparation consultant : On 11.07.2014 [REDACTED] signed a contract to draft the Energetics study (other offers: [REDACTED] and [REDACTED] also second bidder for works)

2.2.4.11. FACTS CONCERNING PROJECT KEOP-5.5.0/K/14-2014-0028 - MISKOLC

(30) Project reference and title: KEOP-5.5.0/K/14-2014-0028 - Közvilágítás energiatakarékos megvalósítása Miskolcon

Beneficiary: Municipality of Miskolc, represented at the date of the signature of the Grant Agreement by [REDACTED]

Project application: 08.10.2014.

The applicant attached as annex to the project application a statement of the manufacturer [REDACTED] certifying that life-time duration L75 is at least 100 000 hours.

Grant decision: 17.12.2014

Grant Agreement: 30.01.2015

Total eligible project amount and total amount of grant according to the Grant Agreement (100%): 451 358 000 HUF

Total amount of grant paid (entirely financed from European Cohesion Fund): 446 331 899 HUF.

Main contract for the project implementation:

The call for tender was published on 29.5.2015 under reference KÉ-9095/2015. It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

The tender evaluation criteria were: proposed price (80), late delay penalty (10) and cancelled implementation penalty (10). OCM(2022)2243 - 31/01/2022

According to the call, the bidder was eligible only if it could prove that:

- P3) during the last year its income generated from contracts related to the subject of the public procurement (public lighting renovation with **LED** technology) was at least 239 000 000 HUF/year.
- M1/a) The bidder had an experience during the preceding 60 months of one single finished works contract of at least 239 000 000 HUF in the field of public lighting works, with minimum 1 700 **LED** lamps installed
- M1/b) during the preceding 60 months there was a period of consecutive 4 weeks when the company installed minimum 218 lamps/week (LED or other lamps)
- M2/a) it could propose an expert with the qualification of technical manager (műszaki vezető) with experience required for the qualification.

The call for bid listed **2383** [redacted] to be supplied ([redacted] lamps). It was stated that "equivalent" would be accepted in case the technical specifications were the same.

The Municipality received two bids during the public procurement procedure: [redacted] (composed by [redacted]) and [redacted] (308 591 520 HUF). The bid of [redacted] was declared non-compliant.

On 22.09.2015 [redacted] signed a **works and design contract** with the Municipality for an amount of 322 837 650 000 HUF. The estimated amount of contract according to the cost benefit calculation was 324 650 000 HUF.

Sub-contractors, suppliers: OLAF received no data on the sub-contractors and supplier from the Managing Authority in relation to this project.

Tender design: [redacted] (see contract for tender and execution plans on the CD attached to the project application CD/Annexes/4.TPONT.

Public Procurement consultant: [redacted]

Project preparation consultant: Lighting plan and measurements: [redacted]

Preiliminary study constultant: [redacted]

2.2.4.12. FACTS CONCERNING PROJECT KEOP-5.5.0/K/14-2014-0035 - SIÓFOK

(31) Project reference and title: KEOP-5.5.0/K/14-2014-0035 - Siófok közvilágítás energiatakarékos átalakítása

Beneficiary: Municipality of Siófok, represented at the date of the signature of the Grant Agreement by [redacted]

Project application: 09.10.2014

Grant decision: 31.12.2014

Grant Agreement: 02.02.2015

Total eligible project amount and total amount of grant according to the Grant Agreement (100%): 426 004 641 HUF

Total amount of grant paid (entirely financed from European Cohesion Fund): 416 136 655 HUF.

Main contract for the project implementation:

The call for tender was published on 27.5.2015 under reference KÉ-8914/2015 (modified under KÉ 9241/2015). It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

The tender evaluation criteria were: proposed price (80), late delay penalty (10) and cancelled implementation penalty (10).

According to the call, the bidder was eligible only if it could prove that:

- P3) during the last 3 years its income generated from contracts related to the subject of the public procurement (public lighting renovation with **LED** technology) was at least 235 000 000 HUF in total (if company created since more than 3 years).
- M1/a) The bidder had an experience during the preceding 60 months of one single finished works contract of at least 235 000 000 HUF in the field of public lighting works, with minimum 1 540 **LED** lamps installed
- M2/a) it could propose an expert with the qualification of technical manager (műszaki vezető) which had the experience required for this qualification.

The call for bid listed 2064 [REDACTED] lamps to be supplied ([REDACTED] [REDACTED] lamps). It was stated that "equivalent" would be accepted in case the technical specifications were the same.

The Municipality received two bids during the public procurement procedure: [REDACTED] and [REDACTED] (199 993 432 HUF). The bid of [REDACTED] was declared non-compliant.

In September 2015 [REDACTED] signed a **works and design contract** with the Municipality for an amount of 321 122 630 HUF (entry into force of the contract: 16.09.2015). The estimated amount of contract according to the cost benefit calculation was 315 976 000 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] were [REDACTED] (33 039 000 HUF) and [REDACTED]

The supplier was [REDACTED] the total amount of the contract was 173 231 264 HUF (contract signed by [REDACTED] [REDACTED])

Tender design: Tender plans signed by [REDACTED] [REDACTED] (see project application CD/Annexes/4.TPONT, tender plans)

Authorised execution plans: included into the works contract, drafted by [REDACTED] [REDACTED] as sub-contractor of [REDACTED]

Public Procurement consultant: [REDACTED]

Project management consultant : [REDACTED]

Project preparation consultant : On 20.12.2012 [REDACTED] signed a contract to draft the preliminary study. It also signed a second contract to draft the project application.

On 08.07.2014 [REDACTED] signed a consultancy contract to draft the Energetics study and the measurements.

2.2.4.13. FACTS CONCERNING PROJECT KEOP-5.5.0/K/14-2014-0039 - HAJDÚBÖSZÖRMÉNY

(32) Project reference and title: KEOP-5.5.0/K/14-2014-0039 - Hajdúböszörmény közvilágítás energiatakarékos átalakítása

Beneficiary: Municipality of Hajdúböszörmény, represented at the date of the signature of the Grant Agreement by [REDACTED]

Project application: 09.10.2014

Grant decision: 31.12.2014

Grant Agreement: 03.02.2015

Total eligible project amount and total amount of grant according to the Grant Agreement (100%): 460 435 179 HUF

Total amount of grant paid (entirely financed from European Cohesion Fund): 457 533 172 HUF.

Main contract for the project implementation:

The call for tender was published on 12.06.2015 under reference KÉ-1023/2015/2022 - 31/01/2022 conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

According to chapter III. 2.3) of the call, the bidder was eligible only if it could prove that:

- P3) during the last year its income generated from contracts related to the subject of the public procurement (public lighting renovation, **not necessarily LED technology**) was at least 100 000 000 HUF/year
- M1/a) The bidder had an experience during the preceding 60 months of one single finished works contract of 120 000 000 HUF in the field of public lighting works, with minimum 2 000 (**LED or other**) lamps installed.
- M1/b) during the preceding 60 months there was a period of consecutive 4 weeks when the company installed minimum 280 lamps/week (LED or other lamps)
- M2/a) it could propose an expert with the qualification of technical manager (műszaki vezető) which had the experience required for this qualification.

The call for bid listed 3.489 [REDACTED] lamps to be supplied ([REDACTED] lamps). It was stated that "equivalent" would be accepted in case the technical specifications were the same.

The Municipality received four bids during the public procurement procedure:

- [REDACTED]
- [REDACTED] 348 929 132 HUF
- [REDACTED] 350 374 211 HUF
- [REDACTED] 299 229 962 HUF (non-compliant)
- [REDACTED] 453 242 280 HUF

On 09.09.2015 [REDACTED], composed by [REDACTED] signed a **works and design contract** with the Municipality for an amount of 348 929 132 HUF. The estimated amount of contract according to the cost benefit calculation was 351 200 000 HUF.

Sub-contractors, suppliers: The main sub-contractor of [REDACTED] was [REDACTED] [REDACTED] was sub-contractor for the Authorised execution plans (3 500 000 HUF).

The main supplier was [REDACTED] (unknown amount HUF), [REDACTED] supplied few smaller items (18 161 052 HUF).

Tender design: Tender plans signed by [REDACTED] [REDACTED] (see project application CD/Annexes/4.TPONT, tender plans)

Authorised execution plans: included into the works contract, drafted by [REDACTED] as sub-contractor of [REDACTED]

Public Procurement consultant: [REDACTED]

Project preparation consultant: on 28.09.2014 [REDACTED] signed a contract to prepare the Energetics study (other offers: [REDACTED])

Project management consultant: [REDACTED]

2.2.4.14. FACTS CONCERNING PROJECT KEOP-5.5.0/K/14-2014-0040 - KISKUNFÉLEGYHÁZA

(33) Project reference and title: KEOP-5.5.0/K/14-2014-0040 - Kiskunfélegyháza város közvilágításának energiatakarékos korszerűsítése

Beneficiary: Municipality of Kiskunfélegyháza, represented at the date of the signature of the Grant Agreement by [REDACTED]

Project application: 09.10.2014

Grant decision: 17.12.2014

Grant Agreement: 30.01.2015

Total eligible project amount and total amount of grant according to the Grant Agreement (100%): 487 740 505 HUF

Total amount of grant paid (entirely financed from European Cohesion Fund): 437 017 541 HUF.

Main contract for the project implementation:

The call for tender was published on 05.06.2015 under reference KÉ-9750/2015. It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

According to chapter III. 2.3) of the call, the bidder was eligible only if it could prove that:

- M1/a) The bidder had an experience during the preceding 60 months of one single finished works contract in the field of public lighting works, with minimum 2 000 (**LED or other**) lamps installed (no minimum amount required).
- M2/a) it could propose an expert with the qualification of technical manager (műszaki vezető) which had the experience required for this qualification.

The tender evaluation criterium was the best price.

The technical specifications of the lamps were exactly those of [REDACTED] lamp types.

The Municipality received three bids during the public procurement procedure:

- [REDACTED]
- [REDACTED] 344 985 418 HUF.
- [REDACTED] 309 873 194 HUF.

On 12.10.2015 [REDACTED] signed a **works and design contract** with the Municipality for an amount of 328 708 299 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] was [REDACTED] the sub-sub-contractor of [REDACTED] was [REDACTED] (61 922 325 HUF).

OLAF did not receive data on the supplier (no [REDACTED] lamps were supplied).

Tender design: Not in the data received from the Managing Authority.

Authorised execution plans: included into the works contract.

Public Procurement consultant: [REDACTED]

Project preparation consultant : No data.

2.2.4.15. FACTS CONCERNING PROJECT KEOP-5.5.0/K/14-2014-0070-MÓRAHALOM

(34) Project reference and title: KEOP-5.5.0/K/14-2014-0070- Mórahalom közvilágítás energiatakarékos átalakítása

Beneficiary: Municipality of Mórahalom, represented at the date of the signature of the Grant Agreement by [REDACTED]

Project application: 06.10.2014

Grant decision: 17.12.2014

Grant Agreement: 04.02.2015

Total eligible project amount and total amount of grant according to the Grant Agreement (100%): 88 117 243 HUF

Total amount of grant paid (entirely financed from European Cohesion Fund): 87 991 555 HUF.

Main contract for the project implementation:

The Municipality conducted a procurement procedure without publication according to **Article 122/A of the Kbt.** (so called "3 offers procedure") in view to sign a **works and design contract** (*tervezéssel egybekötött kiviteli szerződés*).

One of the requirements for compliance was that in the last five years, the bidder must have an experience of one project (design and/or works) of public lighting modernisation including the change of minimum 2 200 lamps (**not necessarily LED**).

The call for bid listed 687 [REDACTED] lamps to be supplied (mainly [REDACTED] and [REDACTED]). It was stated that "equivalent" would be accepted in case the technical specifications were the same.

The call for offer was sent to [REDACTED].

The Municipality received two offers: [REDACTED].

The offer of [REDACTED] was declared ineligible.

During the on-the-spot check of OLAF conducted on [REDACTED] the manager of the company stated to OLAF that his company never applied as an independent bidder in a procurement procedure because it would not have the financial capacity to implement such a contract alone. This contradicts the fact the [REDACTED] sent a bid to Mórahalom. The experience mentioned in the bid were Project Szolnok I and II, for a total amount of 56 830 000 HUF (amount of sub-contract between [REDACTED] including the installation of 2 455 + 1 901 lamps).

On 12.02.2014 [REDACTED] signed a **works and design contract** with the Municipality for an amount of 64 796 500 HUF. The estimated amount of contract according to the cost benefit calculation was 64 804 317 HUF.

Sub-contractors, suppliers: The supplier was [REDACTED] the total amount of the contract was 45 008 184 HUF (contract signed by [REDACTED]). OLAF did not receive data on the sub-contractor.

Tender design: Tender plans signed by [REDACTED] [REDACTED] (see project application CD/Annexes/4.TPONT, tender plans).

Authorised execution plans: included into the works contract, drafted by [REDACTED] as sub-contractor of [REDACTED].

Public Procurement consultant: [REDACTED]

Project preparation consultant : on 08.09.2014 [REDACTED] signed a contract to draft the Energetics study (other offers: [REDACTED]).

2.2.4.16. FACTS CONCERNING PROJECT KEOP-5.5.0/K/14-2014-0071 - SIKLÓS

(35) Project reference and title: KEOP-5.5.0/K/14-2014-0071 - Siklós közvilágítás energiatakarékos átalakítása

Beneficiary: Municipality of Siklós, represented at the date of the signature of the Grant Agreement by [REDACTED].

Project application: 06.10.2014

Grant decision: 31.12.2014

Grant Agreement: 30.01.2015

Total eligible project amount and total amount of grant according to the Grant Agreement (100%): 245 533 014 HUF

Total amount of grant paid (entirely financed from European Cohesion Fund): 244 980 004 HUF.

Main contract for the project implementation:

The call for tender was published on 7.1.2015 under reference KÉ-126834/2014. It was conducted according to the rules of open national public procurement procedure foreseen by **Article 121 of Kbt.**

According to chapter III. 2.3) of the call, the bidder was eligible only if it could prove that:

- P3) that during the last 2 years its income generated from contracts related to the subject of the public procurement (public lighting renovation with **LED** technology) was at least 170 000 000 HUF in total (if company created since more than 2 years)

- M1/a) The bidder had an experience during the preceding 60 months of at least one finished works contract of 130 000 000 HUF in the field of public lighting works, with minimum 979 **LED** lamps installed
- M1/b) during the preceding 60 months there was a period of consecutive 4 weeks when the bidder installed minimum 153 lamps/week (LED or other lamps)
- "M2/a) it could propose an expert with the qualification of technical manager (műszaki vezető) which had the experience necessary to obtain the qualification as foreseen in the applicable Government Decree, and had the experience during the last 60 months of at least one project for minimum 130 000 000 HUF in the field of public lighting works, **or** minimum 979 lamps installed (LED or other).

The call for bid listed 1 306 [REDACTED] lamps to be supplied ([REDACTED] lamps). It was stated that "equivalent" would be accepted in case the technical specifications were the same.

The Municipality received only one bid during the public procurement procedure.

On 02.03.2015 [REDACTED] signed a **works and design contract** with the Municipality for an amount of 181 637 000 HUF, out of which the cost of works was 177 537 000 HUF, the design was 4 100 000 HUF. The estimated amount of works contract according to the cost benefit calculation was 177 952 756 HUF.

Sub-contractors, suppliers: The sub-contractor of [REDACTED] was [REDACTED] (20 613 636 HUF). The supplier was [REDACTED] the total amount of the contract was 99 131 744 HUF (contract signed by [REDACTED])

Tender design: Tender plans signed by [REDACTED] [REDACTED] (see project application CD/Annexes/4.TPONT, tender plans).

Authorised execution plans: included into the works contract, drafted by [REDACTED] [REDACTED] as sub-contractor of [REDACTED]

Project Management consultant: [REDACTED] (contract signed on 02.10.2014, entering into force 31.12.2014 because the suspension clause providing for the entering into force only if the Grant Agreement is signed).

Project preparation consultant : on 18.09.2014 [REDACTED] signed a contract to draft the Energetics study and the preliminary documents, including the including tender design. The sub-contractor of [REDACTED] for tender design was [REDACTED]

3. LEGAL EVALUATION

3.1. IRREGULARITIES LINKED TO THE PUBLICATION, AMENDMENT OF CALL FOR APPLICATIONS KEOP-2012-5.5.0/A AND KEOP-2014-5.5.0/K AND THE EVALUATION OF THE PROJECT APPLICATIONS

General rules applicable to the management of EU funds

Financial Regulation: Regulation (EU, Euratom) No 966/2012⁵² and its implementing rules⁵³.

⁵² Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002.

⁵³ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union

According to Article 14 of Regulation (EC) 1083/2006,⁵⁴ the principle of sound financial management shall be applied to Structural funds in accordance with the Financial Regulation. According to Article 30 of the Regulation No 966/2012, "the budget appropriations shall be used in accordance with the principle of sound financial management, namely in accordance with the principles of economy, efficiency and effectiveness". Article 53(2) of the Financial Regulation obligates the Member States to cooperate with the Commission "so that the appropriations are used in accordance with the principle of sound financial management". The principle of economy implies that "resources used by the institution for the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price" (Article 27(2)).

The projects were financed by the European Cohesion Fund during the 2007-2013 programming period. The applicable general provisions are laid down in Regulation (EC) 1083/2006⁵⁵ (General rules), Regulation (EC) No 1084/2006⁵⁶ (Cohesion Fund), and Commission Regulation (EC) No 1828/2006⁵⁷ (implementing rules).

In Hungarian law, Government Decree 4/2011⁵⁸ provides the principle of equal treatment of applicants by the Managing Authority, and the obligation of the Applicant and other actors of the application procedure to act in good faith, the prohibition to deceive the decision makers.

Definition of irregularity:

Regulation No 2988/95⁵⁹, containing the definition, general rules and sanctions of irregularities.

Definition of EU fraud:

Article 1.1.a) of the Convention on the protection of the Communities financial interests⁶⁰ (definition of fraud to the Communities financial interests), and Article 2 of the same Convention states that Member States should take the necessary measures in order that effective, proportionate and dissuasive sanctions will be provided.

⁵⁴ Council Regulation (EC) 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, OJ L210 of 31.7.2006, p.25-78.

⁵⁵ Council Regulation (EC) 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, OJ L210 of 31.7.2006, p.25-78.

⁵⁶ Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund and repealing Regulation (EC) No 1164/94, OJ L210 of 31.7.2006, p.79.

⁵⁷ Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund, OJ L 371, 27.12.2006, p. 1-163.

⁵⁸ 4/2011. (I. 28.) Korm. rendelet 11. § "(1) A lebonyolításban érintett szervezet az eljárása során köteles megtartani és megtartatni a jogszabályok rendelkezéseit. Hatáskörét a jogszabályokban meghatározott célok megvalósítása érdekében, jogkörét a jogalkotó által meghatározott szempontok figyelembevételével és az adott ügy egyedi sajátosságaira tekintettel gyakorolja. (2) A lebonyolításban érintett szervezet a hatáskörének gyakorlásával nem élhet vissza, hatásköre gyakorlása során a szakszerűség, az egyszerűség, a szabályszerűség, a támogatást igénylővel és a kedvezményezettel való együttműködés követelményeinek megfelelően köteles eljárni. (3) A lebonyolításban érintett szervezet által lefolytatott eljárásokban az egyenlő bánásmód követelményét meg kell tartani. (4) A támogatást igénylőt, a kedvezményezettet és az eljárás más résztvevőjét megilleti a tisztességes ügyintézéshez, a jogszabályban meghatározott határidőben hozott döntéshez való jog. (5) A lebonyolításban érintett szervezet a támogatást igénylő, a kedvezményezett és az eljárás más résztvevője számára biztosítja, hogy jogaikról és kötelezettségeikről tudomást szerezzenek, valamint előmozdítja az őket megillető jogok gyakorlását. (6) A lebonyolításban érintett szervezet által lefolytatott eljárásokban a támogatást igénylő, a kedvezményezett és az eljárás más szereplője köteles jóhiszeműen eljárni, magatartásuk nem irányulhat a döntéshozó megtévesztésére vagy a döntéshozatal, illetve a végrehajtás indokolatlan késleltetésére."

⁵⁹ Council Regulation (EC, EURATOM) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests. (OJ No. L312, page 1, of 31.12.1995)

⁶⁰ Convention of 26 July 1995 drawn up on the basis of Article K.3 of the Treaty on the European Union on the protection of the Communities' financial interests, OJ C316 of 27.11.95 p.49. See also Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, not yet applicable.

3.1.1. SUBSTANTIAL MODIFICATION OF THE CALL FOR PROJECT APPLICATIONS WITHOUT PROLONGATION OF THE DEADLINE OCM(2022)3243 - 31/01/2022

According to Article 60 of Regulation 1083/2006, "The managing authority shall be responsible for managing and implementing the operational programme in accordance with the principle of sound financial management and in particular for: (a) ensuring that operations are selected for funding in accordance with the criteria applicable to the operational programme and that they comply with applicable Community and national rules for the whole of their implementation period.

According to paragraph (3) of Article 11 of Hungarian Government Decree 4/2011, the Managing Authority shall conduct the procedures for the selection of projects in line with the principle of non-discriminatory treatment of the Applicants. According to paragraph (4) of the same Article, the Applicant has the right to a fair treatment.

The Managing Authority responsible for the Energy and Environment Operational programmes published on 12.12.2012 **call No. KEOP-2012-5.5.0./A**. The beneficiaries could submit their applications at earliest on 11.02.2013. The eligible applications reaching at least 50/100 of points according to the evaluation criteria and which did not receive 0 point in any of the exclusive evaluation criteria would receive a grant in the order of arrival until exhaustion of the available amount. It was therefore important for the applicants to submit their application as soon as possible.

On Friday 08.02.2013 the excel table for Annex III of the application was modified by the Managing Authority only in relation to LED public lighting projects. The new publication only mentioned that a new version of Annex III published, without modifying the text of the call and without specifying the exact subject of the modification. It was therefore difficult to a potential applicant to identify which sheet/cell of the very voluminous Annex III was modified, while it was an important element of the cost benefit calculation for LED public lighting projects.

In fact, one cell was modified in the excel table Annex III, which allowed the potential beneficiaries to calculate with 100.000 hours of life-time duration of the lamps, if duly justified, in case of LED lamps used in public lighting renovation projects. Before the modification, only 50.000 hours life-time could be taken into account keeping the minimum acceptable level of remaining lumen power.

The beneficiaries had only one week-end to adapt their application to this new Annex III if they wanted to introduce their application at earliest and have more probability receiving a grant.

In all 17 project applications investigated by OLAF under call KEOP-2012-5.5.0/A, the cost benefit analysis calculated with the maximum life-time newly allowed after the last minute modification of the call by the Managing Authority, i.e. 100.000 hours.

The same happened also for **call No. KEOP-2014-5.5.0/K**. The call was published on 22 September 2014. The call targeted only public lighting projects of municipalities.

The beneficiaries could submit their applications between Thursday 02.10.2014 and Tuesday 07.10.2014. On Wednesday 01.10.2014 the excel table for Annex III of the application was modified by the Managing Authority without prolongation of the deadline.

The modification of the text of the call and of one cell in the Annex III allowed the potential beneficiaries to calculate with 100.000 hours of life-time duration of the lamps in case of LED lamps. In case of call KEOP-2014-5.5.0/K, the subject of modification (life-time duration of LED lamps) was mentioned in the amendment itself, and not only in the excel table, therefore it was easier for the applicants to identify the modification.

The applications were subject in this case to "periodic evaluation procedure" ("*szakaszos elbírálás*"), which means that all the application received in a given timeframe were subject to the same evaluation, independently in relation to the date of application. Therefore in this case the potential applicants had until 07.10.2014 to adapt their application to the new conditions.

In all 15 project applications investigated by OLAF under call KEOP-2014-5.5.0./A - OCM(2022)3243 - 31/01/2022 benefit analysis calculated with 100.000 hours, except the case of Szigetszentmiklós (80 000 hours).⁶¹

In relation to the first call for application, KEOP-2012-5.5.0./A, the representatives of the Managing Authority argued that the last minute modification took place because several remarks received from potential applicants following the publication of the call suggesting to extend the acceptable life-time duration, because the new technical properties of the LED lamps improved exponentially during the last years and a life-time of 100.000 hours became reasonably possible. According to the Managing Authority, the modification did not create new obligations but allowed new opportunities to the potential applicants, therefore there was no need to prolong the deadline.

However, it cannot be excluded that many potential beneficiaries decided not to apply as they calculated with the lower upper limit during their project calculations and they concluded that their project was ineligible and the investment to prepare the project application would be loose of public money. Even if they realised few days before the deadline that they could re-calculate the data, it was too late to prepare the whole project application.

It is worth to note that the finally awarded LED projects, before the last-minute modification using the maximum lifetime allowed at that moment were elaborated in detail while having a far negative BMR, so if submitted, they would not be eligible at all. With the last minute modification, these projects jumped slightly above to the eligible BMR level.

When provided with the opportunity to comment on this issue, [REDACTED] issued a somewhat implausible explanation. According to [REDACTED] they prepared in parallel several draft project applications for the Municipalities, containing realistic costs estimation of works and non-realistic ones (but compliant with the initial call). They hoped all along that they would be able to submit the realistic one.

This statement is an additional evidence that the Beneficiaries did not calculate on the basis of the "independent indicative offers" but the costs were adjusted to the maximum BMR.

It is commendable to provide new opportunities and adapt the call if there is a need for it, but it is necessary in parallel to respect **the principle of equal and fair treatment of the applicants**, which includes also providing them with the time necessary to adapt their application.

Also, if the Managing Authority became really persuaded on 08.02.2013 that the 100.000 hours is reasonable, it does not explain why the call published in 2014 did not contain it since the beginning, and why the Managing Authority did a last minute modification also in the publication of 2014. In this second call such last minute modification constitutes a more serious irregularity because in this case the Managing Authority should have known that it will accept the 100.000 hours. This shows a serious disfunctioning on the side of the Managing Authority.

In all 32 projects investigated under the two calls except one, the Beneficiaires became aware of the last minute modification in the call and modified the application to take into account 100.000 hours life-time (for Szigetszentmiklós the life-time estimation was 80.000 hours).

The fact that all the Beneficiaries became aware except one is due to the fact that in all projects except one the members of the same group of consultants were in charge to draft one or the other part of the project application or some preparative documents.

⁶¹ The case of Szigetszentmiklós is particular, because the consultants were not the same as in other projects, and also the lighting engineer who certified the compliance of the application was not [REDACTED]

This was not the case of all of the applicants: several applicants did not submit applications, because they were not aware of this possibility or simply because they did not intend to increase the costs just because it became possible.⁶²

The contracting authority violated the principle of equal treatment of potential applicants and their right to fair treatment and transparency.

The last minute modification of the two calls by the Managing Authority without informing clearly the applicants on the subject of the modification and without giving sufficient time to modify the draft applications constitutes a breach of Article 60 of Regulation 1083/2006 and Article 11 of Government Decree 4/2011. This irregularity affected not only the 35 projects investigated under those two call, but all the projects financed under the two calls.

3.1.2. ACCEPTANCE OF 100.000 HOURS LIFE-TIME WITHOUT SUFFICIENT EVIDENCE OF IT: CALL KEOP-2012-5.5.0/A AND KEOP-2014-5.5.0/K

For **call KEOP-2012-5.5.0/A** there was no document provided in the project application in which the manufacturer guaranteed unequivocally that the life duration at the maximum allowed decrease of lumen power would be 100.000 hours.

According to the technical description of the lamps provided by the manufacturer for the project applications in 2013, as well as the technical description of the lamps attached to the bids of ██████████ during the public procurement procedures in 2013 and 2014, the life duration at the maximum allowed decrease of lumen power accepted was estimated less than 100 000 hours.

For example:

- For ██████████ lamps after 60 000 hours 80% of the initial lumen power was expected
- For ██████████ lamps after 80 000 hours 80% of the initial lumen power was expected
- For ██████████ lamps after 60 000 hours 90% of the initial lumen power was expected, while after 100 000 hours 70% of the initial lumen power was expected (the accepted minimum allowed decreased lumen power was 75%).

In the first 6 projects, the external technical auditors issued a first negative opinion on the eligibility of the projects and estimated that according to the documents provided by the applicants, only 60.000 hours lifetime could be established.

According to the statement of ██████████ (see letter providing comments on the facts established by OLAF), only some evaluators did not agree to consider 100.000 hours lifetime duration, other evaluators found it realistic. "Out of the 17 projects investigated by OLAF, in 6 projects there was at least one technical evaluator who did not mention as a problem the 100.000 hours lifetime duration". "The Managing Authority noted therefore, also following secondary examination of the scientific literature, that there is no professional consensus on the basis of which the 100.000 hours lifetime duration could be challenged" "The Managing Authority noted therefore, also following secondary examination of the scientific literature, that there is no professional consensus on the basis of which the 100.000 hours lifetime duration could be challenged".

According to the call for project application, it was the task of the applicant to evidence that the 100.000 hours lifetime could be reached - and not the task of the evaluators to evidence that it could not be reached.⁶³

⁶² On the basis of open source information, some examples of projects where a lower life-time was taken into account in the project application: KEOP-5.5.0/A/12/-2013-007 Gyula, 12.5 years, KEOP-5.5.0/K-14-2014-0032 Balmazújvaros, 20 years, KEOP-5.5.0/K/14-2014-0060 Ságvár, 12.5 years, KEOP-5.5.0/K-14-2014-0075 Nagykövácsi, 50.000 hours.

⁶³ "FIGYELEM! 50.000 üzemóra felett indoklás szükséges az energetikai veszteségtartó összefoglalója c. dokumentumban"

By taking into account 100.000 hours, the 17 beneficiaries could calculate the residual value of the lamps after the 15 years period taken into account in the BMR calculation. Calculating with 60.000 hours (minimum lifetime considered as established by all the evaluators), the project should have returned its full investment cost in the first 15 years.

Because this residual value was taken into account, the project was considered eligible (the value of Internal Rate of Return - BMR exceeded 0,5%). Otherwise, if the evaluators would take their decision on the basis of the documents provided within the application, all 17 KEOP-2012-5.5.0/A projects would be ineligible.

For **call KEOP-2014-5.5.0/K** the situation was slightly different,.

Also in this case, there was no sufficient documentary evidence (catalogues, measurement reports) provided in the project application in which it was evidenced unequivocally that the life duration at the maximum allowed decrease of lumen power would be 100.000 hours for all lamps. Indeed, there was a technical evolution during the years, but even for the [REDACTED] lamps, which are the [REDACTED] lamps with the longest life-time foreseen, the 100.000 hours was not documented in the catalogues and technical descriptions attached to the application.

However, the call for application requested a statement of the manufacturer certifying that the life-time duration at the lighting power required (75% of the initial lighting power) would be at least 100.000 hours. The Beneficiaries attached such statement to their applications.

Such documentary evidence, considered together with the explanations provided to OLAF by the Managing Authority and especially by [REDACTED] in its opportunity to comment letter, justifies in case of call KEOP-2014-5.5.0/K projects the decision taken by the Managing Authority. In particular, it is noted that in the catalogues of 2013 and 2014, provided by [REDACTED] to OLAF (even if those documents were not attached to the project application), it was already stated that the lifetime duration would be at least 100.000 hours.

3.1.3. "IMPOSSIBLE OBLIGATION" AT CHARGE OF THE BENEFICIARIES INSERTED INTO THE GRANT AGREEMENT IN VIEW TO ACCEPT APPLICATIONS WHICH WOULD BE OTHERWISE INELIGIBLE

In their final opinion for all 17 projects under KEOP-2012-5.5.0/A (second modified opinion for the first 6 projects, first opinion for the other projects), the technical auditors stated that there will be additional costs because the necessary replacement of some components after 60 000 hours. Therefore, according to their opinion, the Internal Rate of return BMR can be considered as being in the eligibility range **only if there is no additional maintenance cost increase after 60 000 hours**, and suggested the additional requirement of having a fixed price maintenance contract for 25 years for all beneficiaries. Without this guarantee, at the moment of the evaluation of the applications there was no sufficient evidence that the life time duration would be at least 100.000 hours without later additional costs not calculated in the BMR.

The solution applied by the Managing Authority was to request from the applicants to commit themselves that the cost of maintenance will not exceed the amount foreseen in the project application for the years 16-25.

One possibility to guarantee such result would be that the Beneficiary signs a maintenance contract for 25 years. Such long-term contract would be unrealistic, none of the Beneficiaries signed such maintenance contract.

The solution was finally that the Managing Authority proposed to the Beneficiaries to commit themselves in the Grant Agreement (see annex "list of deviations" - "*eltérések listája*") to:

- Make measurements of lumen power after 15 years to verify if the lighting power is still compliant

- Commit themselves that the price of the future maintenance contracts (as maintenance contracts) will not increase even after 15 years, including if the above mentioned measurements lead to additional replacement costs.

The Managing Authority proposed to the Beneficiary to commit itself, in case there is a need, to sign maintenance contracts including specific services in the future for a maximum given price. As underlined by several Municipalities in their opportunity to comment letters, the Managing Authority requested practically the Beneficiaries to engage themselves to conclude contracts in the future with third parties on conditions that they would not be able to influence, as those contracts will be negotiated according to the market prices applicable at that moment.

In some Grant Agreements, it is foreseen that the "cost limit" should be published as condition in the call for tender for the maintenance contract. There is no provision in the Grant Agreement on what should be the solution if such tender gives no results, as no bid is received because the requested price is under the market price.

This constitutes an obligation which cannot be fulfilled and which is prohibited according to the general principles of law.

In comparison, in case of call KEOP-2014-5.5.0/K it was foreseen that in case the lumen power decreases under 75% during the project life time, the beneficiary has to make an addition investment **at its own costs** to ensure the life-time duration used for the cost benefit calculation. Such commitment is not possible to implement.

The Managing Authority placed the Beneficiaries in front of the choice between two options: commit themselves to an impossible obligation, or receive a refusal of grant. This constitutes a violation of Article 60 of Regulation 1083/2006.

3.1.4. CONDITION OF ELIGIBILITY WHICH CAN BE VERIFIED ONLY IF A PROJECT MAINTENANCE PERIOD OF 25 YEARS IS TAKEN INTO ACCOUNT

Some of the maintenance contracts checked by OLAF already exceed the maximum annual costs foreseen in the cost benefit analysis, while the projects are still in the 5 years guarantee period, which means that the cost of the replacement pieces is paid by the works contractor/manufacturer. The maintenance contracts checked by OLAF are valid for 2-3 years only, after expiration they will have to be renegotiated or a new tender procedure will take place at the current market prices.

It is unrealistic to suppose that the companies in charge of maintenance will apply the same price when the guarantee period will end. It is even less realistic to suppose that after 15-20 years, when according to the experts more lamp types will need replacements because their life-time duration will end, the companies in charge of maintenance will propose the same annual price as during the guarantee period, when the lamps were "relatively new" and the costs of replacement pieces were at the charge of the manufacturer.

In all EU financed infrastructure capacity building or renovation projects there is an upper limit for the costs of the works. In most of the cases the works were finally implemented for a price very close to this upper limit.

This means that any modification of the upper limit by the Managing Authority did modify the final cost of the projects as the tender applicants explained their method of calculation for their offer as staying just under this upper limit or maximum cost of an eligible project.

The upper limit is a function of the

- expected internal rate of return (For the projects of the KEOP-2012-5.5.0/A it was 0,5% and KEOP-2014-5.5.0/K it was 1%)
- yearly savings on maintenance cost and energy cost
- number of years these savings can be calculated.

The possible minimum internal rate of return is set by the Member State and for the projects under call KEOP-2012-5.5.0/A it was set by the Managing Authority as minimum 0,5% and 1% for the projects under call KEOP-2014-5.5.0/K), so without inflation the project has to have at least the same amount of savings as the initial cost.

Decreasing the expected minimum internal rate of return from 2 to 1% has the effect of increasing the upper limit of the eligible cost with approximately 10% for long projects.

The increase of the upper limit of costs is also possible with the increase of the yearly savings. As it was described under 2.2.3., 2.2.4, 3.1.1., 3.1.2. and 3.1.3. in these projects the yearly savings were exaggerated by not taking into account any possible replacement costs for the later period of the projects.

Giving a guarantee for the first 5 years for the lamps also makes it possible to have lower maintenance costs for the first period and calculating with these lower maintenance costs across the full lifetime of the project also increase the calculated savings and thus the upper limit of the cost. Every Euro saved will increase the upper limit with 25 Euro or 15 Euro (up to the lifetime years of the project).

The most important factor to increase the upper limit is the acceptable lifetime duration of the lamps. As the savings have to balance the initial costs the more years these savings can be multiplied the more the upper limit of the costs can be increased. Calculating with 100000 hours lifetime instead of 50000 hours simply doubles the upper limit of the eligible costs.

The modification of the maximum acceptable hours only 3 days before the application virtually doubled the upper limit and the real cost of the projects. It cannot be excluded that many potential beneficiary decided not to apply as they calculated with the lower upper limit during their project calculations and the increase of the upper limit arrived only 3 days before the possible submitting of the project application.

For different types of construction works there are standards for the lifetime of the projects. For any new technology the real lifetime is not known and should be estimated by a conservative calculation. It is far beyond the standards of solid financial management to argue with the lack of information concerning real lifetime and taking into consideration 25 years of possible lifetime.

3.2. PUBLIC PROCUREMENT IRREGULARITIES

General Principles of procurement law:

Article 2 of Directive 2004/18/EC⁶⁴ stipulates that "contracting authorities shall treat economic operators equally and non-discriminatorily".

According to Article 44 of the Directive, "the contracting authority may require candidates and tenderers to meet minimum capacity levels in accordance with Articles 47 and 48". Those minimum capacity levels "must be related and proportionate to the subject-matter of the contract". Selection criteria automatically and necessarily limit the number of potential bidders, therefore any unnecessary selection criteria should be avoided, in order to guarantee the respect of principles of free competition, equal and non-discriminatory treatment of bidders.

Hungarian Public Procurement Act (Közbeszerzési Törvény): Law CVIII of 2011 (2011. évi CVIII. törvény, a közbeszerzésekről).

The Public Procurement Control Service (Közbeszerzési Felügyeleti Főosztály, hereafter: KFF)⁶⁵ was responsible for issuing *ex ante* (minőségbiztosítás) and *ex post* (szabályossági tanusítvány) verifications of the public procurement procedures conducted for the

⁶⁴ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, OJ, L 134, 30/04/2004 P. 0114 - 0240.

implementation of the projects investigated. Initially the KFF was located with OCM(2022)8043 - 31/01/2022
 Following a reorganisation, the KFF became part of the Prime Minister's Office.

It is noted that during the project implementation of the KEOP-2009-5.3.0/A and KEOP-2012-5.5.0/A, the KFF did not detect the above listed irregularities in the tender procedure. In relation to some of the projects KEOP-2014-5.5.0/K implemented later, KFF made recommendations, in particular in relation to the experience required and the tender specification.

3.2.1. LACK OF PUBLICATION OF CONTRACT NOTICE DUE TO IRREGULAR CHOICE OF THE TYPE OF PUBLIC PROCUREMENT PROCEDURE (POINT 1 OF COCOF GUIDELINES)

Table 6: summary of the public procurement key data by project

Project reference and Beneficiary	Reference of the call	Estimated amount of public procurement	Type of public procurement procedure	Number of Bids
KEOP-5.3.0/A/09-2010-0137 HÓDMEZŐVÁSÁR HELY MJV	KE 28531/2009 of 30.12.2009	940,000,000	Chapter VI of Kbt. 2003, general simplified public procurement (without negotiation)	3
KEOP-5.3.0/A/09-2010-0357 PAKS	TED 2013/S 021- 032576 and KE- 1385/2013 of 30.01.2013	148,557,585	International open call for tender for supply	6
KEOP-5.3.0/A/09-2010-0358 SIÓFOK	KÉ-11746/2012 of 13.07.2012	294,799,213	Article 121 (1) b) of Kbt 2011 (national open procedure)	3
KEOP-5.5.0/A/12-2013-0168 CEGLÉD	KÉ-130/2015 of 07.01.2015	503,632,778	Article 121 (1) b) of Kbt 2011 (national open procedure)	2
KEOP-5.5.0/A/12-2013-0169 CEGLÉD	KÉ-130/2015 of 07.01.2015	503,632,778	Article 121 (1) b) of Kbt 2011 (national open procedure)	2
KEOP-5.5.0/A/12-2013-0175 TAPOLCA	KÉ-22926/2013 of 20.12.2013	249,917,783	Article 121 (1) b) of Kbt 2011 (national open procedure)	1
KEOP-5.5.0/A/12-2013-0180 KECSKEMÉT MJV	KÉ-22762/2013 of 11.12.2013	291,099,050	Article 121 (1) b) of Kbt 2011 (national open procedure)	1
KEOP-5.5.0/A/12-2013-0182 ZALAEGERSZEG	KÉ-23119/2014 of 31.10.2014	425,267,317	Article 121 (1) b) of Kbt 2011 (national open procedure)	1
KEOP-5.5.0/A/12-2013-0184 MEZŐHEGYES	Article 122/A (without publication, 3 offers)	136,341,552	Article 122/A (without publication, 3 offers)	2 (fake bids)
KEOP-5.5.0/A/12-2013-0186 KECSKEMÉT MJV	KÉ-22762/2013 of 11.12.2013	413,238,884	Article 121 (1) b) of Kbt 2011 (national open procedure)	1
KEOP-5.5.0/A/12-2013-0191 ZALAEGERSZEG MJV	KÉ-23119/2014 of 31.10.2014	426,135,166	Article 121 (1) b) of Kbt 2011 (national open procedure)	1
KEOP-5.5.0/A/12-2013-0194 HEVÍZ VÁROS ÖNKORMÁNYZAT	Article 122/A (without publication, 3 offers)	132,971,955	Article 122/A (without publication, 3 offers)	3 (fake bids)

KEOP-5.5.0/A/12-2013-0202 VÁC	KÉ-23109/2014 of 31.10.2014	421,238,688	Article 121 (1) b) of Kbt 2011 (national open procedure)	1
KEOP-5.5.0/A/12-2013-0226 KALOCSA VÁROS	KÉ-17731/2014 of 29.08.2014	409,985,912	Article 121 (1) b) of Kbt 2011 (national open procedure)	1
KEOP-5.5.0/A/12-2013-0235 SZEKSZÁRD MJV	KÉ-4245/2014 of 05.03.2014	278,773,328	Article 121 (1) b) of Kbt 2011 (national open procedure)	1
KEOP-5.5.0/A/12-2013-0239 SZEKSZÁRD MJV	KÉ-4245/2014 of 05.03.2014	269,844,132	Article 121 (1) b) of Kbt 2011 (national open procedure)	1
KEOP-5.5.0/A/12-2013-0313 SZOLNOK MJV	KÉ-22574/2014 of 27.10.2014	438,926,730	Article 121 (1) b) of Kbt 2011 (national open procedure)	1
KEOP-5.5.0/A/12-2013-0320 KESZTHELY	KÉ-5021/2014 of 19.03.2014	318,564,651	Article 121 (1) b) of Kbt 2011 (national open procedure)	1
KEOP-5.5.0/A/12-2013-0325 SZOLNOK MJV	KÉ-22574/2014 of 27.10.2014	439,910,840	Article 121 (1) b) of Kbt 2011 (national open procedure)	1
KEOP-5.5.0/A/12-2013-0491 BALATONFÜRED	KÉ-23408/2013 of 23.12.2013	216,160,000	Article 121 (1) b) of Kbt 2011 (national open procedure)	3
KEOP-5.5.0/K/14-2014-0001 HATVAN	KÉ-18112/2012, 04.09.2014	228,139,796	Article 121 (1) b) of Kbt 2011 (national open procedure)	1
KEOP-5.5.0/K/14-2014-0002 SÁRVÁR	KÉ-25418/2014, 19.12.2014	279,606,299	Article 121 (1) b) of Kbt 2011 (national open procedure)	2
KEOP-5.5.0/K/14-2014-0003 JÁSZBERÉNY	KÉ-8163/2015, 15.05.2015	310,092,128	Article 121 (1) b) of Kbt 2011 (national open procedure)	3
KEOP-5.5.0/K/14-2014-0004 ALSÓPÁHOK	Article 122/A (without publication, 3 offers)	37,682,000	Article 122/A (without publication, 3 offers)	2
KEOP-5.5.0/K/14-2014-0005 TAMÁSI	KÉ-1429/2015 of 30.01.2015	193,311,378	Article 121 (1) b) of Kbt 2011 (national open procedure)	2
KEOP-5.5.0/K/14-2014-0006 BALATONFÜRED	Article 122/A (without publication, 3 offers)	98,031,496	Article 122/A (without publication, 3 offers)	3
KEOP-5.5.0/K/14-2014-0019 GYÁL	KÉ-129/2015 of 09.01.2015	193,543,307	Article 121 (1) b) of Kbt 2011 (national open procedure)	2
KEOP-5.5.0/K/14-2014-0021 SZIGETSZENTMIK LÓS	KÉ 5027/2015, 03.04.2015	162,000,000	Article 121 (1) b) of Kbt 2011 (national open procedure)	3
KEOP-5.5.0/K/14-2014-0027 BÁCSALMÁS	Article 122/A (without publication, 3 offers)	111,811,024	Article 122/A (without publication, 3 offers)	2
KEOP-5.5.0/K/14-2014-0028 MISKOLC MJV	KÉ-9095/2012 of 29.05.2015	324,650,000		2
KEOP-5.5.0/K/14-2014-0035 SIÓFOK	KÉ-8914/2015 of 27.05.2015	321,122,630		2

KEOP-5.5.0/K/14-2014-0039 HAJDÚBÖSZÖRMÉNY	KÉ-10233/2015 of 12.06.2015	351,200,000	OCM(2022)3243 - 31/01/2022	
KEOP-5.5.0/K/14-2014-0040 KISKUNFÉLEGYHÁZA	KÉ-9750/2015 of 05.06.2015	361,073,000		3
KEOP-5.5.0/K/14-2014-0070 MÓRAHALOM	Article 122/A (without publication, 3 offers)	64,804,317		2
KEOP-5.5.0/K/14-2014-0071 SIKLÓS	KÉ-126834/2014 of 7.1.2015	177,952,756		1

According to Article 7 of Directive 2004/18/EC, the threshold for the application was initially 162 000 EUR (approximately 50 Million HUF) for supply contracts signed by public entities, such as Municipalities, and 6.242.000 EUR (approximately 2 billion HUF) for works contracts. The thresholds were adapted during the years in line with the evolution of the prices. In the new Directive 2014/24/EU, the thresholds are decreased respectively to 134 000 EUR and 5 186 000 EUR.

For all projects investigated, the estimated amounts of the contract to be signed exceeded 50 Million HUF except Alsópáhok, but did not exceed 2 Billion HUF.

Also, for all projects investigated except Paks, the Municipalities qualified the contracts to be signed as works contract and applied the higher threshold. Therefore the only Municipality which applied an international public procurement procedure, with publication at international level was Paks. All the other Municipalities conducted national open procedures or so called "3 offers procedures".

According to Article 1 (2) of Directive 2004/18/EC, "b) 'Public works contracts' are public contracts having as their object either the execution, or both the design and execution, of works related to one of the activities within the meaning of Annex I or a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority.

A 'work' means the outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function.

(c) 'Public supply contracts' are public contracts other than those referred to in (b) having as their object the purchase, lease, rental or hire purchase, with or without option to buy, of products.

Public contract having as its object the supply of products and which also covers, as an incidental matter, siting and installation operations shall be considered to be a 'public supply contract'."

Annex I of the Directive lists all activities which can be qualified as "work" according to Article 1 (2). Those are the activities which CPV code begins with 45.

According to Article 49 of Directive 2004/18/EC⁶⁶ "Contract notices shall be used as a means of calling for competition in respect of all procedures".

Project KEOP-5.3.0/A/09-2010-0137 Hódmezővásárhely:

The amount of the "works" contract between the Municipality of Hódmezővásárhely and [REDACTED] was 577 004 129HUF. The amount of the supply contract between [REDACTED]

⁶⁶ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, OJ, L 134 , 30/04/2004 P. 0114 – 0240.

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 [redacted] and [redacted] the manufacturer, was 341 727 OCM(2022)3243 - 31/01/2022
 60% of the total amount of the main "works" contract.

The main purpose of the contract was to supply the lamps, their installation shall be considered as a linked activity, even taking into account that in relation to LED lamps, the installation involves more sophisticated design and measurements than in tradition public lighting.

Even the CPV codes of the activities listed in the call for tender in this first project did not contain any "works" activity beginning with 45:

- 34928500-3 Street-lighting equipment (*Közvilágítási berendezések*) (supply)
- 50232100-1 Street-lighting maintenance services (*Közvilágítás-karbantartási szolgáltatások*)
- 50232110-4 Commissioning of public lighting installations (*Közvilágítási berendezések, üzemkészsé tétele*)

The qualification as supply contract instead of works contract constitutes a violation of Articles 1, 7 and 49 of the Public Procurement Directive, because instead of an international call for tender only a national publication took place. It caused an important restriction to free competition, as the Beneficiary received only one eligible bid.

The qualification of contract as "works contract" chosen by the contracting authority was challenged by [redacted] which was a competitor of [redacted] in that procedure. [redacted] claimed that the contracting authority should have published a European open public procurement procedure, because the type of contract was correctly a "service contract", and therefore the European threshold was reached.

The Public Procurement Arbitrary Board (KDB) rejected this request not on the legal reasoning, but because according to the KDB, the appeal was received after the deadline.

Several months later [redacted] and [redacted] reached an agreement and [redacted] became the main supplier of [redacted] in the Hódmezővásárhely project, but also in many other projects. [redacted] did not introduce an appeal at Court against the qualification of "works contract" possibly because this new agreement with its competitor.

Project KEOP-5.3.0/A/09-2010-0357: This was the only public lighting project investigated which correctly qualified the contract to be signed as supply contract.

The Municipality considered that the threshold for the application of the Directive was reached and an international call for tender was published.

This example shows that it was possible and even adequate to implement the project through a supply contract, even taking into account that in relation to LED lamps, the installation involves more sophisticated design and measurements than in tradition public lighting projects.

This is the only project where there was no irregularity concerning the lack of publication.

The other projects where a national open tender took place

This was the case for KEOP-5.3.0/A/09-2010-035 (Siófok), as well as all the projects under call KEOP-2012-5.5.0/A and KEOP-2014-5.5.0/K, except the 6 projects listed above.

The contracting authority qualified the contracts to be concluded as works contracts instead of supply contracts.

They defined this time some of the CPV codes as "works" in order to justify such choice, for example:

45316100-6 Installation of outdoor illumination equipment (*Kültéri világítás szerelése*) OCM(2022)3243 - 31/01/2022

45317000-2 Other electrical installation work (*Egyéb villamos szerelési munka*)

45310000-3 Electrical installation work (*Villamos szerelési munka*)

However, most of the content of the contract was still the supply of lamps, the "works" tasks were only subsidiary elements. Also, in all cases the amount of the supply contract between [REDACTED] ("works contractor") and [REDACTED] its supplier, was approximately 60% of the total "works contract" amount.

There are some counter-examples showing that public lighting could be implemented through supply contracts (and respecting the rules of international call for tender), for example KEOP-5.3.0/A/09-2010-0357 PAKS (concerned by this investigation) or KEOP/5.5.0/A/12-2013-0277 Mohács (TED 2014/S 227-400843), not concerned by this investigation.

This caused an important restriction to free competition, as the Beneficiary received, in most of the cases, only one or two bids.

In all those projects the qualification as supply contract instead of works contract constitutes a violation of Articles 1, 7 and 49 of the Public Procurement Directive. An international call for tender should have been conducted, as the estimated contract amount always exceeded 50 Million HUF, but only a national publication took place as the threshold for works contract was not reached.

The 6 projects where the procurement took place according to Article 122/A (without publication, "3 offers procedure"):

- KEOP-5.5.0/A/12-2013-0184 (MEZŐHEGYES)
- KEOP-5.5.0/A/12-2013-0194 (HÉVÍZ)
- KEOP-5.5.0/K/14-2014-0004 (ALSÓPÁHOK)
- KEOP-5.5.0/K/14-2014-0006 (BALATONFÜRED)
- KEOP-5.5.0/K/14-2014-0027 (BÁCSALMÁS)
- KEOP-5.5.0/K/14-2014-0070 (MÓRAHALOM)

In those projects, there was no publication at all and only a so called "three offers procedure" was conducted, while an international call for tender should have been published, except the case of Alsópáhok, where a national call published according to Article 121 Kbt. Procedure was sufficient.

This caused a serious restriction to free competition, because only the three companies invited to bid could participate. OLAF also notes that in two cases (Hévíz and Mezőhegyes, see below 3.3.b) it is evidenced that the bidders submitted coordinated bids following an illegal agreement.

The above listed facts constitute a violation of Articles 1, 7 and 49 of the Public Procurement Directive. In the case of Alsópáhok there was a violation of the Hungarian Public procurement law, as an open tender procedure based on Article 121 Kbt. should have taken place.

Financial consequences: According to COCOF Guidelines, irregularity No.1 Lack of publicity, should involve a financial correction of 100%.

The financial correction is reduced to 25% if publication of a contract notice(s) is required by the Directives and the contract notice(s) was not published in the OJEU but it was published in a way that ensures that an undertaking located in another Member State has access to appropriate information regarding the public procurement before it is awarded, so that it would be in a position to submit a tender or express its interest to participate in that contract.

In this case such a reduction is not appropriate, as the call was published in the Hungarian Official Journal in Hungarian, while the scope of the publication in TED is to provide at least the minimum information in English to all EU (and also non-EU) potential bidders.

Due to the language barrier, only Hungarian companies could become awardees for tender. OCM(2022)3243 - 31/01/2022

3.2.2. SELECTION CRITERIA NOT RELATED AND PROPORTIONATE TO THE SUBJECT-MATTER OF THE CONTRACT (POINT 10 OF COCOF GUIDELINES)

According to Article 44(2) of the Directive 2004/18/EC and Article 58 (1) of Directive 2014/14/EU, the contracting authority may require candidates and tenderers to meet minimum capacity levels. Those minimum capacity levels “must be related and proportionate to the subject-matter of the contract”.

Selection criteria automatically and necessarily limit the number of potential bidders, therefore any unnecessary selection criteria should be avoided, in order to guarantee the respect of principles of free competition, equal and non-discriminatory treatment of bidders.

In 24 projects out of the 35 investigated, the tender notice required that potential tenderers dispose of references related to earlier works using **LED technology** above a certain monetary value to demonstrate adequate technical and professional capacity.

The value of the required reference works and required number of pieces of lamps supplied and installed was to be proportionate to the works procured.

According to national law, in particular the Decree of Prime Minister of 28.11.2014, and Article 55 of law 2011 No. CVIII, the works experience required should not exceed 75% of the estimated amount of the contract to be awarded and 75% of the quantities of the works items. Some of the Beneficiaries referred to this legal basis to claim that if the limit of 75% is respected, the call for tender was compliant. However, the limit of 75% should be considered only as an indication and a limit over which the call for tender can not go. But the respect of 75% can not be considered as a guarantee of respect of Article 44(2) of the Directive which has a broader scope. The related and proportionate character of the capacity lever should be analysed on a case by case basis.

In the KEOP contracts investigated, the requirement of LED related experience is considered as unnecessary, because a company which has demonstrable experience in traditional public lighting, using for example sodium-based or compact fluorescent tubes, can learn and adapt itself very fast to LED technology.

Public lighting is an area where technologies are in constant evolution, and the companies have to adapt themselves continuously. Excluding a public lighting company from tendering for the reason that it never employed a new technology on a large scale while it has important experience in the specific field of public lighting is irrational. Such restrictive considerations, if applied by all contracting authorities, would make any technological development of companies nearly impossible.

In the case of public lighting, an alternative solution could be to foresee that the key experts of the company awarded follow a specific training in the field of LED technology if they don't have any experience (see for example report of on-the-spot check on [REDACTED] the manufacturer explained that it provides training to the engineers who have to install the lamps).

It should also be noted that this requirement significantly restricted competition. This was demonstrated by the fact that for the majority of the tenders audited only one tender application was submitted.

In their letter dated 19.10.2015 addressed to the Directorate General for Regional and Urban Development Policy,⁶⁷ the Hungarian Authorities stated that the requirement of LED

⁶⁷ The requirement of LED experience was already subject to audit by the European Commission (Directorate General for Regional and Urban Development Policy), Ares(2015)3535026. This audit covered several projects concerned by the OLAF investigation, but also other projects. The audit report concluded that “the selection criterion requiring references for public lighting works linked to LED technology is disproportionate”

was compliant with the Hungarian Public Procurement Code applicable at OCM(2022)3243 - 31/01/2022 provided that the minimum capacity levels should be "related" with the subject-matter of the contract.

In order to justify that the works related to LED technologies requires specific knowledge, the Hungarian Authorities attached to their letter a table⁶⁸ explaining the advantages of the LED technology, and the main differences linked to the design of the lighting plan, the installation and the typical malfunctions. According to this document, an engineer who would not have the experience of LED technology would design the plan in a less efficient way and could probably not use all the advantages of this technology. A works company would need specific knowledge and instruments to be able to install the lamps adequately and make the necessary settings.

The public lighting modernization projects are not limited to a simple replacement of the light bulbs. Such project cannot be compared to "when someone decides to purchase LED light bulbs instead of the traditional bulbs in the [REDACTED] and than replaces them standing on a ladder"⁶⁹.

However, it is reasonable to consider that a works company with adequate staff and important experience in public lighting project can adapt itself to the new technologies. The public lighting technologies changed over the years, from the mercury based lamps to sodium-based or compact fluorescent tubes, and later to the LED technology. The technical evolution is still on-going, including for LED technology.

[REDACTED] itself is an example of the capacity of companies to adapt to new technologies: [REDACTED] had nearly no revenues before 2009. From 2009 to 2010 its annual revenue increased to [REDACTED], but the company had still no experience in LED public lighting, simply because there were no LED public lighting projects in Hungary.

The first major EU funded public lighting project in Hungary was project KEOP-5.3.0/A/09-2010-0137 Hódmezővásárhely MJV. The project required the supply and installation of "new" technology public lighting, but there was no requirement for such experience, because at that time no company had such experience in Hungary.

According to the Beneficiary, this project was a great success, and other Beneficiaries stated that it was taken as an example for projects implemented later on. Despite the fact that the contract of [REDACTED] was a contract for "design and works" (tervezéssel egybekötött kiviteli szerződés") and [REDACTED] had no experience at all of LED.

However, at a later stage in other projects, the Beneficiaries required LED experience for an amount slightly below the estimated amount of the contract, often with a number of LED lamps installed also slightly below the number of lamps to be supplied. Such LED experience was required in 24 projects investigated. In several cases, the amount and the number of lamps should be part of one single contract, and several contracting authorities also added as condition that the company should have experience of 3 to 5 consecutive weeks with the installation of 150 to 400 lamps/week.

At least for the first projects, especially in call KEOP-2012-5.5.0/A, [REDACTED] was the only Hungarian company which had such experience, due to the Hódmezővásárhely project. And indeed, all Beneficiaries of KEOP-2012-5.5.0/A received only one bid.

The Hungarian Authorities, in their letter to the Commission (see above), argued that the other bidders were not excluded, because they could rely on the experience of foreign companies which could be involved into the project at least as "reference" or "resource provider" companies. However, the analysis of the documents of those 24 projects shows that when the bid of [REDACTED] was not the only one, the other bidders received systematically requests for clarification on their LED experience. If they did not answer to

⁶⁸ Annex 3 of the letter. Later on, [REDACTED] provided to OLAF this same table during the on-the-spot check as answer to the questions on the differences between classic and LED technology.

⁶⁹ « Nem téveszthető össze ez a technikai változás azzal, amikor valaki hétvégén az [REDACTED]-ban úgy dönt, hogy inkább LED-es izzókat vásárol a hagyományos izzók helyett, majd otthon azokat a létra tetején becsavarja", see opportunity to comment letter of [REDACTED] and [REDACTED], OC(2017)22721.

that clarification request (together with other clarification requests), the lowest bid, although often containing the best price, was considered as non-compliant. OCM(2022)3243 - 31/01/2022

An other argument consists to state that the LED experience was required specifically due to the need to draft the implementation design (kiviteli terve). However, there are examples of projects where the LED experience was not required, including those in the 35 projects investigated by OLAF (see table below), even if the design was included in the works contract. There are also examples within the 24 projects requiring the LED experience of works contracts not including the design (see also the table below).

Finally, the Hungarian Authorities argued that they found a number of projects where references for public lighting linked to LED technology were required and the tender was not awarded to ████████⁷⁰. This is not evidence that the selection criteria were regular, but only that other projects not investigated by OLAF were also irregular.

The requirement of LED experience should be considered as not strictly related to the subject-matter of the contract and in any case disproportionate. If this criteria had not been used, **other companies might have been interested and submitted tenders with better value for money**. There was a serious restriction to the free competition, evidenced also by the fact that in KEOP-2012-5.5.0/A projects the Beneficiaries received **only one bid**.

Later on, when also other Hungarian companies acquired LED experience, in KEOP-2014-5.5.0/K projects some beneficiaries received two or even three bids but:

- the only project where a Beneficiary received four bids (Hajdúböszörmény) was in a tender procedure where the LED experience was not a requirement
- in several KEOP-2014-5.5.0/K projects the competitor of █████ █████ (which submitted often a lower price) was declared as non-compliant because it did not answer the request for missing documents but abandoned the procedure. One of the missing documents requested was often related to the LED experience of the competitor (for more details, see projects data under chapter 2.2.4).

The selection criteria related to LED experience constitutes a breach of Article 55(3) of the National Public Procurement Act⁷¹ but also of Article 44(2) of the Directive 2004/18/EC and Article 58 (1) of Directive 2014/14/EU setting out that the minimum levels of ability required for a specific contract must be related and proportionate to the subject matter of the contract.

The principles of Directive 2004/18/EC should apply not only due to the cross-border interest for the projects, but also because the threshold for the application of the Directive was reached, taking into account that the main subject of the contracts was supply, and not works (see above).

Financial consequences: According to COCOF Guidelines, irregularity No. 10 Selection criteria not related and proportionate to the subjectmatter, and irregularity No. 11 Discriminatory Technical Specifications should both involve a financial correction of 25%.

The financial correction can be decreased to 10% or 5% depending on the seriousness of the irregularity. In this specific case, no reduction is possible as the restrictive criteria and technical requirements had as a consequence an important restriction to free competition. In most of the national open tender procedures, only one bid was received.

Table 7: summary of the content of call for tender by project in relation to the requirement concerning LED experience, the technical specification of the lamps and if the implementation design ("kiviteli tervezés") was included in the contract or not

⁷⁰ KEOP-5.5.0/A/12-2013-0497 – Salgótarján, KEOP-5.5.0/A/12-2013-0007 – Gyula, KEOP-5.5.0/K/14-2014-0046; Ostoros, KEOP-5.5.0/K/14-2014-0075 Nagykovács, KEOP-5.5.0/K/14-2014-0049 Páty.

⁷¹

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Project reference and Beneficiary	LED experience required	Implementation design included into the contract	Number of Bids	Other bidders
KEOP-5.3.0/A/09-2010-0137 HÓDMEZŐVÁSÁRHELY MJV	NO	YES	3	[REDACTED]
KEOP-5.3.0/A/09-2010-0357 PAKS	NO	NO (SUPPLY CONTRACT)	6	[REDACTED]
KEOP-5.3.0/A/09-2010-0358 SIÓFOK	NO	YES	3	[REDACTED]
KEOP-5.5.0/A/12-2013-0168 CEGLÉD	YES	NO	2	[REDACTED] (cheaper offer, non-compliant)
KEOP-5.5.0/A/12-2013-0169 CEGLÉD	YES	NO	2	[REDACTED] (cheaper offer, non-compliant)
KEOP-5.5.0/A/12-2013-0175 TAPOLCA	YES	YES	1	
KEOP-5.5.0/A/12-2013-0180 KECSKEMÉT MJV	YES	NO	1	
KEOP-5.5.0/A/12-2013-0182 ZALAEGERSZEG	YES	YES	1	
KEOP-5.5.0/A/12-2013-0184 MEZŐHEGYES	NO	NO	2	[REDACTED] collusion between bidders
KEOP-5.5.0/A/12-2013-0186 KECSKEMÉT MJV	YES	NO	1	
KEOP-5.5.0/A/12-2013-0191 ZALAEGERSZEG MJV	YES	YES	1	
KEOP-5.5.0/A/12-2013-0194 HÉVÍZ VÁROS ÖNKORMÁNYZAT	NO	NO	3	[REDACTED] collusion between bidders
KEOP-5.5.0/A/12-2013-0202 VÁC	YES	YES	1	
KEOP-5.5.0/A/12-2013-0226 KALOCSA VÁROS	YES	NO	1	
KEOP-5.5.0/A/12-2013-0235 SZEKSZÁRD MJV	YES	YES	1	
KEOP-5.5.0/A/12-2013-0239 SZEKSZÁRD MJV	YES	YES	1	
KEOP-5.5.0/A/12-2013-0313 SZOLNOK MJV	YES	YES	1	
KEOP-5.5.0/A/12-2013-0320 KESZTHELY	YES	YES	1	
KEOP-5.5.0/A/12-2013-0325 SZOLNOK MJV	YES	YES	1	
KEOP-5.5.0/A/12-2013-0491 BALATONFÜRED	NO	YES	3	
KEOP-5.5.0/K/14-2014-0001 HATVAN	YES	YES	1	
KEOP-5.5.0/K/14-2014-0002 SÁRVÁR	YES	YES	2	[REDACTED] (non-compliant)

KEOP-5.5.0/K/14-2014-0003 JÁSZBERÉNY	YES	YES	3	OCM(2022)3243 - 31/01/2022 compliant), (non-compliant)
KEOP-5.5.0/K/14-2014-0004 ALSÓPÁHOK	NO	YES	2	(cheaper offer, non-compliant)
KEOP-5.5.0/K/14-2014-0005 TAMÁSI	YES	YES	2	invalid (cheaper offer, non-compliant)
KEOP-5.5.0/K/14-2014-0006 BALATONFÜRED	YES	YES	3	(cheaper offer, non-compliant), (non-compliant)
KEOP-5.5.0/K/14-2014-0019 GYÁL	YES	YES	2	(non-compliant)
KEOP-5.5.0/K/14-2014-0021 SZIGETSZENTMIKLÓS	YES	YES	3	(non-compliant), (non-compliant)
KEOP-5.5.0/K/14-2014-0027 BÁCSALMÁS	NO	YES	2	
KEOP-5.5.0/K/14-2014-0028 MISKOLC MJV	YES	YES	2	(cheaper offer, non-compliant)
KEOP-5.5.0/K/14-2014-0035 SIÓFOK	YES	YES	2	(cheaper offer, non-compliant)
KEOP-5.5.0/K/14-2014-0039 HAJDÚBÖSZÖRMÉNY	NO	YES	4	(cheaper offer, non-compliant), (cheaper offer, non-compliant), (more expensive)
KEOP-5.5.0/K/14-2014-0040 KISKUNFÉLEGYHÁZA	NO	YES	3	
KEOP-5.5.0/K/14-2014-0070 MÓRAHALOM	NO	YES	2	(non-compliant)
KEOP-5.5.0/K/14-2014-0071 SIKLÓS	YES	YES	1	

3.2.3. DISCRIMINATORY TECHNICAL SPECIFICATIONS (POINT 11 OF COCOF GUIDELINES)

According to Article 23(2) of Directive 2004/18/EC and Article 42 of Directive 2014/24/EU, setting technical standards that are too specific, thus not ensuring equal access for tenderers or having the effect of creating unjustified obstacles to the widening of access to public procurement to competition constitutes an irregularity.

In all 35 projects investigated, it can be clearly identified from the technical specifications from which manufacturer the contracting authority planned to receive the lamps. The manufacturers are clearly identified in the project application of the beneficiaries. Later, at the stage of the public procurement, some Contracting Authorities deleted the name of the

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 lamp type of the specific manufacturer, but even in those cases the type of lamp can clearly be identified on the basis of the technical description.

In 28 projects, the technical specifications provided for [REDACTED] lamps "or equivalent", or the technical specifications were so detailed that in relation to some lamps, only [REDACTED] lamps could be supplied. In all those 28 projects, the [REDACTED] became the supplier.

In 6 projects, the technical specifications provided for [REDACTED] lamps "or equivalent", or the technical specifications described exactly [REDACTED] lamp types. In some cases the lamp types were not mentioned in the call, but they were listed in one of the annexes of the tender documentation. In all those 6 projects, [REDACTED] became the supplier.

In two projects, [REDACTED] lamps "or equivalent" were specified, and in one of those projects the supplier became [REDACTED], for the other project OLAF did not receive information on the supplier.

In one project, [REDACTED] lamps "or equivalent" were specified, OLAF did not receive information on the supplier for this project.

When the lamp types are not listed but can be recognised from the technical specifications, the specifications are too restrictive.

For example, call for tender KÉ-4245/2014 (project KEOP-5.5.0/A/12-2013-0235 and 239 – Szekszárd I and II) was one of the public procurement procedures where the Beneficiary did not mention the name of the [REDACTED] lamp types to be supplied, but the technical description of the lamps was so specific that only [REDACTED] lamps could correspond to each of the lamp types required (see above, point 2.2.3.13).

The call listed 13 types of LED lamps to be supplied. For all of them, the maximum energy consumption and the minimum light power was exactly that of one of the [REDACTED] lamps.

For example:

- Maximum 29 W, minimum 2500 lm LED lamp corresponds to [REDACTED]
- Maximum 40 W, minimum 3700 lm corresponds to [REDACTED] lamp type [REDACTED]
- Maximum 41 W, minimum 4100 lm corresponds to [REDACTED] lamp type [REDACTED]

If a competitor of [REDACTED] could do better or the same as [REDACTED] for 12 categories of lamp, but not for one of them, it would be ineligible to become supplier.

The same applies also when the contracting authority listed the exact lamp types and stated that "equivalent" would be accepted. "Equivalent" was understood as the exact technical characteristics of the given lamp type (and not a close characteristic). This was qualified as minimum.

The contracting authority had different possibilities to widen the competition, while still complying with the project's goals:

- even if the preliminary design and calculations for the project were made by referring to [REDACTED] lamps, the contracting authority could define each lamp type with technical specifications which would be similar, but not exactly based on those lamps. For example, in order to widen the competition, the contracting authority could foresee minimum 2600 lm and maximum 30W for a lamp to judge it equivalent to the 2650 lm and 29W [REDACTED] lamp.
- Another possibility, which would have widened even more the competition, would have been to define in the technical specifications the lighting power and the light

dispersion of each lamp, without the maximum energy consumption, and (2) the total maximum energy consumption wanted for the whole project. OCM(2022)0243 - 31/01/2022

An example on how such individually tailored technical specification resulted in the exclusion of a competitor is the case of Jászberény (see facts under point 2.2.4.4). This call for tender was also tailored to [REDACTED] lamps. [REDACTED] was declared as non-eligible, because during the clarification request the contracting authority requested documents [REDACTED] could not provide, as the lamps proposed exceeded slightly the power consumption required for the given lighting power. [REDACTED] proposed to supply [REDACTED] lamps, but the [REDACTED] lamps consumed 14.2W, the [REDACTED] and the [REDACTED] lamps 54.1W instead of the required 54W.

In relation to [REDACTED] lamps OLAF also verified the preliminary offers of [REDACTED] to the potential bidders. It results that in all projects with no exception, the offers issued to [REDACTED] were considerably lower than the offers issued to the competitors of [REDACTED] (see also chapter on competition law issues).

[REDACTED] explained some of the reasons behind such "favouritism": the previous commercial relations with [REDACTED] and the high volume of orders justified privileged reductions, as well as the fact that some of the competitors of [REDACTED] were suspected to request offers from [REDACTED] only to obtain confidential commercial information and than provide it to the competitors of [REDACTED]

Taken into account that:

- The tender was always at least partly oriented in favour of one specific manufacturer;
- At least in the case of [REDACTED], [REDACTED] could benefit from preferential prices

all public procurement procedures restricted the free competition. This is also evidenced by the fact that in most of the cases only one bid was received by the contracting authority.

Table 8: technical specifications of the lamps to be supplied and installed, by project

Project reference and Beneficiary	Technical specification lamps	Supplier	Number of Bids
KEOP-5.3.0/A/09-2010-0137 HÓDMEZŐVÁSÁRHELY MJV	The exact technology to be used was not specified, it was up to the bidder to propose a "new" technical solution which would reduce the energy consumption	[REDACTED]	3
KEOP-5.3.0/A/09-2010-0357 PAKS	No mention of the manufacturer, but description corresponding exactly to [REDACTED] lamp types.	[REDACTED]	6
KEOP-5.3.0/A/09-2010-0358 SIÓFOK	No mention of the manufacturer, but description corresponding exactly to [REDACTED] lamp types.	[REDACTED]	3
KEOP-5.5.0/A/12-2013-0168 CEGLÉD	[REDACTED] lamp types listed in the call as requirement, "equivalent" was accepted	[REDACTED]	2
KEOP-5.5.0/A/12-2013-0169 CEGLÉD	[REDACTED] lamp types listed in the call as requirement, "equivalent" was accepted	[REDACTED]	2

KEOP-5.5.0/A/12-2013-0175 TAPOLCA	No mention of the manufacturer, but description corresponding exactly to [REDACTED] lamp types.	[REDACTED]	(2022)3243 - 31/01/2022
KEOP-5.5.0/A/12-2013-0180 KECSKEMÉT MJV	No mention of the manufacturer, but description corresponding exactly to [REDACTED] lamp types.	[REDACTED]	1
KEOP-5.5.0/A/12-2013-0182 ZALAEGERSZEG	No mention of the manufacturer in the call itself, but description corresponding exactly to [REDACTED] lamp types. [REDACTED] lamp types named in the excel table to be filled in by the bidder.	[REDACTED]	1
KEOP-5.5.0/A/12-2013-0184 MEZŐHEGYES	[REDACTED] lamp types listed in the call as requirement, "equivalent" was accepted	[REDACTED]	2 (fake bids)
KEOP-5.5.0/A/12-2013-0186 KECSKEMÉT MJV	No mention of the manufacturer, but description corresponding exactly to [REDACTED] lamp types.	[REDACTED]	1
KEOP-5.5.0/A/12-2013-0191 ZALAEGERSZEG MJV	No mention of the manufacturer in the call itself, but description corresponding exactly to [REDACTED] lamp types. [REDACTED] lamp types named in the excel table to be filled in by the bidder.	[REDACTED]	1
KEOP-5.5.0/A/12-2013-0194 HÉVÍZ VÁROS ÖNKORMÁNYZAT	No mention of the manufacturer, but description corresponding exactly to [REDACTED] lamp types.	[REDACTED]	3 (fake bids)
KEOP-5.5.0/A/12-2013-0202 VÁC	No mention of the manufacturer, but description corresponding exactly to [REDACTED] lamp types.	[REDACTED]	1
KEOP-5.5.0/A/12-2013-0226 KALOCSA VÁROS	No mention of the manufacturer, but description corresponding exactly to [REDACTED] lamp types.	[REDACTED]	1
KEOP-5.5.0/A/12-2013-0235 SZEKSZÁRD MJV	No mention of the manufacturer, but description corresponding exactly to [REDACTED] lamp types.	[REDACTED]	1
KEOP-5.5.0/A/12-2013-0239 SZEKSZÁRD MJV	No mention of the manufacturer, but description corresponding exactly to [REDACTED] lamp types.	[REDACTED]	1
KEOP-5.5.0/A/12-2013-0313 SZOLNOK MJV	No mention of the manufacturer, but description corresponding exactly to [REDACTED] lamp types.	[REDACTED]	1
KEOP-5.5.0/A/12-2013-0320 KESZTHELY	No mention of the manufacturer, but description corresponding exactly to [REDACTED] lamp types.	[REDACTED]	1
KEOP-5.5.0/A/12-2013-0325 SZOLNOK MJV	No mention of the manufacturer, but description corresponding exactly to [REDACTED] lamp types.	[REDACTED]	1

KEOP-5.5.0/A/12-2013-0491 BALATONFÜRED	No mention of the manufacturer in the call itself, but description corresponding exactly to [REDACTED] lamp types. [REDACTED] lamp types named in the excel table to be filled in by the bidder.	[REDACTED]	(2022)3243 - 31/01/2022
KEOP-5.5.0/K/14-2014-0001 HATVAN	[REDACTED] lamp types listed in the call as requirement, "equivalent" was accepted	[REDACTED]	1
KEOP-5.5.0/K/14-2014-0002 SÁRVÁR	[REDACTED] lamp types listed in the call as requirement, "equivalent" was accepted	[REDACTED]	2
KEOP-5.5.0/K/14-2014-0003 JÁSZBERÉNY	[REDACTED] lamp types listed in the call as requirement, "equivalent" was accepted	[REDACTED]	3
KEOP-5.5.0/K/14-2014-0004 ALSÓPÁHOK	[REDACTED] lamp types listed in the call as requirement, "equivalent" was accepted	[REDACTED]	2
KEOP-5.5.0/K/14-2014-0005 TAMÁSI	[REDACTED] lamp types listed in the call as requirement, "equivalent" was accepted	[REDACTED]	2
KEOP-5.5.0/K/14-2014-0006 BALATONFÜRED	[REDACTED] lamp types listed in the call as requirement, "equivalent" was accepted	[REDACTED]	2
KEOP-5.5.0/K/14-2014-0019 GYÁL	[REDACTED] lamp types listed in the call as requirement, "equivalent" was accepted	[REDACTED]	2
KEOP-5.5.0/K/14-2014-0021 SZIGETSZENTMIKLÓS	[REDACTED] lamp types listed in the call as requirement, "equivalent" was accepted	[REDACTED]	3
KEOP-5.5.0/K/14-2014-0027 BÁCSALMÁS	[REDACTED] lamp types listed in the call as requirement, "equivalent" was accepted	[REDACTED]	2
KEOP-5.5.0/K/14-2014-0028 MISKOLC MJV	[REDACTED] lamp types listed in the call as requirement, "equivalent" was accepted (main contractor: [REDACTED])	[REDACTED]	2
KEOP-5.5.0/K/14-2014-0035 SIÓFOK	[REDACTED] lamp types listed in the call as requirement, "equivalent" was accepted	[REDACTED]	2
KEOP-5.5.0/K/14-2014-0039 HAJDÚBÖSZÖRMÉNY	[REDACTED] lamp types listed in the call as requirement, "equivalent" was accepted	[REDACTED]	4
KEOP-5.5.0/K/14-2014-0040 KISKUNFÉLEGYHÁZA	No mention of the manufacturer, but description corresponding exactly to [REDACTED] lamp types.	[REDACTED]	3
KEOP-5.5.0/K/14-2014-0070 MÓRAHALOM	[REDACTED] lamp types listed in the call as requirement, "equivalent" was accepted	[REDACTED]	2
KEOP-5.5.0/K/14-2014-0071 SIKLÓS	[REDACTED] lamp types listed in the call as requirement, "equivalent" was accepted	[REDACTED]	1

3.2.4. CONFLICT OF INTERESTS (POINT 21 OF COCOF GUIDELINES)

Conflict of interests:

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 According to Article 2 of Directive 2004/18/EC, Contracting Authorities shall treat economic operators equally and non-discriminatorily and shall act in a transparent way.

According to Article 57 of Regulation (EU, Euratom) No 966/2012 (Financial Regulation), "1. Financial actors and other persons involved in budget implementation and management, including acts preparatory thereto, audit or control shall not take any action which may bring their own interests into conflict with those of the Union. (...)

2. For the purposes of paragraph 1, a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interests."

According to Article 24 of the Hungarian Public Procurement Act of 2011⁷² the Contracting Authority shall take all necessary measures in order to avoid conflict of interests and violation of the principle of free competition. An economic operator may not participate in the preparation of the tender and in the tender procedure if it has a common interest with one of the participants.⁷³

According to Point 21 of the COCOF Guidelines, any conflict of interest established by a competent judicial or administrative body, either from the part of the beneficiary of the contribution paid by the Union or the contracting authority, shall lead to a financial correction of 100%.

OLAF, as an administrative body, established several conflicts of interests affecting the majority of the projects.

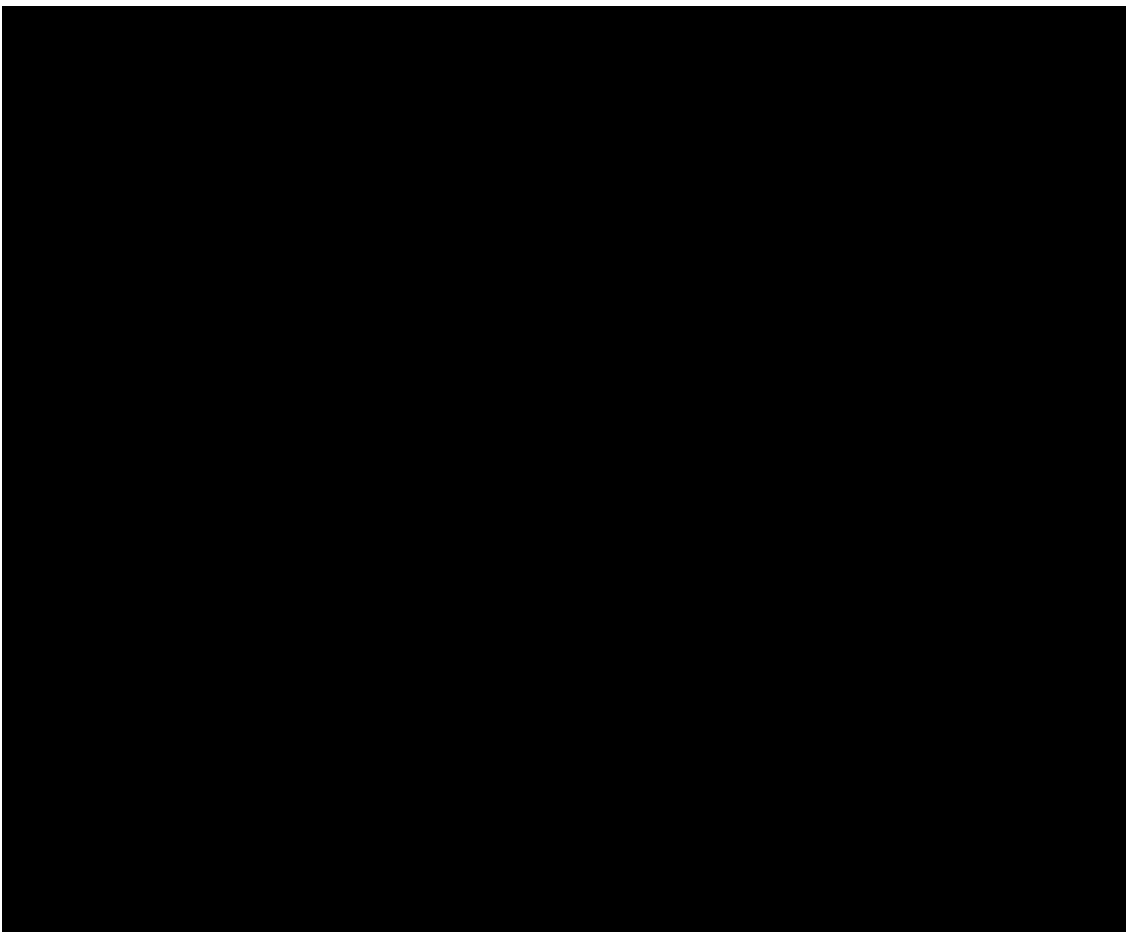
The following table contains a summary of the different consultants which participated to a large number of projects as project preparation consultant, project management consultant, public procurement consultant or energetics auditor.

The table highlights in orange all projects where the project applications were submitted during the period of formal overlapping economic interests of ██████████ in ██████████ and ██████████, in yellow when the projects were subject to other conflicts of interests (see next sub-chapters).

Table 9: main consultants involved in the projects. In yellow: projects were there was a formal overlapping between the ownership of ██████████ and one of the consultants through the person of ██████████

⁷² 2011. évi CVIII. Törvény

⁷³ 24. § (1) Az ajánlatkérő köteles minden szükséges intézkedést megtenni annak érdekében, hogy elkerülje az összeférhetlenséget és a verseny tisztaságának sérelmét eredményező helyzetek kialakulását. (2) Összeférhetetlen és nem vehet részt az eljárás előkészítésében és lefolytatásában az ajánlatkérő nevében olyan személy vagy szervezet, amely funkcióinak pártatlan és tárgyilagos gyakorlására bármely okból, így különösen gazdasági érdek vagy az eljárásban részt vevő gazdasági szereplővel fennálló más közös érdek miatt nem képes. (3) Összeférhetetlen és nem vehet részt az eljárásban ajánlattevőként, részvételre jelentkezőként, alvállalkozóként vagy az alkalmasság igazolásában részt vevő szervezetként az ajánlatkérő által az eljárással vagy annak előkészítésével kapcsolatos tevékenységbe bevont személy vagy szervezet, ha közreműködése az eljárásban a verseny tisztaságának sérelmét eredményezheti. Az ajánlatkérő köteles felhívni az eljárás előkészítésébe bevont személy vagy szervezet figyelmét arra, ha e bekezdés alapján - különösen az általa megszerzett többletinformációkra tekintettel - a közbeszerzési eljárásban történő részvétele összeférhetlenséget eredményezne.



a) Conflict of interests due to the participation of a company of [REDACTED] in the project preparation and/or implementation in the period when he was "factual owner" of [REDACTED]

[REDACTED] is the company which signed the main contracts for the implementation of the 38 projects investigated, either as contractor or member of the consortium.

[REDACTED] was also one of the natural persons shared "factual owners" ("tényleges tulajdonos")⁷⁴ of [REDACTED] **from 25.01.2013 to 05.08.2013 and from to 30.04.2014** through his company [REDACTED]

All the projects in which another company of [REDACTED] signed a contract with the Beneficiary for project preparation or implementation is irregular because [REDACTED] had an economic interest that the main contract for the project implementation would be awarded to [REDACTED]

Two companies of [REDACTED] participated in the preparation or the implementation of 25 projects.

[REDACTED] signed consultancy service contracts (megbízási szerződés) in 22 public lighting renovation projects investigated (and a maintenance service contract for one project).

Its tasks for most of the projects consisted of drafting the energetics study (compulsory annex III of the project application), and also in some cases preliminary studies, technical

⁷⁴ The definition of "factual owner" should be understood according to Law CXXXVI. Of 2007 on the prevention of money laundering and terrorism financing, it is the natural person behind a company, even if one or several legal persons are inserted between in the ownership chain.

documentation for project application, tender design (in some cases attached to the project application of the beneficiary), authorised execution plans etc. OCM(2022)3243 - 31/01/2022

██████████ was partial owner of ██████████ from 16.10.2011 to 16.12.2013. He was not owner from 17.12.2013 to 24.08.2014. He is the sole owner since 25.08.2014.

██████████ was also manager of ██████████ from 16.10.2011 to 16.12.2013. Since 17.12.2013 the manager of the company is ██████████

Between **25.01.2013 and 17.12.2013** ██████████ was "factual partial owner" both of ██████████ and of ██████████. All the projects in which ██████████ provided consultancy services in this period (contracts signed in this period or partially implemented during this period) are irregular due to conflict of interests.

██████████ was in charge of project management services in 9 public lighting renovation and building renovation projects investigated.

██████████ was partial "factual partial owner" of ██████████ from 05.04.2013 to 29.09.2014 (through ██████████). He is the sole owner of ██████████ since 29.09.2014.

Between **25.01.2013 and 29.04.2014** ██████████ was "factual co-owner" both of ██████████ and of ██████████. All the projects in which ██████████ provided consultancy services in this period (contract signed in this period or partially implemented during this period) to the Beneficiary is irregular due to conflict of interests.

The arguments of the Hungarian Authorities, stating that ██████████ was in charge of the preparation of the project application, and not the preparation of the tender procedure is not valid, because it is established on the basis of the documents collected that in most cases the documents of the project applications were used as such without any modification, or only slight modifications as part of the tender documentation: tender plans, list of lamp types to be supplied, etc.

The companies of ██████████ had the possibility to influence the public procurement procedures for which ██████████ was awarded the contract. All public procurement was affected by serious irregularities, such as irregular selection criteria, discriminatory technical specifications.

██████████ could influence in several cases the content of the tender design (already attached in the project application, and used later on for the public procurement procedure). It had access to confidential information. It was ██████████, in particular ██████████, who allowed ██████████ the Director for public lighting of ██████████ to access the project application documents. ██████████ was in some cases the last person who modified the BMR calculation, allowing (due to the last-minute modification of the call) to obtain a higher amount available for the works contract which was later awarded to ██████████

██████████ was in charge of project management, which means that it had to follow the project implementation and verify in particular if ██████████ complied with its contract.

b) Other conflict of interests situations

Links between ██████████ and ██████████

██████████ was one of the natural persons "factual owners" ("tényleges tulajdonos")⁷⁵ of ██████████ from **25.01.2013 and 17.12.2013**.

██████████ was a member of the Board of Directors (*igazgatósági tag*) of ██████████ from **13.08.2009 to 21.01.2014** (source: opten.hu database)

⁷⁵ The definition of "factual owner" should be understood according to Law CXXXVI. Of 2007 on the prevention of money laundering and terrorism financing, it is the natural person behind a company, even if one or several legal persons are inserted between in the ownership chain.

of company registration). He was also one of the "factual owners" of the company from **30.04.2014 to 28.04.2015**. OCM(2022)3243 - 31/01/2022

██████████ was member of the Board of Directors while ██████████ was one of the "factual owners" through his company ██████████ and ██████████. On 29.04.2014 ██████████ sold his shares in ██████████ and ██████████ to ██████████, this is how he became "factual owner" of ██████████.

██████████ was a previous business partner of ██████████. They were both owners and managers of ██████████ between 30.11.2010-11.03.2013.⁷⁶ They still have common economic interests; they are for example both shareholders of the company ██████████.⁷⁷

Due to links between the two business partners, the behaviour of ██████████ or ██████████ on behalf of the Beneficiaries can not be considered as independent. All the projects for which ██████████ or ██████████ signed a contract with the Beneficiary for project preparation or implementation is irregular due to conflict of interests.

Links between the company ██████████ and the Beneficiaries or their consultants

The link between the interests of ██████████ and the consultancy companies is also evidenced due to the following:

- Exchange of emails between staff of ██████████ and ██████████ for the project preparation involving ██████████ the Public Lighting Director of ██████████ who should not participate in any discussion on the side of the Beneficiary
- In all projects under KEOP-2012-5.5.0/A the persons who last modified the excel tables containing the Internal Rate of Return (BMR) calculation before submission of the project application was ██████████, the Public Lighting Director of ██████████. ██████████ recognised that for KEOP-2012-5.5.0/A projects "it is possible that she provided support to fill in the excel table to ██████████ from ██████████ because their previous professional relationship in the field of public lighting".

Again, the arguments of the Hungarian Authorities, stating that ██████████ was in charge of the preparation of the project application, and not the preparation of the tender procedure is not valid (see above).

c) Conflict of interests between ██████████ (██████████), ██████████ and ██████████ in 16 projects of call KEOP-2012-5.5.0/A

██████████ (later called ██████████) was one of the three companies which issued an "indicative offer" for 16 projects (all projects investigated under KEOP-2012-5.5.0/A except Balatonfüred).

As explained above (see facts, 2.2.3.1), the three offers were in the reality drafted by the same person. This can be evidenced because the company providing the best offer was alternating but the two weaker offers always offered amounts 5% and 7% higher than that of the best offer. This occurred not only regarding the total amount of the offer, but also for each of the cost lines and lamp types (while the offers from project to project varied significantly for any lamp type). Also, for the project of Kalocsa, all three "indicative offers" contain the same calculation mistake (the mistake could be however due to a mistake in the original excel table sent by the Beneficiary, as stated by ██████████). All three projects were drafted on the computer of ██████████, owner and manager of ██████████.

⁷⁶ On 11.03.2013 ██████████ left the company, ██████████ is still owner of manager of ██████████

⁷⁷ ██████████ Company Registry number: ██████████, Tax number: ██████████. In general, the economic relations between ██████████ and ██████████ are not a public information because there are companies inserted into the ownership chain, and most of the companies involved are "Zrt." with no publicly available information on the name of the shareholders.

It should be repeated once more that the principles of Directive 2004/18/EC apply for two reasons: the cross-border interest of the projects, and because the threshold for the application of the Directive was reached, taking into account that the main subject of the contracts was supply, and not works (see above).

Therefore the reasoning of the Hungarian Authorities in their response to the audit of DG REGIO (letter of 19.10.2015 Ares(2015) 3535026) can not be accepted, first because it refers only to Hungarian law, while the Directive and the general principles applicable to the Structural Funds should apply.

Second, the answer of the Hungarian Authority is not correct even in relation to the interpretation of Hungarian law.

According to Article 24 of the Hungarian Public Procurement Act of 2011⁷⁸ the Contracting Authority shall take all necessary measures in order to avoid conflict of interests and violation of the principle of free competition. An economic operator may not participate in the preparation of the tender and in the tender procedure if it has a common interest with one of the participants.

There is an exception to this principle: there is no conflict of interest if a person participates in the procedure because the contracting authority requested information on the price in order to estimate the cost before the publication of the tender, without giving any additional indication on the future public procurement. This rule is foreseen in order to enable companies to provide independent indicative offers when a contracting authority is conducting a preliminary market analysis in order to establish the estimated cost of contract.

However, here the indicative offers were not independent, they were issued following a collusion between companies and they were used to manipulate the estimation of the cost in a way that it could led to an increased estimated cost of the contract, and therefore to an increased amount of grant. In all estimation of costs the lowest indicative offer was given in a way to make the calculation of the BMR just above the eligibility range.

In fact, all beneficiaries of KEOP-5.5.0/A calculated the maximum amount of costs for the works contract taking into account the given maintenance costs, energy consumption costs and the 100.000 hours life-time of the lamps.

3.2.5. COMPETITION LAW ISSUES

Main legal references in Competition law:

Article 101 of the Treaty on the functioning of the European Union (TFEU)⁷⁹ on the prohibition of illegal agreements between economic operators which has an effect of distorting the free market.

Article 102 TFEU on the prohibition of abuse of dominant position.⁸⁰

⁷⁸ 2011. évi CVIII. Törvény

⁷⁹ As amended by the treaty of Lisbon, OJ C306 of 17 December 2007. Article 101 "1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which: (a) directly or indirectly fix purchase or selling prices or any other trading conditions; (b) limit or control production, markets, technical development, or investment; (c) share markets or sources of supply; (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage (...)."

⁸⁰ "Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in: (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; (b) limiting production, markets or technical development to the prejudice of consumers; (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (d) making the conclusion of contracts subject to acceptance by the

Article 2 of the previous and the new Hungarian Public Procurement Act⁸¹ OCM(2022)3243 - 31/01/2022
 of equal treatment of bidders by the contracting authority, on the principle of respect of free competition by the contracting authority and the bidders, and on the respect of the principle of sound financial management by the contracting authority.

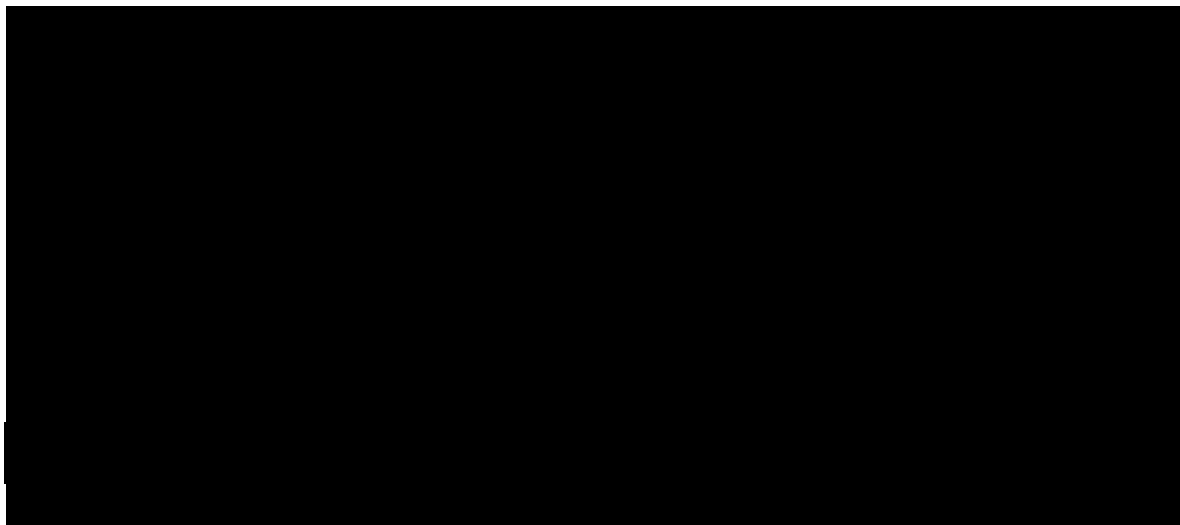
**a) Illegal subcontracting by [REDACTED] to [REDACTED]
 in project KEOP-5.3.0/A/09-2010-0137 Hódmezővásárhely
 MJV**

[REDACTED] was a competitor of [REDACTED] in the tender procedure published under reference number KÉ 28531/2009. It later became its main supplier instead of the sub-contractor initially foreseen ([REDACTED]). The amount of the supply contract between [REDACTED] and [REDACTED] was 341 727 507 HUF, i.e. 60% of the main contract between the Municipality and [REDACTED].

Sub-contracting a contract to its own competitor is contrary to the general principle of free competition, which stipulates that a competitor should not later become a sub-contractor of the company which won the tender.

This principle is transposed into Hungarian law. According to Article 1⁸², together with Article 70(4) of the Kbt. applicable at the time of the procedure, an applicant can not participate to the tender as member of a competitor consortium, or as sub-contractor for more than 10 % of another competitor.

This constitutes breach of the principle of free competition, in particular as foreseen in Article 101 of the Treaty on the functioning of the European Union under Hungarian law, such behavior qualifies as infringement to Article 1 and Article 70(4) of the Kbt. applicable at the time of the procedure.



other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

⁸¹ 2011. évi CVIII. Törvény 2. § (1) A közbeszerzési eljárásban az ajánlatkérő köteles biztosítani, a gazdasági szereplő pedig tiszteletben tartani a verseny tisztaságát, átláthatóságát és nyilvánosságát. (2) Az ajánlatkérőnek esélyegyenlőséget és egyenlő bánásmódot kell biztosítania a gazdasági szereplők számára. (3) Az ajánlatkérő és a gazdasági szereplők a közbeszerzési eljárásban a jóhiszeműség és tisztesség, valamint a rendeltetésszerű joggyakorlás követelményeinek megfelelően kötelesek eljárni. (4) Az ajánlatkérőnek a közpénzek felhasználásakor a hatékony és felelős gazdálkodás elvét szem előtt tartva kell eljárnia. Similar provisions are also foreseen in Article 2 of the new Public Procurement Act, 2015. évi CXLIII. Törvény.

⁸² 1. § (1) A közbeszerzési eljárásban – ideértve a szerződés megkötését is – az ajánlatkérő köteles biztosítani, § az ajánlattevő pedig tiszteletben tartani a verseny tisztaságát és nyilvánosságát.

3.3. FRAUD AND IRREGULARITIES IDENTIFIED

Main legal basis in Criminal law:

Article 1.1.a) of the Convention on the protection of the Communities financial interests⁸⁴ (definition of fraud to the Communities financial interests), and Article 2 of the same Convention states that Member States should take the necessary measures in order that effective, proportionate and dissuasive sanctions will be provided.

National law — Criminal Code, Act C of 2012: Budgetary fraud (Article 396)⁸⁵, Falsification of document/forgery (Article 345)⁸⁶.

⁸³ All offers issued by ██████████ to different potential bidders for all projects are summarised in a separate note to the file. Copy of all offers is annexed to the report of on-the-spot control on ██████████

⁸⁴ Convention of 26 July 1995 drawn up on the basis of Article K.3 of the Treaty on the European Union on the protection of the Communities' financial interests, OJ C316 of 27.11.95 p.49. See also Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, not yet applicable.

⁸⁵ 396. § (1) Aki a) költségvetésbe történő befizetési kötelezettség vagy költségvetésből származó pénzeszközök vonatkozásában mást tévedésbe ejt, tévedésben tart, valótlan tartalmú nyilatkozatot tesz, vagy a valós tény elhallgatja, b) költségvetésbe történő befizetési kötelezettséggel kapcsolatos kedvezményt jogtalanul vesz igénybe, vagy c) költségvetésből származó pénzeszközöket a jóváhagyott céltól eltérően használ fel, és ezzel egy vagy több költségvetésnek vagyoni hátrányt okoz, vétség miatt két évig terjedő szabadságvesztéssel büntetendő.

⁸⁶ 345. § Aki jog vagy kötelezettség létezésének, megváltozásának vagy megszűnésének bizonyítására hamis, hamisított vagy valótlan tartalmú magánokiratot felhasznál, vétség miatt egy évig terjedő szabadságvesztéssel büntetendő.

a) Organised fraud identified in projects KEOP-2012-5.5.0/A

A well organised fraud scheme can be identified for all KEOP-2012-5.5.0/A projects investigated.

Initially, the Beneficiaries were asked to calculate their Internal Rate of Return (BMR) based on 50.000 hours life-time duration of the lamps. Following the last minute modification of the excel table to be annexed to the applications, the Beneficiaries could calculate with 100.000 hours life-time (if duly justified).

The Beneficiaries had an eligible BMR already prepared with the 50.000 life-time duration. If this was not the case, they would not plan to submit an application.

The last-minute increase to 100.000 hours (without a change to the other components of the BMR) should have resulted automatically in an important increase of the Internal Rate of Return. In fact, by taking into account 100.000 hours, the Beneficiaries could calculate with a 40% residual value of the lamps (instead of 0%) after the 15 years period, and add this amount to the Internal Rate of Return (BMR) calculation.

However, all the BMR calculations resulted in practically the minimum level of eligibility, i.e. 0.5% in all project applications. This means that if the same data for the saving energy consumption costs and maintenance costs was taken into account, the Beneficiaries would have to increase artificially the estimated costs of works in the last few days before submitting their application, to obtain the maximum possible grant for the project under the new conditions.

On the basis of the Internal Rate of Return (BMR) calculation method used, taking into account a constant BMR at its minimum eligible level (0.5%), the increase from 50.000 hours lifetime to 100.000 hours lifetime artificially doubled the estimated costs of the works contract.⁸⁷

In a regular project application, the beneficiary should estimate the works costs based on a market analysis, for example by requiring indicative offers, and with this estimated costs calculate the BMR. In the projects investigated it happened in the other way around: first the beneficiaries (and their consultants) calculated what can be the maximum amount of works with a BMR which is still eligible. And then they obtained the corresponding "independent indicative offers".

This is also evidenced by the statement of [REDACTED]. When provided with the opportunity to comment on this issue, [REDACTED] issued a somewhat implausible explanation. According to [REDACTED], they prepared in parallel several draft project applications for the Municipalities, containing realistic costs estimation for works and non-realistic ones (but compliant with the initial call). They hoped all along that they would be able to submit the realistic one. This statement is an additional evidence that the Beneficiaries did not calculate on the basis of the "independent indicative offers" but the costs were adjusted to the maximum BMR.

The Beneficiaries (and their consultants) did not spend time to "manufacture" supporting documents for the costs estimation in the original application, as such supporting document could be subject to "provision of missing documents" (*hiánypótlás*). Only during the clarification procedure they provided the missing three "independent indicative offers".

The three "independent indicative offers" were only allegedly independent (see facts 2.2.3.1, and 3.2.4 last part), and in the reality they were drafted by the same person, mostly on the same computer, using a very simple mathematic formula.

The company providing the best offer was alternating but the two weaker offers always gave amounts 5% and 7% higher than that of the best offer not only regarding the total amount of the offer, but also for each item, for all cost lines and lamp types (12% and

⁸⁷ Because the 0,5% expected rate on return the increase is not exactly 100%. Most of the projects calculated with the very maximum amount possible.

21% in the case of Balatonfüred).⁸⁸ All the three indicative offers for works under the project application KEOP-5.5.0/A/12-2013-0226 (Kalocsa) contain the same calculation error (possibly due however to a mistake in the original excel table).

In the case of the two Zalaegerszeg Projects, it is evidenced that the three indicative offers were manipulated not only in relation to the works contract, but also between the different service providers (*megbízási szerződés*): designer (two offers drafted on the same computer), supervisor engineer (two companies owned by the same person), project management (three offers printed on a paper with the footer of [REDACTED]⁸⁹).

Those "independent indicative offers" were used to manipulate the estimation of the costs in the project application in a way that it led to an increased estimated amount of the contract, and therefore to an increased amount of grant. The fraud occurred already at the stage of the Grant Decision.

In all projects the same *modus operandi* occurred. This shows that the real organisers of the fraud were not the Beneficiaries, but some of their consultants or some natural persons behind them. This is also reinforced by the facts that the consultants were often the same, and some of them were in a situation of conflict of interests. Those persons could have committed the facts not only with the consequence of causing damage to the EU funds, but also in view to obtain an undue illegal enrichment:

- [REDACTED] had common financial interests with [REDACTED] initially and later with one of its indirect owners, [REDACTED]
- [REDACTED] company of [REDACTED], drafted the excel tables for the project applications together with [REDACTED] from [REDACTED] the future winner of the contract award procedure.
- The excel tables contained an artificial increase of the estimated costs as explained above. This later allowed the Beneficiary to sign a contract of a higher amount with the winner of the contract award procedure.
- The companies of [REDACTED] were involved in several ways in the project preparation, and some of the documents drafted for the project preparation were also used during the tender procedure. Thus, the companies of [REDACTED] had the possibility to influence the tender specifications.
- The tender specifications were irregular, and favoured [REDACTED] because it was the only company in 2012 to have an experience in large scale LED project (because its participation in the Hódmezővásárhely project).
- The tender specifications were irregular, and favoured each time one specific manufacturer. In the case of [REDACTED] at least, it is evidenced that favouring [REDACTED] in tender specifications meant favouring [REDACTED], as the two companies had an informal agreement that [REDACTED] would sell the same lamps to [REDACTED] much cheaper than to its

⁸⁸ In all projects under call for project application KEOP-2012-5.5.0./A except one (Balatonfüred) the three indicative offers used to establish the market price of the works were issued by [REDACTED] and [REDACTED]. In the case of Balatonfüred the three companies to give offer were [REDACTED] and [REDACTED].

⁸⁹ In its letter of comments on the facts concerning it, the Beneficiary stated that it was included into the tasks of [REDACTED] to provide the three offers for the costs estimation of the works contract and for the above mentioned service contracts.

⁹⁰ [REDACTED] recognised for KEOP-2012-5.0.0/A projects that "it is possible that she provided support to fill in the excel table to [REDACTED] from [REDACTED] because their previous professional relationship in the field of public lighting".

competitors, sometimes the difference could be even around 100% in 2022) 3243 - 31/01/2022 offers issued to the competitors.

Taken each single element separately, there would be only a list of serious irregularities. Taken together, the different elements show a coherent picture of the fraud because their consistency, organised and repetitive character.

Such behaviour falls under the definition of EU fraud according to Article 1 of the PIF Directive. Some elements should also be punished individually as false documentation according to the Directive.

In Hungarian law this could fall under qualification of Criminal Code, Act C of 2012: Budgetary fraud (Article 396), Falsification of document/forgery (Article 345). The possible qualification of organized crime (Article 321) should also be considered⁹¹

It can not be excluded for call KEOP-2014-5.5.0/K that similar facts occurred, as also in those projects the BMR calculation was re-drafted in the few days before the submission of the project application, following the last minute modification of the call by the Managing Authority.

However, OLAF could not evidence the manipulation of the market analysis, because in this call, there was no requirement to justify the market price and the estimation of costs in the application. The amount was calculated on the basis of the maximum eligible amount possible according to the other data in the cost benefit calculation (decrease of maintenance cost and decrease of the cost of energy).

Also, the involvement of ██████████ is not evidenced at the stage of the excel tables, even if one of the consultants was again ██████████ in most of the projects.

b) Falsified "independent bids" in two projects

In all projects KEOP-2012-5.5.0/A, the three "independent offers" provided in order to justify the artificially over-estimated works contract costs were falsified.

In project KEOP-5.5.0/A/12-2013-0184 (Mezőhegyes) and KEOP-5.5.0/A/12-2013-0194 (Hévíz), the Beneficiaries conducted a so called "3 offers procedure", according to Article 122/A of the Hungarian Public Procurement Act.

Mezőhegyes received two bids:

- ██████████ 135 625 838 HUF
- ██████████ 136 311 272 HUF.

Both ██████████ and ██████████ calculated their item prices based on the item prices contained in the offers issued by ██████████ to ██████████ (reference number SO14003060-1 and SO14003060-2), see facts under 2.2.3.7.

Hévíz received three bids:

- ██████████ 132 742 860 HUF (excl. VAT)
- ██████████, 142 034 860 HUF (excl. VAT)
- ██████████ 144 689 717 HUF (excl. VAT)

Considering that the price of ██████████ is the reference price (100%), the two other competitors price is increased respectively by 7% (██████████) and 9% (██████████) not only in respect of the total amount of the offer, but also for each item, for all 48 cost lines including work items, measurements and each lamp types. For a detailed analysis of how those offers were drafted necessarily by the same person, see note to the file OCM(2017)7940.

This constitutes serious tender irregularity. It also qualifies as fraud, and use of falsified document.

⁹¹ 321. § (1) Aki bűncselekmény bünszervezetben történő elkövetésére felhív, ajánlkozik, vállalkozik, a közös elkövetésben megállapodik, vagy az elkövetés elősegítése céljából az ehhez szükséges vagy ezt könnyítő feltételeket biztosítja, illetve a bünszervezet tevékenységét egyéb módon támogatja, büntett miatt egy évtől öt évig terjedő szabadságvesztéssel büntetendő.

In Hungarian law this could fall under qualification of Criminal Code, OCM(2022)3243 - 31/01/2022 Budgetary fraud (Article 396), Falsification of document/forgery (Article 345).

It is noted that those two projects were part of the four Municipalities investigated by the Hungarian judicial authorities. The case was dismissed because no evidence of cartel was obtained, but it is possible that on the basis of this new evidence, the cartel could also be proven (Article 420 of the Criminal Code).

3.4. SUMMARY OF THE FRAUD AND IRREGULARITIES IDENTIFIED BY PROJECT

Table 10 : Fraud and irregularities identified by type and by project

Project reference and Beneficiary	Type of irregularity and recovery rate							Conflict of interests (100%)	Illegal sub-contracting (violation of national law)
	Serious irregularities in the call or evaluation of project applications (100%)	Fraud : organised fraud (100%)	Fraud: Falsified "independent" bids - collusion (100%)	Lack of publication of contract notice (100%)	Selection criteria not related and proportionate (25%) -	Discriminatory technical specifications (25%)			
KEOP-5.3.0/A/09-2010-0137 HÓDMEZŐVÁSÁR HELY MJV				X					X
KEOP-5.3.0/A/09-2010-0357 PAKS						X			
KEOP-5.3.0/A/09-2010-0358 SIÓFOK				X		X			
KEOP-5.5.0/A/12-2013-0168 CEGLÉD	X	X		X	X	X	X		
KEOP-5.5.0/A/12-2013-0169 CEGLÉD	X	X		X	X	X	X		
KEOP-5.5.0/A/12-2013-0175 TAPOLCA	X	X		X	X	X	X		
KEOP-5.5.0/A/12-2013-0180 KECSKEMÉT MJV	X	X		X	X	X	X		
KEOP-5.5.0/A/12-2013-0182 ZALAEGERSZEG	X	X		X	X	X	X		
KEOP-5.5.0/A/12-2013-0184 MEZŐHEGYES	X	X	X	X		X	X		
KEOP-5.5.0/A/12-2013-0186 KECSKEMÉT MJV	X	X		X	X	X	X		
KEOP-5.5.0/A/12-2013-0191 ZALAEGERSZEG MJV	X	X		X	X	X	X		
KEOP-5.5.0/A/12-2013-0194 HEVÍZ VÁROS ÖNKORMÁNYZAT	X	X	X	X		X	X		
KEOP-5.5.0/A/12-2013-0202 VÁC	X	X		X	X	X	X		

KEOP-5.5.0/A/12-2013-0226 KALOCSA VÁROS	X	X		X	X	X	X	OCM(2022)3243 - 31/01/2022
KEOP-5.5.0/A/12-2013-0235 SZEKSZÁRD MJV	X	X		X	X	X	X	
KEOP-5.5.0/A/12-2013-0239 SZEKSZÁRD MJV	X	X		X	X	X	X	
KEOP-5.5.0/A/12-2013-0313 SZOLNOK MJV	X	X		X	X	X	X	
KEOP-5.5.0/A/12-2013-0320 KESZTHELY	X	X		X	X	X		
KEOP-5.5.0/A/12-2013-0325 SZOLNOK MJV	X	X		X	X	X	X	
KEOP-5.5.0/A/12-2013-0491 BALATONFÜRED	X	X		X	X	X		
KEOP-5.5.0/K/14-2014-0001 HATVAN	X			X	X	X	X	
KEOP-5.5.0/K/14-2014-0002 SÁRVÁR	X			X	X	X	X	
KEOP-5.5.0/K/14-2014-0003 JÁSZBERÉNY	X			X	X	X	X	
KEOP-5.5.0/K/14-2014-0004 ALSÓPÁHOK	X			X		X	X	
KEOP-5.5.0/K/14-2014-0005 TAMÁSI	X			X	X	X	X	
KEOP-5.5.0/K/14-2014-0006 BALATONFÜRED	X			X		X		
KEOP-5.5.0/K/14-2014-0019 GYÁL	X			X	X	X	X	
KEOP-5.5.0/K/14-2014-0021 SZIGETSZENTMIK LÓS	X			X	X	X		
KEOP-5.5.0/K/14-2014-0027 BÁCSALMÁS	X			X		X	X	
KEOP-5.5.0/K/14-2014-0028 MISKOLC MJV	X			X	X	X		
KEOP-5.5.0/K/14-2014-0035 SIÓFOK	X			X	X	X	X	
KEOP-5.5.0/K/14-2014-0039 HAJDÚBÖSZÖRMÉ NY	X			X		X	X	
KEOP-5.5.0/K/14-2014-0040 KISKUNFÉLEGYHÁ ZA	X			X		X		
KEOP-5.5.0/K/14-2014-0070 MÓRAHALOM	X			X		X	X	

KEOP-5.5.0/K/14-2014-0071 SIKLÓS	x			x	x	x	x	OCM(2022)3243 - 31/01/2022
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4. ESTIMATED FINANCIAL IMPACT OF THE FACTS ESTABLISHED

The amounts to be recovered should be calculated according to Commission Decision of 19.12.2013, C(2013)9527 final, on the setting out and approval of the Guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement ('new COCOF Guidelines').

The following table contains the calculation of the total eligible project amounts and the part financed by the Cohesion Fund.

4.1. ESTIMATED FINANCIAL IMPACT OF THE FACTS ESTABLISHED BY INDIVIDUAL PROJECTS

In each of the 35 projects, several irregularities occurred and at least one of them qualifies as involving a 100% financial correction rate according to the COCOF Guidelines. The total amount of Cohesion Funds to be recovered on the basis of individual findings by project is 35 396 947EUR (10 619 084 020HUF), as detailed in the table below.

Table 11: Financial data detailed by project (for total eligible amounts, see above table 1)

Project reference and Beneficiary	Grant paid (HUF)	Grant paid (EUR)	To be recovered (HUF)	To be recovered (EUR)	Recovery rate
KEOP-5.3.0/A/09-2010-0137 HÓDMEZŐVÁSÁRHELY MJV	366,142,644	1,220,475	91,535,661	305,119	25%
KEOP-5.3.0/A/09-2010-0357 PAKS	69,238,411	230,795	17,309,603	57,699	25%
KEOP-5.3.0/A/09-2010-0358 SIÓFOK	206,204,861	687,350	51,551,215	171,837	25%
SUB-TOTAL KEOP-2009-5.3.0/A	641,585,916	2,138,620	160,396,479	534,655	
KEOP-5.5.0/A/12-2013-0168 CEGLÉD	328,967,160	1,096,557	328,967,160	1,096,557	100%
KEOP-5.5.0/A/12-2013-0169 CEGLÉD	259,638,644	865,462	259,638,644	865,462	100%
KEOP-5.5.0/A/12-2013-0175 TAPOLCA	298,861,265	996,204	298,861,265	996,204	100%
KEOP-5.5.0/A/12-2013-0180 KECSKEMÉT MJV	346,027,762	1,153,426	346,027,762	1,153,426	100%
KEOP-5.5.0/A/12-2013-0182 ZALAEGERSZEG	493,414,918	1,644,716	493,414,918	1,644,716	100%
KEOP-5.5.0/A/12-2013-0184 MEZŐHEGYES	161,218,486	537,395	161,218,486	537,395	100%
KEOP-5.5.0/A/12-2013-0186 KECSKEMÉT MJV	483,799,887	1,612,666	483,799,887	1,612,666	100%

Project reference and Beneficiary	Grant paid (HUF)	Grant paid (EUR)	To be recovered (HUF)	To be recovered (EUR)	Recovery rate
KEOP-5.5.0/A/12-2013-0191 ZALAEGERSZEG MJV	489,489,261	1,631,631	489,489,261	1,631,631	100%
KEOP-5.5.0/A/12-2013-0194 HÉVÍZ VÁROS ÖNKORMÁNYZAT	158,192,636	527,309	158,192,636	527,309	100%
KEOP-5.5.0/A/12-2013-0202 VÁC	489,348,153	1,631,161	489,348,153	1,631,161	100%
KEOP-5.5.0/A/12-2013-0226 KALOCSA VÁROS	479,440,391	1,598,135	479,440,391	1,598,135	100%
KEOP-5.5.0/A/12-2013-0235 SZEKSZÁRD MJV	320,122,450	1,067,075	320,122,450	1,067,075	100%
KEOP-5.5.0/A/12-2013-0239 SZEKSZÁRD MJV	307,882,009	1,026,273	307,882,009	1,026,273	100%
KEOP-5.5.0/A/12-2013-0313 SZOLNOK MJV	483,967,163	1,613,224	483,967,163	1,613,224	100%
KEOP-5.5.0/A/12-2013-0320 KESZTHELY	363,766,349	1,212,554	363,766,349	1,212,554	100%
KEOP-5.5.0/A/12-2013-0325 SZOLNOK MJV	484,363,662	1,614,546	484,363,662	1,614,546	100%
KEOP-5.5.0/A/12-2013-0491 BALATONFÜRED	247,102,357	823,675	247,102,357	823,675	100%
SUB-TOTAL KEOP-2012-5.5.0/A	6,195,602,553	20,652,009	6,195,602,553	20,652,009	
KEOP-5.5.0/K/14-2014-0001 HATVAN	308,199,653	1,027,332	308,199,653	1,027,332	100%
KEOP-5.5.0/K/14-2014-0002 SÁRVÁR	385,334,753	1,284,449	385,334,753	1,284,449	100%
KEOP-5.5.0/K/14-2014-0003 JÁSZBERÉNY	404,963,580	1,349,879	404,963,580	1,349,879	100%
KEOP-5.5.0/K/14-2014-0004 ALSÓPÁHOK	44,844,160	149,481	44,844,160	149,481	100%
KEOP-5.5.0/K/14-2014-0005 TAMÁSI	258,932,704	863,109	258,932,704	863,109	100%
KEOP-5.5.0/K/14-2014-0006 BALATONFÜRED	134,898,395	449,661	134,898,395	449,661	100%
KEOP-5.5.0/K/14-2014-0019 GYÁL	260,192,019	867,307	260,192,019	867,307	100%
KEOP-5.5.0/K/14-2014-0021 SZIGETSZENTMIKLÓS	220,684,167	735,614	220,684,167	735,614	100%
KEOP-5.5.0/K/14-2014-0027 BÁCSELMÁS	155,044,731	516,816	155,044,731	516,816	100%
KEOP-5.5.0/K/14-2014-0028 MISKOLC MJV	446,331,899	1,487,773	446,331,899	1,487,773	100%

Project reference and Beneficiary	Grant paid (HUF)	Grant paid (EUR)	To be recovered (HUF)	To be recovered (EUR)	Recovery rate
KEOP-5.5.0/K/14-2014-0035 SIÓFOK	416,136,655	1,387,122	416,136,655	1,387,122	100%
KEOP-5.5.0/K/14-2014-0039 HAJDÚBÖSZÖRMÉNY	457,533,172	1,525,111	457,533,172	1,525,111	100%
KEOP-5.5.0/K/14-2014-0040 KISKUNFÉLEGYHÁZA	437,017,541	1,456,725	437,017,541	1,456,725	100%
KEOP-5.5.0/K/14-2014-0070 MÓRAHALOM	87,991,555	293,305	87,991,555	293,305	100%
KEOP-5.5.0/K/14-2014-0071 SIKLÓS	244,980,004	816,600	244,980,004	816,600	100%
SUB-TOTAL KEOP-2014-5.5.0/K	4,263,084,988	14,210,283	4,263,084,988	14,210,283	
GRAND TOTAL ALL PROJECTS	11,100,273,457	37,000,912	10,619,084,020	35,396,947	

4.2. ESTIMATED FINANCIAL IMPACT AFFECTING THE WHOLE CALLS FOR PROPOSAL KEOP-2012-5.5.0/A

In accordance with Articles 99 and 100 of Council Regulation (EC) N° 1083/2006 of 11 July 2006, laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund, the Commission may make financial corrections by cancelling all or part of the contribution made by the Union to an operational programme where there is a serious deficiency in the management and control system of the programme which has put at risk the Community contribution already paid to the programme.

The facts established and their qualification justifies the application of Articles 99 and 100 in view of a financial correction of 100% in relation to the EU financing of all the public lighting projects financed under the two calls for proposal KEOP-2012-5.5.0/A, and not only the 17 projects investigated for the following reasons.

- a) The fraud and irregularities established in each of the projects investigated under the two calls for proposal KEOP-2012-5.5.0/A and KEOP-2014-5.5.0./K are sufficiently serious to involve a financial correction for 100% of the grant in each project.
- b) Some of the serious irregularities are attributable to a serious deficiency in the management and control system of the programme. The Managing Authority modified at the last minute the conditions of the application without modifying the deadline to apply and give all potential applicants the possibility to adapt their application. The Public Procurement Control Unit (KFF) omitted to identify the serious tender irregularities.
 - The number of projects (17 for call KEOP-2012-5.5.0/A), and especially their amount is relevant compared to the total amount of those call: 20 652 009EUR compared to 29 000 000 EUR of Cohesion Funds available for public lighting projects for call KEOP-2012-5.5.0/A

4.3. CALCULATION OF THE TOTAL ESTIMATED FINANCIAL IMPACT

The total amount estimated to be recovered is 43 744 938 EUR (13 123 481 467 HUF).

Table 12: The total estimated financial impact on the Cohesion Fund is 43 164 938 EUR.

	Total financial impact of individual projects investigated (EUR)	Total amount of Cohesion Fund concerned by the financial correction (HUF)	Total amount of Cohesion Fund concerned by the financial correction (EUR)
KEOP-2009-5.3.0/A	534,655	160,396,479	534,655
KEOP-2012-5.5.0/A	20,652,009	8,700,000,000	29,000,000 ⁹²
KEOP-2014-5.5.0/K	14,210,283	4,263,084,988	14,210,283
TOTAL	35,396,947	13,123,481,467	43,744,938

5. COMMENTS OF THE PERSONS CONCERNED

Beneficiaries of the projects

OCM Numpber arrival	OCM Numb er OLAF letter	Addressee	Summary of comments	OLAF comments
Email: 22111	19935	HÓDMEZÖVÁSÁRHELY MJV ÖNKORMÁNYZATA	The Beneficiary pointed out some mistakes in the project key data and some clerical mistakes.	Correction done
Email: 22200	19895	PAKS VÁROS ÖNKORMÁNYZATA	Fact 1, 2: some corrections on the key data of the project. Fact 3: the reason for requirement of independent laboratory certification was to guarantee the quality. The comment in the document was related to the legal quality of the call and not the fact that it would restrain the competition. ██████████ could also provide such measurement, but did it too late. Fact 6, 7 and 8: the qualification "non-compliant" of the other bidders was legal.	Fact 1, 2: correction done.
Email: 22044 Letter: 22472	19891	SIÓFOK VÁROS ÖNKORMÁNYZATA	The Beneficiary confirmed that the data in relation to the public procurement conducted for the first project are correct. Some factual errors are pointed out in relation to the call for tender in relation to the second project. The Beneficiary stated that it was not aware or has no comment about the other facts.	Facts 9 and 10 corrections done, complementary information added.

⁹² Total amount available for public lighting projects for call KEOP-2012-5.5.0/A. This is the originally available amount under the call, and not the sum of the payments made for all individual projects.

Email: 22197 Letter: 22515	19893	CEGLÉD VÁROS ÖNKORMÁNYZATA	<p>The representative of Cegléd MJV stated that in relation to most of the facts it could not comment as it had no knowledge on them.</p> <p>Fact 4: The Beneficiary was not aware on how the costs estimation was calculated. As the most important was the final real cost following the public procurement procedure. The indicative offers are not mandatory to any of the parties.</p> <p>Fact 5: It is very common that the Beneficiaries do not attach all the compulsory annexes when it is possible to provide them at a later stage of the evaluation. There is no contradiction if the scan of the indicative offers is dated after the date of the offer.</p> <p>Fact 7: The Beneficiary provided additional information on the maintenance contract.</p> <p>Fact 11: Correction on the project management contract</p> <p>Fact 13: Correction on the project key data.</p> <p>Fact 14: Information on the public procurement consultant</p>	<p>OCM(2022)3243 - 31/01/2022</p> <p>Fact 9: There is a contradiction, because the scan was done on the computer of [REDACTED], not only for his company but also for his competitors. It was then sent to the Beneficiary and annexed to the project application.</p> <p>Fact 7: The figures were corrected for the Final Report.</p> <p>Facts 11, 13 and 14:: corrections done when factual error occurred.</p>
No comment	19940	TAPOLCA VÁROS ÖNKORMÁNYZATA	No comment	
Email: 22123	19896	KECSKEMÉT MJV ÖNKORMÁNYZATA	<p>Fact 5: There is no contradiction if the scan of the indicative offers is dated after the date of the offer.</p> <p>Fact 7: The Beneficiary provided additional information on the maintenance contract. It was not compulsory to have 25 year contract.</p> <p>Fact 8: This is not a fact but a supposition.</p> <p>Fact 10: Annex 3 and 4 contain statements and certificates and there is no information that they would be drafted by [REDACTED].</p> <p>Fact 11: The annual cost of maintenance of the 5.393 LED lamps is 5.54 million HUF and not 7.97 million HUF</p>	<p>Fact 5: There is a contradiction, because the scan was done on the computer of [REDACTED], not only for his company but also for his competitors. It was then sent to the Beneficiary and annexed to the project application.</p> <p>Fact 7: the additional fact did not change the fact that Tapolca MJV had no maintenance contract covering 25 years. It was not compulsory, but it was the only way to guarantee in advance there will be no increase of costs.</p> <p>The figures in relation to the maintenance contract in the Final Report are corrected, but the conclusion is the same: the yearly amount is already the maximum amount, while we are still in the guarantee period.</p> <p>Fact 10: OLAF's comments concerns excel tables annexes III and IV (and not folder III and IV).</p> <p>Fact 11: Correction done</p>

<p>Email: 22112 Letter: 22499</p>	<p>19890</p>	<p>ZALAEGRSZEG MJV ÖNKORMÁNYZATA</p>	<p>Fact 3, 4 and 5: it was [redacted] which required three offers for the different costs estimation, and not the Beneficiary.</p> <p>Fact 5: There is no contradiction if the scan of the indicative offers is dated after the date of the offer.</p> <p>Fact 7: Explanation on how the 25 years life-time was taken into account.</p> <p>Fact 9: The final audit was done by [redacted] and [redacted]. The Beneficiary had no contract with [redacted].</p> <p>Fact 10: Annexes III and IV were prepared by [redacted].</p> <p>Fact 11: The lighting measurements were done by [redacted] and not by [redacted].</p> <p>Fact 12: Some factual corrections in relation to the project key data. The Beneficiary also stated that the current maintenance contract is more than 50% cheaper than the maximum estimated amount according to the BMR, which was 1964HUF/lamp/year.</p>	<p>Fact 9: There is a contradiction (see above)</p> <p>Fact 10: Annexes III and IV were prepared by [redacted] according to its contract, but [redacted] cooperated, it is evidenced from the file properties.</p> <p>Fact 11: the lighting measurements were done by [redacted] according to its contract, but the measurement reports are signed by [redacted]. This could be due to the use of an IT tool developed by [redacted] (see also letter of [redacted] containing some possible explanations on this). The reference to lighting measurements is deleted in chapter 2 of the Final Report.</p> <p>Fact 12: Corrections done. OLAF can not agree with the statement in relation to the maintenance contract, as according to the BMR calculation the maximum amount was 374.3 HUF/lamp/year in Project II (2935 lamps) and 373.4 HUF in Project I. Both application calculated a maintenance cost maximum of 1 098 550 HUF. According to the documents received from the beneficiary, Zalaegerszeg has at the moment maintenance contracts for 3 690 175 HUF and 3 698 977 HUF for the lamps involved in the projects.</p>
<p>Email: 22004</p>	<p>19910</p>	<p>MEZŐHEGYES VÁROSI ÖNKORMÁNYZAT</p>	<p>The Beneficiary considers that the project was implemented in respect of the legal rules, the quality of works is professional, and the project improved the life-quality in the Municipality.</p> <p>The total energy costs was 8 million HUF/year cheaper compared to the situation before the project (energy consumption + maintenance contract together).</p>	<p>The total energy cost saving (maintenance + energy consumption) should have been minimum 8.690.197 HUF/year during all 25 years according to the BMR calculation. If it is 8 million now, it is already non compliant and this non compliance will increase especially after the 5 years guarantee period, when the Beneficiary will have to pay in addition for replacement parts.</p>

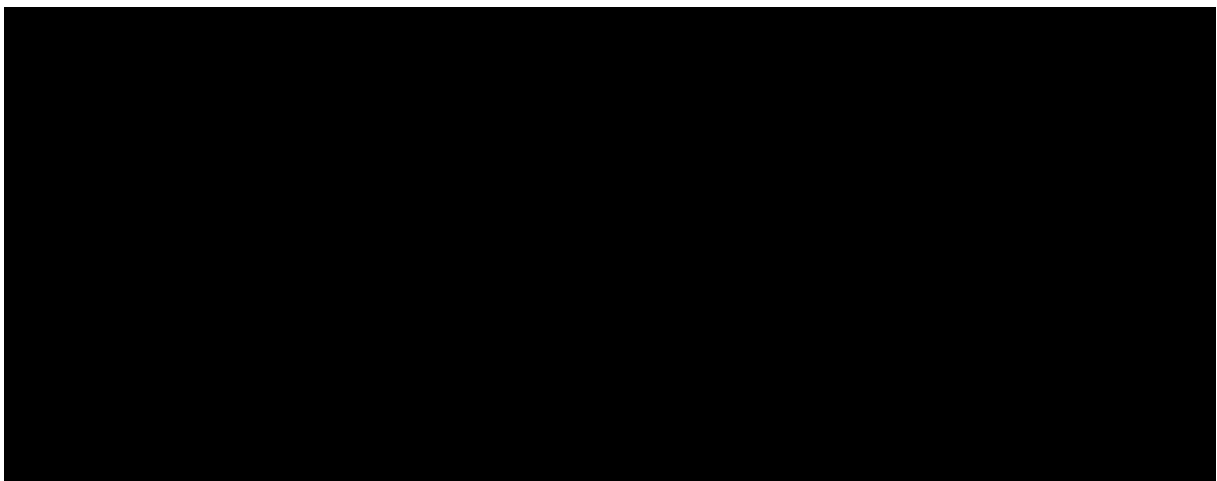
Letterl: 22469	19930	HÉVÍZ VÁROS ÖNKORMÁNYZAT	The Beneficiary stated that the project was implemented correctly and generated important costssaving. According to the Beneficiary, several facts are not correct but did not say which facts. The Beneficiary can not answer without consulting the consultancies.	OLAF sent the same facts also to the consultants concerned.
No comment	19888	VÁC VÁROS ÖNKORMÁNYZAT	No comment	
Email: 22085	19931	KALOCSA VÁROS ÖNKORMÁNYZATA	Fact 2: The project application was submitted on 13.02.2013. Fact 4: The Beneficiary did not analyse in depth the three indicative offers, it only made the compulsory documentary verifications. Fact 5: The date of creation of the files is probably the date of scanning, which is different from the date of issuing the offer.	Fact 5: The date of creation of the file is the date of creation as pdf file on the computer of ██████████, owner of one of the companies issuing the offer, therefore there is a contradiction (see also above).
Email: 22016 Email: 23382 Letter: 23774	19880	SZEKSZÁRD MJV ÖNKORMÁNYZATA (I)	The first email asks for some clarifications and for additional deadline. Fact 1: The Beneficiary did not sign a "tanácsadói" (consultancy) contract but a "megbízási" (consultancy or service) contract with ██████████ Fact 2: Szekszárd submitted its application on 13.02.2013. Fact 4: The Beneficiary did not examine the content of the three "indicative offers", only their formal validity, as it was not a base for a contract, only an indication on the market price. Fact 5: It was possible to send the indicative offer after the submission of the project application. There is no contradiction if the scan of the indicative offers is dated after the date of the offer as they were scanned afterward by the beneficiary. Fact 6-8: It was allowed to calculate with 100.000 hours in the cost benefit calculation, this is what the Beneficiary did. Fact 7: The exact text of the commitment of Szekszárd in relation to the maintenance cost is communicated to OLAF. Fact 9: The Beneficiary is not aware that the contract of ██████████ was prepared by somebody else. Fact 10: The drafting of Annexes III and IV were included into the tasks of ██████████ Facts 11 and 12: The public procurement consultant was ██████████	Answer to questions in the first email and partial deadline prolongation Email 21935. Fact 1: The mistake is due to a translation problem which should be corrected in the final version. Fact 2: Data added to the Final Report. Fact 5: There is a contradiction (see above) Fact 7: The exact formulation is taken into account in the Final Report. Facts 11 and 12: Information added in the Final Report.
No comment	19887	SZOLNOK MJV ÖNKORMÁNYZATA	No comment	
Email: 22016 Letter: 22208	19862	KESZTHELY VÁROS ÖNKORMÁNYZATA	The Beneficiary stated that the project was implemented correctly and generated important costs saving. According to the Beneficiary, several facts are not correct but did not say which facts. The Beneficiary suggests contacting the different consultancies.	OLAF sent the same facts also to the consultants concerned.

No registration number yet	19863	BALATONFÜRED VÁROS ÖNKORMÁNYZATA	<p>By email sent on 15.12.2017, the Beneficiary stated the following.</p> <p>Fact 1-11 and 13: The documents mentioned were not prepared by the Beneficiary, therefore it does not comment on them.</p> <p>Fact 12: The selection criteria (LED experience) was related to the subject matter of the contract and was below the estimated contract amount, it was therefore regular.</p> <p>Fact 14: the independent indicative offers were in all cases compliant with the requirements of the call for project applications.</p> <p>Facts 15-20 and 22: The documents mentioned were not prepared by the Beneficiary, therefore it does not comment on them.</p> <p>Fact 21: some factual errors are pointed out in relation to the content of the call for tender.</p>	<p>OCM(2022)3243 - 31/01/2022</p> <p>Fact 21: Correction done (reference to the experience deleted as not LED related).</p>
Letter 22504	19909	HATVAN VÁROS ÖNKORMÁNYZATA	<p>Hatvan has no comment on most of the facts.</p> <p>Fact 6: The Beneficiary stated that it was [REDACTED] the project manager, which sent the Annex III. Electronically to the Beneficiary. The Beneficiary provided a copy of the email of [REDACTED] providing the excel table.</p>	<p>Comments taken into account for the Final Report.</p>
No comment	19878	SÁRVÁR VÁROS ÖNKORMÁNYZATA	No comment	
Email: 22118 Letter: 22368	19885	JÁSZBERÉNY VÁROS ÖNKORMÁNYZATA	<p>No comments for facts 1-7, 11.</p> <p>Fact 8: Some factual errors are pointed out in relation to the content of the call for tender.</p> <p>The Beneficiary argued that the requirement for financial and professional capacity was not disproportional, because according to the Decree of the Prime Ministry of 28.11.2014, the requirement should be under the threshold of 75% of the amount and quantities of the contract to be awarded.</p> <p>Facts 9 and 10: The reasons for non-compliance were missing documents "hiánypótlás" (and not a "clarification request" "tisztázó kérdés")</p> <p>According to the Hungarian Public Procurement Act, the contracting authority was obliged to request explanations on the low price submitted by [REDACTED]</p> <p>Fact 12: the public procurement consultant was [REDACTED]</p> <p>Project manager: [REDACTED]</p>	<p>Fact 8: Corrections made in the Final Report.</p> <p>The threshold of 75% is an indication in national law. There is still a need to verify on a case by case basis if the requirement is <u>related</u> and <u>proportionate</u>.</p> <p>Fact 9 and 10: In English, clarification request is used both for missing document request and clarification request. However, this is clarified under Jászberény project.</p> <p>Fact 12: Additional information added to the Final Report.</p>
Email: 22116 Letter: 22513	19876	ALSÓPÁHOK KÖZSÉG ÖNKORMÁNYZATA	<p>The Beneficiary did not provide additional information, it stated that it respected the applicable legislation and relied on different consultancy companies because it did not have the necessary knowledge to prepare and implement the project itself.</p>	

Email:21879	19915	TAMÁSI VÁROS ÖNKORMÁNYZATA	<p>Fact 8: Some factual errors are pointed out in relation to the content of the call for tender.</p> <p>The Beneficiary argued that the requirement for financial and professional capacity was not disproportional, because according to the Decree of the Prime Ministry of 28.11.2014, the requirement should be under the threshold of 75% of the amount and quantities of the contract to be awarded.</p> <p>The reasons for exclusion of [REDACTED] [REDACTED] were numerous missing supporting documents, no only the documents listed by OLAF in its letter.</p>	<p>Fact 8: Corrections made in the Final Report.</p> <p>The threshold of 75% is an indication in national law. There is still a need to verify on a case by case basis if the requirement is <u>related</u> and <u>proportionate</u>.</p> <p>In the Final Report the other missing supporting documents are added. However, any missing document would justify the non-compliance, which means that even if [REDACTED] [REDACTED] would provide all documents except for example the LED experience justification (which is estimated disproportionate and non-related), it would be non-compliant.</p>
Email: 22275	19913	GYÁL VÁROS ÖNKORMÁNYZATA	<p>Fact 8: In the call for tender, the period for the experience was 60 months and not 3 years.</p> <p>The requirement for financial and professional capacity was not disproportional, because according to the Decree of the Prime Ministry of 28.11.2014, the requirement should be under the threshold of 75% of the amount and quantities of the contract to be awarded.</p>	<p>Fact 8: Correction done in the Final Report. The threshold of 75% is an indication in national law. There is still a need to verify on a case by case basis if the requirement is <u>related</u> and <u>proportionate</u>.</p>
Email:22094	19906	SZIGETSZENTMIKLÓS VÁROS ÖNKORMÁNYZATA	<p>Fact 1. The Energetics study does not contain a proper cost benefit analysis, the data are scattered in the whole document.</p> <p>Fact 2: Complementary explanation is given on the procedures for the evaluation of project applications.</p> <p>The project maintenance period is 5 years. The period taken into account for the internal rate (BMR) calculation is 15 years (2015-2030).</p> <p>In the case of a calculation with 60.000 hours life-time duration, the table would give an error message because the BMR would be under the eligible threshold.</p> <p>In the case of a calculation with 80.000 hours life-time, the residual value is 25% and not 20%.</p> <p>Fact 6: Factual errors are corrected in relation to the text of the call for tender.</p>	<p>Fact 6: Correction done in the Final report.</p>
Email:22065	19875	BÁCSALMÁS VÁROSI ÖNKORMÁNYZAT	<p>Fact 6: It is suggested to contact the different consultancies which participated to the project as the Beneficiary has no information.</p> <p>Fact 8: The project was implemented in respect of the applicable rules, in a professional way and good quality.</p>	
No comment	19882	MISKOLC MEGYEI JOGÚ VÁROS ÖNKORMÁNYZATA	No comment	

Mail: 22077	19872	HAJDÚBÖSZÖRMÉNY VÁROS ÖNKORMÁNYZATA	Fact 8: Some factual errors are pointed out in relation to the content of the call for tender.	Fact 8: Correction done in the Final Report.
Email: 22125	19918	KISKUNFÉLEGYHÁZA VÁROS ÖNKORMÁNYZATA	Fact 7: Three offers were received; the third offer was [REDACTED] The reference required in the call was related to 2.200 lamps in the last 5 years.	Fact 7: Correction done in the Final Report.
Email: 22020	19870	MÓRAHALOM VÁROSI ÖNKORMÁNYZAT	The Beneficiary confirms that [REDACTED] submitted an offer as independent bidder. The Beneficiary sent a copy of the bid from [REDACTED]	
Letter:22510	19916	SIKLÓS VÁROS ÖNKORMÁNYZATA	<p>Fact 6: The Beneficiary had no contract with [REDACTED] and has no information on her involvement in the project preparation.</p> <p>Some factual errors are pointed out in relation to the project key data (facts 3 and 7) and the call for tender, especially the requirements in relation to the technical expert (fact 8).</p> <p>The Beneficiary argued that the requirement for financial and professional capacity was not disproportional, because according to the Decree of the Prime Ministry of 28.11.2014, the requirement should be under the threshold of 75% of the amount and quantities of the contract to be awarded.</p> <p>Fact 9: the amount of works contract can be divided into two parts: works 177 537 000 HUF and design 4 100 000 HUF.</p> <p>Fact 10: The Beneficiary was not aware of the sub-contracting between [REDACTED] and [REDACTED] for the design.</p> <p>Facts 11 to 13: The Beneficiary was not aware of the personal links between some of the companies. The Beneficiary made the compulsory verifications in order to avoid conflict of interests.</p> <p>The project was executed in good faith and in respect of the applicable regulations. The project goals, i.e. the reduction of energy consumption is reached thanks to the 100% grant received.</p>	<p>Fact 6: The reference to [REDACTED] [REDACTED] [REDACTED] is deleted for all projects KEOP-5.5.0/K in the Final Report.</p> <p>Facts 3, 7 and 8: Correction done in the Final Report.</p> <p>The threshold of 75% is an indication in national law. There is still a need to verify on a case by case basis if the requirement is <u>related</u> and <u>proportionate</u>.</p> <p>Fact 9: Information added. Thus the amount of works contract falls under the available amount according to the Grant Agreement.</p>

Companies and natural persons concerned



6. CONCLUSIONS

The investigation was related to 35 LED public lighting projects: 3 projects under call KEOP-2009-5.3.0/A, 17 projects under KEOP-2012-5.5.0/A and 15 projects under KEOP-2014-5.5.0/K.

On the basis of the evidence collected, in relation to three projects under the call KEOP-2009-5.3.0/A the investigation proven that:

- In case of Hódmezővásárhely and Siófok, the Beneficiary published a national call for tender instead of an international one, because it qualified the contract to be awarded as works contract instead of as supply contract.
- In the projects of Paks and Siófok, the call for tender contained discriminatory technical specifications.

In relation to the 17 projects financed under KEOP-2012-5.5.0/A and the 15 projects financed under KEOP-2014-5.5.0/K, the investigation established:

- For both calls for project applications KEOP-2012-5.5.0/A and KEOP-2014-5.5.0/K the Managing Authority did not respect the principles of non-discriminatory treatment of applicants and their right to fair treatment. The Managing Authority modified substantially the content of the call without informing properly the applicants and prolonging the deadline to apply. This irregularity affects all the call, not only the projects investigated.
- In relation to the 17 KEOP-2012-5.5.0/A projects investigated, the Managing Authority accepted ineligible applications on the basis of considerations other than the content of the documentary evidence provided by the applicants in relation to the presumable life-time duration of the lamps to be supplied.
- In relation to the 17 KEOP-2012-5.5.0/A projects investigated, the Managing Authority required the Beneficiaries to commit themselves to an "impossible

obligation", namely to sign maintenance contracts 15 years after the project implementation for a given amount, while such contracts will be necessarily subject to the actual market price and negotiation. OCM(2022)3243 - 31/01/2022

- In relation to the 32 KEOP-2012-5.5.0/A and KEOP-2014-5.5.0/K projects investigated, numerous tender irregularities occurred, such as for example lack of publication of tender procedure, selection criteria not related and not proportionate to the subject of the contract, discriminatory technical specification having as consequence the orientation of the tender in favour of a given manufacturer, conflict of interests.
- In case of KEOP-2012-5.5.0/A projects, an organised fraud scheme has been identified, involving an artificial increase of the cost estimation through the use of falsified documents during the project application, the illegal participation of the staff of the works company to the drafting of the project application, tender orientation in view to award the contract to a company linked to one of the consultants, possible illegal agreement between the works contractor and one of the manufacturers.

The total estimated financial impact is **43 744 938 EUR (13 123 481 467 HUF)** composed as follows:

- KEOP-2009-5.3.0/A: 534 655 EUR (3 irregular projects)
- KEOP-2012-5.5.0/A: 29 000 000 EUR (all public lighting projects of this call for project applications)
- KEOP-2014-5.5.0/K: 14 210 283 EUR (15 irregular projects)

Signatures	
Lead Investigator	on 19/12/2017 at 11:40 by [REDACTED] [LEAD INVESTIGATOR]
Head of Unit	on 19/12/2017 at 12:21 by [REDACTED] [HEAD OF UNIT]
Director	on 19/12/2017 at 15:22 by [REDACTED] [DIRECTOR]