



Republika e Kosovës
Republika Kosova – Republic of Kosovo
ORGANI SHQYRTUES I PROKURIMIT
TELO ZA RAZMATRANJE NABAVKE
PROCUREMENT REVIEW BODY

Psh. No.1151/24

The Review Panel, appointed by the President of the Procurement Review Body (PRB), based on Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova (LPP) composed of Batisha Ibrahim – President, Isa Hasani and Kimete Gashi-Brajshori-Member of the Review Panel deciding upon the complaint of the Economic Operator (EO) “Construmax” SH.P.K., against the Non-execution of the decision of the PRB of the Ministry of Culture of the YS and ÇJK in the capacity of the Contracting Authority (CA) regarding the procurement activity “Construction work for the implementation of the detailed project [main implementer] of architecture and engineering, for the construction of the National Judo Center - Gym, Multi-functional Building and Hostel, in Peja, in the Municipality of Peja - Re-tendering” with procurement number 207-24-2051-5-1-1, on the 30/01/2025, has issued this:

DECISION

1. Approved, as grounded the complaint of EO “Construmax” SH.P.K., with no. 2024/1151, dated 27/11/2024, . whereas the decision of the CA Ministry of Culture of the YS and the ÇJK regarding the procurement activity “Construction work for the implementation of the detailed project [main implementer] of architecture and engineering, for the construction of the National Judo Center - Gym, Multifunctional Building and Hostel, in Peja, in the Municipality of Peja - Re-tendering” with procurement number 207-24-2051-5-1-1 is canceled 58 Notification on the decision of the CA, while the procurement activity is returned to Re-evaluation.
2. Within 10 days, the CA must inform the PRB of all actions taken regarding this procurement activity, otherwise, the PRB has the right to take measures against the CA for non-compliance with the decision as provided for in the provisions of Article 131 of the LPP.
4. Since the complaint of the complaining EO is approved as grounded, the complaint fee is refunded in the amount deposited when submitting the complaint. The complaining EO is obliged, in accordance with Article 31, point 6 of the Rules of Procedure of the PRB, to make a request for the return of the complaint security within a period of sixty (60) days, otherwise the deposit will be confiscated, and these funds will go to the Budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances -

The Ministry of Culture YS and the ÇJK, in the capacity of the Contracting Authority, on 07.03.2024, has published the Contract Notice B05 regarding the procurement activity entitled “Construction work for the implementation of the detailed project [main implementing] of architecture and engineering, for the construction of the National Judo Center - Gym, Multifunctional Building and Hostel, in Peja, in the Municipality of Peja - Re-tendering” with procurement number 207-24-2051-5-1-1.

The contracting authority has implemented an open procedure, type of contract: work, estimated value of the contract: 5,890,000 €.

The CA has published the Notice on the Decision to Cancel this procurement activity (proposing the cancellation of the activity in the absence of responsive bids) on the 08.11.2024.

EO “Construmax” SH.P.K on 13.11.2024 has filed a request for reviewing against the Notice on the Decision of the Contracting Authority for cancellation. The CA on 19.11.2024 has rejected the request for reviewing of the EO.

Against the decision cited above, dated 27.11.2024, the operator "Construmax SH.P.K. has filed with the PRB complaint no. 2024/1151 (Protocol No.).

On the preliminary review phase: (a) The PRB has found that the complaint in the present case was filed in accordance with Article 109.1 of the LPP, according to which any interested party may file a complaint against any decision taken by the CA after the implementation of the preliminary dispute resolution procedure, as provided for in Article 108/A of this Law. Since the complainant has the status of an interested party as defined in Article 105, paragraph 1, in conjunction with Article 4, paragraph 1.26 of the LPP, whereas the complaint contains the essential elements foreseen by Article 111 of the cited Law, which means that it meets the conditions in terms of the cited provisions and falls under the competences of this body in terms of Article 105 of the LPP, in connection with Article 9 of the PRB's Work Regulations. The PRB analyzed all the documents of this case, including all the acts and/or actions of the parties, as described above (procedural facts and circumstances), there are no elements for preventing a conflict of interest, as required in terms of Article 11 of the PRB's Work Regulations, regarding paragraph 1.75, of Article 4 of the LPP and at the same time analyzed all the documents of this case, including all the acts and actions of the parties and considered that there is no need to convene a hearing with the parties as provided for in paragraph 1, of Article 24 of the Rules of Procedure of the PRB.

(b) Based on the actions described above, the PRB has appointed the Review Panel pursuant to Article 111, paragraph 5 (ii) of the LPP and has engaged the review expert in accordance with Article 111, paragraph 5 (i) of the LPP, with the task of conducting the initial review of the file and the complaining claims, regarding this procurement activity, within the meaning of Article

113 and 114 of the LPP in connection with Article 17 and 19 of the cited Regulation. In this regard, on 22.12.2024 the review expert has submitted the Evaluation Report with recommendations which are described as follows:

- The complaint of the complaining EO should be approved as grounded,
- The decision of the CA to cancel the procedure should be annulled

Response of the Contracting Authority to the complaining claims of the EO "Construmax S.H.P.K."

Response to claim 1: Regarding claim 1, it is not grounded since on the date: 15.07.2024, at 11:34h, the representative of the GOE came to the Procurement Office for access to documents. In his presence, the measures for the activity were directly dismissed, and the same was notified of the offers that have business secret requests. In addition to the business secret information that was assessed as such by the CA, the complaining GOE, at their request, received all other documents for the aforementioned procurement activity by CD. During the viewing of the documents, the representative of the GOE resisted receiving all the documents of the participants in this procurement activity but after seeing the bids coded with the trade secret sign in the system, he agreed not to request the documents included in articles 68 and 69, but he constantly requested documents such as: the bank guarantee, the Dynamic Plan because according to him, these are documents that are read during the opening of bids. The Procurement Office, during the access process, has informed that because the GOE participating in this procurement activity have coded their bids with the business secret sign and have their own requests for Business Secrets according to Article 11 of the LPP, it cannot approve such a Request but only the documents that are allowed. Also, during the bid evaluation procedure as well as during the procedure for allowing access to documents, in no case will the CA- MCYS- Specifically, the Procurement Officials did not violate Article 1 - Purpose of the LPP, but each phase of the procedure in question was treated and evaluated honestly, professionally and without influence and not as the complaining GOE claims, therefore all the above-mentioned claims of the applicant do not justify the fact that the applicant has not properly fulfilled the requirements of the CA and thus this claim is completely unfounded and which are argued with facts by the CA- MCYS. (Evidence: Offer of the complaining GOE, Notification of the Decision of the CA and LS, Bid Evaluation Report, dated: 12.07.2024).

Response to claim 2: Regarding claim number 2 of the complaining GOE, it does not dispute the fact that it responded positively to the request of the CA. The Contracting Authority - MKR, acted based on Article 30 of Regulation No. 001/2022 on Public Procurement, paragraph 30.4, where it requested all GOE participating in the procurement activity to extend the validity of the bids and the validity of the Tender Security. According to paragraph 30.6 of Article 30 of the same Public Procurement Regulation, the CA has requested that each EO participating in the procurement activity react if they wish to respond positively to the CA's request or to reject it for the reasons you have stated. For this reason, the CA-MCYS has left at your disposal an open period of five (5) days in which you can respond positively or reject the request. During this period, through the electronic E-Procurement system, the CA-MCYS has received positive

responses from all EO participating in the procurement activity, thus extending the validity of the offers as well as the validity of the Tender Security as requested by the CA. Also, from your side as the complaining GOE, the CA-MCYS has accepted the evidence for the extension of the validity of the bids and the validity of the Tender Security. (Evidence: Request for extension of the CA, Evidence of the GOE attached to the electronic E-Procurement system). Based on all the above-mentioned arguments, for the very fact that you as the GOE have responded positively to the request of the CA, all the claims presented by you do not stand, emphasizing here also the fact that your claims have been in contradiction with your actions or because you have raised in the electronic E-Procurement system the extension of the validity of the bids and the Tender Security, therefore, as a claim it is completely unfounded.

Response to claim 3: Regarding this claim, you have contradicted your statements, where you once state that you are the only bidder who has extended the validity of the bids and the validity of the Tender Security, then you state that the other two bidders have extended the validity of the bids and the Tender Security beyond the deadline. Therefore, this claim is rejected as completely unfounded because the CA-MCYS acted based on Article 30 of Regulation No. 001/2022 on Public Procurement, paragraph 30.4, has requested from all EO participating in the procurement activity, where it has requested from each bidder the extension of the validity of the offers and the validity of the Tender Security by leaving at your disposal the open period of five (5) days where you can respond positively or reject it as a request of the CA. Therefore, all the assumptions and claims of the complaining GOE do not stand because the Contracting Authority does not act on the basis of wishes but according to the Public Procurement Law in force where based on Article 60, paragraph 1, sub-paragraph 1.1 of the LPP in force the criterion for awarding the contract was determined by the CA-MCYS the most economically advantageous Tender based on the criteria and weight specified in Annex 6 of the Tender Dossier.

Response to claim 4: The claim of the complaining GOE that the quality guarantee was not a selection criterion cannot be based, because in the DT it was a criterion for awarding the Tender, the most economically advantageous tenderer with the sub-criteria in the specific part of the DT in the Complaint with number 6, and in case of uncertainties, the EO during the tendering phase could request clarifications that are allowed according to Article 16.1 Clarification of the Tender Dossier. Although you as the GOE have provided a signed and stamped Declaration of Guarantee, we consider that you have not fulfilled the requirement of the DT, since you should also provide a comprehensive guarantee when submitting the bids, and not as you claim to submit this guarantee after the completion of the works.

Response to claim 4: The evaluation committee has also carefully evaluated the amount offered by you and has found that there are no arithmetic errors during the calculation, but during the evaluation it has noticed in the position with serial number 2.1.1 in the main amount. In your bid, the evaluation committee has found that you have offered the price per unit while you have not offered the total price, and you should also fill in the amount of the price.

Response to claim 5: Regarding this claim of the complaining GOE, the alleged statements of the complaining GOE do not stand since the CA-MCYS has approved the request for access to documents according to the request of the complaining GOE. The representative of the GOE has

requested from the Procurement Office to download the estimate directly from the electronic E-Procurement system and the same estimate to be certified for position 2.1.1 of the estimate that there is an error as highlighted by them. The representative of the complaining GOE requested that the bids be opened and that the documents be checked to see if they were uploaded to the system in order to verify their existence. He also requested the opening of the documents that the GOEs participating in the procurement activity had marked in the electronic E-Procurement system with the business secret sign. Regarding these requests, the Procurement Office approved them as requests and allowed access to the documents that are permitted by the applicable LPP. No statement by the complaining GOE disputes the fact that as bidders in this procurement activity they did not fulfill the conditions and criteria set out in the Contract Notice and in the Tender Dossier as required by the CA-MCYS. All presumptive statements against GOE participating in this procurement activity are their justifications because the CA-MCYS, specifically the evaluation, examination and comparison commission of offers in support of Article 59 of Law No./ 04/ L- 042 on Public Procurement, amended and supplemented by Law No. 04/ L-237, Law No. 05/ L- 068 and Law No. 05/ L- 092, has concluded that no bidder based on the findings and irreparable errors in this procurement phase is liable. Likewise, the Procurement Office was correct in allowing access to documents and was not influenced by any circumstances, which is also confirmed by the evidence attached to the electronic E-Procurement system. (Evidence: Approval of the request for access to documents, Minutes for access to documents). Based on all the above arguments, the CA-MCYS has concluded that this claim of the complaining GOE is also completely unfounded.

Response to claim 6: Regarding this claim, the CA-MCYS clarifies that it cannot dispel the doubts of the complaining GOE, but based on all the evaluated documentation, it finds that the alleged statements of the complaining GOE are unfounded, since the CA-MCYS has evaluated the bids of the GOE participating in the procurement activity according to the conditions and criteria itself set out in the Contract Notice and in the Tender Dossier and the bidders' evidence. All clarifications that have been requested from all EOs participating in the procurement activity have been requested in full harmony with Article 72 of the LPP as well as Article 38 of Regulation No. 001/2022 on Public Procurement.

Response to claim 7: Regarding this claim, this is not the reason for the elimination of the participating GOE from the aforementioned procurement activity and this claim of the complaining GOE is completely unfounded.

Response to claim 8: Regarding this claim, the CA-MCYS clarifies that it cannot dispel the doubts of the complaining GOE, but based on all the evaluated documentation, it finds that the alleged statements of the complaining GOE do not hold, since the CA-MCYS has evaluated the bids of the GOE participating in the procurement activity according to the conditions and criteria set out in the Contract Notice and the Tender Dossier and the bidders' evidence. All clarifications that have been requested from all EOs participating in the procurement activity have been requested in full harmony with Article 72 of the LPP as well as Article 38 of Regulation No. 001/2022 on Public Procurement.

Response to claim 9: Regarding this claim of the GOE, it should be noted that the procurement activity has not been canceled for this reason, because if we had responsive bids in the absence of such evidence and in such cases, the CA-MCYS would act with clarifications in accordance with Article 72 of the applicable LPP, Article 26, paragraph 26.6 of Regulation No. 001/2022 on Public Procurement. Therefore, as well as Article 10 of the Guidelines No. 001/2023 on Public Procurement, this claim of the complaining GOE is completely unfounded.

Response to claim 10: Regarding this claim of the GOE, it should be noted that the procurement activity has not been canceled for this reason, because if we had responsive bids with the lack of such evidence and in such cases, the CA-MCYS would act with clarifications in accordance with Article 72 of the applicable LPP, Article 26, paragraph 26.6 of Regulation No. 001/2022 on Public Procurement. Therefore, as well as Article 10 of the Guidelines No. 001/2023 on Public Procurement, this claim of the complaining GOE is completely unfounded.

Response to claim 11: Regarding this claim of the GOE, it should be noted that the procurement activity has not been canceled for this reason, because if we had responsive bids with the lack of such evidence and in such cases, the CA-MCYS would act with clarifications in accordance with Article 72 of the applicable LPP, Article 26, paragraph 26.6 of Regulation No. 001/2022 on Public Procurement. Therefore, as well as Article 10 of the Guidelines No. 001/2023 on Public Procurement, this claim of the complaining GOE is completely unfounded. However, if during the evaluation of the bids the lack of such evidence is found, it is allowed under Article 72 of the LPP for a contracting authority during the evaluation to request and receive information or documents that are missing in the application/tender. These documents, however, must objectively present sufficient evidence that reasonably reflects the existing situation prior to the date of publication of the Contract Notice. In conclusion, based on all the above arguments, this claim of the complaining GOE is completely unfounded.

Response to claim 12: The CA-MCYS regarding this claim cannot dispel the doubts of the complaining GOE, but based on all the evaluated documentation, it finds that the alleged statements of the complaining GOE do not hold, since the CA-MCYS has evaluated the bids of the GOE participating in the procurement activity according to the conditions and criteria set out in the Contract Notice and in the Tender Dossier and the evidence of the bidders. Regarding this claim of the GOE, it should be noted that the procurement activity was not canceled for this reason, because if we had responsive bids with the lack of such evidence and in such cases, the CA-MCYS would act with clarifications in accordance with Article 72 of the applicable LPP, Article 26, paragraph 26.6 of Regulation No. 001/2022 on Public Procurement. Therefore, as well as Article 10 of the Guidelines no. 001/ 2023 on Public Procurement, this claim of the complaining GOE is completely unfounded. All clarifications that have been requested from all EOs participating in the procurement activity have been requested in full compliance with Article 72 of the LPP and Article 38 of the Regulation no. 001/ 2022 on Public Procurement.

Response to claim 13: Regarding this claim of the complaining GOE, the alleged statements of the complaining GOE do not stand, since the CA-MCYS has evaluated the bids of the GOE participating in the procurement activity according to the conditions and criteria set out in the Contract Notice and in the Tender Dossier and this is not the reason for the elimination of any of

the participants. The GOE have been notified through Standard Letters of the reasons for the elimination of their bids, therefore this claim is completely unfounded. However, even if such evidence were lacking, it is permitted under Article 72 of the LPP for a contracting authority during the evaluation to request and receive information or documents that are missing in the application/tender. These documents, however, should objectively present sufficient evidence that reasonably reflects the existing situation prior to the date of publication of the Contract Notice. Therefore, based on all the above arguments, this claim of the complaining GOE is also completely unfounded.

Response to claim 14: CA-MCYS acted in accordance with the articles of the LPP in force and has respected Article 7 because the Contracting Authority has treated all GOE participating in this procurement activity in an equal and non-discriminatory manner and has carried out the examination, evaluation and comparison of offers according to Article 59 of Law No. 04/ L 042 on Public Procurement, amended and supplemented by Law No. 04/ L- 237, Law No. 05/ L- 068 and Law No. 05/ L- 092, thus acting in a transparent and fair manner for all GOE participating in the aforementioned procurement activity. Remark: From claim number 6 of the complaining GOE and up to the last claim of the complaining GOE with number 16, there are a total of 10 repeated claims with the same assumptions that the CA has responded to in almost the same way with the doubts and assumptions raised by them. In conclusion, it is found that the applicant has not presented solid arguments to support his claims regarding his liability, and the claims cited, even if they are well-founded, are allowed to be clarified according to Article 72 of the LPP and Article 38 of the Regulation no. 001/2023 on Public Procurement, However, because your offer was the cheapest, and no other findings were noted except for the guarantee and non-fulfillment of position 2.1.1, where these two findings were also noted by the other two bidders, we did not continue with clarifications for documentary evidence that the other bidders may have lacked, or other eliminating findings. At the same time, from the material evidence administered, it was found that the applicant's claims are completely unfounded. Therefore, the applicant's request for reconsideration is rejected as completely unfounded. Based on the above, it is decided as in the provision of this Decision.

The claims of the complaining economic operator "Construmax SH.P.K." in complaint No. 1151/24 are presented as follows:

First claim (1): The complainant claims that: "The first eliminatory reasoning regarding the assessment of the economic and financial situation is not grounded, due to the fact that the request in the Technical Dossier (DT) was to prove that there was a minimum income of €9,000,000.00 for the last three fiscal years. The publication date of the DT was 07.03.2024, and for the past three fiscal years, we not only meet this requirement, but also exceed it by about 2 million euros. This is because only the income excluding VAT is 9.9 million euros, while if we also calculate the VAT, which was the same value as the income then we reach 11.7 million euros. This justification for the elimination of the group of complaining EOs does not find legal support, namely Article 68 of the LPP, paragraph 1 stipulates: "... The requirements on the economic situation must be expressed in figures and will refer to a maximum of the last three financial years..." Considering the publication of the contract notice and the tender dossier,

which contains the date 07.03.2024, the CA cannot under any circumstances fail to take the time period of the fiscal year 2024 as a basis. In the qualifying request, the CA on the one hand requested turnover for the past 3 fiscal years, and on the other hand specified the year 2020, a year that cannot be legally defined or limited. 6/10 Furthermore, according to Law No. 04/L-077, on obligations, namely Article 86, unclear provisions are defined in special cases, specifying: In the case where the contract has been concluded according to previously printed content, or where the contract has been in any way prepared and proposed by one contracting party, unclear provisions shall be interpreted in favor of the other party. Therefore, the justification for the elimination on this point is probably influenced by other bidders, since we as a consortium have over €11,753,519.78 in revenue in the past 3 fiscal years, from the date of the contract notice.

Second claim (2): The complainant claims that: "The second justification for the elimination regarding the lack of photographs in the Annex/Table 1 form is a justification unfounded in the requirements of the Technical Dossier (DT), because in the requested documentary evidence it was specified that, " , must submit information on each contract for construction works implemented - through the presentation of textual and numerical data, as well as photographs, on four [4] pages [together with the following table] of A4 size" Our consortium has submitted information for each construction contract by presenting textual and numerical data. We have also submitted 4 pages of photographs for each project. The justification for the elimination that we as a group of EOs have not submitted photographs is absurd. Our group has presented legal evidence in the bid, such as contracts and acceptance reports of completed works, according to the qualifying requirement. According to the legal provisions of Article 69 of the LPP, the use of photographs is not accepted as evidence and testimony, as is also determined by other sub-legal provisions. The implementation of the preliminary contract is argued with legal documents, such as the final reports of the implementation of 7/10 works and other documents. Despite this, we as a group of EOs in the bid have submitted photographs of the preliminary works, argued with references. The failure to apply the photograph in the specified form does not make our bid irresponsible and does not change the fact that we as a group of EOs have implemented the projects submitted in the bid. Moreover, in annex/table 1 there was no specified place for placing photographs. Also, annexes/table 1 were for completing the data for the project and, for this reason, it was not possible to place photographs of the data. This elimination reason has nothing to do with the requirements of the Tender Dossier (DT) or with the completion of the annex, because we have submitted the annexes and photographs for each project. "Also, there is sufficient evidence to argue that we have implemented the projects and that they meet the requirements set by the CA in the DT. Each document is clear and proves the professional capacity of our consortium.

Third claim (3): The complainant claims that "The third justification for the elimination of the group of complaining EOs and the justification that the CV of Ms. Ylfete Tahiraj, Architectural Engineer, is not stamped, is not based on the fact that in the first evaluation of this tender, you as the CA, on 23.05.2024, have sent us a standard letter of request for clarification of the tender requesting clarification regarding the same reason. Along with the requested clarifications, we have emphasized that we have presented two architects, where Ms. Ferdeze Kastrati has fulfilled the requirements of the Tender Dossier (DT), and the other architect, Ms. Ylfete Tahiraj,

is also part of our consortium staff In case there is a need for eventual engagement, we as the complaining EO have presented these clarifications and have uploaded them to the Procurement on 28.05.2024, which can be found as evidence. Therefore, we consider that this elimination reason is unfounded and not supported by the requirements of the Tender Dossier (DT), since we have completed request 1.1 with the architect Ms. Ferdeze Kastrati. For request 1.1 - a main architectural manager, we have presented Ms. Ferdeze Kastrati, who has completed all the required evidence. Also, in the clarifications made on 28.05.2024, we have also uploaded the sealed CV of Ms. Ylfete Tahiraj, and during the re-evaluation phase you had the opportunity to request additional clarifications, based on Article 72 of the LPP. Proof of the clarifications uploaded in e-procurement on 28.05.2024”.

Fourth claim (4). The complainant claims that: “The elimination reason regarding the lack of evidence for the equipment that was identified in the Decision for the elimination of our consortium for the points of the machinery requirements for points 1.7, 1.8, 1.9, 1.10, 1.11, 1.15, 1.16, 1.20, 1.21, 1.23, 1.24, is unfounded, due to the fact that the CA-MCYS requested clarifications on 23.05.2024 in the first evaluation. We, according to the request of the CA, on 28.05.2024, have uploaded the requested clarifications and have argued that all 8/10 of the requested equipment are at our disposal, by providing evidence and photos that are existing and before the deadline for opening the bids. Therefore, we consider that the description of these findings clearly indicates a specific purpose achieved by certain officials, for a certain company, through actions or omissions, which are considered serious violations of the Public Procurement Law. During the evaluation of the bids, even during their re-evaluation, the evidence and proofs submitted with the bid, or those submitted after requests for clarification and completion, were not taken into account. Consequently, according to Article 59, paragraph 1 of the Law on Public Procurement, the legal responsibility falls on each member of the evaluation commission, separately. Proof of the explanations uploaded on 28.05.2024 in the procurement According to Article 10 of the Guidelines with no. 001/2022 on Public Procurement, point 10.1, examples are given, where it is emphasized that these are not the only cases and Depending on the case presented, the CA must act in accordance with Article 72 and Article 59 of the LPP. All justifications for the elimination of the group of complaining EOs are justifications that do not find legal support. Moreover, for all possible uncertainties that appear, even though they do not exist, the Contracting Authority is obliged to request additional clarifications, in accordance with Article 72 and Article 59 of the Public Procurement Law (PPL).

Fifth claim (5): The complainant claims that: “Amended text: The other elimination reason related to the lack of mobile scaffolding, allegedly we did not submit evidence for 200 m2 of scaffolding, is unfounded. Also, other similar reasons we assess that the PRB, the review expert and the review panel should take into consideration the legal provisions 9/10 of the Law on Public Procurement and exercise their authority to take legal action for attempts to eliminate our bid with such justifications. According to point d) of Article 97 of the Public Procurement Regulation, failure to comply with and violation of the principles of public procurement set out in the Public Procurement Act is considered a serious violation. Also, point o) stipulates that evidence that proves incorrect or unprofessional conduct of procurement officials in relation to the EO is also harmful. Such justifications indicate a specific purpose and favoritism of a specific

company, where it is now clear that this company cannot be qualified as responsible for this procurement procedure. Our group of EOs in the bid has submitted the customs document with no. R6748, where the used scaffolding items are recorded. Including here the posts (=1400 cm), accessories (rails =2200 cp, connectors = 180 cp, scaffolding =10 cp) with a total of 3790 pieces and a total weight of 18600 kg. Also, in this customs document is recorded the used mobile scaffolding with aluminum wheels, which is 1 piece and weighs 200 kg. The mobile scaffolding is the last part that supports the ground and has wheels, on which the scaffolding can be placed at the necessary height, creating the possibility of reaching thousands of square meters. This issue is known by the responsible officials of the CA-MCYS, but despite this, surprisingly, an attempt is being made to eliminate our offer. In fact, not only do we meet this requirement, but we also significantly exceed it. As a result, the PRB and, respectively, the eventual review experts, authorized and skilled in this field, should seek clarification or professional support from experts in the relevant field - such as construction engineers - in order to present the factual situation clearly.

Sixth claim (6): The complainant claims that: "The other reason for elimination, regarding the lack of evidence for two industrial containers, is not grounded, because in our bid we have submitted the purchase invoice for the two containers with an area of 15m², and we have also attached the payment slip for the containers for the invoice no. 24-FSH-006 dated 27.03.2024, as well as the relevant bank confirmation. Exhibit 29 bid documentation folder 18.Machinery - H1.3Industrial container Based on what we have highlighted above, we consider that the CA, although in the evaluation phase it requested clarifications for the same reasons, now in the re-evaluation phase it has identified these reasons as found, which indicates a specific purpose and non-recommendation of our company. This issue and the legal violations, violations of procurement principles and such abuse should be of concern to the Contracting Authority and should be punished by the Procurement Review Body, and not only. In conclusion, based on the evidence and facts argued above, we as a Group of Bidders, with professional responsibility, have prepared and bid in this procurement procedure. As a result, the procurement procedure initiated and published by the CA - MCYS, has 10/10 contract award criteria and evaluation criteria defined.

- Administration and evaluation of evidence -

In order to fully establish the factual situation, the review panel has administered as evidence the expert report, the opinions of the parties regarding the expert report, the complainant's submissions and documents, the letters and documents of the contracting authority, the relevant documents related to the procurement activity, as well as all evidence proposed by the procedural parties.

Based on Article 111 paragraph 5 in conjunction with Articles 113 and 114 of the LPP, the Review Panel on 02/12/2024 authorized the review expert to conduct the initial review of the file and claims under complaint no. 1151/2024, which was submitted on 22/12/2024.

Regarding the claims of EO "Construmax SH.P.K." the review expert through report no. 2024/1151 has assessed as follows:

Response to Complaint 1: According to Complaint No. 1, the complaining economic operator claims as follows: The first eliminatory justification regarding the assessment of the economic and financial situation is not based on the fact that the request in the Technical Dossier (DT) was to prove that there was a minimum income of €9,000,000.00 for the last three fiscal years. The publication date of the DT was 07.03.2024, and for the past three fiscal years, we not only meet this requirement, but also exceed it by about 2 million euros. This is because only the revenues without VAT are 9.9 million euros, while if we also calculate the VAT, which was the same value as the revenues, then we reach 11.7 million euros. The request in the tender dossier for this complaining claim is as follows: The economic operator Group of economic operators- Consortium, must provide evidence of the economic situation and financial capacity to meet the requirements of the subject of this procedure; and for this purpose, must prove that during the past three [3] fiscal years- 2020, 2021 and 2022, it has secured a minimum annual gross income, in the amount of over € 9,000,000.00 [Nine, zero-zero-zero, zero-zero-zero. zero-zero euros]. The evidence in the tender dossier for this complaint claim is as follows: Required documentary evidence-Requirement 1.2. The economic operator Group of economic operators- Consortium, must submit the following documentation, for each of the past three [3] fiscal years- 2020, 2021 and 2022.

- Financial reports and management reports certified by a recognized licensed audit firm; In the case of a Group of economic operators - Consortium, the evidence must be submitted separately for each economic operator

- One [1] copy of the original, signed and stamped by the Economic Operator Group of Economic Operators - Consortium.

- The review expert explains that the complaining EO has offered in relation to this complaint claim as follows: Initially, it should be clarified that the request in the tender dossier in relation to this criterion was a request in the past 3 fiscal years - 2020, 2021 and 2022, which in fact should include the year 2023, because Article 68 Requirements on the economic and financial situation states: Requirements on the economic situation must be expressed in figures and will refer to a maximum of the last three financial years.

Based on the annual revenues from the reports of the independent licensed auditor, it results that GOE Construmax and HARST Group meet the minimum annual gross revenue requirement that the revenues presented in the annual statements for the past financial years exceed the amount of over 9,000.000.00€. We will not present them in more detail because the Economic and Financial Situation is included as a business secret by the complaining EO.

The financial statements of the complaining GOE are included in the offer under Financial Capacity with serial numbers 2 and 3.rar. From the above description, we conclude that the complaining claim no. 1 is grounded.

Response to Complaint No. 2: According to Complaint No. 2, the complaining economic operator claims as follows: The second justification for the elimination regarding the lack of photographs in the Annex/Table 1 form is a justification unfounded in the requirements of the Technical Dossier (DT), because in the requested documentary evidence it was specified that, ",

must present information on each contract for construction work implemented - through the presentation of textual and numerical data, as well as photographs, on four [4] pages [together with the following table] of A4 size'. The review expert explains that the complaining EO in the files with serial number 5,6,7,8 kontrata.rar also includes photos of the completed projects. Even the CA-MCYS itself in its response to the request for review admits that the complaining EO has uploaded photos in other formats and their connection with the table presented was difficult to implement. Therefore, in case of such difficulties, the CA-MCYS could request additional clarifications according to Article 72 of the LPP and Article 38 of the Public Procurement Regulation No. 001/2022, because the EO has included in its bid a certain number of photos that present the implementation of such projects. In addition to the photos included, there is also other evidence in the offer of the complaining GOE within the files with serial numbers 5,6,7,8 , which are presented as evidence of the implementation of the projects such as references, technical acceptance reports, etc. From the above description, we conclude that the complaining claim no. 2 is grounded.

Response to Complaining Claim 3: According to Complaint Claim No. 3, the complaining economic operator claims as follows: The third justification for the elimination of the group of complaining EOs and the justification that the CV of Ms. Ylfete Tahiraj, Architectural Engineer, is not stamped, is not based, due to the fact that in the first evaluation of this tender, you as the CA, on 23.05.2024, have sent us a standard letter of request for clarification of the tender, requesting clarification regarding the same reason. The review expert clarifies that the CA-MCYS on date clarifies that the CA-MCYS on date 23.05.2024 has requested additional clarifications including clarification regarding the stamping of the CV of Ms. Ylfete Tahiraj. EO Construmax on 28.05.2024 has returned the following responses: We have presented two architects, where Ms. Ferdeze Kastrati has fulfilled the requirements of the Tender Dossier (DT), and the other architect, Ms. Ylfete Tahiraj, is also part of our consortium staff. In case there is a need for eventual engagement, we as the complaining EO have presented these clarifications and have uploaded them to E-Procurement on 28.05.2024, which can be found as evidence. Therefore, in addition to the DT requirement being met by Ms. Ferdeze Kastrati, the DT requirement is also met by Ms. Ylfete Tahiraj, because in her CV she has 4 years of experience at Harst Group, she also has experience before graduation, and she also has experience in the Police in 2008 after graduation, which if only the experience in the Police and Harst Group is calculated, she meets 5 years of experience, but Ms. Ylfete Tahiraj, although she does not have experience at NTP,, JETA'' on her CV while she has a reference from NTP,, JETA'', we attach pension contributions to prove that she was employed in this company and meets the 5-year requirement. Based on the above description of the additional clarifications requested by the CA-MCYS and the responses sent by the EO Construmax on 28.05.2024, we clarify that this complaint claim was clarified at the tender evaluation stage and as a result of this it was not found in the standard letter for the eliminated tenderer according to the decision of the CA dated 12.07.2024. Based on this, let it be understood that the evaluation commission has accepted the clarifications as well-founded in relation to this complaint claim. According to Article 59, paragraph 4 which states: The contracting authority may consider a tender as responsive if: contains only errors or inaccuracies which can be corrected without changing the material condition or aspect of the tender in question, or (ii) contains only minor deviations which are not

likely to cause material changes or deviations from the characteristics, conditions, and other requirements set out in the contract notice and in the tender dossier; provided that any such deviation is quantified, to the extent possible, and is taken into account in the evaluation and comparison of tenders.

Therefore, the failure to stamp the CV can be treated as a minor deviation that does not cause material changes in the tender dossier or in the contract notice. According to the above description, the clarifications of the tender dossier provided by the complaining EO, the provision of two CVs for two architects, where the CV of Ms. Ferdeze Kastrati, which has the stamp from the EO Construax, was also provided, we believe that the complaint claim no. 3 is grounded.

Response to Complaining Claim 4: According to Complaining Claim No. 4, the complaining economic operator claims as follows: The elimination reason regarding the lack of evidence for the equipment that has been identified in the Decision to eliminate our consortium for the points of the machinery requirements for points 1.7, 1.8, 1.9, 1.10, 1.11, 1.15, 1.16, 1.20, 1.21, 1.23, 1.24, is unfounded, due to the fact that the CA-MCYS requested clarifications on 23.05.2024 in the first evaluation. We, according to the request of the CA, on 28.05.2024, have uploaded the requested clarifications and have argued that all 8/10 requested equipment is at our disposal, providing evidence and photos that are existing and before the deadline for opening the bids. Also, in relation to this complaint, clarifications were requested during the bid evaluation phase, where EO Construmax on 28.05.2024 returned the clarifications through E-procurement. We clarify that this complaint claim was clarified in the tender evaluation phase and as a result of this it was not as found in the standard letter for the eliminated tenderer according to the decision of the CA dated 12.07.2024. Based on this, it is understood that the evaluation commission has accepted the clarifications as based on this complaining claim. In the files with serial number 17 Machinery.rar are presented the equipment with serial numbers 1.1 to 1.18 and file no. 18 Machinery. Rar are also presented the equipment with serial numbers 1.19 to 1.24. List of equipment in file no. 17 Machinery.rar. Based on the decision of the CA dated 19.11.2024, in response to the request for review in the complaint claim no. 4, the CA refers to the lack of some equipment, we provide some clarifications as follows: According to the CA-MKRS, the equipment in 1.7 is completely missing. The review expert explains that a device with serial number 1.7 is found in file no. 17 Makineria.rar with the name Soil compactor with flat roller 60 kN. According to the CA-MKRS, the technical specifications as requested are missing for the device 1.9. The review expert explains that the CA-MCYS in these cases must specify which are the technical specifications that were requested and were not met by the complaining EO in this procurement activity. In folder 1.16 according to the CA-MCYS, an excavator and not a tractor is attached. The review expert explains that in this file, precisely on page 7, a photo of the tractor is presented, while on page 8, the invoice for the purchase of the tractor.

Also, regarding this complaint claim, clarifications were requested during the bid evaluation phase, where EO Construmax on 28.05.2024 returned clarifications through E-procurement regarding the equipment offered with serial number from 1.1 to 1.24. This complaint claim was also clarified during the tender evaluation phase and as a result of this it was not found in the

standard letter for the eliminated tenderer according to the decision of the CA dated 12.07.2024. Based on this, it is understood that the evaluation committee has accepted the clarifications as well-founded in relation to this complaint claim. However, for all uncertainties in such cases, the CA-MCYS, in relation to complaint claim no. 4, the re-evaluation committee shall act according to Article 72 of the LPP and Article 38 of the Public Procurement Regulation, i.e. the necessary additional clarifications shall be requested in relation to any uncertainties. Therefore, based on the above description, the additional clarifications dated 28.05.2024, the claims by the re-evaluation committee, we believe that complaint claim no. 4 is partially well-founded and the necessary clarifications shall be made in the bid re-evaluation phase.

Response to Complaining claim 5: According to Complaining claim No. 5, the complaining economic operator claims as follows: The other eliminatory reason regarding the lack of mobile scaffolding, allegedly we have not submitted evidence for 200 m² of scaffolding, is unfounded. Our group of EOs in the bid has submitted the customs document with no. R6748, where the used scaffolding items are recorded. Including here the posts (=1400 cm), accessories (rails =2200 cp, connectors = 180 cp, scaffolding =10 cp) with a total of 3790 pieces and a total weight of 18600 kg. Also, in this customs document is also recorded the used mobile scaffolding with aluminum wheels, which is 1 piece and weighs 200 kg. The review expert explains that in the serial file no. 18 Makineria.rar is the customs SUD submitted by the complaining EO with no. R6784. In this SUD are presented the items of scaffolding used according to the quantities and descriptions of the SUD. In addition, the complaining EO in the upper part of the SUD has made a description of the scaffolding as follows: H. 1.2. Mobile scaffolding with wheels [‘Mobile scaffolding’].

Mobile scaffolding with wheels includes all structural, safety and functional elements.

Two hundred [200] m² in vertical projection. Even the CA-MKRS itself in the response to the Request for Review admits that there is a SUD but emphasizes that the SUD writes kg and not square meters. In such cases, if the CA-MKRS doubts the amount of kg or square meters, it could

request the necessary clarifications or engage a certain expert if the amount of scaffolding provided

according to the SUD meets the square meters, even though the complaining EO has provided the necessary clarifications in the SUD for Two hundred [200] m² in vertical projection. Based on the above description, the customs SUD provided by the complaining EO and the request of the CA-MKRS, we think that the complaining claim no. 5 is grounded.

Response to claim 6: According to Claim No. 6, the complaining economic operator claims as follows: The reason for the elimination, regarding the lack of proof for two industrial containers, is not grounded, because in our bid we have presented the purchase invoice for the two containers with an area of 15m², and we have also attached the payment slip for the containers for the invoice with no. 24-FSH-006 dated 27.03.2024, as well as the relevant bank confirmation. The reviewing expert explains that in file no. 18 Makineria.rar there is the document H 1.3 Kontinjer

Industrial.pdf (invoice and proof of payment) for the containers with the following description: The invoice is dated 27.03.2024 and also the proof of payment is dated 27.03.2024. According to the description in the invoice there are two containers of 15 m2. Therefore, the claim of the CA-MCYS in the decision dated 19.11.2024 in response to the request for reconsideration where it is stated that related to the industrial container is an invoice from GAMP which was not received at all by Construmax, this fact does not stand because the complaining EO has attached the proof of payment of this invoice.

Based on the above description, the invoice provided by the complaining EO, the proof of payment made by the complaining EO in relation to two containers according to the invoice dated 27.03.2024, we believe that the complaint claim no. 6 is grounded. Based on the complaint claims according to the complaint of the complaining EO, we clarify that the complaint contains 6 complaint claims as follows: The review expert clarifies that based on the analysis of the facts/evidence documented in the electronic e-procurement platform, the clarifications requested by the CA, the course and analysis of the procurement procedure, regarding this procurement activity The CA - the re-evaluation commission, has not fully respected all the legal provisions of the LPP during the evaluation procedure according to the above description for each complaint claim, therefore, according to Article 114 of the LPP, precisely paragraph 2 of this article, we recommend that the CA in the Re-evaluation procedure undertake all the necessary corrective actions. It is the responsibility, and at the discretion of the Contracting Authority, respectively the re-evaluation commission - ZPP, that the evaluation, examination and comparison process be carried out in full harmony with the legal provisions of the LPP, in this procurement activity, in order to respect the selection requirements, the technical specifications Annex 1 in the tender dossier, as well as to respect the award criteria. The review expert explains that contracting authorities are obliged to ensure that public funds and public resources are used in the most economical manner, while taking into consideration the purpose and subject matter of the procurement, as provided for in Article 6 of the LPP, the contracting authority must also take into consideration Article 1 of the LPP, since it is known that the purpose of this law is to ensure the most efficient, transparent and fair way of using public funds and resources. From the above description of each complaint claim, the clarifications received in the bid evaluation phase, the tender dossier, the complaint claims of the complaining economic operator, the re-evaluation report of the CA-MCYS, the Decision of the CA-MCYS dated 29.11.2024 in response to the request for review, also based on Article 6 and Article 7 of the LPP, we recommend to the review panel: the complaint of Construmax shpk to be approved as grounded, the case to be returned for Re-Evaluation, the notification on the cancellation of the procurement activity dated 08.11.2024 to be canceled.

The expertise report was received by both procedural parties through the e-procurement system where the contracting authority did not agree with the opinion given in the expertise report while the economic operator agreed with the opinion given by the review expert.

-Findings of the Review Panel-

The Review Panel, after reviewing and analyzing all documentation on the e-procurement platform, complaint claims, and responses provided by the expert of the case, considers that the

expert reports contain a priori the essential elements of such a document as provided for by the provision of Article 113 in conjunction with Article 114 of the LPP, where the PRB requires the expert to review all procurement documentation, including all complaining claims, and to provide the panel and all parties with an independent and professional assessment of the procurement activity and the validity of the complaining claims. However, it should be noted that the expert report is not binding on the Review Panel and that any such report is assessed and/or analyzed in the overall context of the case files, the alleged facts and any other evidence, taking into account the nature of the possible violations, the course, nature and purpose of the procurement activity. Therefore, the fact in which cases and for what, the Panel relies or not, on any report and/or any of the recommendations, is a matter of his/her independent and professional judgment, as these responsibilities are addressed in terms of Article 98, 99 in conjunction with Article 105 of the LPP.

The review panel has independently and objectively, with due diligence and professional care, evaluated all the evidence of the case. In this way, it has been found that the Contracting Authority has not acted in accordance with the legal provisions on public procurement and the requirements of the tender dossier in relation to the procurement activity “Construction work for the implementation of the detailed project [main contractor] of architecture and engineering, for the construction of the National Judo Center - Gym, Multi-functional Building and Hostel, in Peja, in the Municipality of Peja - Re-tendering with procurement number 207-24-2051-5-1-1.

The Review Panel for this procurement procedure, the Contracting Authority, based on the findings through the electronic platform according to the publication of B58 Notice on the decision of the CA dated 12.07.2024, the Contracting Authority, according to the elimination form, has eliminated the bid of the complaining EO with justifications that have essential differences in relation to the re-evaluation, and according to the publication of B58 Notice on the decision of the CA dated 08.11.2024.

The Review Panel, administered all the documents of this case, including the acts and actions of the CA, the complainant's submissions and evidence and the report of the review expert and by analyzing all of them in the general context of this case has created his/her independent conviction that the complaint of the complaining EO is approved as grounded. In this case, the Panel explains that the expertise report contains all the complaining statements and the analysis related to them, explaining them specifically in relation to the violated provisions, as required at least by the provision of Article 113 and 114 of the LPP.

The Review Panel, after reviewing all facts and arguments, has concluded that the CA during the development of this procurement activity has not respected the legal provisions of the LPP, because the report of the earlier evaluation and the re-evaluation regarding the offer of the complaining EO regarding the result of the offer has essential differences. Consequently, the Review Panel supports the recommendation of the review expert that the complaint of the complaining EO be approved as grounded, to be canceled B58 Notification on the decision of the CA regarding the procurement activity entitled: “Construction work for the implementation of the detailed project [main implementer] of architecture and engineering, for the construction of the National Judo Center - Gym, Multi-functional Building and Hostel, in Peja, in the

Municipality of Peja - Re-tendering” with procurement number 207-24-2051-5-1-1, and the case shall be returned for re-evaluation and the CA shall, during the re-evaluation of this procurement activity, fully comply with the legal provisions of the LPP,

The evaluation panel, according to its independent assessment in accordance with Article 105, taking into account the requirement of Article 104, paragraph 1, of the cited Law, according to which, quoted: “The procurement review procedure shall be implemented and carried out in a prompt, fair and non-discriminatory manner, aiming at the fair, legal and effective resolution of the case...” and in accordance with Article 1, of the LPP, according to which, the purpose of this Law is, among others, quoted: “...to ensure the integrity and accountability of public officials, civil servants and other persons carrying out or involved in a procurement activity by requiring that the decisions of such individuals and the legal and factual basis for such decisions are not influenced by personal interests, are characterized by non-discrimination and a high degree of transparency and are in accordance with the procedural and substantive requirements of this law”. Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations that may arise during a procurement activity.

Therefore, acting in accordance with the powers cited above and Article 104 paragraph 4 in conjunction with paragraph 1, according to which the procurement review procedure shall be implemented and carried out in a prompt, fair and non-discriminatory manner, aiming at the legal and effective resolution of the case, and referring to Article 117 of the LPP, and in the evidence presented above, the Review Panel decided as in the provision of this decision.

For points I, II of the decision, it was decided based on article 117 of the LPP in connection with article 29 and 31 paragraph of the PRB Work Regulation.

For point III of the decision, it was decided based on article 31 paragraph 4 and paragraph 6 of the PRB Work Regulation in connection with article 118 of the LPP.

From what was said above, it was decided as in the provision of this decision.

President of the Review Panel

Mrs. Batisha Ibrahim

Legal advice:

An appeal is not allowed against this decision, but the dissatisfied party can appeal to the Commercial Court, to the Department for Administrative Affairs for annulment of the decision within 30 days from the date of acceptance of the decision.

Decision to be submitted to:

1x1 CA – **MINISTRY OF CULTURE YS AND ÇJK;**
1x1EO–“ **CONSTRUMAX SH.P.K.**”;

1x1 Archive of the PRB;