



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

Psh. No.0802/25

The Review Panel, appointed by the Acting President of the Procurement Review Body (PRB), pursuant to Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova (LPP) composed of Isa Hasani-President, Vedat Poterqoi and Kimete Gashi-members, deciding upon the complaint of the Economic Operator (EO) “KUSHTRIMI NM” SH.P.K., against the Decision for the contract award or a design competition of the “MUNICIPALITY OF HANI I ELEZIT” in the capacity of the Contracting Authority (CA) regarding the procurement activity “Asphalting of the Gorance - Krivenik road - second phase” with procurement number; 659-25-2901-5-1-1, on the 24/10/2025, has issued this:

**DECISION**

1. Approved, as grounded the complaint of the EO “KUSHTRIMI NM” SH.P.K” with no. 2025/0802 dated 21/08/2025, regarding the procurement activity “Asphalting of the Gorance - Krivenik road - second phase” with procurement number; 659-25-2901-5-1-1, initiated by the Contracting authority -MUNICIPALITY OF HANI I ELEZIT .
- 2.Cancelled, B58 Notice on the Decision of the Contracting Authority - “MUNICIPALITY OF HAN I ELEZIT”, while the procurement activity “Asphalting of the Gorance - Krivenik road - second phase”, with procurement number; 659-25-2901-5-1-1, is returned for re-evaluation.
3. Within 15 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. Based on Article 31, point 4, of the Rules of Procedure of the PRB, the complaining economic operator EO EO “KUSHTRIMI NM” SH.P.K., shall be refunded the complaint insurance fee in the amount deposited upon filing the complaint. The EO is obliged, in accordance with Article 31, point 6 of the Rules of Procedure of the PRB, to make a request for withdrawal of the complaint insurance fee within sixty (60) days, otherwise the deposit shall be confiscated and these funds shall be transferred to the Budget of the Republic of Kosova.

## REASONING

-Procedural facts and circumstances -

On the 18.04.2025 “MUNICIPALITY OF HANI I ELEZIT” in the capacity of Contracting Authority has published Notice for contract B05 regarding the procurement activity with “Asphalting of the road Gorance - Krivenik - second phase” with procurement no.: 659-25-2901-5-1-1. while on 01.08.2025 has published Notice on the decision of the CA for award EO “Rahovica Commerce SHPK”.

The contracting authority has implemented an open procedure, type of contract: works, estimated contract value: 694,000.00 €.

On the 06.08.2025, “KUSHTRIMI NM” SH.P.K., has submitted a request for review against the above-mentioned decision of the CA. On 11.08.2025, the Contracting Authority has rejected as unfounded the request for review.

On the 21.08.2025, the PRB has accepted the complaint from the EO “KUSHTRIMI NM” SH.P.K., with no. 2025/0802 regarding the activity “Asphalting of the Gorance - Krivenik road - second phase” with no. procurement 659-25-2901-5-1-1.

-On the preliminary review phase -

The PRB has found that the complaint contains all the elements set out in Article 111 of the LPP and as such has been submitted within the legal deadline in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for the resolution of disputes in the sense of Article 108/A of the LPP, by the economic operator who is an interested party under Article 4 paragraph 1 subparagraph 26 of the LPP. In this way, the Review Panel has found that it is competent to review this complaint under Article 105 of the LPP and there is no procedural obstacle to continue with the review of the complaint on its merits.

The claims of the complaining economic operator “KUSHTRIMI NM” SH.P.K., are presented as follows:

On the 01.08.2025, through the electronic e-procurement platform, we were notified of the decision of the CA, where EO Rahovica Commerce was recommended for a contract, at a price of 690,238.35 euros, while we were sent a standard letter for eliminated tenderers with the following justification:

1. In the equipment: Vibrating toothed gravel compaction cylinder min. 20 tons, 2 pieces are required in the file, while you as GEO have attached one that you have under agreement with LIKA TRADE, and you are missing one piece, therefore you do not meet this criterion.
2. In the equipment: Grader equipped with rippers and with Laser system min. 20 tons, you as GOE do not prove this equipment, but you have a smaller equipment Grader with rippers Brand Faun O&K Type F106, which is not 20 tons, but is 10.8 tons, it also does not have the laser system, therefore at this point you do not meet the criterion either. So, neither the weight nor the laser system is met by the Grader presented by you as GEO.

3. On the equipment: Rubber wheel cylinder - rubber with vibration min. 4 tons, you as GOE do not prove this equipment but you have presented equipment, therefore you do not complete this equipment according to the required criteria.
4. On the equipment: Semi-trailer for filling road cracks, you as GOE do not prove this equipment, you have not proven it with a booklet as required according to the criteria of the file.
5. On the equipment: Equipment for laying gravel and embankments, you as GOE have presented an ABG Titan 223 VB equipment which during the research on [www.google.com](http://www.google.com) turns out that it is not for embankments, but is an asphalt finisher (it can easily be proven that it is not for embankments). Also in the list of equipment (of EO.Source E) no. 44 it is written: Finisher-machine for asphalt with serial number ABG TITAN 223-VB 76 -1994 which proves that all the numbers are as in the SUD. Also you did not prove the booklet for this equipment.
6. On the equipment: Self-loading concrete mixer, you as GOE have offered a self-loading concrete mixer equipment according to the agreement with an Albanian EO with plate AA-794-CP, but the equipment does not have a valid registration, but has expired..
7. On the Dynamic Plan, the TD's request was calendar days, and after additional clarifications regarding this point, you as EO have changed the Dynamic Plan, from working days to calendar days, which is a mistake towards the CA, since in the basic file you have 150 working days, and in additional clarifications you have brought another Dynamic Plan of 150 calendar days, which is in contradiction with the legal provisions of the LPP (changing the document from the basic file constitutes a basis for fraud and your offer is rejected).
8. The letter of support from the Bank does not conform to the contract criteria.

From the criteria required above, it results that the EO must have cash in the account or access to unconditional credit, while you as the EO have Conditional Access to credit, as it says:.. In case BM Group is declared the winner of the above-mentioned project, RBKO is open to offering the possibility of financing BM Group shpk in the amount of 300,000 Euros, based on the internal criteria and procedures.

So, the last sentence based on internal criteria and procedures, means that you do not have unconditional access, but you have "conditional" access, because it says: . ..based on the bank's internal criteria and procedures, where this point also makes your offer irresponsible.

On the 18.07.2025, the CA requested clarifications as follows:

In order to evaluate your tender properly, we request that you provide clarification of your tender as follows:

According to article 59.2 and 72 of the LPP, we request additional clarifications from you:

- You have not attached references for the requested value of €950,000 (in the case of the Leader consortium 60%, while the other members the rest)

- Reference for Project Manager (B.Sc. Civil Engineering)
- Reference for Site Supervisor (B.Sc. Civil Engineering)
- Reference for Surveyor (B.Sc. Geodesy or B.Sc. Geodesy)
- Reference for Hydro Engineer (B.Sc. Civil Engineering or B.Sc. Hydro)
- License for concrete base from Mineral LLC (must be submitted to us valid)

Missing equipment:

- Excavator with hammer min.8 tons (proof of hammer missing);
- Gravel compaction cylinder min.5 tons, 2 pieces are required (You as GOE have attached one, and you must attach another one);
- Gravel compaction cylinder min.20 tons with vibrating teeth, 2 pieces are required (you as GOE have attached only one);
- Grader equipped with laser system min.20 tons - please send us the SUD because you have not attached (the agreement and the SUD);
- Rubber wheeled cylinder - vibrating rubber min.4 tons (Send us the DED for the requested equipment)
- Water tanker truck with a carrying weight of min.15 tons (send us the valid license plate -
- Bitumen and emulsion spraying truck (one is required, send us the DED)
- Road crack filling semi-trailer (one is required, send us the valid license plate)
- Gravel and embankment spreading equipment min.2 tons (one is required, and you have not sent the license plate for the requested equipment, send it to us)
- Self-loading concrete mixer truck (you have not sent the equipment proof)
- Concrete pump truck (you have not attached the proof to the file)
- Semi-trailer or trailer with signs and signaling lights for road works (you have not sent the proof to the file).

In the Dynamic Plan, the criteria for the dossier are requested in calendar days, while in your Dynamic Plan you have offered it in working days, specifically 150 working days!

All these documents should be sent to us with evidence within 3 days. Initially, we would like to clarify that after the clarifications requested by the CA on 18.07.2025, where the CA has listed almost the entire tender dossier for additional clarifications, which was not at all realistic, but for the sake of correctness, we have responded and once again sent the evidence with the clarifications, even though these evidences were attached to the tender dossier.

However, even after the additional clarifications that we have sent you, the CA on 01.08.2025 issued a notification on the CA's decision where, among other things, we as the EO are eliminated on several points even after the clarifications that we have sent you.

1. The first reason for elimination.

In the equipment: Cylinder for gravel compression with vibrating teeth min. 20 tons, 2 pieces are required in the file, while you as the GOE have attached one that you have with an agreement with LIKA TRADE, and you are missing one more piece, therefore you do not meet this criterion.

Our clarification.

Regarding the equipment Cylinder for gravel compaction with 20 tons of teeth, we clarify that we have offered the agreement no. 01/05 with the company Sallahu Shpk, which is ranked no. 1 in the agreement and which has attached the customs document and the photograph and the same is identical as requested by the CA in the tender dossier and the reason for the elimination at this point is totally unfounded.

2. Second reason for elimination.

On the equipment: Grader equipped with rippers and a Laser system min.20 tons, you as GOE do not prove this equipment, but you have a smaller equipment Grader with rippers Brand Faun O&K Type F106, which is not 20 tons, but is 10.8 tons, it also does not have the laser system, so at this point you do not meet the criterion. So, neither the weight nor the laser system is met by the Grader presented by you as GOE.

Our clarification.

The Grader equipment equipped with rippers and with a Laser system min.20 tons, we have also offered in the list of machinery and there we have emphasized that we have an agreement with the company Gener 2 Shpk and we have also offered the grader in question identically as requested in the DT. We have also provided additional clarifications as requested by the CA, therefore this claim of the CA is unfounded.

3. Third reason for elimination.

On the equipment: Cylinder with rubber wheels - rubber with vibration min. 4 tons, you as GOE do not prove this equipment but have presented equipment, therefore you do not fulfill this equipment according to the required criteria.

Our Explanation

We clarify that for the Equipment Cylinder with rubber wheels - rubber with vibration min. 4 tons, we have offered agreement no. 01/05 with the company Sallahu Shpk and this equipment is ranked no. 2. With the agreement is attached the customs document and the same is identical as requested by the CA in the DT. We emphasize that the reason for elimination at this point is totally unfounded.

#### 4. Fourth reason for elimination.

On the equipment: Semi-trailer for filling the road crack, you as GOE do not prove this equipment, you have not proven it with a booklet as required by the file criteria.

#### Our Explanation

We clarify that for the equipment Semi-trailer for filling the road crack, we have offered an agreement for Semi-trailer for transporting the machinery for filling and cracking the road which has attached the booklet with the registration period with plates 03-155-XB. This is the agreement between

Company Mursel shpk and Horn & Co Kosova shpk. We have also offered the agreement with the company Haxha Com, which was in agreement no. In order 4, we have offered the semi-trailer equipment for filling and cracking, which has the customs document and invoice attached, therefore the reason for the elimination at this point by the CA is unfounded.

#### 5. Fifth reason for elimination.

On the equipment: Equipment for laying gravel and embankments, you as GOE have presented an ABG equipment Titan 223 VB which during the research on [www.google.com](http://www.google.com) turns out that it is not for embankments, but is Asphalt finisher (it can be easily proven that it is not for embankments). Also in the list of equipment (of OE.Source E) no. 44 it is written: Finisher-machine for asphalt with serial number ABG TITAN 223-VB 76 -1994 which proves that all the numbers are as in the SUD. Also you do not prove the booklet for this equipment.

#### Our clarification

At point no. 5 of the elimination, for Equipment for laying gravel and embankments, we clarify that we have offered an agreement with the company Burimi E Shpk and Kushtrimi NM Shpk to which we have offered the paver which serves for laying asphalt and laying gravel, and for which we have attached the customs document. The license for the machinery in question was not requested in the tender dossier, therefore we have not offered it and this claim is completely unfounded and contradicts Article 56.3 of the LPP, because we cannot be eliminated for requests that are not part of the tender dossier.

#### 6. The sixth reason for elimination.

On the equipment: Self-loading concrete mixer, you as GOE have offered a Self-loading concrete mixer equipment according to the agreement with an Albanian EO with plate AA-794-CP, but the equipment does not have a valid registration, but has expired.

#### Our clarification.

We clarify that for the Self-loading concrete mixer equipment we have offered it in the list of machinery and there we have said that we have an agreement with the company Sireta 2F Shpk and Company Murseli Shpk. We have offered the said self-loading concrete mixer identically as requested in the DT. Also in the additional clarifications that we have sent after they were requested by the CA. In the notification on the decision sent by the CA, among other things, the

CA claims that we do not meet the criterion for the vehicle in question since this vehicle does not have a valid registration. This claim of the CA is also unfounded since the vehicle in question is registered until 29.08.2025.

#### 7. Seventh reason for elimination

In the Dynamic Plan, the TD's request was calendar days, and after additional clarifications regarding this point, you as the EO have changed the Dynamic Plan, from working days to calendar days, which is a mistake towards the CA, since in the basic file you have 150 working days, while in the additional clarifications you have brought another Dynamic Plan of 150 calendar days, which is in contradiction with the legal provisions of the LPP (changing the document from the basic file constitutes a basis for fraud and your offer is rejected).

#### Our clarification

Also for the dynamic plan, we inform you that after the clarifications requested by the CA, we have uploaded the dynamic plan again and have offered it as required by law and order and we have nothing to do with fraud here. We have offered the dynamic plan of 150 calendar days, but below we have transformed the way of performing the work into working days.

In reality, during the preparation of the documents, we had a technical error where we initially prepared a dynamic plan with 150 working days by mistake, but before uploading the documents, we prepared another one with 150 calendar days, but during the upload to the system, we uploaded the dynamic plan with 150 working days, but with additional clarifications, we provided the dynamic plan as requested, and where we noticed that in the dossier we had uploaded the dynamic plan with 150 working days by mistake, therefore this fact is considered a minor deviation according to Article 59.4 point 9ii) of the LPP.

#### 8. Eighth reason for elimination

The supporting letter from the Bank does not conform to the contract criteria - From the criteria required above it follows that the EO must have cash in the account or access to unconditional credit, while you as the EO have Conditional Access to credit, since it says:.. In case BM Group is declared the winner of the aforementioned project, RBKO is open to offer the possibility of financing BM Group shpk in the amount of 300,000 Euros, based on internal criteria and procedures. So, the last sentence based on internal criteria and procedures, means that you do not have unconditional access, but you have "conditional" access, because it says: ..based on the bank's internal criteria and procedures, where this point also makes your offer irresponsible..

#### Our Explanation

This elimination by the CA is also absurd. Here the tendencies of the CA towards our company are clearly seen, since we as EO participating in this activity have provided a letter of support from the leader of the BM Group Shpk group where as a company we have approved a credit limit in the Raiffeisen Bank in the amount of 4,400,000.€ which we can withdraw at any time and the reason for the elimination at this point is nothing more than the support of the company recommended by the CA. This reason for the elimination is completely unfounded.

- We have requested access to the documents of the EO recommended for the contract and other EOs, where we have been allowed very limited access and in this case, Article 10 and 11 of the LPP have been violated, since we have not been allowed access to any document except the affidavit.

This action did not comply with Article 10 and 11 of the LPP, and also violated the LPP, LAW NO. 06/L-081 ON ACCESS TO PUBLIC DOCUMENTS and also violated Article 41 of the Constitution of the Republic of Kosovo. The EO recommended for the contract has completed Annex 3 for business secrets, but in no way has it been able to justify the request for business secrets that the disclosure of the documentation will harm the company, but no justification has been given as to how the company is harmed by the provision of documents on economic / financial capacity, and the documents required for technical and professional capacity. According to Article 11 paragraph 3 of the LPP, the request must be justified and concrete reasons must be presented, which convincingly demonstrate, in the reasonable judgment of the contracting authority, that public access to such an element would result in material damage to the legitimate commercial interests of the group of economic operators. The EO recommended for the contract has not provided any evidence or reason that access to the documents would damage its material and commercial interests, therefore the statement of the EO recommended for the contract cannot be taken into account because it does not comply with the legal requirements.

We would like to clarify that the contracting authority must classify information and documents as business secrets if the three criteria mentioned in Article 11.3 of the LPP are met. The contracting authority is obliged to respect all the provisions of the LPP and in this case Articles 10 and 11 of the LPP, and when there is a declaration of business secrets, the CA must analyze it and if all three conditions of Article 11.3 of the LPP are not met, then the documents of the EO recommended for the contract should not be classified as business secrets. Above all, even if some documents can be classified as business secrets, then the CA must prepare the cleaned version according to Article 11.4 of the LPP and this action has not been undertaken by favoring the economic operator recommended for the contract. The failure to prepare the cleaned version by the CA shows that the CA is trying at all costs to favor the EO recommended for the contract by trying to hide the documents of the same. Since we have not been allowed access to the documents, we must raise our claims with doubts about the bid of the EO recommended for the contract.

For the EO recommended for the contract, we suspect that it has not met all the requirements regarding technical, professional and economic and financial capacity, therefore we ask the CA to analyze this evidence to see if it has provided it in a regular manner and in accordance with the requirements of the tender dossier.

We suspect that it has not provided the evidence for machinery and with the required specifications. It has also not provided evidence for the staff as requested in the tender dossier. It has not provided the evidence from the Bank as requested. It has not provided the contracts as requested and at the requested value.

We believe that the CA has not made a fair assessment during the evaluation of the tenders, since if such a thing had been done, then the same EO and also the EO recommended for the contract should have been eliminated from the procurement activity.

EO "QUALITY ASPHALT" cheaper than our offer has been declared irresponsible and I agree with the reason for elimination.

We have accepted the decision to reject the request for reconsideration dated 11.08.2025, but no concrete reason has been given for this rejection. ? Regarding the cylinder, the CA has responded as follows:

This response of the CA does not correspond to the real situation and the evidence that we have attached to the tender dossier. The CA does not take into account the SUD, the photograph and the agreement No. 01/05 with the company Sallahu but does research on the internet in an unnecessary and unreasonable manner, therefore the response of the CA does not correspond to the real situation of the evidence that we have presented.

- Regarding the Grader equipped with rippers and a Laser system of min. 20 tons, the CA responded as follows:

Regarding this response, we clarify that the grader has 19.5 tons, but even though 20 tons were requested, this fact constitutes a minor deviation according to Article 59.4 point (ii) of the LPP, since this minor change does not affect absolutely anything in the case of performing the works and does not constitute a material change, especially when considering the fact that we are significantly cheaper than the offer of the EO recommended for the contract.

- Regarding the Rubber Wheel Cylinder - rubber with vibration min. 4 tons, the CA responded as follows:

Even this response of the CA does not match the reality of our offer, because in the offer we have attached the Rubber-Rubber Wheeled Cylinder with vibration as requested at least 4 tons, where we have attached the Customs DUD, therefore we do not know what other document should be provided to convince the CA.

Even in this case, the CA refers to research allegedly done on the internet, but that any type of research in these cases is not only unnecessary but is also discriminatory and biased towards our consortium.

- Regarding the Semi-trailer for filling the road crack, the CA has responded as follows:

We once again clarify that we have fulfilled this request by providing evidence for the equipment for the road crack filling semi-trailer, where we have provided an agreement for the transport of the machinery for filling and cracking the road, which has attached the registration certificate with license plates 03-155-XB. This is the agreement between the Company Mursel shpk and Horn & Co Kosova shpk. We have also provided the agreement with the company Haxha Com, and in agreement no. 4 we have provided the equipment for filling and cracking semi-trailer, which has attached the customs document and invoice, therefore the reason for the elimination at

this point by the CA is unfounded. What is important is that evidence has been provided for this request and it does not matter whether one or two machines were provided as the CA claims.

- Regarding the Equipment for laying gravel and embankments, the CA responded as follows: The reasoning of the contracting authority is untenable due to the fact that in the request for reconsideration and now in the complaint we have explained very clearly that for the Equipment for laying gravel and embankments we explain that we have offered an agreement with the company Burimi E Shpk and Kushtrimi NM Shpk to which we have offered the finisher which serves for laying asphalt and laying gravel, and for which we have attached the customs document. The contracting authority in its reasoning has noted doubts but the same has not provided any concrete facts for the doubts mentioned in the reasoning. Even though we have attached the customs document, the contracting authority has not taken it into account at all even though the same was submitted in accordance with the request of the tender dossier.

- Regarding the self-loading concrete mixer equipment, the CA responded as follows:

The contracting authority's reasoning is untenable due to the fact that we have explained very clearly that we have offered it in the list of machinery and there we have clearly specified that we have an agreement with the company Sireta 2F Shpk and Company Murseli Shpk. We have offered the said mixer identically as requested in the DT. Also, we have sent additional clarifications after being requested by the CA. We are once again clarifying that the vehicle in question has a registration until 29.08.2025, therefore, the CA's reasoning is untenable, moreover, it is a tendentious action against our company.

Regarding our claim regarding the dynamic plan, the CA responded as follows:

The reasoning of the contracting authority, as well as the reasonings opposed above, is an unsustainable and tendentious reasoning, against our company. In this case, we are not dealing with fraud at all as the contracting authority claims, and we have proven this when we sent the dynamic plan after the technical release, respectively with additional clarifications we have attached the dynamic plan with 150 calendar days as requested, since we noticed that on 18/4 with the file we had incorrectly raised the dynamic plan with 150 working days, therefore this fact is considered a minor deviation according to Article 59.4 point 9ii) of the LPP and in no way can and should not be considered as fraud such a technical release. The contracting authority is trying in every way to eliminate us by issuing completely unfounded and unsupported justifications on concrete facts.

- Regarding our claim regarding the letter of support from the bank, the CA responded as follows: The contracting authority is again continuing with absurd and tendentious justifications against our company, since in this activity we have provided a letter of support from the leader of the BM Group Shpk group, where as a company we have approved a credit limit at Raiffeisen Bank in the amount of €4,400,000, which we can withdraw at any time, therefore we are once again clarifying that the reasoning of the contracting authority on this point is nothing more than support for the company recommended by the CA.

We request the PRB to analyze in detail and in full all the documents presented by us, since we as the responsible and cheapest EO in this procurement activity are being eliminated with absurd justifications. Regarding our complaint claims regarding the limited access to the EO documents, the CA has tried to justify that we as a company have the same justification for the confidentiality request, with the EO recommended for the contract.

So the CA is making comparisons between documents with the sole purpose of favoring the EO recommended for the contract and discriminating against us as a responsible EO with a lower price than the EO recommended for the contract. The contracting authority's reasoning that it can only provide the documents to the competent bodies is unfounded, because regardless of what justification the EO provides in their request, the CA may not take into account the EO's request that all documents be considered confidential documents. We are once again clarifying that in this procurement activity we are the only responsible EO and as such we should have been recommended for the contract and at the same time we are the EO with a lower price than the EO recommended for 43,470.40 euros. So the contracting authority is risking the state budget by spending the aforementioned amount by recommending an irresponsible EO for a contract with a higher price, while discriminating against us, where in the event of a recommendation for a contract, the amount of 43,470.40 euros would be saved, and with this amount another project would be completed.

Based on the evidence and facts mentioned above, it results that the examination, evaluation and comparison of tenders was not carried out in accordance with Article 59 of the LPP and at the same time the main criterion for awarding the contract was not respected, which was the responsive tender with the lowest price according to Article 60 paragraph 1.1 of the LPP. Article 7 of the LPP was also not respected, where we also fulfilled all the requirements of the FTD and the contract notice and we were not recommended for the contract. Paragraph 1 of Article 7 of the LPP clearly stipulates that "The contracting authority shall treat economic operators equally and non-discriminatory and shall act in a transparent manner".

Also, paragraph 6 of Article 7 of the LPP provides that "When conducting procurement activities, all contracting authorities shall ensure; that (vi) the selected tender complies with all substantive aspects of the relevant conditions, criteria and specifications", but the contracting authority did not comply with this legal provision either because an economic operator who is irresponsible was recommended for the contract.

In this case, the municipal budget is at risk of being damaged in the amount of: 43,470.40 €.

Article 1 of the LPP was not taken into consideration, since it is known that the purpose of this law is to ensure the most efficient, transparent and fair way of using public funds, public resources and all other funds and resources of contracting authorities in Kosova.

Referring to the allegations above, the complaining economic operator considers that the Contracting Authority has acted in violation of Article 1 of the LPP, Article 6 of the LPP, Article 7 of the LPP, Article 10 of the LPP, Article 11 of the LPP, Article 59 of the LPP, Article 60 of the LPP, Article 72 of the LPP, Article 69 of the LPP, Article 40 of Regulation No. 001/2022 On

Public Procurement. Based on the evidence and arguments mentioned above, we request the PRB to take: DECISION to APPROVE, as grounded, the complaint of GOE

"BM GROUP; MURSELI COMPANY SH.P.K; KUSHTRIMI-NM", CANCELLED, the notification on the decision of the CA for contract award and the case is returned for RE-EVALUATION and during the re-evaluation, the examination, evaluation and comparison of the offers shall be carried out in accordance with the requirements of the tender dossier, the contract notice and in accordance with the provisions of the LPP.

CA's response to the request for review: GOE. BM -GROUP; MURSELI; Kushtrimi NM, has filed a Request for Review in the CA- Hani i Elezit, according to the complaint claim regarding: Article 1 of the LPP Article 6 of the LPP Article 7 of the LPP Article 10 of the LPP Article 11 of the LPP Article 59 of the LPP Article 60 of the LPP Article 72 of the LPP Article 69 of the LPP Article 4 of Regulation No. 001/2022 On Public Procurement. and

Article 7 of the LPP, Article 28.4 of the DT (reward of projects), Article 55 of Regulation 01/2022 of the LPP.

Request for review based on Article 108/A of Law No. 04/L-042, on Public Procurement in the Republic of Kosovo, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092. The Municipality of Hani i Elezit has announced the procedure for the project: "Asphalting of the Gorance — Krivenik — second phase" road, with procurement no. 659-25-2901-5-1-5, and KKHE-25-015-5-1-1, we provide this chronology of this activity:

The Municipality of Hani i Elezit has announced the procedure on 18.04.2025, the procedure developed Work, large value.

Response to the complaint claims of the complaining EO

Clarification regarding the complaint claim no.1

Regarding the complaint claim no.1 for the equipment: Compactor min.20 tons with vibrating teeth,

1. First reason for elimination.

In the equipment: Cylinder for gravel compaction with vibrating teeth min. 20 tons, 2 pieces are requested in the file, while you as GOE have attached one that you have with an agreement with LIKA TRADE, and you are missing one piece, therefore you do not meet this criterion.

Our clarification.

Regarding the equipment Cylinder for gravel compaction with teeth min. 20 tons, we clarify that we have offered agreement no. 01/05 with the company Sallahu Shpk, which is ranked no. 1 in the agreement and which has attached the customs document and the photograph and the same is identical as requested by the CA in the tender file and the reason for elimination at this point is totally unfounded.

Regarding your complaint claim, we would like to clarify that your claim for the equipment Cylinder for gravel compaction with vibrating teeth min. 20 tons does not stand, since you as GOE have brought in your file the Hamm 35 20 SUD which, if searched on the internet [www.Google.com](http://www.Google.com), can be very easily verified according to the serial number of the equipment, which proves that your equipment is not as required, but you have tried to attach another SUD with another photo, therefore your claim does not stand. Surely you as EO with these actions want to mislead us as CA, but this is very easy to verify and you find it as in the photo that has been researched for the equipment that you have presented with the SUD.

According to the criteria of the DT and the NJK, your claim is unfounded, since the required criteria for the equipment in question are not met and according to Article 59.4 of the LPP, your offer is irresponsible.

Regarding the second complaint claim for the equipment Grader equipped with rippers and laser system min.20 tons.

## 2. Second reason for elimination.

On the equipment: Grader equipped with rippers and a Laser system min.20 tons. You as GOE do not prove this equipment, but you present a smaller equipment Grader with rippers Brand Faun O&K Type F106, which is not 20 tons, but 10.8 tons, also does not have the laser system, therefore at this point you do not meet the criterion. So, neither the weight nor the laser system is met by the Grader presented by you as GOE.

Our clarification.

We have also offered the Grader equipped with rippers and a Laser system min.20 tons in the list of machinery and there we have emphasized that we have an agreement with the company Gener 2 Shpk and we have also offered the grader in question identically as requested in the DT. We have also provided additional clarification as requested by the CA, therefore this claim of the CA is unfounded.

Your justification for the requested equipment is not valid at all: Grader equipped with rippers and a laser system of at least 20 tons, you as GOE do not meet this criterion because the equipment is clearly required, but you have tried with a usage agreement with an Albanian Operator, GENER 2 SHPK, where you have attached the booklet and some photos (of the equipment) that clearly show that you do not meet this criterion as requested, therefore such deliberate actions as you are taking are not good and do not represent the seriousness of the company, but the aim of profiting from a project in an illegal but very deceptive way. For the equipment in question, the Grader equipped with a laser system and a min.20 ton laser system, you as GOE in your file have not presented the requested equipment with weight and system, but you have tried to present a device taken from the internet that does not have the laser system, but does not have the requested weight either, which can be easily verified from the attached booklet

that you want to deceive us since the required minimum is 20 tons (min.20,000 kg), while you have 19.5 tons (19,500 kg). The attached booklet at point (G) clarifies or elaborates the weight of the vehicle-equipment (refer to) G-weight

So, the equipment that you have proven in the request for reconsideration with additional material, does not have the Laser system, nor does it have the required weight, since the minimum required is 20 tons, while you have brought 19,500 tons (see point G) of the booklet, which is proven to be 500 kg, less than required. Such actions, just to be rewarded with a contract even though you do not meet the required criteria, are unacceptable and the CA must take all legal steps for these actions. According to the criteria of the DT and the NJK, your claim is unfounded, since the required criteria for the equipment in question are not met and according to Article 59.4 of the LPP, your offer is irresponsible, therefore we will pursue other legal avenues.

Clarification regarding the complaint claim no. 3

Regarding your complaint justification for the device “Cylinder with rubber wheels - rubber with vibration min. 4 tons”, we

clarify that you do not complete this device..

3. Third reason for elimination.

On the device: Cylinder with rubber wheels - rubber with vibration min. 4 tons, you as GOE do not prove this device but you have presented the device, therefore you do not complete this device according to the required criteria.

Our Explanation

We clarify that for the Equipment Cylinder with rubber wheels - rubber with vibration min. 4 tons, we have offered agreement no. 01/05 with the company Sallahu Shpk and this device is ranked no. 2.

A customs document is attached to the agreement and the same is identical as requested by the CA in DT. We emphasize that the reason for elimination at this point is totally unfounded. You as GOE in the request for review have offered a device in the name of EO.Sallahu, where if you search on the internet, it turns out another device rubber-iron, not rubber-rubber. For more information, refer to the search at [www.Google.com](http://www.Google.com)

So, this equipment is also not as required, since from the research on [www.google.com](http://www.google.com) it results in a compactor, but not as required. Cylinder min. 4 tons rubber-rubber with vibration..from the photos you can verify,

also there is no vibration as required.

According to the criteria of the DT and the NJK, your claim is unfounded, since the required criteria for the equipment in question are not met and according to article 59.4 of the LPP, your offer is irresponsible.

Clarification regarding Complaint claim no. 4 Complaint

Regarding your claim of elimination no. 4 for the Semi-trailer equipment for filling the road crack, your reasoning does not stand on the fact that you did not bring it as required.

Fourth reason for elimination.

On the device: Semi-trailer for filling the road crack, you as GOE do not prove this device, you do not prove it in the booklet as required by the file criteria.

Our Explanation

We would like to clarify that for the Semi-trailer equipment for filling and cracking the road, we have offered an agreement for a Semi-trailer for the transport of machinery for filling and cracking the road, which has attached the registration book with the license plate number 03-155-XB. This is the agreement between the Company Mursel shpk and Horn & Co Kosova shpk. We have also offered an agreement with the company Haxha Com, and in agreement no. 4 we have offered the Semi-trailer equipment for filling and cracking, which has attached the customs bill and invoice, therefore the reason for the elimination at this point by the CA is unfounded. You as the EO, with this action, are attempting to commit fraud against the CA, specifically against the Procurement Office, where the Semi-trailer equipment for filling road cracks has acted improperly, by attaching two devices to it: Semi-trailer with tab.03-155-XB which is a transport trailer and is not a Semi-trailer for filling road cracks, these actions-frauds are unacceptable because this equipment (proof-license) is required in the internal affairs.

Research according to the License Plate 03-155-XB with the name of the equipment (Blomenroehr Required Criteria: Semi-trailer for filling road cracks, and a Semi-trailer for carrying machinery was not requested. So, you have tried in every way to mislead the CA, regarding the Semi-trailer for filling road cracks, because you have tried to send it to us with two pieces of evidence (one license plate and the other DUD), where according to the criteria it is very clearly required: Semi-trailer for filling road cracks, where 2 pieces of equipment were not requested as you did, but 1 piece of equipment was requested. So, you have brought a Semi-trailer and separately the machine for filling road cracks, so you have tried to deceive us in order to mislead the CA at all costs for the realization of the request yours, but the commission is professional and looks at these works according to the criteria and not according to the attempts at manipulation/fraud that EOs try to make, as in your case where you have offered 2 pieces of equipment, one a trailer, and the other an emulsion machine, so, once again we explain to you that what is required is: a semi-trailer for filling road cracks, where according to the Law the semi-trailer must have a valid (registered) license.

So, these two devices that you have attached do not meet the criteria of the file..

These actions are unacceptable, they are fraudulent and action should be taken according to the law in force for fraud against the CA.

According to the criteria of the DT and the NJK, your claim is unfounded, since the required criteria for the device in question are not met and according to article 59.4 of the LPP, your offer is irresponsible.

Regarding the complaint claim no. 5 for the device: Equipment/machine for laying embankments, your reasoning as the complaining EO does not hold, since we are attaching facts and evidence.

Fifth reason for elimination.

On the equipment: Equipment for laying gravel and embankments. You as GOE have presented an ABG equipment Titan 223 VI3 which during the research on [5AnArw.google.com](http://5AnArw.google.com) turns out that it is not for embankments. but is Asphalt finisher (it can be proven that it is not for embankments). Also in the list of equipment (of OE.Source E) no. 44 it is written: Finisher-machine for asphalt with serial number AB TITAN 223-VB 76 -1994 which proves that all the numbers are as in the DLJD. Also you do not prove the booklet for this equipment..

Our Explanation

On point no. 5 of the elimination, for Equipment for laying gravel and embankments, we clarify that we have offered an agreement with the company Burimi E Shpk and Kushtrimi NM Shpk to which we have offered the paver which serves for laying asphalt and laying gravel. and for which we have attached the customs document. The license for the machinery in question was not requested in the tender dossier. Therefore, we have not offered it and this claim is completely unfounded and contradicts Article 56.3 of the LPP, because we cannot be eliminated for requests that are not part of the tender dossier.

Your claim does not stand because you have offered an Asphalt Finisher and not a Machine for Berths, because this equipment is suspected of manipulation with this SUD and that will be verified by the competent bodies and responsibility will be borne, since even the Operator who has the agreement has it on its list as a Machine for Berths, while in the SUD it is a Machine for Berths.

In the description it says Machine for pavements, while with the numbers ABG TITAN 223-VB 76- year 1994, it turns out asphalt finisher, refer to [www.Google.com](http://www.Google.com)

The agreement writes machine for pavements

The DUD writes Machine for Pavements, while the name and number of the machine turns out Asphalt Finisher, a completely different machine than what is required.

From this DUD two devices emerge, from the title machine for pavements by the brand of the device and serial number it turns out machine for asphalt. So, these deliberate actions are clearly visible...how is it possible for two devices to be converted in point 31 of the DUD.

So, EO BURIMI-E also has the Asphalt Machine in the list of equipment no. 44 and not the Machine for embankments.

So, the EO carrier of the machine (the owner of the machine or equipment), has included the same equipment in the list of equipment as an Asphalt Paving Machine, and has not included the Machine for embankments (as described in the SUD).

These actions are unacceptable and besides not giving good results, they negatively reflect on the image of the company.

Since these bad actions with equipment, as in the case in question with one DUD two devices appear, is very suspicious and will be verified by the competent authorities, for the ABG Titan 223 VB-76 device we will create a professional commission for the device you have presented, and go out into the field (in the presence of the competent authorities for verification) and see how the Asphalt Finisher is laying the shoulders... According to the criteria of the TD and the CN, your claim is unfounded, since the required criteria for the device in question are not met and according to Article 59.4 of the LPP, your offer is irresponsible, therefore legal channels for verification will be followed.

Regarding the complaint claim Self-loading mixer for concrete production, this equipment was requested with registration, whereas you as the EO have not offered this equipment with a valid registration, which we will prove to you as follows through your booklet that you have attached to the file...

6. The sixth reason for elimination. Regarding the equipment: Self-loading mixer for concrete production, you as the GOE have offered a Self-loading mixer for concrete production equipment according to the agreement with an Albanian EO with plate AA-794-CP, but the equipment does not have a valid registration, but has expired.

Our Explanation.

We explain to you that for the Self-loading Automixer Equipment for concrete production we have offered in the list of machinery and there we have said that we have an agreement with the company Sircta 2F Shpk and Company Murseli Shpk. We have offered the Automixer in question identically as requested in the DT.

Also in the additional explanations that we have sent after they were requested by the CA. In the notification on the decision sent by the CA, among other things the CA claims that we do not meet the criteria since the vehicle in question has a valid registration. This claim of the CA is also unfounded since the vehicle in question has a registration until 29.08.2025.

Regarding your complaint claim, as the complaining EO claims that it has the device "Automixer; registered, we are proving this with the TRAFFIC PERMIT that it has attached to the file, and in additional explanations, where it is clearly seen the registration of the vehicle from 27.12.2020 to 26.12.2021, which proves that the vehicle or automixer booklet is expired. So, you yourself as the EO have brought this document, which very clearly states TRAFFIC PERMIT for the device with plate AA794CP, which you find attached to the booklet with evidence.. Therefore, based on the evidence-TRAFFIC PERMIT, it is seen that this booklet is expired. According to the criteria of the DT and the NJK, your claim is unfounded, since the

required criteria for the device in question are not met and according to Article 59.4 of the LPP, your offer is irresponsible.

#### Clarification regarding Complaint No. 7

Regarding Complaint No. 7 of the complaining EO, regarding the dynamic plan which was requested in calendar days, and which you have offered in 1 working day, makes your offer irresponsible.

You as GOE in your file have brought the dynamic plan in working days (specifically 150 working days), while in the request for clarification you have changed it and brought it in calendar days (specifically 150 calendar days), these actions that you have taken are nothing other than fraud against the CA. Such actions are unacceptable and should be sanctioned according to the Law.

#### The seventh reason for elimination

In the Dynamic Plan, the DT's request was calendar days, and after additional clarifications regarding this point, you as the EO have changed the Dynamic Plan, from working days to calendar days, which is a mistake towards the CA, since in the basic file you have 150 working days, while in the additional clarifications you have brought another Dynamic Plan of 150 calendar days, which is in contradiction with the legal provisions of the LPP (changing the document from the basic file constitutes a basis for fraud and your offer is rejected

#### Our Explanation

Also for the dynamic plan, we inform you that after the clarifications requested by the CA, we have changed the dynamic plan again and that we have offered it as required by law and order and we have nothing to do with fraud here. We have offered a dynamic plan of 150 calendar days, but below we have converted it into working days the way the performance of the work.

In reality, during the preparation of the documents, we had a technical error where we initially prepared a dynamic plan with 150 working days by mistake, but before uploading the documents, we prepared another one with 150 calendar days, but during the upload to the system, we uploaded the dynamic plan with 150 working days, but with additional clarifications we provided the dynamic plan as requested, and we noticed that in the dossier we had uploaded the dynamic plan with 150 working days by mistake, therefore this fact is considered a minor deviation according to Article 59.4 point 9ii) of the LPP. Dynamic plan submitted in the dossier by you: Dynamic plan sent with additional clarifications

So, the sentence in red According to this dynamic plan, the works are scheduled to be completed in 150 calendar days, while in the tables below there are only “working days”, which clearly proves that your intention was to “deceive the CA”.

So, 150 working days!

Such manipulations that you have seen in the Dynamic Plan, from 150 working days to 150 calendar days, and such attempts at fraud should be punished according to the LPP, after you

signed a declaration under oath that says very clearly, "I accept the possibility of criminal and civil sanctions, if I declare falsely, I deceive... in the case in question you have deceived with these actions, which should be pursued according to the legal provisions.

Since such actions are intentional and deceptive towards the CA with the sole purpose of deceiving the CA, they are totally unacceptable and punishable according to legal provisions.

According to the criteria of the DT and the NJK, your claim is unfounded, since the required criteria for the equipment in question are not met and according to Article 59.4 of the LPP, your offer is irresponsible, therefore legal avenues will be pursued.

Clarification regarding Complaint No. 8

Regarding the complaining claim no. 8 for the Bank's Letter of Support, it is very clear that the criterion that the EO must have access to unconditional credit, or cash on hand"

8. The eighth reason for elimination

The Letter of Support from the Bank does not comply with the contract criteria

-From the criteria required above, it results that the EO must have cash on hand or access to unconditional credit, while you as the EO have Conditional Access to Credit, as it says:.. In the event that BM Group is declared the winner of the above-mentioned project, RBKO is open to offering the possibility of financing BM Group shpk in the amount of 300,000 Euros, based on the internal criteria and procedures.

So, the last sentence, based on the internal criteria and procedures, means that you do not have unconditional access, but you have "\*\*conditional access", because it says: ...based on the internal criteria and procedures of the bank, where this point also makes your offer irresponsible..

Our Explanation

This elimination by the CA is also absurd. Here the tendencies of the CA towards our company are clearly seen, since we as an EO participating in this activity have been offered a letter of support from the leader of the BM Group Shpk group where as a company we have an approved credit limit in the Raiffeisen Bank in the amount of 4,400,000.6 which we can withdraw at any time and the reason for the elimination at this point is nothing more than the support of the company recommended by the CA. This reason for the elimination is purely unjustified based..

You as GOE from the bank's support letter, it is read very clearly in Albanian that it reads: "In case BM GROUP is declared the winner of the above-mentioned project, RBKO is open to offer the possibility of financing BM GROUP shpk in the amount of 300,000 Euros, based on internal criteria and procedures". So, the sentence "based on internal criteria and procedures", means that it is not an unconditional loan or you do not have an open loan, but if the tender is won, the Bank will look at the possibilities based on the bank's internal criteria and procedures... So, this itself proves that the bank will respect the internal criteria and procedures and not as requested to have the loan open for the above-mentioned project.

So this automatically proves that the required criteria of the DT and the NJK are not met, since it is not unconditional but implies a conditional loan (based on the bank's internal criteria and procedures).

Regarding articles 10 and 11 of the LPP, we as the CA have given you access to documents, except for business secret documents.

You as the GOEI also have business secret documents, where we cannot offer your documents to another operator if they request access, but the PRB has this right to verify whether the recommended EO is responsible or not, and precisely it has the right to take other legal measures against EOs that are defamatory or fraudulent, with the sole purpose of "illegal or fraudulent profit", not respecting the required criteria of the file and notification, but attempting to deceive the CA.

Business secret declaration for your bid:

So, for you as GOE your documentation is a Business Secret and no one can have access to your documents, they must be treated according to Article 11 of the LPP, while you for other Operators must have access to all documents of other bidding Operators (even if they have business secrets), since in the case in question the recommended EO also has the same Business Secret declaration.

Quote from your text:

Therefore, based on the request for Business Secret, we as CA do not have the opportunity to give access to EOs, except for the competent bodies that can access and handle the case such as PRB, PPRC, etc.

So, you as GOE are irresponsible based on Article 59.4 of the LPP, which states: The contracting authority will consider a tender as responsible only if the tender in question is in compliance with all the requirements set out in the contract notice and in the tender dossier. Also, based on the various attempts to defraud the CA, the cases will be verified and then measures will be taken according to the LPP. So, you as the EO do not meet the criteria required according to the DT and the NJK. So, all evidence proves that this GOE is irresponsible and legal procedures should be followed according to the LPP and other provisions for violations-fraud.

- Administration and evaluation of evidence -

Based on Article 111 paragraph 5 in connection with Articles 113 and 114 of the LPP, the Procurement Review Body on 27.08.2025 authorized the review expert to conduct the initial review of the file and claims according to the complaint with no. 0802/25, while on 08.09.2025 the review expert's report with no. 2025/0802 was submitted with the following recommendations: Based on the above-mentioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO be approved as partially grounded and that the CA's decision remain in force. The expertise report has been duly accepted by all procedural parties. The CA agrees with the recommendations of the review expert's report, and the EO has not responded to the review expert's report.

Regarding the claims of EO "KUSHTRIMI NM" SH.P.K., the review expert through report no. 2025/0802 has assessed as follows:

The procurement activity entitled: "Asphalting of the Gorance - Krivenik road - second phase" with procurement no.: "659-25-2901-5-1-1", initiated by the Contracting Authority (CA) - MUNICIPALITY OF HANÏ I ELEZIT, open procedure, type of contract work, criterion lowest responsive price.

The complaint is filed against the decision of the Contracting Authority, respectively against the reasons for the elimination and evaluation of the CA.

The complaining EO after the rejection of the request for review by the CA, the same files a complaint with the PRB,

claiming that the CA has not evaluated and examined the offers in accordance with the Law on Public Procurement respectively violates articles: 1,6,7,10,11,59,60,72,69, as well as article 40 of the Public Procurement Regulation nr.002/2024.

Introductory clarification:

The reviewing expert after analyzing and reviewing the case files clarifies that, the Contracting Authority, respectively the Evaluation Commission, on 24/07/2025, publishes the Report stating quote:

The Evaluation Commission, after receiving the clarifications according to article 72 of the LPP, has analyzed the documents of GOE. BM GROUP; Kushtrimi NM; MURSELI, and after the analysis has come to this conclusion:

1. In the equipment: Gravel compaction cylinder with vibrating teeth min. 20 tons, 2 pieces are required in the file, while you as GOE have attached one that you have with an agreement with LIKA TRADE, and you are also missing one piece, therefore you do not meet this criterion.
2. In the equipment: Grader equipped with rippers and a Laser system min. 20 tons, you as GOE do not prove this equipment, but you have a smaller equipment Grader with rippers Brand Faun O&K Type F106, which is not 20 tons, but 10.8 tons, and also does not have a laser system, therefore at this point you do not meet the criterion. So, neither the weight nor the laser system is met by the Grader presented by you as GOE.
3. On the equipment: Rubber wheel cylinder - rubber with vibration min. 4 tons, you as GOE do not prove this equipment but you have presented equipment, therefore you do not meet this equipment according to the required criteria.
4. On the equipment: Semi-trailer for filling road cracks, you as GOE do not prove this equipment  
but you have presented equipment, therefore you do not meet this equipment according to the required criteria.

5. On the equipment: Equipment for laying gravel and embankments, you as GOE have presented an ABG Titan 223 VB equipment which during research on [www.google.com](http://www.google.com) turns out that it is not for embankments, but is Asphalt finisher (it can easily be proven that it is not for embankments). Also in the list of projects no.44 it is written: Finisher for asphalt with serial number ABG TITAN 223-VB 76 -1994 which proves that all the numbers are as in the SUD, where manipulation is suspected. Also, you do not prove the booklet for this equipment.

6. On the equipment: Self-loading concrete mixer, you as the GOE have offered a Self-loading concrete mixer equipment according to the agreement with an Albanian EO with plate AA-794-CP, but the equipment does not have a valid registration, but has expired..

7. On the Dynamic Plan, the DT's request was calendar days, while after additional clarifications regarding this point, you as the EO have changed the Dynamic Plan, from working days to calendar days, which is a mistake towards the CA, since in the basic file you have 150 working days, while in additional clarifications you have brought another Dynamic Plan of 150 calendar days, which is in contradiction with the legal provisions of the LPP (changing the document from the basic file constitutes a basis for fraud and your offer is rejected).

8. The support letter from the Bank does not conform to the contract criteria

GOE. BM GROUP; MURSELI; Kushtrimi NM, after clarifications according to article 72 of the LPP, the EO does not meet the required criteria. From the required criteria above, it results that the EO must have cash in the account or access to unconditional credit, while you as the EO have Conditional Access to credit, as it says:.. In case BM

Group is declared the winner of the above-mentioned project, RBKO is open to offer the possibility of financing BM Group shpk in the amount of 300,000 Euros, based on the internal criteria and procedures.

Based on the criteria set out above, it is seen that it does not meet the required criteria of the dossier and this makes the GOE offer irresponsible... Consequently, based on the findings of the evaluation committee, additional clarifications have been requested from the complaining Operator in order to comply with Article 72 of the Public Procurement Law.

Whereas, the complaining EO, dissatisfied with the evaluation of the bids and with the decision of the Contracting Authority regarding the reasons for the elimination, in the complaint it submits complaining claims, explaining itself in order to prove their accountability as the cheapest and responsible bid.

The first claim of the complaining EO:

1. The first reason for elimination. For the equipment: Cylinder for gravel compression with vibrating teeth min. 20 tons in the file, 2 pieces are required, while you as GOE have attached one that you have by agreement with LIKA TRADE, and you are also missing one piece, therefore you do not meet this criterion.

Our clarification. Regarding the equipment Cylinder for gravel compression with 20 tons of teeth, we clarify that we have offered the agreement no. 01/05 with the company Sallahu Shpk,

which is ranked no. 1 in the agreement and which has attached the customs document and the photograph and the same is identical as requested by the CA in the tender dossier and the reason for the elimination at this point is totally unfounded. Response to the complaining claim of the complaining EO:

The review expert regarding the first reason of the complaining EO explains that the evaluation commission has requested clarifications regarding the request in question, and consequently, in the offer of the complaining EO, according to the explanation of the complaining EO, there is also the second equipment with an agreement with Sallahu SHPK, which in the SUD has the description Compaction roller with used steel cylinder, Brand: HAMM Type: 3520 with Serial No. 1502547 year 2002, attaching a photo, but the CA in annex 1, equipment number 8 requires Cylinder for compaction of gravel min. 20 tons with vibrating teeth quantity 2, which according to the CA after searching on the internet this type of equipment does not match the photo provided and requested by the CA, and as such the CA, in accordance with Article 52.7 of the Law on Public Procurement, can investigate any suspected information from the bidders, and as such the claim of the complaining EO is not found to be sustainable.

Article 52.7 LPP quote:

7. The contracting authority in case of doubt of any information submitted by the economic operator, will conduct an effective control of the information and tender documentation.

Second claim of the complaining EO:

8. Second reason for elimination. On the equipment: Grader equipped with rippers and with Laser system min.20 tons, you as GOE do not prove this equipment, but you have a smaller equipment Grader with rippers Brand Faun O& K Type F106, which is not 20 tons, but is 10.8 tons, also does not have the laser system, therefore at this point you do not meet the criterion. So, neither the weight nor the laser system is met by the Grader presented by you as GOE.

Our clarification. The Grader equipment equipped with rippers and with a Laser system min.20 tons, we have also offered in the list of machinery and there we have emphasized that we have an agreement with the company Gener 2 Shpk and we have also offered the grader in question identically as requested in the DT. We have also provided additional clarifications as requested by the CA, therefore this claim of the CA is unfounded.

Response to the complaining claim of the complaining EO:

The review expert regarding the second claim clarifies that, based on the claim of the complaining EO, the equipment presented with a rental agreement by the company Gener 2 SHPK, according to the circulation booklet, is 19800 kg and not 20000 kg as required in the DT, but this equipment can be taken in accordance with Article 59.4 of the LPP, if it is proven that the Laser purchase invoices are for the equipment in question, always if the other criteria of the DT are met. Partially sustainable claim.

Third claim of the complaining EO:

9. Third reason for elimination. On the equipment: Cylinder with rubber wheels - rubber with vibration min. 4 tons, you as GOE do not prove this equipment but have presented equipment, therefore you do not fulfill this equipment according to the required criterion.

Our Explanation We explain to you that for the Equipment Cylinder with rubber wheels - rubber with vibration min. 4 tons, we have offered agreement no. 01/05 with the company Sallahu Shpk and this equipment is ranked no. 2. The customs document is attached to the agreement and the same is identical as requested by the CA in the DT.

We emphasize that the reason for elimination at this point is totally unfounded.

Response to the complaining claim of the complaining EO:

The review expert regarding the third claim clarifies that, the complaining EO also presented the same as additional evidence, the agreement with Sallahu SHPK regarding the equipment according to the DUD description Rubber Compactor Rule Brand HAMM Walse 1985, but it is not proven that it is a rubber-rubber cylinder with vibration, therefore the CA in accordance with Article 52.7 of the LPP can research for the documents or information of interest, and as such the third claim of the complaining EO does not stand.

The fourth claim of the complaining EO

10. The fourth reason for elimination. On the equipment: Semi-trailer for filling the road crack, you as the GOE do not prove this equipment, you have not proven it with a booklet as required according to the criteria of the dossier.

Our Explanation We would like to clarify that for the Semi-trailer equipment for filling cracks in the road, we have offered an agreement for a Semi-trailer for transporting machinery for filling and cracking the road, which has the registration booklet with the license plate number 03-155-XB attached. This is the agreement between Company Mursel shpk and Horn & Co Kosova shpk. We have also offered the agreement with the company Haxha Com, and in agreement no. 4 we have offered the semi-trailer equipment for filling and cracking, which has the customs document and invoice attached, therefore the reason for the elimination at this point by the CA is unfounded. Response to the complaining claim of the complaining EO:

Regarding the fourth claim of the complaining EO, the review expert explains that, in the booklet provided with the license plate 03-155-XB with validity in the same, it is written that it is a semi-trailer, and according to the documents, it fulfills the requirement no. 17 in Complaint 1, while the other equipment that was brought to the customs SUD does not possess a booklet, but the CA can always investigate the evidence of the bidders in accordance with Article 52.7 of the LPP. Partially grounded claim.

Fifth claim of the complaining EO:

11. Fifth reason for elimination. On the equipment: Equipment for laying gravel and embankments, you as GOE have presented an ABG Titan 223 VB equipment that during the research on [ëëë.google.com](http://ëëë.google.com) it turns out that it is not for embankments, but is an asphalt finisher

(it can easily be proven that it is not for embankments). Also in the list of equipment (of EO. Source E) no. 44 it is written: Finisher-machine for asphalt with serial number ABG

TITAN 223-VB 76 -1994 which proves that all the numbers are as in the SUD. Also you do not prove the booklet for this equipment..

Our clarification On point no. 5 of the elimination, for Equipment for laying gravel and embankments, we clarify that we have offered an agreement with the company Burimi E Shpk and Kushtrimi NM Shpk to which we have offered the paver which serves for laying asphalt and laying gravel, and for which we have attached the customs document. The license for the machinery in question was not requested in the tender dossier, therefore we have not offered it and this claim is completely unfounded and contradicts Article 56.3 of the LPP, because we cannot be eliminated for requests that are not part of the tender dossier.

Response to the complaining claim of the complaining EO:

Regarding the equipment for laying gravel and embankments, the offer contains the agreement with Burimi ESHPK where in the SUD it states in the description Machine for laying gravel-embankments, in the list the same equipment is named asphalt paving machine ABG Titan 223VB 76, which therefore does not match the list with the SUD, while regarding the booklet, the CA in the DT has not specified which equipment exactly should be with the booklet.

Also in the offer is the agreement with Haxha Com in which there is the SUD with no. 23392 with the description Part that is mounted on Bobcat for opening and spreading and repairing asphalt and adjusting gravel embankments. However, the CA in accordance with Article 52.7 of the LPP can investigate any document and evidence of the bidders. Partially grounded claim.

Sixth claim of the complaining EO:

12. Sixth reason for elimination. On the device: Self-loading mixer for concrete production, you as GOE have offered a Self-loading mixer for concrete production device according to the agreement with an Albanian EO with plate AA-794-CP, but the device does not have a valid registration, but has expired.

Our clarification. We clarify that for the Self-loading mixer for concrete production device we have offered it in the list of machinery and there we have said that we have an agreement with the company Sireta 2F Shpk and the Company Murseli Shpk. We have offered the said mixer identically as requested in the DT. Also in the additional clarifications that we have sent after they were requested by the CA. In the notification on the decision sent by the CA, among other things, the CA claims that we do not meet the criterion for the vehicle in question since this vehicle does not have a valid registration. This claim of the CA is also unfounded since the vehicle in question is registered until 29.08.2025.

Response to the complaining claim of the complaining EO:

Further, regarding the self-loading automixer for concrete production, the complaining EO has offered the equipment for rent from the company Sireta 2F SHPK, which as a reason for elimination is the validity of the equipment specified until 26.12.2021, but based on evidence

such as the Certificate of Technical Inspection of Road Vehicles valid until 31.01.2026, in the documentation of the policy for compulsory insurance of vehicle holders the validity is 29.08.2025, the annual vehicle tax for this vehicle is until 30.12.2025, and as such this equipment in the booklet has expired validity, while in other documents it has validity.

The claim of the complaining EO is found to be partially founded.

The seventh claim of the complaining EO:

13. Seventh reason for elimination In the Dynamic Plan, the DT's request was calendar days, while after additional clarifications regarding this point, you as the EO have changed the Dynamic Plan, from working days to calendar days, which is a mistake towards the CA, since in the basic file you have 150 working days, while in the additional clarifications you have brought another Dynamic Plan of 150 calendar days, which is in contradiction with the legal provisions of the LPP (changing the document from the basic file constitutes a basis for fraud and your offer is rejected).

Our clarification: We also inform you about the dynamic plan that after the clarifications requested by the CA, we have uploaded the dynamic plan again and have offered it as required by law and order and we have nothing to do with fraud here. We have offered the dynamic plan of 150 calendar days, but below we have converted the method of performing the work into working days. In reality, during the preparation of the documents, we had a technical error where we initially incorrectly prepared a dynamic plan with 150 working days, but before uploading the documents, we prepared another one with 150 calendar days, but during the upload to the system, we uploaded the dynamic plan with 150 working days, but with additional clarifications, we provided the dynamic plan as requested, and we noticed that we had uploaded the dynamic plan with 150 working days incorrectly in the file, therefore this fact is considered a minor deviation according to Article 59.4, point 9ii) of the LPP.

Response to the complaining claim of the complaining EO:

The review expert regarding the dynamic plan as the reason for elimination explains that, in the offer, the complaining EO has attached the dynamic plan where it writes that it is calculated for working days, and then after the clarifications requested by the CA, the same brings the modification of the plan by improving it from working days to calendar days, but again within the plan working days are specified, therefore the claim of the complaining EO is not found to be sustainable, due to the fact that this modification again involves a misunderstanding.

Eighth claim of the complaining EO:

14. Eighth ground for elimination The supporting letter from the Bank does not conform to the contract criteria - From the criteria required above, it results that the EO must have cash in the account or access to unconditional credit, while you as the EO have Conditional Access to the credit, as it says:.. In case BM Group is declared the winner of the above-mentioned project, RBKO is open to offer the possibility of financing BM Group shpk in the amount of 300,000 Euros, based on the internal criteria and procedures. So, the last sentence, based on the internal criteria and procedures, means that you do not have unconditional access, but you have

"conditional" access, because it says: . . .based on the internal criteria and procedures of the bank, where this point also makes your offer irresponsible.

Our Explanation This elimination by the CA is also absurd. Here the tendencies of the CA are clearly seen towards our company, since we as EO participating in this activity have provided a letter of support from the group leader of BM Group Shpk where as a company we have approved the credit limit in the bank Raiffeisen Bank in the amount of 4,400,000.€ which we can withdraw at any time and the reason for the elimination at this point is nothing more than the support of the company recommended by the CA. This reason for elimination is completely unfounded.

Response to the complaining claim of the complaining EO:

Regarding the eighth reason for elimination, regarding the supporting letter from the Bank, the review expert clarifies that, in the letter provided, the Bank has initially specified that the economic operator "Client" possesses a credit limit in the amount of 4.4 million euros, has also specified the title and number of the activity, emphasizing the support regarding their request, specifying that the bank will offer the possibility of financing 300 K based on the bank's internal criteria and procedures. So as such, the bank has emphasized that the client possesses a Limit, but since the remaining balance as a limit is not specified, then it is considered that it is used in total, and that regarding the request for financing, the bank conditions the client according to their internal procedures and policies, therefore it is conditional credit support. The claim is not found to be grounded. Ninth claim of the complaining EO:

We have requested access to the documents of the EO recommended for the contract and other EOs, where we were allowed very limited access and in this case, Article 10 and 11 of the LPP was violated, since we were not allowed access to any document except the sworn statement. This action did not comply with Article 10 and 11 of the LPP, and also violated the LPP, LAW NO. 06/L-081 ON ACCESS TO PUBLIC DOCUMENTS and also violated Article 41 of the Constitution of the Republic of Kosova.

The EO recommended for the contract has completed Annex 3 for business secrets, but has in no way been able to justify the request for business secrets that the disclosure of the documentation will harm the company, but no justification has been given as to how the company is harmed by the provision of documents on economic/financial capacity, and the documents required for technical and professional capacity.

According to Article 11 paragraph 3 of the LPP, the request must be justified and concrete reasons must be presented, which convincingly demonstrate, in the reasonable judgment of the contracting authority, that public access to such an element would result in material damage to the legitimate commercial interests of the group of economic operators. The EO recommended for the contract has not provided any evidence or reason that access to the documents would damage its material and commercial interests, therefore the statement of the EO recommended for the contract cannot be taken into account because it does not comply with the legal requirements. Response to the complaining claim of the complaining EO:

The review expert regarding the access requested by the complaining EO for the bid of the recommended EO clarifies that the latter has completed Annex 3 Request for business secret explaining the reasons for non-disclosure of the documentation provided in the bid, and as such the CA in accordance with Article 10 and 11 of the LPP has not provided access, however the CA also in accordance with Article 11.4 of the LPP must clean the documents classified as business secrets and provide access to the cleaned version. The claim of the complaining EO is found to be partially substantiated

While regarding the offer of the recommended EO, since it did not have full access, regarding the prejudices of the complaining EO, the review expert after analyzing the documentation clarifies that the same has attached documents such as bank support which specifies that the EO possesses the means, the working means are owned and under a lease agreement, completed projects above the requested value, turnover, therefore, in accordance with the assessment of the evaluation commission of the CA, the same is declared responsible. The tenth claim of the complaining EO: EO "QUALITY ASPHALT" cheaper than our offer is declared irresponsible and I agree with the reason for elimination. Response to the complaining claim of the complaining EO:

The review expert regarding the complaining claim of the complaining EO against EO Asphalt SHPK explains that, the same are eliminated from the evaluation of the commission, because they did not respond to the requested clarifications. Grounded claim.

Evaluation of the evaluation commission quote:

Group of Economic Operators Quality Asphalt SH.P.K.; ALPING SH.P.K.; N.N.SH. WORLD MEDIUM- has submitted the list, but has not brought the references, we have asked for additional clarifications, he has not responded at all to the request for clarifications and this makes his offer irresponsible. Also - You have submitted the surveyor, but you have not sent the work contract and the reference, we have asked for additional clarifications, he has not brought them. Send us the DUD and the invoice for the hammer.

He has NOT responded and this makes his offer irresponsible...

In conclusion, according to the explanations above in the complaining claims of the complaining EO, since some of the complaining claims are found to be partially grounded, then it is recommended that the complaining EO's complaint be approved as partially grounded, while the decision of the CA remains in force

- Findings of the Review Panel -

The Rules of Procedure of the Public Review Body, which is published on the PRB website, with Article 20, paragraph 2 of the Regulation, sets out the requirements for the Contracting Authority and the Economic Operator, that all information and notices must be submitted and communicated through the public communication platform, if this is possible.

Based on the documents of this case, the Panel considers that regarding the issue in the concrete case, there is no need to convene a hearing with the parties, within the meaning of Article 24 paragraph 1 of the Rules of Procedure of the PRB, taking into account the fact that the claims of the parties and their submissions, the evidence and the report of the review expert provide sufficient data to decide on the merits.

The Review Panel assesses that the Review Expert Report, drafted at the request of the Panel regarding the dispute in this case of public procurement activity, contains the essential elements of such a document as foreseen by the provision of Article 113 in conjunction with Article 114 of the LPP, according to which the expert is required to review all procurement documentation, including all complaint claims and to provide the Panel and all parties to the dispute with an independent and professional assessment of the procurement activity and the validity of the complaining claims.

However, it should be noted that the legal fact that the expert report is not binding on the Review Panel and that each such report is assessed and/or analyzed in the overall context of the case files, the alleged facts and other possible evidence, taking into account the nature of the possible violations, the course, nature and purpose of the procurement activity, therefore the fact that in which cases and for what, the Panel relies or not, on the expert 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 Public Procurement Law.

The review panel, based on the documents of the tender dossier, the bid and the complaint of the complaining economic operator, regarding the claims of the complaining economic operator, does not trust the review expert regarding the responses to the claims of the complaining EO, because there are differences in the responses to the complaints regarding the reasons for which the complainant was eliminated and there is no clear reflection of the real situation by the review expert. The panel assesses that the Contracting Authority (CA) during the examination, evaluation and comparison of the offers did not act in accordance with the LPP in force, since the complaining EO for all points of its elimination from this procurement activity has provided evidence that the CA did not act in accordance with Article 59 and 72 of the LPP.

The Panel notes that this evidence, in addition to being within his/her bid, was also provided with clarifications but also on the occasion of filing the complaint, therefore, the elimination of the work tools for: Cylinder for gravel compaction with vibrating teeth min. 20 tons, Grader equipped with rippers and with Laser system min. 20 tons, Cylinder with rubber wheels with vibration min. 4 tons, Semi-trailer for filling road cracks, Equipment for laying gravel and embankments, Self-loading automixer for concrete production, is an unsustainable elimination by the CA because the complainant has all these equipment attached to the bid and for these equipment possesses customs documents and agreements with various companies for their lease, which is also allowed by the Tender Dossier, otherwise the CA has the possibility to act in accordance with Article 52.7 of the LPP, in case you suspect any of these devices.

The Panel regarding the Bank's supporting letter, this justification for the elimination of the complainant by the CA is also untenable, because even in the bank's supporting letter the company has approved the credit limit in the Raiffeisen Bank in the amount of €4,400,000.00. Where the CA can also act in accordance with Article 52.7 of the LPP. While, regarding the other reason for elimination regarding the dynamic plan, the complaining EO has given his/her reasons regarding this omission, but the CA, has the possibility that in terms of Article 6 of the LPP to act in accordance with 59.4 and classify this as a minor deviation, because the complainant consists in a bid of €43,470.40, cheaper than the EO recommended for the contract.

The complainant has also filed a complaint regarding the access to the offer of the EO recommended for the contract, where the CA, in violation of the legal provisions, accepts the request of the EO recommended for the business secretary and does not justify at all the non-provision of these documents to the complaining party. This complaint is qualified as grounded because the CA did not act in accordance with Article 10 and 11 of the LPP, completely prohibiting access to the offer of the recommended EO. These actions mean that the CA did not act in accordance with Article 1, 6, 7, 59 and 60 of the LPP, during the development of this procurement activity and in the re-evaluation the CA should act in accordance with the established legal provisions.

The review panel, after administering and evaluating the evidence, fully ascertaining the factual situation, relying on the LPP as the applicable substantive law, after reviewing the complaint claims, taking into account all the case files, has found that the complaint of the Economic Operator EO "KUSHTRIMI NM" SH.P.K should be approved as partially grounded and the Decision of the contracting authority, dated 01.08.2025, for awarding the contract for the procurement activity, should be annulled.

Consequently, the Review Panel has decided to cancel the Notice of Decision of the Contracting Authority, Municipality of Hani Elezit, regarding the procurement activity "Asphalting of the Gorance - Krivenik road - second phase", with procurement number 659-25-2901-5-1-1 and the procurement activity is returned for re-evaluation to the contracting authority. The CA is obliged to implement the findings-assessments of the claims of the complaining EO as grounded by the panel, in accordance with the requirements of the Tender Dossier/Contract Notice.

The review panel emphasizes that in accordance with Articles 1 and 6 of the LPP, Contracting Authorities exercise their institutional independence in the public procurement process, however, it remains within the competences and responsibilities of this body to review complaints and legality in the procurement process, in accordance with Article 24, paragraph 2 of the LPP cited "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in full compliance with this Law" in relation to Article 59,1 cited "The contracting authority shall establish an Evaluation Commission for the examination, evaluation and comparison of bids. All members of the Evaluation Commission shall take full individual responsibility for the evaluation of the bid".

The Review Panel, based on the fact of partial approval of the complaint of the EO “KUSHTRIMI NM” SH.P.K, decided to return the complaint fee in the amount deposited by the complaining economic operator based on Article 31 par. 4 of the Rules of Procedure of the PRB.

The Review Panel has decided in accordance with the legal competences in the sense of Article 104 paragraph 1 in connection with Article 103, Article 105 and Article 117 of the LPP to implement the procurement review procedure in a prompt, fair, non-discriminatory manner, with the aim of legal and effective resolution of the case. Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which predict and regulate such situations, which may arise during a procurement activity.

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

#### **President of the Review Panel**

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**Mr.Isa Hasani**

#### **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 – MUNICIPALITY OF HANI I ELEZIT;

1x1EO–“KUSHTRIMI NM SH.P.K.”;

1x1 Archive of the PRB;