

**PROCUREMENT REVIEW PANEL**, appointed by the President Pursuant to the article 105 as well article 106 of the Law on Public Procurement of the Republic of Kosova no.04/L-042, amended and supplemented by Law No. 04/L-237, amended and supplemented Law no.05/L-068, amended and supplemented Law no.05/L-092, composed of: Mr. Nuhi Paçarizi – President, Mr. Blerim Dina – referent, Mr. Goran Milenković - member, deciding on the complaint lodged by the Economic operator: “N.T.P.SH “XANI-INEX”-Prishtinë, against the contract award notice, where is recommended for contract economic operator: “A-D-E Group” SH.P.K- Prishtinë, regarding with the procurement activity with title: “Supply with planetary reducer” with procurement no.KEK-20-1702-1-2-1, initiated by the Contracting authority/Kosova Energy Corporation/KEC/, on the 20.08.2020 has issued this:

## **DECISION**

**I. APPROVED**, as partly grounded the complaint of the Economic operator: N.T.P.SH “XANI-INEX”-Prishtinë, regarding with the procurement activity with title: “Supply with planetary reducer” with procurement no.KEK-20-1702-1-2-1, initiated by the Contracting authority/Kosova Energy Corporation/KEC/.

**II. CANCELLED** the contract award notice, regarding with the procurement activity with title: “Supply with planetary reducer” with procurement no.KEK-20-1702-1-2-1, initiated by the Contracting authority/Kosova Energy Corporation/KEC/, and the case returns for re-evaluation.

**III.** Contracting authority within 15 days must inform in written the Review panel for all actions taken regarding with this procurement activity and other parties in the procedure.

**IV.** Non-compliance with this decision obliges the Review Panel conform with the legal provisions of article 131 of the Law for Public Procurement of Kosova No.04 / L-042, amended and supplemented by Law No. 04/L-237, Law no.05/L-068, Law no.05/L-092, to take action against the Contracting Authority.

**V.** Since the complaint of the complaining economic operator “N.T.P.SH “XANI-INEX”-Prishtinë, is approved as partly grounded, it is returned the insurance fee of the complaint in the amount deposited when filing a complaint.

**VI.** Obligated complaining economic operator that conform article 31 point 6 of the Rules of Procedure of the PRB, within sixty (60) days is obliged to request to take back the funds, otherwise these funds will be confiscated and will pass to the budget of the Republic of Kosova.

## REASONING

Complaining economic operator NTPSH "XANI-INEX" -Prishtina, as a dissatisfied party has filed a complaint in the PRB, on the 08.07.2020 with no.457 / 20, against the notification for contract award regarding the procurement activity with title : "Supply with planetary reducer", with no. Procurement: "KEK-20-1702-1-2-1", initiated by the contracting authority / CA / Kosova Energy Corporation / KEC / sh.a, claiming that:

- The contracting authority has acted in contradiction with articles: 1, 7, 59 and article 60 of the Law on Public Procurement of the Republic of Kosova, Rules for submitting a request for reconsideration to the contracting authorities, filing complaints with the PRB and the value of complaint fees. article 6, Suspension of procurement activity - paragraph 6.1 point a and paragraph 6.3.

Procurement Review Body, conform article 113 and 114 of the LPP on the 23.07.2020, has authorized the professional procurement expert to review the validity of all claims of the complaining party.

The professional procurement expert in the report dated: 29.07.2020, regarding the complaining claim of the complaining EO explains as follows:

Answer to Claim no.1; Regarding the claim of the complaining EO that the manufacturer in the authorization issued for EO recommended for contract has not stated when the warranty period begins according to the requirement of Annex 1 to the technical specifications which is 12 months from the date of receipt in the warehouse but states that it is 12 months from the date of technical acceptance, which is contrary to the request of the CA, review expert has this opinion. In the authorization of the manufacturer submitted with the offer of the EO recommended for contract it is written that "we give a guarantee period of 12 months for our products". Also in the Declaration for Warranty provided by EO recommended for contract, writes that "warranty for equipment delivered in the above tender is 1 year or 12 months from the date of technical acceptance." Now the claim of the complaining EO that the guarantee is from the date of technical acceptance and not from the date of acceptance in the warehouse, this in the opinion of the review expert is the same because the acceptance in the warehouse is done when technically accepted. So it is important that the EO recommended for contract with the two documents mentioned above proves that it has provided a guarantee of 12 months, as required by the CA. This complaining claim is therefore ungrounded.

Answer to Claim no.2; Regarding the following claim of the complaining EO that in Annex 1 of the Technical Specifications point 1.5 is required that: - Companies (manufacturers) must possess the opportunity to produce similar products-reducer for planetary reducer for circular motion of KPC a and b. While the EO recommended for contract has not provided the company profile that has production capacity of these devices and also in the certificate of ISO standard 9001: 2015 issued to the manufacturer provided by the winning EO, nowhere states that the manufacturer produces a reducer according to at the request of the CA, the review expert has this opinion. Since this request is not stated in the selection criteria in the tender dossier that must be provided any concrete document for the company profile, specifying the document but is given as a description in the technical specification, without specifying what document should be submitted with the bid, EO the winner has provided the authorization issued by the manufacturer where the manufacturer declares how it produces the products required in Annex 1 of the tender dossier. So this document for the opinion of the review expert

meets this requirement of technical specification. Also in the ISO certificate standard 9001: 2015 of the manufacturer offered by the winning EO it says that it produces a reducer. So in general this point is met by the EO recommended for contract. Therefore, this complaint is also unfounded.

Answer to Claim no.3; Regarding the other claim of the complaining EO that EO recommended for contract has not offered according to the mandatory technical specification, point 1.5 where the design of the reducer unit is required as follows: - Symmetrical design on the right and left side - Design for rotation in right and left side so these designs are not provided by the winning EO, the review expert has this opinion. In the drawing submitted with the offer of the EO recommended for contract is the design of the required reducer unit which also contains the relevant dimensions. However, the two designs mentioned above are not presented. For the opinion of the review expert in the form as the drawings are provided with the bid of the winning EO, does not meet the requirement in the technical specification. Therefore, this complaining claim is also grounded.

Answer to Claim no.4; Regarding the following claim of the complaining EO that states that in the bid of the winning EO are not met other requirements in the technical specification of the tender dossier such as: - Indentations with strength and base of (quality 6), therefore missing. - Lubrication with spray without pump, missing. - ISO VG viscosity lubrication with oils, is missing - The oil dryer should be located on the back of the reducer, is missing - The instrument for measuring the oil level, made the upper part of the reducer, is missing. - Magnet for abrasive particles, missing. for these issues raised, the review expert has this opinion. In the technical specification of the tender dossier, respectively in point 1.5 it says "Documentation which is required in the bidding phase". So according to this request for all points raised in this complaint claim of the complaining EO, tenderers had to provide documents for fulfillment of these points in the bidding phase, and not after signing the contract as emphasized by the contracting authority in response to the request for reconsideration. . EO recommended for contract, in his bid, has not provided documentation that proves that they are for these points of technical specification which have been raised by the complaining EO. This complaining claim is therefore grounded.

Answer to Claim no.5; Regarding the other claim of the complaining EO that states that the cross section of the drawing for the reducer should be given by the manufacturer and not by the economic operator, the review expert has this opinion. In the drawing provided with the offer of the EO recommended for contract, is given the cross section of the drawing for the reducer according to the request of the tender dossier. This drawing offered by the offer, is not of the EO recommended for contract but is of the authorized manufacturer. Therefore, this complaining claim is also ungrounded.

Answer to Claim no.6; Regarding the last claim of the complaining EO that states that CA has not made the suspension of the procurement activity after our request for reconsideration according to article 6 point 6.1 (a) and point 6.3 of the regulation for filing complaints in the PRB because the answer to the request is given. on the 02.07.2020, one day after the legal deadline, the review expert has this opinion. After receiving the request for review of the complaining EO, CA has not taken action to continue this procurement activity but has reviewed the request and returned the response to the complaining EO. The response from the CA was delayed for a while but the EO

received a response. With this action of the CA, has not been damaged the complaining EO because the same has received a response from the CA and also has been received a complaint in the PRB. This complaining claim is assessed as partially grounded.

Opinion of the review expert: Contracting authority during the examination, evaluation and comparison of the bids did not exactly comply with the requirements given in the technical specification of the tender dossier. Has evaluated the bid of the winning EO as responsible even though it has not met all the points required in the technical specification of the tender dossier. In this case CA has not respected article 59 of the LPP that is recommended for contract EO irresponsible. Based on the above clarifications, the review expert proposes to the review panel that the complaint of the complaining EO to be partially approved as grounded. Review expert in accordance with article 114 point 2 of the LPP, recommends the contracting authority to re-evaluate the bids for the procurement activity "Supply with planetary reducer" with procurement no. no. KEK-20-1702-121 in accordance with the provisions of the LPP.

Contracting authority, on the: 04.08.2020, through memo, has notified the PRB, that partially agrees with the opinion of the review expert.

Economic Operator, on the 02.08.2020, through memo, has notified the PRB that does not agree with the opinion of the review expert.

The hearing session was held on: 20.08.2020, without the presence of the parties conform article 24.1 of the Regulation of the PRB, where the case files were reviewed by checking and analyzing the documentation for the procurement procedure which consists of: authorization of initiating the procurement activity, contract notice, minutes on the opening of bids, decision on the establishment of the bid evaluation commission, bid evaluation report, contract award notice, complaint of the economic operator, report of the professional procurement expert and all memos of the parties to the proceedings.

Regarding the claim of the complaining economic operator NTPSH "XANI-INEX" - Prishtina that the manufacturer in the authorization issued for EO recommended for contract has not mentioned when the warranty period starts according to the request of annex 1 to the technical specifications which is 12 months from the date of acceptance in the warehouse but states that it is 12 months from the date of technical acceptance, which contradicts the request of the CA. Review panel conform professional procurement expert clarifies that in the authorization of the manufacturer submitted with the offer of the EO recommended for contract writes that "we give a guarantee period of 12 months for our products". Also, in the statement for the guarantee provided by the EO recommended for contract, writes that "the guarantee for the equipment delivered in the above tender is 1 year or 12 months from the date of technical acceptance." Now the claim of the complaining EO that the guarantee is from the date of technical acceptance and not from the date of acceptance in the warehouse, Review Panel conform professional expert clarifies that it is the same because the acceptance in the warehouse is done when technically accepted. So, it is important that the EO recommended for contract with the two documents mentioned above proves that it has provided a guarantee of 12 months, as required by the CA. Therefore, this complaining claim is ungrounded.

Regarding the claim of the complaining EO NTPSH "XANI-INEX" -Prishtina that in annex 1 of the technical specifications point 1.5 it is required that: - Companies

(manufacturers) must possess opportunities to produce similar products-reducer for planetary reducer for circular motion of the KPC a and b. Whereas, the EO recommended for contract did not provide the company profile that has production capacity of these devices and also in the ISO certificate 9001: 2015 certificate issued to the manufacturer provided by the winning EO, nowhere states that the manufacturer produces a reducer at the request of the CA. Review panel conform professional expert clarifies that since this request is not stated in the selection criteria in the tender dossier that should be provided any concrete document for the company profile, specifying the document but given as a description in the technical specification, without specifying what the document must be submitted with a bid, the winning EO has provided the authorization issued by the manufacturer where the manufacturer declares how it produces the products required in annex 1 of the tender dossier. So, this document meets this requirement of the technical specification. Also, in the ISO certificate standard 9001: 2015 of the manufacturer offered by the winning EO it says that it produces a reducer. So, in general, this point was met by the EO recommended for contract. Therefore, this complaining claim is ungrounded.

Regarding the claim of the complaining economic operator NTPSH “XANI-INEX” - Prishtina that EO recommended for contract has not offered according to the obligatory technical specification, point 1.5 where the design of the reducer unit is required as follows: - Symmetrical design on the side of right and left - Design for rotation on the right and left side so these designs are not offered by the winning EO. Review panel conform professional expert clarifies that in the drawing submitted with the offer of the EO recommended for contract is the design of the required reducer unit which contains the relevant dimensions. However, the two designs highlighted above are not presented. Review panel conform professional expert clarifies that in the form as the drawings are provided with the offer of the winning EO, does not meet the requirement in the technical specification. Therefore, this complaining claim is grounded.

Regarding the claim of the complaining EO N.T.P.SH “XANI-INEX” -Prishtina that in the bid of the winning EO are not met other requirements in the technical specification of the tender dossier such as:

- Indentations with firmness and base of (quality 6), so missing. - Lubrication with spray without pump, missing.
- ISO VG grade viscosity lubrication oil, missing - Oil dryer located on the back of the reducer, missing
- The instrument for measuring the oil level, made the upper part of the reducer, is missing.
- Magnet for abrasive particles, missing.

Review panel conform professional procurement expert regarding this claim clarifies that in the technical specification of the tender dossier, respectively in point 1.5 of it writes "Documentation which is required in the bidding phase". So, according to this request for all points raised in this complaining claim of the complaining EO, tenderers had to provide documents for fulfillment of these points in the bidding phase, and not after signing the contract as emphasized by the contracting authority in response to the request for reconsideration. EO recommended for contract, in his bid did not provide documentation that proves that they are for these points of technical specification which have been raised by the complaining EO. Therefore, this complaining claim is grounded.

Regarding the claim of the complaining EO NTPSH “XANI-INEX” -Prishtina that the cross section of the drawing for the reducer should be given by the manufacturer and not by the economic operator, Review panel conform professional procurement expert clarifies that in the drawing provided by the bid of EO recommended for contract, the cross section of the drawing for the reducer is also provided according to the request of the tender dossier. This drawing offered with offer, is not of the EO recommended for contract but is of the authorized manufacturer. Therefore, this complaining claim is ungrounded.

Regarding the claim of the complaining EO NTPSH “XANI-INEX” -Prishtina that CA has not suspended the procurement activity after our request for reconsideration according to article 6 point 6.1 (a) and point 6.3 of the regulation for filing complaints in the PRB because the response to the request was given on 02.07.2020, one day after the legal deadline. Review panel clarifies that after receiving the request for reconsideration of the complaining EO, CA has not taken action to continue this procurement activity but has reviewed the request and returned a response to the complaining EO. The response from the CA is outside the legal deadline which means that the CA has not complied with the legal deadline when responding to the request for reviewing. Therefore, this complaining claim is grounded.

Review panel after reviewing the case file and clarifications of the professional procurement expert, concludes that contracting authority during the examination, evaluation and comparison of the bids did not exactly comply with the requirements given in the technical specification of the tender dossier. Also, Review Panel considers that CA has evaluated the bid of the EO recommended for contract as a responsive tender even though it has not met all the points required in the technical specification of the tender dossier. Therefore, the contracting authority is obliged to examine and evaluate the bids conform article 59 of the LPP. Also, the review panel clarifies that contracting authorities should take into account article 1 of the LPP, as it is known that the purpose of this law is to provide the most efficient, transparent and fair way of using public funds, public resources. as well as all other funds and resources of the contracting authorities in Kosovo.

Review panel conform article 117 of the LPP, and based on the evidence presented above decided as in the provision of this decision.

**Legal advice:**

Aggrieved party can not appeal against this decision, but it can file charges for damage compensation within 30 days, after the receipt of this decision with the lawsuit In the Basic Court In Prishtina at the Department for Administrative Affairs.

President of the Review Panel

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Mr. Nuhi PAÇARIZI

Decision to be submitted to:

1x1 CA – Kosova Energy Corporation/KEC/,  
1x1 EO – “N.T.P.SH “XANI-INEX”-Prishtinë  
1x1 Archive of the PRB  
1x1 For publication on the website of the PRB.