



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

Psh. No.565/23

Review Panel, appointed by the President of the Procurement Review Body (PRB), Pursuant to the article 105, article 106, and 117 of the Law on Public Procurement of the Republic of Kosova (Law no. 04/L-042, supplemented and amended by Law 04/L-237, Law 05/L-068, supplemented and Law 05/L-092) composed of: Vedat Poterqoi - President, Vjosa Gradinaj Mexhuani - Member, Agon Ramadani - member, deciding according to the complaint of the EO “ALFA.i”, regarding with the procurement activity: “Installation of heating and adjustment of lighting in the Karagaq Sports Gym in Peje LOT 1 Installation of central heating and ventilation in the Karagaq Gym and Leshan LOT 2 Lighting adjustment in the Karagaq Sports Gym” initiated by the Contracting Authority (CA) - Municipality of Peja, on the 25/10/2023 has issued this:

DECISION

1. **Approved** as grounded the complaint of the Economic operator “ALFA.i”, submitted to the Procurement Review Body on the 10.08.2023 (with protocol number 565/23) for the procurement activity with title: “Installation of heating and adjustment of lighting in the Karagaq Sports Gym in Peje LOT 1 Installation of central heating and ventilation in the Karagaq Gym and Leshan LOT 2 Lighting adjustment in the Karagaq Sports Gym” with procurement no:635-23-5904-5-1-1, initiated by the Contracting Authority (CA) - Municipality of Peja.
2. **Cancel** the notice on the decision of the CA for LOT 1 and recommend that the case returns for re-evaluation.
3. It is allowed the return of the deposited amount when the complaint is submitted, and the complaining economic operator is obliged, in accordance with Article 31 point 6 of the PRB's Work Regulations, within a period of sixty (60) days to make a request for the return of the complaint insurance, otherwise, the deposit will be confiscated and these funds will go to the Budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances –

On the 09.06.23, Municipality of Peja, in the capacity of the Contracting Authority, published the contract notice for the procurement activity with title: “Installation of heating and adjustment of lighting in the Karagaq Sports Gym in Peje LOT 1 Installation of central heating and ventilation in the Karagaq Gym and Leshan LOT 2 Lighting adjustment in the Karagaq Sports Gym” with procurement no:635-23-5904-5-1-1. Meanwhile, on the 26.07.2023, the notice on the CA's decision was published.

EO "ALFA.i" on the 31.07.2023 submitted a request for reconsideration to the CA. The CA-Mune of Peja has by decision rejected the request for reconsideration of EO "ALFA.i" regarding the procurement activity:“Installation of heating and adjustment of lighting in the Karagaq Sports Gym in Peje LOT 1 Installation of central heating and ventilation in the Karagaq Gym and Leshan LOT 2 Lighting adjustment in the Karagaq Sports Gym” with procurement no:635-23-5904-5-1-1, initiated by the Contracting Authority (CA) - Municipality of Peja.

Dissatisfied with the decision of the CA, the complaining EO "ALFA.i" on the 10.08.2023 submitted a complaint to the PRB, with protocol number 565/23, against the decision of the Contracting Authority regarding the procurement activity described above.

The contracting authority has implemented an open procedure, type of contract: Work, estimated value of the contract: 590,870.72 €.

The EO's complaint was made in accordance with Article 109.1 of the LPP, according to which any interested party can submit a complaint to the PRB against any decision taken by the CA. Since the EO has also applied for reconsideration, it means that its actions also refer to Article 108/A of the cited Law. Therefore, the PRB considers that the Complaint fulfills the prerequisites in terms of the provisions now cited and the same falls under its competences in terms of Article 105 of the LPP.

- Evaluation and administration of evidence –

Based on the actions described above, the PRB has engaged the evaluation expert in accordance with Article 111, paragraph 5 of the LPP, with the duty that the same in the sense of Article 113 of the cited Law, make the initial review of the dossier and the complaining claims, in relation to the procurement activity described above. In this regard, on the 25.08.2023, the review expert submitted the evaluation report with the following recommendations:

Based on the aforementioned clarifications, the review expert proposes to the review panel that the complaint of EO "ALFA.i".

I. Approved as grounded the complaint of the Economic operator “ALFA.i”, submitted to the Procurement Review Body on the 10.08.2023 (with protocol number 565/23) for the procurement activity with title: “Installation of heating and adjustment of lighting in the Karagaq Sports Gym in Peje LOT 1 Installation of central heating and ventilation in the Karagaq Gym

and Leshan LOT 2 Lighting adjustment in the Karagaq Sports Gym” with procurement no:635-23-5904-5-1-1, initiated by the Contracting Authority (CA) - Municipality of Peja.

II. **Cancel** the notice on the decision of the CA for LOT 1 and recommend that the case returns for re-evaluation.

RESPONSE TO THE COMPLAINING CLAIMS OF THE COMPLAINT EO "ALFA -i"

Introductory clarification: The Contracting Authority of the Municipality of Peja has developed the procurement activity with title: Installation of heating and adjustment of lighting in the Karagaq Sports Gym in Peje LOT 1 Installation of central heating and ventilation in the Karagaq Gym and Leshan LOT 2 Lighting adjustment in the Karagaq Sports Gym” **with procurement no:635-23-5904-5-1-1, open procedure, type of contract: Work, estimated value of the contract: 590,870.72 €.**

The Contracting Authority has published the Contract Notice on 09.06.2023, while on the 15.06.2023 and 07.07.2023 it has published the B54 standard form for correcting errors.

On the 26.07.2023, the CA issued the Notice on the CA's Decision. Complainant EO "ALFA.I SH.P.K" on the 31.07.2023 submitted a request for reconsideration to the CA, against the Decision of the CA, while the CA on 04.08.2023 issued a Decision to reject the request for reconsideration, consequently against this Decision of the CA, the complaining EO "ALFA.I SH.P.K" dated 10.08.2023, has submitted a complaint to the PRB.

The procurement review expert, according to authorization 2023/0565, and in accordance with article 114 of the LPP, has reviewed the complaining claims of the complaining EO and has the following findings and conclusions:

Response to the Complainning Claims:

The CA dated 26.07.2023, through the Notice on the CA Decision and the standard letter, has notified the complaining EO about the result of the procurement activity as well as the reasons for the elimination of the complaining EO "ALFA.I SH.P.K". Also, even in the rejection of the request for reconsideration dated 04.08.2023, the CA emphasized the same reasons for the elimination of the complaining EO, which are as follows:

"During the evaluation of your offer, the evaluation committee found that you do not meet the criteria required in the Tender Dossier and in the Contract Notice, since the general conditions of the TD require that the professional staff be certified with a professional level certificate IV (Installation, heating, sewerage and water supply), while you lack the Professional Certificate of the technical staff as well as the notarized diplomas for the part of the technical staff, the professional staff of Engineers also lacks the Certificate for fire protection. As well as you, in your offer, you did not complete the Annex - 7 established by the CA in the TD where it was requested to be completed and signed by the EO for the IMPLEMENTATION DEADLINE AND GUARANTEE PERIOD, it was an administrative condition since it is a special ANNEX that must be completed, therefore we hereby inform you that your offer is irresponsible and you are eliminated from this PA".

Meanwhile, the complaining EO claims that, "none of the reasons for the elimination are valid, because we have met all the requirements of the TD!

As for the professional certificates, we inform you that we have submitted the Professional Certificates of the technical staff notarized according to the request of the TD and the reasons for the elimination have no factual or legal basis (see attached doc.)"

Regarding the complaining claims of the complaining EO "ALFA.I SH.P.K", the examining expert clarifies that:

The CA during the drafting of the tender file and the contract notice, respectively in the **Requests on technical and/or professional opportunities**, has determined as follows:

Request 2: For (LOT-1), you presented the staff that will be engaged in this project, who are directly responsible for the execution of the work and the project in general, including the professional staff. - The technical staff (EMPLOYEE) that will be included in the project - minimum 10 employees. Minimum 5 trained employees with professional certificate level IV (Installation, Heating, Sewerage and water supply)

Evidence of Request 2, For (LOT-1) The list of workers with contracts or pre-contracts on behalf of the project must be notarized in the presence of two parties, at least 10 workers, as well as for the 5 trained workers, notarized copies of certificates".

According to the aforementioned request, the CA in the announcement on the decision of the CA dated 26.07.2023, has notified EO-"ALFA.I SH.P.K", of the elimination from the PA, with the reasoning that, "since the general conditions TD has requested that the professional staff be certified with a level IV professional certificate (Installation, heating, sewerage and water supply), while you lack the Professional Certificate of the technical staff as well as the notarized diploma for the part of the technical staff.. "

The Review Expert has reviewed this complaint claim, after reviewing and analyzing the tender documentation, always based on the requirements set by the Contracting Authority in the tender file and in the contract notice (Requirements and Evidence), specifically in the Requirements on technical possibilities and/or professional, CA has requested, among other things, - The technical staff (EMPLOYEE) that will be included in the project - minimum 10 employees. At least 5 trained employees with a professional certificate level IV (Installation, Heating, Sewerage and water supply, while in Evidence of Request 2, For (LOT-1) the list of workers with contracts or pre-contracts on behalf of the project must be notarized in the presence for two parties, at least 10 workers, as well as for 5 trained workers, notarized copy certificates.

Based on the above-mentioned high demand, the CA has requested "Professional certificate level IV (Installation, Heating, Sewerage and water supply), not specifying in the relevant request-evidence which are considered acceptable (Certificates as evidence issued by Public Institutions and Private Institutions).

So, since such a request has not been defined in advance in the tender file and in the contract notice, in this regard, the complaining EO in the Staff List, according to the request in the tender

dossier, has also presented 5 workers engaged for this project with notarized contracts, for which he presented notarized Diplomas in the relevant field (Installation, Heating, Sewerage and water supply). As a result, the Diplomas and contracts presented by the complaining EO in relation to this request fulfill the requirement of the tender file and contract notification. Due to the fact that, according to the Pre-university Education Curricular Framework of the Republic of Kosovo, "level IV" is considered -Higher secondary education.

KORNIZA KURRIKULARE E ARSIMIT PARAUNIVERSITAR TE REPUBLIKES SE KOSOVES

4. Struktura e arsimit parauniversitar - nivelet formale dhe shkallet kryesore te kurrikulës

Roli i niveleve formale dhe shkallet kryesore te kurrikulës në organizimin e punës edukativo-arsimore në shkollë

Struktura e arsimit në Kosovë është në harmoni me Klasifikimin Standardit Ndërkombëtor të Arsimit si në tabelën e mëposhtme:

| Nivelet sipas KSNA ¹ | Nivelet Formale të Arsimit Parauniversitar në Kosovë ² | Mosha |
|---------------------------------|---|---------------------------------------|
| KSNA 6 KSNA 5 | Arsimimi i të rriturve/Arsimimi gjatë tërë jetës në shkallë të gjerë (formal dhe ioformal) Arsimi pasuniversitar Arsimi universitar | 23/24+ 23/24+ |
| KSNA 4 | Arsimi passekondar jouniversitar | 18 + |
| KSNA 3 | Arsimi i mesëm i lartë Gjimnazi klasa X-XII Shkollat profesionale (klasat X-XII) | 15-17 Matura |
| | Arsimi i mesëm i lartë Shkollat profesionale (klasat X-XI) | 15-16 Shkollat profesionale |
| KSNA 2 | Arsimi i mesëm i ulët Klasat VI-IX | 11-14 |
| KSNA 1 | Arsimi filior Klasat I-V | 6-10 |
| KSNA 0 | Klasa përgatitore Edukimi parashkollor | 5-6 Indeje-5 |

Nëpër nivele formale të arsimit, nënësit në mënyrë koherente përgatiten për mësim gjatë tërë jetës dhe për botën e punës në epokën e dijes dhe të digitalizimit.

Krahasuar me Komizën e Kualifikimeve, korniza e kurrikulës u referohet vetëm 4 niveleve formale të arsimit dhe 5 niveleve të kualifikimeve. Me këtë ofrohet një bazë e mirë, një platformë e cila në të njëjtën kohë është dritare e hapur drejt arsimit gjatë tërë jetës dhe arsimit të të rriturve. Prandaj, në të gjitha shkallet dhe fushat e kurrikulës do të theksohen mundësitë që u ofrohen nxënësve për të arritur kualifikimet kombëtare të bazuara në Komizën Kombëtare të Kualifikimeve.

¹ Klasifikimi Standardi Ndërkombëtor i Arsimit.
² Të gjithë të fundit ekuivalen me nivelin e arsimit pasuniversitar.

29

Regarding the complaining claim of the complaining EO "ALFA.I SH.P.K", for the reasons of elimination by the CA regarding Annex - 7 decided by the CA in the DT where it was requested to be completed and signed by the EO for the IMPLEMENTATION DEADLINE AND PERIOD GUARANTEE.

Regarding this complaint claim of the complaining EO "ALFA.I SH.P.K", the examining expert clarifies that:

CA during the drafting of the tender file and contract notice, respectively in the Requests above

technical and/or professional opportunities, has been defined as follows:

Request 10 For (LOT-1), & (LOT-2) The economic operator must present a dynamic plan with a detailed description of all activities for the implementation of this contract, based on the deadline of the EO

Evidence 10 For (LOT-1), & (LOT-2) The dynamic plan with a detailed description of all activities for the implementation of this contract, based on the deadline of the EO".

The review expert has reviewed this complaint claim, after reviewing and analyzing the tender documentation, always based on the requirements set by the Contracting Authority in the tender file and in the contract notice (Requests and Evidence), specifically on the Requirements on technical possibilities and / or professional, CA has requested, among other things, "For (LOT-1), & (LOT-2) the economic operator must present a dynamic plan with a detailed description of all activities for the implementation of this contract, based on the deadline to EO, Evidence 10 For (LOT-1), & (LOT-2) The dynamic plan with a detailed description of all activities for the implementation of this contract, based on the deadline of EO".

Based on the mentioned high demand, in the tender dossier and in the contract notice, the CA has not requested any Standard Form on how to complete the Dynamic Plan with a detailed description of all activities for the implementation of this contract. Therefore, I consider that the IMPLEMENTATION DEADLINE AND GUARANTEE PERIOD, documents which were presented by the complaining EO, are in accordance with the requirements set by CA. Due to the fact that Annex 7 is not mentioned in the high request mentioned as a point of reference. Moreover, Annex 7 was not part of the selection criteria.

Article 17.12 of the Regulation on Public Procurement defines, quote: *"In the tender dossier, the CA will declare all the relevant information for the contract in question that the interested EOs should know for the preparation of the tenders without asking for additional information." Such information shall include all specifications, requirements, criteria, timelines, methodologies, contract conditions, site visits or pre-tender meetings, etc. related to contract awarding procedures. **Each sentence in the tender dossier will be well drafted, since the tender file is the basic material, on the basis of which the Economic Operators will create their tenders. The tender file will be prepared in such a way that — as a rule of principle — there is no need for additional explanatory information.** In particular, the contracting authority must take into account, when preparing the tender file, that there are no communications, discussions or negotiations between the contracting authority and the tenderers. The requirements set out in the Tender Dossier and in the contract notice must be identical. in case the CA organizes a site visit or pre-bidding conference, the participation of the EO in the site visit/pre-bidding conference should not be mandatory. The visit to the workshop/pre-bidding conference is organized for the EO and is for their benefit, so it is helpful for the EO".*

According to the aforementioned provision, the Tender Dossier is the main document on the basis of which the bidder prepares his offer, therefore the offer is evaluated by the CA based on the requirements, conditions and criteria defined in the Tender Dossier and in the contract notice.

Also, the CA, in the announcement on the decision of the CA dated 26.07.2023, has notified EO- "ALFA.I SH.P.K", of the elimination from the PA, on the grounds that "you lack the Professional Certificate of the technical staff and you lack notarized diplomas for the part of the technical staff, also the professional staff of Engineers lacks a Certificate for fire protection..."

For this complaint claim of the complaining EO "ALFA.I SH.P.K", the examining expert explains that:

According to Article 59 of the LPP, the contracting authority will consider a tender as responsive only if the tender in question is in compliance with all the requirements set forth in the Tender dossier and in the Contract Notice.

This means that CA during the tender evaluation process determines the responsibility of the tenders only on the basis of the requirements specified in the Tender Dossier and in the Contract Notice.

As for the non-providing of any document by the Economic Operator that was requested by the Contracting Authority, the Contracting Authority may request additional clarifications based on Article 72 of the LPP.

The List of Workers" is mentioned as evidence in Article 69 of the LPP, in this particular case, relevant certificates and notarized diplomas were also requested, therefore, regarding the evidence required in the TD, I consider that, CA during the evaluation of tenders, for lack of information or eventual errors may require additional clarifications in accordance with Article 72 of the LPP.

Regarding the clarifications of the tender, paragraph 1 of article 72 of the LPP defines:

"When the information or documentation to be submitted by the economic operators is or appears to be incomplete or incorrect, or when specific documents are missing, the contracting authorities may require the economic operators to submit, complete, clarify or complete the information or documentation appropriate within a certain period of time, provided that such requests are made in full accordance with the principles of equal treatment and transparency".

In accordance with paragraphs 1, 2 and 3 of Article 72 of this law, CAs may request EOs to submit, complete, clarify or complete any evidence specified in the Tender Dossier and in the Contract Notice **in accordance with articles 65-71 of this law. The provision of missing information or the provision of information will be applied only to documents whose existence is fixed before the deadline for tender submission and can be objectively verified.**

Also, to help the CA in evaluating tenders, the Public Procurement Guide provides a table with some examples, which presents some of the problems that CAs may encounter during the evaluation of tenders and the solution on how to act. The examples presented in this table are not the only cases. Depending on the case presented, CA must act in accordance with Article 72 and Article 59 of the LPP.

Based on the aforementioned provisions, to be considered a responsible tender, the tender in question must be in accordance with all the requirements set forth in the tender file and

in the contract notice. In the event that during the evaluation process, the CA finds that the EO has not provided any evidence in accordance with what was requested in the tender documents, it has the right to request, in accordance with paragraph 2 of article 59 and article 72 of the LPP written clarifications from EO.

Whereas, as regards the complaint claims of the complaining EO against the recommended EO for the contract, where it is stated that: "is irresponsible" for the following reasons:

- "1. There is no notarized agreement with the machine engineer,
2. Fire protection certificate for Eng. Xhevat Berisha was not presented according to the request where the same was requested to be notarized, but the EO recommended for the contract did not present it notarized, therefore this EO is irresponsible.
3. For the manager Mr. Shaqir Elezaj The Certificate for Energy Audit in Buildings is not notarized, therefore this EO is irresponsible.
4. Likewise, the agreements presented by the recommended EO for the contract for the technical staff are not notarized as specified in the tender file, at the same time their Certificates are not notarized. Therefore, based on this fact, this EO had to be eliminated from the procurement activity since it did not bid in accordance with the requirements of the tender file and contract notice.
5. One of the reasons for which we were eliminated is the failure to complete Annex 7 (part of the TD) - Declaration for the guarantee and implementation of works, but the same annex was not completed by the EO recommended for the contract, but only sent a statement according to its format as we have submitted it. In this case, there has been a favoritism of the EO recommended for the contract and unequal treatment in relation to our company".

The Review Expert has reviewed these complaints, and after reviewing and analyzing the documentation, namely the claim of the complaining EO, also the offer of the recommended EO for the contract, related to these complaints of the complaining EO, the Review Expert clarifies that: As for point 1,2,3 and 4, the deficiencies in the respective evidence required by the CA according to the request of the tender file and contract notice are evident, as a result of which the recommended EO was not submitted notarized according to the said request.

Whereas, as for point 5, where it is stated that "one of the reasons for which we were eliminated, is the failure to complete Annex 7 (part of TD) - Declaration for guarantee and implementation of works, but the same annex has not been completed not even the recommended EO for contracts", regarding this, it is evident that even in this particular case, Annex 7 has not been completed, which is one of the reasons for the elimination of the complaining EO also has to do with the non-completion of Annex 7, however, as Regarding Annex 7, we provided clarifications at the beginning.

Also,

Regarding the complaining claim of the complaining EO, "that in the decision to reject the request for reconsideration dated 04.08.2023, no reasons were given at all, but only the reasons for the elimination were repeated without giving detailed explanations..."

The review expert clarifies that, on the 26.07.2023, through the Notice on the Decision of the CA and the standard letter, it notified the complaining EO about the result of the procurement activity as well as the reasons for the elimination of the complaining EO "ALFA.I SH.P.K". Also, even in the rejection of the request for reconsideration dated 04.08.2023, the CA emphasized the same reasons for the elimination of the complaining EO, without giving concrete clarifications in the complaining claims.

According to paragraph 9 of Article 108/A of the LPP, it is clearly stated that, "The refusal will be justified and communicated in writing, in accordance with this law, to the complainant and all interested parties, if there are any". In addition, the contracting authority may prevent the further procedure by accepting a written notice from the appellant regarding his willingness to withdraw the request submitted for consideration.

Also, whenever a request for reconsideration is rejected, Article 62.2 of the Regulation on Public Procurement defines:

62.2 The decision on rejection will be justified and will be published in the electronic procurement system by the Responsible Procurement Official.

As for the complaining claim of the complaining EO, against the recommended EO for the contract, "that the company "Winning" constitutes a conflict of interest with the established condition, since the same company is family owned by the company TERMO HIDRAULIKU, which made the required certification for installers level IV (the relationship between these two companies is that the owner of one company is the father while the other is the son)".

The Examining Expert regarding this complaining claim, considers that the verification for Conflict of Interest is beyond the capabilities and capacities of the Examining Expert. However, whenever the EO has doubts about this issue, in order to clarify this situation, it can be addressed to the competent bodies.

Also, the CA during the tender evaluation phase, according to paragraph 7 of article 52 of the LPP, "The contracting authority in case of doubt about any information submitted by the economic operator, will carry out an effective control of the information and documentation of the tender".

Regarding the complaining claim of the complaining EO, that the CA in this procurement activity did not respect article 72 of the LPP, also article 7 of the LPP was not respected.

The reviewing expert clarifies that, based on the above-mentioned clarifications, the analysis of the facts and evidence documented in the e-procurement electronic platform, the course of the procurement procedure, related to this procurement activity, the CA-Evaluation Commission has not respected in as a whole article 7,59,69,72,108/A of the LPP, as well as article 10 of the Public Procurement Guide, because it is the responsibility and at the discretion of the

Contracting Authority, respectively the Evaluation Committee, that the process of evaluation, examination and comparison of tenders is done in accordance with the provisions of the law and secondary legislation for public procurement, in order to respect the requirements set by the CA in the tender dossier and in the contract notice.

According to paragraph 4 of article 59 of the LPP, Examination, Evaluation and Comparison of Tenders, which defines:

The contracting authority will consider a tender as responsive only if the tender in question is in compliance with all the requirements set forth in the contract notice and in the tender dossier. Notwithstanding the foregoing, the contracting authority may consider a tender as responsive if: (i) it contains only errors or ambiguities which can be corrected without changing the material condition or aspect of the tender in question, or (ii) it contains only minor deviations that cannot cause material changes or deviations from the characteristics, conditions, and other requirements set forth in the contract notice and in the tender file; provided that, any such deviation is quantified, as much as possible, and taken into account during the evaluation and comparison of tenders".

So, during the process of evaluation of tenders, with the aim that the evaluation of tenders is done in harmony with the law and legislation on public procurement, also in order to treat all EOs participating in this procurement activity as equals, if the CA finds that the Economic Operators have not provided any evidence in compliance with what was requested in the tender documents, has the right to request written clarifications from the EO in accordance with paragraph 2 of Article 59 and Article 72 of the LPP, and in case that doubts any submitted information has the right according to paragraph 7 of article 52 of the LPP to perform an effective control of the tender documentation.

The procurement review expert, based on the complaining claims of the complaining EO, also based on the above-mentioned findings and clarifications, proposes to the Contracting Authority CA-Peja Municipality to cancel the Notice on the CA's Decision for this procurement activity and the matter should be returned to Re-Evaluation, as well as Examination, Evaluation and Comparison of Tenders should be done in accordance with the provisions of the law and legislation for public procurement.

- Finding of the Review Panel -

The Review Panel concluded that there are no elements to prevent the conflict of interest, as required in the sense of Article 11 of the Regulation on the Work of PRB, therefore it analyzed all the documents of this subject, including all acts and actions of the parties and considered that there is a need to hold a public hearing with the parties and dated 25.10.2023, in the presence of the parties, all the evidence sufficient to decide on this matter was presented. In this case, the panel took into consideration all the complaint statements, acts and actions of the CA and the expert's report.

In fact (of course, regardless of the recommendations) the Panel notes that the procurement procedure that was applied in this case is presented in detail in the review expert's expertise

report, explaining all the stages of the process and the actions taken by the parties in the comparative context with the acts in force, especially with the Public Procurement Rules.

Therefore, referring to article 104.1, of the LPP, according to which it is required that the review procedure be implemented in a fast, legal and effective manner and also analyzing in their entirety the documents of this subject in the context of this procurement process, the panel did not consider it necessary to elaborate again in detail and unnecessarily in this case each appeal claim, as long as they are specifically singled out especially in the contested decision of the contracting authority. Among other things, in the contested decision of the contracting authority and in the review expert's report, explanations were given regarding the complaining statements. The panel notes that the reasons given in the expert's report are professional and well argued with material evidence, without the need to describe them again. Therefore, the Panel supports the explanations of the examining expert who explained in his expert report, as well as supports the expert's recommendation that the case be re-evaluated for LOT 1 and the complaint be classified as grounded. For this reason, the CA representative also agreed that the matter should be re-evaluated and the evaluation of the offers should be made in accordance with article 59 and 72 of the LPP for all participating EOs.

- Conclusion -

Based on the above, the Review Panel considers that CA has acted contrary to the provisions of Article 7, 59, 60 and 72 of the LPP, cited in the Complaint. The Review Panel considers that the actions and acts of the CA, and the evaluations of the review expert regarding the fulfillment or not of the conditions described above and the complaint statements in this case constitute a sufficient basis for the procurement activity to be re-evaluated because otherwise it will conflict with the scope of the LPP and the argumentative basis of the appeal claims, which the Panel evaluates according to its independent assessment in terms of Article 104 in relation to Article 105 of the LPP. The return of a procurement activity based on a contested legal re-evaluation is in harmony with Article 1 of the LPP, according to which, the purpose of this Law is, among others, quoted: "...to ensure the integrity and responsibility of public officials, civil servants and other persons who perform or are involved in a procurement activity, requesting that the decisions of such individuals and the legal and factual basis for such decisions, are not influenced by personal interests, are characterized by non-discrimination and with a high degree of transparency and, to be in accordance with the procedural and essential requirements of this law".

Regarding Article 105, taking into account the requirement of Article 104, paragraph 1, of the cited Law according to which, quoted: "The procurement review procedure will be implemented and carried out in a fast, fair and non-discriminatory manner, which aims at the fair, legal and effective resolution of the matter..." Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations, which may arise during a procurement activity.

Therefore, from the above, the review panel in accordance with article 117 of the LPP decided as in the provision of this decision.

President of the Review Panel

Mr. Vedat Poterqoi

Legal advice:

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

Decision to be submitted to:

1x1 CA – **MUNICIPALITY OF PEJA;**

1x1 EO – **“ALFA.i”;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.