



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

Psh. No.1013/23,1015/23

The Procurement Review Body through the Review Panel composed of Vjosa Gradinaj Mexhuani as President, deciding on the complaint of the economic operator "KIGA" Sh.P.K. with no. 1013/23 dated 14.12.2023 as well as the complaint of the economic operator "NTP Burimi" with no. 1015/23 dated 14.12.2023 against the Notice on the Decision dated 29.11.2023 of the Contracting Authority – Peja General Hospital related to the procurement activity with title: "Supply of pellets" with procurement number 70030-23- 8606-1-1- 1, on the basis of Article 105 in relation to Article 106 and Article 117 of the LPP, after consideration in the session without the presence of the parties on the 29.01.2024 has issued this:

DECISION

I. It is dismissed as not allowed, the complaint of the economic operator "KIGA" Sh.P.K. with no. 1013/23 dated 14.12.2023 against the Notice on the Decision dated 29.11.2023 of the Contracting Authority - Peja General Hospital regarding the procurement activity entitled "Supply of pellets" with procurement number 70030-23-8606-1-1 -1.

II. It is approved as grounded the complaint of the economic operator "NTP Burimi" with no. 1015/23 dated 14.12.2023 against the Notice on the Decision dated 29.11.2023 of the Contracting Authority - Peja General Hospital regarding the procurement activity entitled "Supply of pellets" with procurement number 70030-23-8606-1-1 -1.

III. Cancelled the Notice on the Decision of the Contracting Authority dated 29.11.2023 for the cancellation of the procurement activity with the data as in points I and II of the decision, while the procurement activity is returned to re-evaluation.

IV. The Contracting Authority - Municipality of Podujeva is obliged to implement this decision and within ten (10) days after the acceptance of the decision to send to PRB the notification regarding the actions taken for its implementation, all this under the warning that in case of non-implementation of this decision, PRB will take measures against the Contracting Authority in accordance with Article 131 of the LPP.

V. It is allowed to return the fees of the complaints in the amount deposited so that the complaining economic operators are obliged to submit a request for the return of the fee within the period of sixty (60) days after the acceptance of this decision in accordance with article 31 paragraph 6 of the Rules of Procedure of PRB, under the warning that if the request is not submitted within the deadline, the deposit will be confiscated and all deposited funds will go to the budget of the Republic of Kosovo.

REASONING

- Procedural facts and circumstances -

Peja General Hospital, in the capacity of the Contracting Authority, on the 14.08.2023, has published the Contract Notice B05 related to the procurement activity entitled "Supply of pellets" with procurement number 70030-23-8606-1-1-1.

This procurement activity was developed through an open procedure with the type of contract for supply and with an estimated contract value of 180,000.00 €.

On the 29.11.2023, the Contracting Authority has published the Notice on Decision B58 through which it has recommended for the contract the group of economic operators "NTP Gresa Commerce & MBB Construction" Sh.P.K.

Both complaining economic operators within the legal deadline submitted requests for reconsideration against the notification on the decision, but the contracting authority, through the relevant decisions, rejected these requests for reconsideration as unfounded.

On 14.12.2023, the complaining economic operator "KIGA" Sh.P.K. submitted to the PRB the complaint no. 1013/23, also dated 14.12.2023, the complaining economic operator "NTP Burimi" submitted to PRB the complaint no. 1015/23.

During the preliminary review of the complaint, the Review Panel found that both complaints contain all the elements defined through Article 111 of the LPP and as such were submitted within the legal term in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for resolution of disputes in the sense of article 108/A of the LPP, from economic operators who are interested parties according to article 4 paragraph 1 sub-paragraph 26 of the LPP. In this way, the Review Panel has concluded that it is competent to review these complaints according to Article 105 of the LPP and there is no procedural obstacle to proceed with reviewing the complaints in a meritorious manner.

Taking into account the fact that both complaints are related to the same procurement activity, respectively with the notification on the same decision of the Contracting Authority related to this procurement activity, it has been decided that complaint no. 1013/23 and complaint no.

1015/23 to be joined and treated as a unified case in the sense of Article 16 paragraph 1 of Regulation no. 01/2020 of the Work of the Procurement Review Body.

Regarding the handling of this activity, PRB has authorized two expertises, dated 22.12.2023 and dated 21.01.2024, that both experts have recommended that this activity should be returned to the Authority for reassessment, which according to them has acted in violation of the article 59 and 72 of the LPP.

- Administration and evaluation of evidence -

Claims of the complaining economic operator "KIGA" Sh.P.K. are presented as follows: "The recommended GOE did not provide an original a2 technical certificate or a notarized copy, but obtained the certificate and pellet analysis from the Internet and attached it to the offer, so these certificates are not in the name of any of the operators who have applied in this tender, CA instead of eliminating this EO in this particular case has recommended this EO for contracts even though it is irresponsible. The recommended GOE is irresponsible as it did not fill out the tender form properly and also did not submit the price list and immediately had to be eliminated according to the UPP in accordance with Article 10." Referring to the claims as above, the operator economic complainant "KIGA" Sh.P.K. considers that the Contracting Authority has acted contrary to Article 1, 6, 7, 59 and 60 of the LPP. The complaining economic operator has asked the PRB Review Panel to approve the complaint so that the procurement activity is reassessed.

The claims of the complaining economic operator "NPT Burimi" are presented as follows:

"In the reasoning of the Decision of the CA it is stated that we have not met the requirements of the TDS, respectively: Your offer is irresponsible and has the status of an eliminated offer: Offer of your company: In requirements 9.1&9.2 of TDS requirement 2 ISO Certificate. You have no ISO credentials. This does not hold at all because we possess the ISO Certificate required by TDS and these are evidences which can be verified as having existed before the date of submission of the offers and in accordance with article 72 point 3 we should have been requested and not eliminated by damaging it the budget of the CA in the amount of: 15600 euros. ISO certificates are documents that can be verified when they existed, and the CA had to ask for these certificates in accordance with Article 72.3." Referring to the claims as above, the complaining economic operator "NTP Burimi" considers that the Contracting Authority has acted in violation of Article 1, 59, 69 and 72 of the LPP. The complaining economic operator has asked the PRB Review Panel to approve the complaint so that the procurement activity is reassessed.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 22.12.2023 authorized the review expert to conduct the initial review of the file and claims according to complaint no. 1013/23, while on 18.12.2023 the Review Panel authorized the review expert to conduct the initial review of the dossier and claims according to complaint no. 1015/23. Regarding complaint no. 1013/23 dated 22.12.2023, the review expert's report with no. 2023/1013 with the following recommendations: "the complaint is approved as partially founded, the contract award notice is canceled and it is recommended that the matter be reassessed". Regarding complaint no. 1015/23 dated 18.12.2023, the review expert's report with

no. 2023/1015 with the following recommendations: "the complaint is approved as grounded, the contract award notice is canceled and it is recommended that the matter be reassessed".

After the administration and assessment of evidence, the Review Panel takes into account the nature of the activity/seasonal, related to complaint no. 1013/23 and complaint no. 1015/23 authorized the review expert to prepare a super expertise. Regarding complaint no. 1013/23 dated 22.01.2024, the review expert's report - super expertise with no. 2023/1013 with the following recommendations: "Based on the above-mentioned clarifications, the review expert recommends to the review panel that the complaint of the complaining EO be dismissed as unauthorized." Regarding complaint no. 1015/23 dated 22.01.2023, the review expert's report - super expertise with no. 2023/1015 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 grounded, the contract award notice be canceled and recommends that the matter be reassessed".

The Review Panel has assessed that the conditions have been met to decide on this case without a hearing in the sense of Article 24 paragraph 1 of the Rules of Procedure of the PRB, taking into account that the claims of the parties and their submissions, the evidence as well as the reports of the review experts provide sufficient data to decide on the merits of the case.

Review expert through report - super expertise no. 2023/1013 dated 22.01.2024, regarding the claims of the complaining economic operator "KIGA" Sh.P.K. has briefly assessed as follows:

The review expert clarifies that the Contracting Authority during the drafting of the tender dossier for this procurement activity, among others, in the requirements set in the tender dossier and in the contract notice (Requirements and Evidence), specifically in the Requirements on technical and/or professional opportunities article 9.1 & 9.2, has defined the requirements (documents) for Economic Operators as follows: Requirement 1. The economic operator must provide evidence that he has successfully completed contracts for the same supplies, carried out in the past three years (20, 21, 22) before the date of publication of this contract notice, in value of at least; 270,000 euros. In case the consortium leader must have at least 60% of the turnover value. Required documentary evidence: Evidence 1. EO must provide evidence a). The list of contracts executed during the last three years (from the date of publication of this contract notice) signed and sealed by the EO. b). References or reports of acceptance of supplies in copies signed and sealed by the relevant Authority which must indicate the number of the procurement or contract, the value of the contract, the date of signature of the contract, and the place of realization. Remarks No contract will be considered if it is not attached positive reference or reports of receipts of supplies made for a public or private authority in, for proof must be submitted reports of receipts or references (in references the value should be mentioned) of issued by such authority. The Review Expert explains as follows: In the offer submitted by the Group of Economic Operators "KIGA SH.P.K." "LIKI GROUP SH.P.K", the list of contracts and the list of sales for fuel pellets were presented. To clarify it better, EO "KIGA LLC" has presented a list of 64 contracts worth 769,129.39 euros attached with some references to completed contracts, while from the member of this group-consortium EO "LIKI GROUP SHPK, it is presented the sales list for PELET fuel in the amount of 436,029.75 euros, as well as

with Invoices as proof of the sale of PELET fuel. However, we clarify that the contracts presented in this list by EO "KIGA SHPK", contracts with serial numbers 6, 7, 41 and 64 are contracts for the same supplies according to the request in the tender dossier, the total value of which is 106,576.91 euros. therefore, for these contracts, only one reference has been attached as evidence for the same supplies. Regarding the request in question, the Review Expert explains that the CA has requested that "the economic operator must provide evidence that he has successfully completed contracts for the same supplies, carried out in the past three years (20,21,22) before the date of publication to this contract notice". So according to the above request in the tender dossier, in terms of public procurement: The term "same" means a supply, service or work that is the same (identical) as the subject of the contract, therefore the other contracts in this list are not contracts for the same supplies, cannot be taken as a basis for calculation. Moreover, in relation to the definition of the terms "same" and "similar" in the sense of the contracts executed in the last three years, KRPP dated 09.06.2023, has given an Opinion which is published in the questions of frequency, namely opinion number 11. The reviewing expert, always based on the request of the tender file, where it is stated that "The economic operator must provide evidence that he has successfully completed the contract for the same supplies, carried out in the past three years (20,21,22) before the date of publication of this notice for contracts, in value of at least; 270,000 euros. In this case, the leading consortium needs at least 60% of the turnover value", as well as based on what was said above, also against the fact that the member of the consortium EO "LIKI GROUP SH.P.K", has presented the sales list for PELET fuels in the amount of 436,029.75, however, I consider that, based on the requirements of the tender dossier, the list of contracts presented by EO "KIGA SHPK", in this case as the leader of the consortium, does not meet the requirements of the tender file, therefore the Group of Economic Operators "KIGA SH.P.K."; "LIKI GROUP SH.P.K" is irresponsible in this procurement activity. This finding is based on the fact that, since the CA in the tender dossier with this request has defined the threshold that, "In this case, the leading consortium must have at least 60% of the turnover value". While EO "KIGA ShPK", since in this procurement activity it is defined as the leader of the consortium, based on the documentation presented with the offer, it has not provided evidence of contracts for the same supplies, carried out in the past three years for at least 60% of the turnover value as requested in the tender file. Further, the reviewing expert clarifies that the Contracting Authority during the drafting of the tender dossier for this procurement activity, among others, in the requirements set in the tender dossier and in the contract notice (Requirements and Evidence), specifically in the Requirements on technical possibilities and/ or professional Article 9.1 & 9.2, has defined the requirements (documents) for Economic Operators, as follows: Requirements on technical and professional opportunities: Requirement 3. THE BIDDER MUST SUBMIT THE TECHNICAL ANALYSIS OF THE A-TEST PELLET, THIS ANALYSIS MUST BE FROM A LICENSED INSTITUTION. MUST HAVE TECHNICAL CERTIFICATE N+A2. Documentary evidence required: Evidence 3. TECHNICAL ANALYSIS OF THE A-TEST PELLET BY A LICENSED INSTITUTION- MUST HAVE TECHNICAL CERTIFICATE N+A2 ORIGINAL OR NOTARIZED COPY. The Review Expert, after reviewing and administering the case documents, facts/evidence documented in the electronic e-procurement platform, based on the high demand of the tender dossier as a reason for the elimination of the complaining EO from the CA, clarifies that: CA in

the tender dossier requested "O. THE BIDDER MUST SUBMIT THE TECHNICAL ANALYSIS OF THE A-TEST PELLET, THIS ANALYSIS MUST BE FROM A LICENSED INSTITUTION. MUST HAVE TECHNICAL CERTIFICATE N+A2", Whereas, in the offer submitted by the Group of Economic Operators "KIGA SH.P.K"; "LIKI GROUP SH.P.K" has presented the test report for the technical analysis. The reviewing expert took into account what was said above, the complaining claims of the complaining EO against the recommended EO for the contract have not been reviewed at all, due to the fact that the Group of Economic Operators "KIGA LLC"; "LIKI GROUP SH.P.K" has not presented facts and evidence regarding the verification of the asserted facts that the assessment of the CA does not hold and/or is illegal, therefore it is irresponsible in this procurement activity, entitled: "SUPPLY OF PELET" with no. of procurement: "70030- 23-8606-1-1-1", initiated by the Contracting Authority (CA) - General Hospital - Peja.

Therefore, the complaining Economic Operator "KIGA LLC" can be considered as a party without material legal interest, in accordance with Article 4.1.26 of the LPP, which defines: "Interested party - the person who can prove a material interest from the result of the activity of procurement implemented by the contracting authority in relation to a particular public contract or design competition involving any person who has been or may be at risk of harm from an alleged violation", always based on the above clarifications mentioned as and based on the Notice of the PRB dated 09.02.2023 published on the PRB website, namely point a), where it is stated that: "a) If the complainant does not present any facts or facts and evidence regarding the certification of the asserted facts that the assessment does not hold and/or is illegal, respectively the attacked act of the CA for its elimination and/or does not argue the basic fact/assertion, that it is responsible for the procurement activity for which it exercised complaint". Also, the Review Expert clarifies that: Paragraph 2 of Article 24 of the LPP defines, we quote: "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in full compliance with this law". According to article 59 of the LPP, examination, evaluation and comparison of tenders is the full competence and responsibility of the Contracting Authority, so that paragraph 4 of article 59 of the LPP, defines as follows, we quote: "The contracting authority will consider a tender as responsive only if the tender in question is in compliance with all 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) 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 shall be quantified, as far as possible, and taken into account during the evaluation and comparison of tenders".

According to the above, the argumentation in the review expert's report dated 22.01.2024 is quite detailed, understandable and fully based on the relevant documents that refer to the procurement activity. The findings in the review expert's report can be confirmed through the tender file as well as the documents with which the tenderers have offered. Moreover, the findings of the review expert are also based on the relevant provisions of the LPP and RRPP. Consequently, the

Review Panel regarding the claims of the complaining economic operator "KIGA" Sh.P.K. has put full faith in the review expert's report.

Review expert through report - super expertise No. 2023/1015 regarding the claims of the complaining economic operator "NTP Burimi" has assessed as follows:

The review expert, after reviewing and analyzing the tender documentation and case documents in the e-procurement platform, always based on the above-mentioned request in the tender file, clarifies that: CA in the tender dossier requested "Certificate for the Management System of Quality EN - ISO 9001 2015 NOTE CERTIFICATES OF THE SAME NATURE (-ISO 9001) AND MORE ADVANCED ARE ACCEPTED". Based on the wording of this request, the CA in this request did not specify that the bidding EO should offer the "EN-ISO 9001 2015 Certificate" on its behalf, i.e. on behalf of the bidding EO, therefore according to this description of the said request in the file of the tender, I consider that the request as such has been left open by the CA. Given that, the CA in the tender dossier did not request the EN-ISO 9001 2015 Certificate to be in the name of the bidding Economic Operators, the complaining EO submitted the valid ISO 9001:2015 Quality Management System in the name of the Economic Operator "HD& Pellet", therefore, based on the clarifications mentioned above, the complaining EO fulfills the request of the tender file. This finding is based on the fact that: Paragraph 3 of Article 56 of the LPP defines: "The tenderer, during open procedures, or the candidate, during limited procedures and competitive procedures with negotiations, will not be disqualified or excluded from such procedures in basis of any request or criterion that is not mentioned in the contract notice and in the tender dossier".

The review expert explains that, for this procurement activity, it is seen that EO "N.P.T. Source", is based on the capacity of another EO, this finding is based on the fact that, in the documentation presented in the offer by the complaining EO, because related to Request No. 3 "Request 3. THE OFFER MUST SUBMIT THE TECHNICAL ANALYSIS OF THE PELLETS A-TEST, THIS ANALYSIS MUST BE FROM A LICENSED INSTITUTION. MUST HAVE TECHNICAL CERTIFICATE N+A2", according to the said request, the complaining EO "Technical Analysis of Pellet" submitted it on behalf of the Economic Operator "HD& Pellet", therefore this document was acceptable for the CA in this case. Therefore, based on the aforementioned clarifications, I consider that, during the evaluation of the tender, the CA should not have double evaluation standards for the requirements of the tender dossier which are not clearly specified. In accordance with Article 17.12 of the RRPP, "... Each sentence in the tender file will be well drafted, since the tender file is the basic material, on the basis of which the economic operators will create their tenders. Provisions of the Law on Public Procurement and legislation secondary require the Contracting Authority to specify the criteria, conditions, requirements, evidence and specifications in the tender file and contract notice in a clear, non-discriminatory and comprehensible way for the Economic Operators. 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.

Regarding support in financial, technical and/or professional capacities, the Reviewing Expert clarifies that: Paragraph 4 of Article 68 of the LPP regarding the economic and financial situation, defines: An economic operator may, when it is appropriate and for a contract in particular, to rely on the capacities of other entities, regardless of the legal nature of the ties it has with them. He must in this case prove to the contracting authority that it will have the necessary resources available, for example, by producing an undertaking from those entities for this purpose. Under the same conditions, a group of economic operators can rely on the capacities of participants in the group of other entities". Paragraph 8 of Article 69 of the LPP also defines the same regarding technical and/or professional ability. 8. An economic operator may, when appropriate and for a specific contract, rely on the capacities of other entities, regardless of the legal nature of the ties it has with them. He in this case must prove to the contracting authority that it will have available the necessary resources for the execution of the contract, for example, by producing an enterprise from those entities in the country the necessary resources available to the economic operator. Under the same conditions, a group of economic operators can rely on the skills of the participants in the group or on other subjects”.

Based on the aforementioned provisions, a company (Economic Operator in the sense of this law) is allowed to rely on the financial, technical and professional capacities of another company in accordance with paragraph 4 of article 68, and paragraph 8 of article 69 of the LPP- so that his tender is in compliance with the requirements established in the Tender dossier and in the Contract Notice as required by paragraph 4 of article 59 of the LPP.

Regarding tender clarifications, paragraph 1 of article 72 of the LPP defines: "When the information or documentation that must be submitted by economic operators is or appears to be incomplete or incorrect, or when specific documents are missing, the contracting authorities may require economic operators to submit, complete, clarify or complete the appropriate information or documentation within a certain time limit, provided that such requests are made in full compliance with the principles of equal treatment and transparency”.

So, 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, Provision of missing information or provision of information will be applied only to documents whose existence is fixed, before the deadline for tender submission and can be objectively verified.

So, according to the provisions mentioned above, for any evidence required according to articles 65-71 of this law, the CA may request additional clarifications from the EOs in accordance with article 72 of the LPP. The review expert, based on the above-mentioned findings and clarifications, also taking into account the documents of the case presented in this report, as well as based on the requirements of the tender file, consider that the CA did not evaluate the tender in accordance with paragraph 4 of article 59 of the LPP. Paragraph 4 of Article 59 of the LPP defines: "The contracting authority will consider a tender as responsible 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".

The CA regarding the expertise received for the complainant KIGA LLC has stated as follows: Regarding the expertise dated: 22.12.2023, no. 2023/1013, for the "PELLET SUPPLY" tender with no. of procurement: "70030-23-8606-1-1-1", CA - General Hospital - Peje declares that it does not agree with the opinion of the expert. and regarding the complainant "N.P.T. Burimi", Regarding the expertise of the date: 28.12.2023 for the "PELLET SUPPLY" tender with no. of procurement: "70030-23-8606-1-1-1", CA - General Hospital- Peje declares that it does not agree with the opinion of the expert for the following reasons. The reviewing expert has not analyzed that these ISO standards are not in the name of the complaining company BURIMI, these ISO standards are in the name of the economic operator HD& Pelet, which is not a participant in this procurement activity, and as such are unacceptable. As for the report of the super-expertise regarding GOE KIGa has stated that it agrees, but regarding EO Burimi it does not with the same reasoning as above.

According to the above, the examining expert according to the report of the super-expertise dated 22.01.2024, - the panel judges that the same has handled in a professional and objective manner all the claims of the complaining economic operator "NTP Burimi". The argumentation in the review expert's report is quite detailed, understandable and fully based on the relevant documents that refer to the procurement activity. The findings in the review expert's report can be confirmed through the tender file as well as the documents with which the tenderers have offered. Moreover, the findings of the review expert are also based on the relevant provisions of the LPP and RRPP. Consequently, the Review Panel regarding the claims of the complaining economic operator "NTP Burimi" has given full confidence to the review expert's report.

-Findings of the Review Panel -

The review panel independently and objectively, conscientiously and professionally evaluated all the evidence of the case. In this way, it was found that the Contracting Authority acted in violation of Article 59 of the LPP.

In the preliminary review phase, regarding the complaint submitted by GOE "KIGA LLC"; "LIKI GROUP SH.P.K" PRBO has determined that the complaint in the present case was submitted within the legal deadline as provided by Article 109 paragraph 1 and was exercised after the preliminary procedure for resolving disputes, as this is also required in the sense of Article 108/A of LPP, however, the complaint does not contain all the essential elements foreseen by the provision of article 111 of the LPP. In fact, according to paragraph 1.5 of article 111, it is required that the complainant prove the fact, quoted: "that he qualifies as an "interested party" as this expression is defined in article 4 of this law". But according to article 4, paragraph 1.26. it is expressly provided that the interested party is considered the person [meaning: physical and/or legal] who, as stated, cited "can demonstrate a material interest from the result of the

procurement activity implemented by the contracting authority in relation to a special public contract or ...".

In this case, viewed in the general context of the documents of this case, the course of the procurement activity, acts and actions of the parties involved, it is not disputed that the appellant was eliminated from this procurement activity with the now contested decision of the contracting authority. However, the appellant did not attack the above-mentioned decision of the contracting authority on the basis of the causes and reasons expressly required by paragraph 1.8. of article 111 of the LPP, according to which the complainant is required, quoted: "to describe the way in which the alleged violation has caused or threatens to cause material damage to the complainant..." Thus, in the context of explanations such as above, the PRB notes that:

- that the complainant has not filed a complaint to prove his/her material interest, as required by paragraph 1.26. of Article 4;
- did not exercise the complaint in accordance with paragraph 1.8 of article 11, according to which it is required to describe the way in which the alleged violation has caused or may cause material damages;

Analyzing all this, the PRB in this case considers that it should refer to the provision of Article 31, paragraph 2, of the Regulation on the work of the Procurement Review Body, according to which, quoted: "...the panel should consider the complaint as unfounded, even if there was no violation of the law, the complainant would have no chance of winning the tender". Therefore, in the present case, it is established that the complainant does not have the status of the interested party, which is considered a necessary condition for the review and meritorious decision in the sense of Article 105 of the LPP, according to which the PRB has competences, authority, power and responsibility, in within the conditions specified in this Part IX that examine complaints from, quoted "interested parties". Group of Economic Operators "KIGA SH.P.K."; "LIKI GROUP SH.P.K" has not presented facts and evidence regarding the verification of the asserted facts that, according to him/her, the evaluation of the CA does not really hold and/or is illegal, therefore it is irresponsible in this procurement activity.

As for the claims of EO "NTP Burimi", the Review Panel, based on the report of two review experts, found that the CA in the tender file had not expressly requested the EN-ISO 9001 2015 Certificate to be in the name of the EO, while on the other hand The complainant in his/her offer has presented a valid ISO 9001:2015 [Quality Management System] on behalf of EO "HD& Pelet", In this regard, the experts have recommended that the CA in the re-evaluation procedure for any evidence required under Article 65- 71 of this law, may request additional clarifications from the EOs in accordance with article 72 of the LPP.

Therefore, the review panel, based on the above-mentioned findings and clarifications, also took into account the case documents presented in this report, as well as based on the requirements of the tender file, clarifies that the CA did not evaluate the tender in in accordance with paragraph 4 of article 59 of the LPP. Paragraph 4 of Article 59 of the LPP which defines: "...The contracting authority will consider a tender as responsible only if the tender in question is in compliance with all the requirements set forth in the contract notice and in the tender dossier.. ." It is also non-

disputable that the CA has made evaluations with double standards, acting contrary to Article 7 of the LPP, as explained above by the review expert without the need to quote them again. The panel clarifies that the CA must always take into account and act in accordance with article 17.12 of the RRPP cited "... 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. Provisions of the LPP and legislation secondary require the CA to specify the criteria, conditions, requirements, evidence and specifications in the tender file and contract notice in a clear, non-discriminatory and understandable manner for Economic Operators. 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.

Therefore, the Review Panel after the administration and assessment of the evidence, the complete ascertainment of the factual situation, relying on the LPP as applicable material law and the recommendations of the review experts, has found that the complaint GOE "KIGA SH.P.K." "LIKI GROUP SHPK". should be dismissed as unauthorized while the complaint of EO "NTP Burimi" should be approved as well-founded, therefore the panel has decided to cancel the Notice on the Decision dated 29.11.2023 of the CA, related to the procurement activity entitled "Supply with pellets" with procurement number 70030-23-8606-1-1-1, while the procurement activity is returned to re-evaluation.

The Review Panel requests the Contracting Authority to be attentive during the public procurement procedures, acting in full compliance with the LPP and other legislation in force for public procurement, as well as to act in harmony with the findings of this decision. The Panel emphasizes that the Tender Dossier is the main document on the basis of which the bidder prepares his offer, the offer must be evaluated by the CA based on the requirements, conditions and criteria defined in the Tender Dossier and in the contract notice pursuant to Article 7 related to article 56.3 of the LPP.

The Review Panel has decided in accordance with the legal powers and in the sense of articles 1, 6, 7, 103, 104 paragraph 1, article 105 and article 117 of the LPP for the implementation of the procurement review procedure in a fast, fair, without discrimination, with the aim of legal and effective resolution of the case.

Regarding the appeal fee, it was decided in accordance with article 31 paragraph 4 and paragraph 6 of the PRB Work Regulations.

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

President of the Review Panel

Mrs.Vjosa Gradinaj

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 – **General Hospital - Peja;**

1x1 EO – **“KIGA " SH.P.K., N.P.T. " Burimi ";**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.