



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

Psh. No.970/23

The Review Panel, appointed by the President of PRB, based on Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosovo (LPP) composed of Vedat Poterqoi - President, Isa Hasani - Member and Vjosa Gradinaj Mexhuani - Member, deciding according to the complaint of the Economic Operator (EO) “Gëzime S. Gashi B.I”, against the Decision for contract award of the Municipality of Prishtina, in the capacity of the Contracting Authority (CA) related to the procurement activity “Supply of pellets" with procurement number 616-23-6338-1-1-1, on the 09.01.2024 has issued this:

DECISION

1. Approved, as partly grounded the complaint of EO “Gëzime S. Gashi B.I”, with protocol no.970/2023, of the 04/12//2023, whereas the decision of CA -Municipality of Prishtina, related to the procurement activity “Supply of pellets" with procurement number 616-23-6338-1-1-1, is cancelled, and the procurement activity is returned to Re-evaluation.
2. Within 10 days, the CA must inform the PRB about all the 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 by the provisions of Article 131 of LPP.
3. The funds deposited in the name of the tariff tax for submitting the complaint to the account of the Economic Operator “Gëzime S. Gashi B.I. are returned.

REASONING

-Procedural facts and circumstances-

On the 21.06.2023, the Municipality of Prishtina, in the capacity of the Contracting Authority, has published the contract notice for the procurement activity entitled: Supply of pellets" Whereas on the 16.11.2023 the Notice on the decision of the Contracting Authority where it awarded with contract "DHF Company SHPK".

This procurement activity was developed through an open procedure with the type of supply contract and with an estimated contract value of 438,000.00 €.

On the 21.11.2023, EO "Gëzime S. Gashi B.I" submitted a request for reconsideration against the aforementioned decision of the CA. On 24.11.2023, the Contracting Authority rejected the request for reconsideration as unfounded.

On the 04/12/2023, PRB has received the complaint from EO "Gëzime S. Gashi B.I" with no. 970/23 related to the activity "Supply of pellets" with procurement number 616-23-6338-1-1-1.

-On the preliminary review stage-

The Review Panel has concluded that the complaint contains all the elements defined through Article 111 of the LPP and as such was submitted within the legal term in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for resolving disputes in the sense of Article 108/A of the LPP, from the economic operator who is an interested party 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 this complaint according to Article 105 of the LPP and there is no procedural obstacle to proceed with reviewing the complaint in a meritorious manner.

The claims of the complaining economic operator "Gëzime S. Gashi B.I" are presented as follows:

- Claims of the Economic Operator: "A total of 12 economic operators have bid in this procurement activity. In the first evaluation, EO DHF Company SHPK was recommended for the contract at a price of €237,744.00. We had been sent the standard letter for unsuccessful tenderers. After this announcement on the decision, we had submitted a request for reconsideration and then a complaint to the PRB with claims that the EO recommended for the contract is irresponsible. In relation to our complaint, the expertise of the reviewing expert was issued dated 09.10.2023 with no. 2023/0733 which had recommended that the matter be returned for reassessment and that clarifications be requested from the EO recommended for the contract regarding the evidence for the value of the contracts. Likewise, the review panel with its decision No. 2023/0733 dated 02.11.2023 had decided that the matter should be reassessed and that the evidence of the EO recommended for the contract should be clarified, related to contracts and references. After returning the case for re-evaluation, the contracting authority acted the same by favoring the EO recommended for the contract and by discriminating against us as a responsible economic operator with a lower price. The contracting authority issued a notice on

the new decision dated 16.11.2023, where the same economic operator DHF Company LLC was again recommended for the contract. After receiving this notification, we have requested access to the documentation of the EO recommended for the contract and we have noticed that this EO has been asked for additional clarifications regarding the references and the value of contracts of a similar nature. Even in this evaluation, the Responsible Procurement Officer and the Evaluation Commission in the Municipality of Pristina did not apply the principles of public procurement, especially objectivity, and did not take into account the purpose of the LPP. Also, they have not strictly implemented the requirements of the decision of PRB with no. PRB: 2023/0733 for the reevaluation of offers. The actions of the contracting authority favoring the recommended EO at all costs are completely contrary to the welfare of school students and children in kindergartens. In the Standard Letter of the request for clarification of the tender dated 08.11.2023, which was addressed to EO "DHF COMPANY" SH.P.K., it was requested to submit these documents, quote "Based on Article 72 of the LPP, we ask you to to deliver: 1. Contracts, 2. References, 3. Evidence of payments through the underlined bank or certificates for making supplies according to the list of contracts submitted according to Annex 6 and the DT (The references must be the sums of values in euros (€) contracted, beginning and end of supply.) not less than 400,000.00 €" end quote. EO "DHF Company LLC" in the list of supplies in the last three years has listed supplies made in the amount of 400,000.00 € with these EOs: Ahmetaj Group LLC - supplies made according to the list of supplies in the last three years 187,895.6 5 €; Jusaj Metal LLC - supplies made according to the list of supplies in the last three years 163,730.03 €; and Lira - M NPT - supplies made according to the list of supplies in the last three years 89,567.16 €. First of all, we clarify that the contracts that were made with the supply of oil are not contracts of a similar nature, because similar are the contracts that deal with wood and pellets, and contracts with derivatives such as oil, gasoline, etc. The contract and the references on which the EO recommended for the contract was based and which the contracting authority took into account, and which really should not have been taken into account, are as follows:

The contract with "AHMETAJ GROUP SHPK" During the review of the evidence provided by EO DHF Company SHPK with clarifications for the re-evaluation process, we noticed that the bank turnover for the alleged completed contracts were not proven with evidence that proves the authenticity of the contracts and turnover amounts presented in the list of supplies and references submitted with the tender dossier. Although in the Standard Letter of the request for clarification of the tender dated 08.11.2023 which was addressed to EO "DHF COMPANY" SH.P.K., evidence of payments through the underlined bank or certificates for making supplies according to the list of contracts were requested, EO DHF Company LLC has not submitted these proofs of supplies made with EO Ahmetaj Group LLC confirmed by the bank as requested by CA. The document provided by EO DHF Company SHPK to confirm the supply made to EO Ahmetaj Group SHPK entitled "Circulation in the period from 20.04.2021 to 10.08.2022" is not a reliable document because it is neither sealed nor signed by the bank's responsible officials. It can be converted to word and filled in and changed, so it is not scanned. Also in this document it is stated that the beneficiary is EO Ahmetaj Group SHPK (which is the buyer in the contract) and not EO DHF Company SHPK (which is the seller in the contract) and this is contrary to what was requested. In addition, the criterion of the economic and financial condition in the tender file was requested to be fulfilled by the participants in the tender, in the specific case EO

DHF Company ShPK recommended for awarding the contract and not by EOs that did not participate in the tender as is the case with Ahmetaj Group LLC. In addition, the amount of turnover presented in these two documents received from the bank is 149,552.00 €, which is not the same amount of turnover that EO DHF Company has presented in the list of supplies made in the last three years with EO Ahmetaj Group LLC of 187,895.65 €. We have also compared the format of the document for bank circulation provided by EO DHF Company SHPK, which bears the logo of Bank NLB, with the proof of circulation that NLB Bank has issued to us as EO and we have noticed that there are substantial differences between two documents issued by the same bank for the same purpose! The contract signed between EO DHF Company SHPK and Ahmetaj Group SHPK is also unconvincing because it does not contain the name of the person authorized to sign the contract on behalf of EO Ahmetaj Group SHPK. So there is no name and surname of who signed it, so it must be verified if this contract is valid. The objections to the documents show that these testimonies cannot be taken into account because they do not meet the requirements of the tender file. The contract appears to have been signed on March 29, 2019, and was concluded for three years with the possibility of extension. The contract is valid until the end of March 2022. The reference states that it was issued for the period 01.05.2020 to 30.04.2023 and is 187,895.65 Euros. In the list, the period of the end of the contract from 01.05.2020 to 30.04.2023 is 187,895.65 Euros. It turns out that the reference is not issued for the presented contract, because there are other supply periods. There is no reference to the period March 2019-March 2022 as the contract in question was concluded. Also, there is no annex to the contract that would prove that it is related to the basic contract. In this case, it turns out that the list of contracts does not meet the requirements of the tender file and the tender must be rejected. Therefore, no concrete evidence has been provided regarding the contracts listed in the list. The document issued by NLB Banka for circulation does not match the amount of transactions with the value stated in the list and the value in the reference. Moreover, in the document of NLB Bank, there is no transaction that was made in 2019. This means that for the contract that was presented, there is no evidence that it was completed. Also, in this document, in some cases, it is not written to whom the payment was made, as in serial numbers 1, 3 and 4 of circulation from 01.01.2020 to 31.12.2020. Also in circulation from dt. 20.04.2021 to 10.08.2022, it does not appear to whom the payment was made, as in serial numbers 5, 7, 12 and 14, therefore these transactions, even if they are true, cannot be taken into account, because it is not known to whom they were made and then what these payments were made for. So, even with clarifications, the EO recommended for the contract has not been able to prove that it fulfills the request of the tender file. Providing other evidence with private companies cannot objectively prove the existence of these documents such as contracts, references and other evidence issued only by the company. The contract and the evidence provided in relation to the company Ahmetaj Grup SHPK, apart from not being of a similar nature, cannot be taken into account because they are also invalid documents and do not match one another.

The contract with "JUSAJ METAL SHPK" In the document "List of supplies in the last three years" submitted by EO DHF Company SHPK, the second EO in terms of the size of the realized turnover is EO Jusaj Metal SHPK. In response to the Standard Letter of the request for clarification of the tender dated 08.11.2023 which was addressed to EO "DHF COMPANY" LLC, EO DHF Company LLC for EO Jusaj Metal LLC has provided as proof of circulation a

document in excel kinse issued by Raiffasien bank. The proof of turnover in excel is not evidence confirming the authenticity of the turnover presented in the list of supplies and as such should not be taken as genuine evidence but should be rejected by the Evaluation Committee and the Responsible Procurement Officer as document not certified and not confirmed by the bank. According to this Excel document provided by EO DHF Company SHPK, the payments made by EO Jusaj Metal SHPK to EO DHF Company are 27,940.33 €. Even if it were an official document, sealed and signed by the bank, the amount of turnover is not the same as the amount of turnover which EO DHF Company LLC has declared in the list of supplies made in the last three years with EO Jusaj Metal ShPK, which is 163,730.03 €. In addition, the contract that was signed between EO DHF Company SHPK and EO Jusaj Metal SHPK does not contain the name of the representative of EO Jusaj Metal SHPK. Also, when comparing the signatures of the representative of EO Jusaj Metal SHPK in the reference and the contract for/and with EO DHF Company SHPK, it is noticed that it is not the same signature and this raises even more suspicions that these documents are fictitious. Therefore, we request that they be verified by the PRB. Even in this case, there are conflicting and inconsistent testimonies regarding the value of the transaction and the time of the transaction, respectively the execution of the contract. In the list and reference, it is written Turnover for the period 01.05.2020 to 30.04.2023 is 163,730.03 Euros. In the financial card drawn up by Jusaj himself, it appears that the invoices were made and paid from dt. 31.05.2020, while the document presented as the Bank's shows that the first payment was made to DHF on 27.09.2020, therefore in this case the manipulation of evidence compiled by the EO recommended for the contract is clearly seen. The contract appears to have been signed on 17.12.2019. while in the list it is noted the realization from dt. 01.05.2020-30.04.2022, like all other contracts mentioned in the list. Also in the reference it is written as follows "Circulation for the period 01.05.2020 to 30.04.2023 is 163,730.03 Euro". In this case, there is no match between the reference and the contract, therefore we can freely say that this reference is not for the presented contract because the dates do not match and there is no more note in the reference about which contract it is about. These testimonies are invalid and should not be taken into account, especially when I take into account the fact that even with clarifications, he was not able to testify to the contracts listed in the list. From these testimonies, the inconsistencies of the testimonies can be observed, even though the EO itself has submitted them with clarifications.

The contract with EO LIRA - M NPT Even EO Lira - MNPT has been presented as the third EO in terms of turnover value, corresponding to the realization of contracts, with which EO DHF Company SHPK may have made supplies. The same flaws were also observed in the testimonies that have been offered to EO Lira - M NPT in response to the Standard Letter of request for clarification of the tender dated 08.11.2023 which the Procurement Sector addressed to DHF Company LLC. No proof stamped and signed by the bank has been provided for the circulation presented for EO Lira - M NPT in the List of Supplies in the last three years, but some documents titled transaction details have been provided, which are convertible to word and in which data can be changed. So these documents are suspicious and do not confirm the authenticity of the declared turnover that was carried out with EO Lira-M LLC according to the List of supplies in the last three years of EO DHF Company LLC. The same flaws were also observed in the contract that was signed between EO DHF Company LLC and EO Lira - M NPT,

so the contract does not contain the name of the representative of EO Lira - MNPT and when comparing the signatures of the representative of EO Lira - MNPT in the reference and the contract for/and with EO DHF Company LLC, it is noted that it is not the same signature and this raises even more suspicions that these documents are fictitious.! The contract provided as evidence states that it was signed on 07.12.2017 for a period of three years with the possibility of extension for another three years. From this fact it is understood that this contract ended on 07.12.2020 and there is no evidence for the realization of this contract. The presented reference states that the turnover for the period 01.05.2020 to 30.04.2023 is 89,567.16 Euros". Some suspicious transactions have been offered, although in these transactions it is not stated anywhere what and for what the payments are made. Despite all these dubious claims and testimonies, which do not match each other, even if these transactions were true, they do not match the contract offered by the EO recommended for the contract, because the transactions are for the period 2020-2023, whereas the contract was signed in 2017 and normally ended in 2020. As long as the EO recommended for the contract failed to clarify and prove the value of the contracts even after additional clarifications, then it is clearly understandable that this EO is irresponsible and had to be eliminated from competition and not recommended for contract. For all three of these economic operators DHF Company LLC has also provided circulation cards with them, but these cards do not provide accurate information, because they were prepared by the EO DHF Company LLC and are not confirmed by the EO nor by their banks. For none of the EOs that are presented in the list of supplies made in the last three years, which EO DHF Company SHPK has submitted in the tender file, no proof of circulation has been provided by the banks and this reconfirms our suspicion of DHF Company SHPK has not executed contracts in the value required in the tender file for the procurement activity "Supply of pellets" In our opinion, during the process of re-evaluation of offers for the procurement activity "Supply of pellets" there have been even more serious violations of the Law on Public Procurement, accepting as evidence the documents that are not issued and confirmed by the competent authorities in this case the bank. In addition to these deficiencies noted in the documents mentioned above, we have also noticed that the activity of EO DHF Company LLC is different and contrary to the FPP defined in the tender file for "Supply with pellets". In article 27 "Tender file", paragraph 3, of the LPP it is clearly stated that "Regardless of whether the tender file is required or not, the supplies, services or works under the contract must be described using the general procurement vocabulary and codes the right ones. This is also foreseen in article 17 paragraph 21 of Regulation No. 001/2022 on Public Procurement, where it is stated that the supplies, services and works that are the subject of the contract must be described with the general procurement vocabulary (FPP) and appropriate codes . The appropriate code for the supply of pellets according to FPP 20161000-2 is different from the fuel code for which EO DHF Company has received similar supplies in the last three years. Consequently, according to the opinion of the KRPP dated 09.06.2013, the FPP is also used as a basis for defining the term "similar". In the specific case for the subject of the contract "Supply of pellets", the FPP is 20161000-2, while the references and the list of contracts carried out in the last three years provided by EO DHF Company, are categorized under FPP 23000000-7. This means that there are big differences between contracts with pellets and the like that can also be contracts with wood, compared to contracts with fuels as offered by the EO recommended for the contract. So,

K.K. Prishtina has not respected the legal provisions and the opinion of KRPP regarding the procurement activity "Supply of pellets" and has accepted as similar supplies the list of contracts of the fuel supply category. The differences are big between pellets and fuels, even the boilers are different and the pellet boiler cannot be used for fuels as well. Contracts similar to pellets can be contracts with wood because they are approximately the same composition, while oil and other fuels are of a different nature and cannot be considered similar to pellets. With dt. On 24.11.2023, we accepted the decision to reject the request for reconsideration, and this decision does not contain any concrete reasoning regarding our appeal claims. This action of the CA constitutes a violation of Article 108/A paragraph 9 of the LPP, which states: 1. The refusal will be justified and communicated in writing, in accordance with this law, to the complainant and all parties interested, if any. Moreover, the contracting authority can prevent the further procedure, upon receipt of a written notice from the appellant regarding his willingness to withdraw the request submitted for consideration. The decision of the PRB concluded that the matter should be re-evaluated and additional clarifications should be requested, while the decision of the PRB did not guide the contracting authority that any evidence provided by the EO recommended for the contract should be taken into account. Clarifications can be requested according to article 59.2 and 72 of the LPP, but the evidence provided by the economic operators, in this case the EO recommended for the contract should not be taken as valid and valid if they are not real and if they are not in accordance with the requirements of the FDT and the contract notification. As we mentioned above, the additional evidence that was provided by the EO recommended for the contract is not in harmony with the request of the tender file and does not correspond to each other, they are outside of the last three years, in some cases the payments for however they are made, they are questionable and ultimately do not meet the requirement of the tender file. Therefore, Article 72 of the LPP is used in a favorable way in terms of the EO recommended for the contract. Considering all the shortcomings and flaws of the EO's offer recommended for the contract, it turns out that his offer is irresponsible, while when it should be considered a responsible offer, Article 40.6 of Regulation No. 001/2022 on Procurement clearly states Public, where it is defined as follows: 40.6 The tender will be considered responsive when: a. is in administrative compliance with the formal requirements of the tender file; b. is in compliance in technical terms with the description, requirements and specifications defined in the tender file; c. was submitted by the Economic Operator that fulfills the selection criteria defined in the tender file. So, K.K. Prishtina has not respected the legal provisions and the opinion of PPRC regarding the procurement activity "Supply of pellets" and has accepted as similar supplies the list of contracts of the fuel supply category. The differences are big between pellets and fuels, even the boilers are different and the pellet boiler cannot be used for fuels as well. Contracts similar to pellets can be contracts with wood because they are approximately the same composition, while oil and other fuels are of a different nature and cannot be considered similar to pellets. With dt. On 24.11.2023, we accepted the decision to reject the request for reconsideration, and this decision does not contain any concrete reasoning regarding our appeal claims. This action of the CA constitutes a violation of Article 108/A paragraph 9 of the LPP, which states: 1. The refusal will be justified and communicated in writing, in accordance with this law, to the complainant and all parties interested, if any. In addition, the contracting authority may prevent the further procedure by accepting a written

notification from the appellant regarding his willingness to withdraw the request submitted for consideration. Therefore, the decision for rejection was not justified at all, but the same was referred only to the decision of the PRB, noting that clarifications were requested according to the decision of the PRB. The decision of the PRB concluded that the matter should be re-evaluated and additional clarifications should be requested, while the decision of the PRB did not guide the contracting authority that any evidence provided by the EO recommended for the contract should be taken into account. Clarifications can be requested according to article 59.2 and 72 of the LPP, but the evidence provided by the economic operators, in this case the EO recommended for the contract should not be taken as valid and valid if they are not real and if they are not in accordance with the requirements of the FDT and the contract notification. As we mentioned above, the additional evidence that was provided by the EO recommended for the contract is not in harmony with the request of the tender file and does not correspond to each other, they are outside of the last three years, in some cases the payments for however they are made, they are questionable and ultimately do not meet the requirement of the tender file. Therefore, Article 72 of the LPP is used in a favorable way in terms of the EO recommended for the contract.

Considering all the shortcomings and flaws of the EO's offer recommended for the contract, it turns out that his offer is irresponsible, while when it should be considered a responsible offer, Article 40.6 of Regulation No. 001/2022 on Procurement clearly states Public, where it is defined as follows: 40.6 The tender will be considered responsive when: a. is in administrative compliance with the formal requirements of the tender dossier; b. is in compliance in technical terms with the description, requirements and specifications defined in the tender dossier; c. was submitted by the Economic Operator that fulfills the selection criteria defined in the tender dossier.

The offer of the recommended EO for the contract is administratively and technically irresponsible. The evidence provided by this economic operator differs essentially from the conditions and criteria of the tender file. The recommendation for the contract was not made in harmony with Article 56 of the LPP because the selection criteria as provided for in this provision were not taken as a basis. Legally, the EO recommended for a contract has no possibility of being awarded with a contract, since even Article 25 of Regulation No. 001/2022 on Public Procurement clearly foresees when an Economic Operator can be considered qualified. Article 25.1 According to Article 56 of the LPP, an EO will be considered qualified for participation in the procurement activity if: a. An EO certifies that it is suitable according to Article 65 of the LPP by providing evidence required by the contracting authority and b. Such an EO, in case the CA has determined minimum qualification requirements, fulfills such requirements and proves it by providing evidence requested by the contracting authority in compliance with articles 64 to 69 of the LPP. Likewise, the following provisions of Regulation No. 001/2022 on Public Procurement define as follows: Article 25.2 The eligibility requirements must always be fulfilled by the EO. 25.5

Selection criteria: a. in no way can they be used as criteria for awarding the contract b. cannot have certain weights; c. they are Pass/Fail assessment requirements. So, based on the evidence

mentioned above, it is clear that the EO recommended for the contract did not meet the minimum requirements for qualification, therefore it had to be declared irresponsible. So the selection criteria are the requirements of the Pass/Fail assessment, while in this case these requirements were not met by the EO recommended for the contract, therefore his offer should not be passed further. This fact is also clarified by Guideline No. 001/2023 for Public Procurement, where in Article 8.5 it clearly defines: 8.5 Selection criteria: i. in no way can they be used as criteria for awarding the contract ii. cannot have certain weights; iii. they are evaluation requirements Pass/Fail One or the other The requirements have been met and the tenders submitted by such tenderers are still under consideration, or The requirements have not been met and the tenders submitted by such tenderers will be rejected immediately In the present case the requirements are not have been fulfilled and the tender of the recommended EO for the contract had to be rejected immediately.

Based on all the evidence and facts mentioned above, we conclude that the examination, evaluation and comparison of the tenders was not done in accordance with Article 59 of the LPP, because the EO was recommended for the contract and did not fulfill the all the requirements of the tender file and contract notification. Also, the main criterion for awarding the contract, which was the responsible tender with the lowest price, as provided for in article 60 paragraph 1.1 of the LPP, was not respected because a group of irresponsible economic operators was recommended for the contract. The contracting authority in this procurement activity did not respect Article 72 of the LPP in a fair way, but was used in a one-sided and favorable way, asking for clarification even though the evidence and facts were clear that the EO recommended for the contract did not meets the requirements of the TDS and the contract notice. Article 7 of the LPP was also not respected, because we were discriminated against by not being declared the winner even though we met all the requirements of the TDS and the contract notification. Paragraph 1 of Article 7 of the LPP clearly provides that "The contracting authority will treat economic operators equally and non-discriminatory and will act in a transparent manner".

Likewise, paragraph 6 of article 7 of the LPP provides that "During the management of procurement activities, all contracting authorities will ensure; that (vi) that the selected tender complies with all the substantive aspects of the relevant conditions, criteria and specifications", while the group of EOs recommended for the contract is irresponsible, that is, it has acted contrary to the aforementioned provision. During the development of this procedure, article 1 of the LPP was not taken into consideration, as 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 as well as all funds and other resources of contracting authorities in Kosova.

Referring to the claims as above "Gëzime S. Gashi B.I". considers that the Contracting Authority has violated articles 1, 7, 56, 59, 60, 69, 72 of the LPP, article 40 of regulation no. 001/2022 on public procurement, article 8 of guide no. 001/2022 on public procurement and PRB decision 2023/0733. Proposing that the appeal of EO Rron 2019 & N.P.T "Meti Comerc" be approved as based, the notice on the decision of the CA (B58) be canceled and the matter returned to Re-evaluation, while the re-evaluation of the offers is done according to the legal provisions of the

LPP and in accordance with the requirements of the tender dossier and contract notice, otherwise we will be forced to continue with complaints and objections for these violations in other higher instances.

The response of the CA to the request for reconsideration. "The economic operator "Rron 2019" (hereinafter "the applicant") on 21.11.2023 submitted a request for reconsideration against the notification on the decision dated 16.11.2023 regarding the procurement activity entitled "Supply of pellets" with procurement number 616-236338-1-1-1. During the preliminary review of the applicant's request for reconsideration, it was found that the request is allowed and submitted within the deadline by the authorized person, and there are no other obstacles to review the applicant's request. In this way, the conditions have been met to proceed with the meritorious review of the request. The main claims of the submitter are that the EO that was awarded the contract and we found that EO DHF Company has not submitted contracts for similar supplies in the last three years from the date of publication of the contract notice for no less than 400,000.00 euros. First of all, it should be noted that the claim has to do with the evaluation request of the tender file: From the administration of the offer of the tenderer recommended as evidence in this case, it was found that the same has submitted the required documentary evidence "the list of executed contracts by completing annex 6 of the tender file... (in the last 3 years before the publication of the contract notice not less than 400,000.00 euros)". Otherwise, from the formulation of the claim, it can be confirmed that even the applicant does not contest that the recommended tenderer has submitted the list of contracts. However, the Contracting Authority in accordance with the decision of PRBO 733/23 has sent a standard letter for additional clarifications to the recommended tenderer, which has responded to this request by sending the additional documents requested as evidence precisely for the list of contracts according to the relevant request of the tender file. In this way, according to the decision of the PRB, the revaluation was carried out in accordance with the LPP and RRPP, and the necessary additional clarifications were requested. In this way, it has been found that the complaining claims are unfounded. For point I and II of this decision, it was decided based on article 63 par. 63.1.1. related to article 62 par. 62.1. of RRPP. For point III and IV of this decision, it was decided based on article 63 par. 63.2. of RRPP."

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 05/12/2023 has authorized the expert to conduct the initial review of the file and claims according to complaint no. 970/23, while on 18/12/2023 the expert's report with no. 2023/0970 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 well-founded, the contract award notice be canceled and recommends that the matter be returned for re-evaluation.

The expertise's report has been duly accepted by all procedural parties. To which they have not returned an answer.

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 expert's report reviewers provide sufficient data to decide on the merits of the case.

- Administration and evaluation of evidence -

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

Regarding the claims of EO "Gëzime S. Gashi B.I". review expert through report no. 202/0970 assessed as follows:

Findings of the reviewing expert regarding the complaining claims: "The complaining EO, as an unsatisfied party, has submitted a complaint to the PRB, with the claim that the CA has not respected the decision no. 733/23 and mainly as in the first complaint, he contests the contracts and references of the EO recommended for contracts which he declares to be fictitious. The reviewing expert clarifies that after the decision of PSH no. 733/23, the CA has reassessed the procurement activity entitled: Supply of pellets with no. of procurement: 616-23-6338-1-1-1, where he requested clarifications on the contracts and references of the EO recommended for the contract.

In response, the EO recommended for contracts submitted the contracts, references and some bank transactions with private economic operators (a contract concluded between the EO recommended for contracts with EO Ahmetaj Group, then with EO Jusaj Metal, Lira-M, etc.). The complaining EO in its complaint contests separately the contracts, references and bank transactions, for which it claims that the EO contracts recommended for contracts are fictitious only as evidence to cover the request of the tender dossier. The reviewing expert, after analyzing the contracts and references of the EO recommended for contracts submitted to the E-Procurement platform during the stage of re-evaluation of the offers, in which case the CA-Municipality of Prishtina after analyzing the evidence has recommended it for contracts, the reviewing expert assesses that the CA has not completed the process of evaluating evidence according to Article 59 of the LPP, because the reviewing expert during the analysis of the contracts noticed that the contract dated: 07.12.2017 between EO DHF and EO Lira - M, in the introductory part of the contract it is stated: Signed in Peja, dated: 07.12.2017, between the following contracting parties: DHF Company Shpk, with unique identification number 810746670 and Lira -M.

The review expert, based on Law 06/L-016, clarifies that in 2017 there were no unique identification numbers, this is proven by the fact that paragraph 4 of Article 266 of this law states: During the three (3) year transitional period, ARBK is obliged to provide all existing Commercial Companies with a unique number. Law which entered into force on: 24.05.2018. Therefore, the examining expert assesses that the process of evaluating these testimonies was not done in full harmony with article 59 and 72 of the LPP. Also related to this issue, the reviewing expert estimates that there are other contracts which are before the date when the EO

recommended for the contract was provided with a new certificate. Also according to Administrative Instruction No. 01/2019 of the Government of the Republic of Kosovo dated: 03.04.2019, the deadlines for the transfer of business numbers are determined, specifically in Article 11 of this Administrative Instruction. Therefore, the review expert assesses that the claim of the complaining EO stands because it was necessary to verify the situation in which the contract was reflected as the economic operator had the unique number in 2017. Likewise, some other contracts are before the date of entry into force of the Instruction Administrative No. 01/2019, with which the economic operators are obliged to change the unique numbers. The examining expert, on the basis of the data in the evidence presented, assesses that it is necessary to verify the evidence because it is contradictory and this is proven by the fact that out of seven (7) submitted references, six (6) of them bear the date of issue: 06.06.2023 and only one is dated: 06.07.2023. In the contracts presented concretely in the 2017 contract, in the article that talks about the duration of the contract, it is stated that the agreement is for three years with the possibility of extension for another 3 years and there is no evidence that the contract has been continued, while the reference is issued on: 06.06.2023."

According to the above, the review expert handled the claims of the complaining economic operator "Gëzime S. Gashi B.I" in a professional and objective manner. The argumentation in the expert's report is quite detailed, understandable and based entirely on the relevant documents that refer to procurement activity. The findings in the experts' report can be confirmed through the tender file as well as the documents with which the tenderers have offered. Consequently, the Review Panel regarding the claims of the complaining economic operator has given full confidence to the expert's report. In this way, it has been found that the claims of the complaining economic operator "Gëzime S. Gashi B.I" are grounded.

- Findings of the Review Panel -

The review panel independently and objectively, conscientiously and professionally evaluated all the evidence of the case. From the clarifications given above, it is concluded that the review expert handled the claims of the complaining economic operator "Gëzime S. Gashi B.I" in a professional and objective manner. The argumentation in the expert report is quite detailed, understandable and fully based on the relevant documents. that refer to the procurement activity. The given findings can be confirmed through the tender file and other documents.

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, after reviewing the appeal claims, taking into account all the documents of the case and the recommendations of the review expert, has found that the complaint of the Economic Operator is approved as partially founded. Consequently, the Review Panel has decided regarding the procurement activity entitled "Supply of pellets" with procurement number: 616-23-6338-1-1-1, to cancel the contract award notice and return the matter to re-evaluation. The Review Panel, taking into account the above-mentioned description and facts, and after examining the documents of the case, examining the complaining claims of the complaining economic operator, concrete analysis and documentation of the case, sees the complaint of the economic operator as partially founded, suggesting that the activity of procurement entitled "Supply of pellets" during

the re-evaluation phase CA to act in accordance with the provisions of articles 59 and 72 of the LPP, as well as in accordance with paragraph 7 of article 52 of the LPP, to carry out an effective control for full clarification regarding the authenticity and correct ascertainment of this contract related to the unique identification number as well as the duration of the contract.

- Conclusion -

Based on the above, the Review Panel considers that the CA has acted contrary to the provisions of Article 59 and 72 of the LPP. 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 again because in the opposite will contradict the scope of the LPP and the argumentative basis of the appeal claims, which the Panel evaluates according to its independent assessment in the sense 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 PRB

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 – **MUNICIPAL ASSEMBLY - PRISHTINA;**

1x1 EO – **Gëzime S. Gashi B.I.;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.