



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

Psh. No.874/23

The Review Panel, appointed by the President of the Public Procurement Review Body (PRB), based on Article 105, 106 and 117 of the Law on Public Procurement of Kosova (LPP), composed of: Vedat Poterqoi - President, Isa Hasani - Member and Vjosa Gradinaj Mexhuani - Member, deciding according to the complaint submitted by the Economic Operator (EO) “Wire Labs Kosova” L.L.C, dhe OE “Cactus” Sh.a, against the Decision to for contract award, “Ministry of Economy” in the capacity of the Contracting Authority (CA) related to the procurement activity “Implementation of the independent non-public 5G network in the Innovation and Training Park in Prizren” with procurement number 213-23-7161-1-1-1, on the 11/01/2024 has issued this:

DECISION

1. **Approved**, as partly grounded the complaint of the EO “Wire Labs Kosova” L.L.C., with no. 870/2023 of the 06/11/2023, and EO “Cactus” Sh.a., with no. 874/2023, of the 06/11/2023, whereas the decision of the CA “Ministry of Economy” related to the procurement activity “Implementation of the independent non-public 5G network in the Innovation and Training Park in Prizren” with procurement number 213-23-7161-1-1-1, is cancelled, meanwhile the procurement activity is returned to **Re-evaluation**.
2. Within a period of 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 the article 131 of the LPP.
3. Are returned the funds deposited in the name of the tariff tax for submitting the complaint to the account of the Economic Operator “Wire Labs Kosova” L.L.C., and "Cactus" Sh.a.

REASONING

- Procedural facts and circumstances -

On the 13.07.2023, the “Ministry of Economy” in the capacity of the Contracting Authority has published the Contract Notice B05 related to the procurement activity entitled “Implementation of the independent non-public 5G network in the Innovation and Training Park in Prizren” with procurement number 213 -23-7161-1-1-1.

This procurement activity was developed through an open procedure with the type of contract for supply and with an estimated contract value of 1,600,000.00 €.

On the 10.10.2023, the CA published the Notice on Decision B58 through which it awarded the GOE "3 CIS JSC & Inter Adria L.L.C" contract.

On the 24.10.2023, EO “Wire Labs Kosova” L.L.C. submitted a request for reconsideration against the Notice on Decision B58 of the Contracting Authority. On the 24.10.2023, EO "Cactus" Sh.a. also submitted a request for reconsideration against the Notice on Decision B58 of the Contracting Authority.

On the 26.10.2023, the Contracting Authority published the decision through which the complaints of both Economic Operators are rejected as unfounded and the notice on the decision of the Contracting Authority is confirmed.

On the 06/11/2023, EO "Wire Labs Kosova" L.L.C. submitted to the PRB the complaint no. 870/23, while on 06/11/2023 EO "Cactus" Sh.a., submitted to the PRB the complaint no. 874/23.

-On the stage of preliminary review-

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. 870/23 and complaint no. 874/23 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.

The claims of the complaining economic operator "Wire Labs Kosova" L.L.C. are presented as follows:

Claim: *“The contracting authority in the case of the announcement of the decision to award the contract has violated articles Article 59 Examination, Evaluation and Comparison of Tenders, Article 64 Evidence of Requirements Article 69 Technical and/or Professional Ability”. 1. The economic operator does not fulfill the requirement of the tender dossier in Requirements on technical and/or professional opportunities 9.1 & 9.2 where it is required: the economic operator must provide evidence that it has successfully completed the contracts for the implementation of the Non-Public 5G Network (Private Network) in the value minimum of 2,000,000.00 (two million) Euros and the required documentary evidence: The list of completed contracts, which completes the Tender File, where the name of the contract, the amount of the contract, the start and end date and the beneficiary, as well as references or certificates for the performance of works and services must be attached to the list. In this case, EO has provided a list of Purchase orders (PO) showing the services provided by local staff in Kosovo to CISCO customers worldwide, which proves that there is not even one project implemented for a PRIVATE (non-public) 5G project. therefore, they do not meet the requirements of the tender file where this contract for the implementation of the 5G network (Private Network) needs to be completed and are irresponsible, also the Reference issued by CISCO does not meet the requirements of the tender file where this contract name is needed, the amount of the contract, the start and end date of the project in this case a private 5G project, also the Cisco reference confirms the fact that the 3CIS company has not implemented a project of the requested nature but has performed other professional services”.*

Referring to the claims as above, EO "Wire Labs Kosova" L.L.C, considers that the Contracting Authority has acted contrary to article 59, 64, 69 of the LPP by asking the Review Panel in the PRB to approve our complaint and to return the matter in reassessment.

Answer of the CA to the request for reconsideration for EO "Wire Labs Kosova" L.L.C., "In the decision of the CA to reject the request for reconsideration dated 26.10.2023, the CA gave the following reasoning: "In response to your request for reconsideration according to Article 108A of Law no. 04/L-042 on Public Procurement of the Republic of Kosova, we inform you that the Contracting Authority claims for a list of contracts and references. - Finding the violation of Article 59. Examination, Evaluation and Comparison of Tenders. The evaluation of the offers has been done in accordance with Article 59, it has been checked and verified. as far as we have legal capacities. The finding is baseless. - Determination of the violation of Article 64 Evidence of requests. A.K. which means the evaluation commission has implemented article 64 precisely and the evaluation of the offers was done according to the request of the evaluation commission, we have made a request for an additional document according to article 72 of the LPP and 10.1. and Guideline No. 001_2023 for public procurement for the list of contracts and within the deadline we have received the document or testimony that means no violation of Article 64. The finding is baseless. - Finding the violation of Article 69 Technical and/or Professional Ability A.K. which means the evaluation commission has implemented article 69 precisely. The evaluation committee was professional, the composition was 2 local and one international. During the evaluation of the offers, in the offer of O.E. awarded has concluded that the reference is in the offer but is not the list of the contract relying on article 59.2 and 72 of the LPP and article 10.1 of the guide No-001_2023 for public procurement quote: List of 69 realized contracts

it is not submitted clarifying information, but Evidences (reference / acceptance certificate / contract) A.K. has acted according to the articles mentioned above and we have accepted them within the legal term and that: - Payments from 2017 to 2023, the contract between the parties CISCO and 3 CIS JSC which has been evaluated by the commission that the request according to article 69 has been met to LPP. The tender evaluation committee of the Contracting Authority has qualified such documents as evidence based and evidence for the successful implementation of projects for the implementation of the Non-Public SG Network (Private Network) and has deemed EO "3CIS & Interadria" responsive in terms of technical and professional capacity. The finding is ungrounded.

The claims of the complaining economic operator "Cactus" Sh.a. are presented as follows:

The economic operator states that "On 19.10.2023, the Contracting Authority - Ministry of Economy on the E-procurement Platform has published Form B58 - Notice on the Decision of the Contracting Authority for the activity with procurement number: 213-23-7161- 1-1- 1 - Implementation of the independent non-public 5G Network in the Innovation and Training Park in Prizren. To this decision, the CA has attached the Standard Letters for the Successful Tenderer, the Unsuccessful Tenderer and the Eliminated Tenderer. After analyzing this decision, we noticed that the Contracting Authority recommended that contracts be awarded to the EO Group: "3 CIS JSC; Inter Adria L.L.C., from Prishtina, immediately on 19.10.2023 we sent the request for access to the tender documents to the Contracting Authority. We have repeated the same request for access to the tender documents on 20.10.2023. From the Contracting Authority, we were allowed access to the tender documents until 23.10.2023 at 10:00, one day before the deadline for sending the Request for Review of the CA. On 23.10.2023 at 10:00 a.m. we went to the office of the Responsible Procurement Official of the CA, where he allowed us only limited access to the tender documents of the EO Group: "3 CIS JSC; Inter Adria L.L.C., from Pristina, which is ranked first with 77.70 points and EO Group: Wire Labs Kosova L.L.C.; A & B engineering LLC; WIDELITYL.LC; Wireless laboratories INC, which is ranked second with 67.35 points. From the documents we have had access to, we have found that the offers of these two groups of Economic Operators are irresponsible offers as they have not met all the requirements of the Contracting Authority noted in the Tender File and the Contract Notice. On 24.10.2023, through the E-Procurement platform, we sent the Request for Review to the Contracting Authority - Ministry of Economy. In the Request for Reconsideration that we sent to the CA on 24.10.2023, we noted in detail all our complaints that we considered the CA made during the evaluation of the offers. On 26.10.2023 from the Contracting Authority we received the Decision for the rejection as unfounded of our Request for Reconsideration".

Our complaints regarding the offer of the EO Group: 3 CIS JSC & InterAdria L.L.C. from Pristina:

Claim: "References The Contracting Authority in the Tender Dossier and Notice for Contracts of Requests on technical and/or professional opportunities, article 9.1 & 9.2, point 1, has requested: 1. The economic operator must provide evidence that he has successfully completed the contracts for the implementation of the Non-Public 5G Network (Private Network) in a minimum value of 2,000,000.00 (two million) Euros. Required documentary evidence: 1. A list of

completed contracts, completing the Tender Dossier where the title of the contract, the amount of the contract, the start date and the end date and the beneficiary must be specified, as well as references or certificates for the performance of works and services must be attached to the list. To fulfill this request of the CA, the EO Group: "3 CIS JSC; Inter Adria L.L.C. from Prishtina together with the offer submitted only the following evidence: 1. The reference issued by CISCO dated 14.08.2023 for the company 3CIS J.S.C. 2. A catalog of private references for the month of April 2023 of the company NOKIA. Referring to Article 69 Technical and/or Professional Ability and the request in the Tender File and Notice for Contracts of Requests on technical and/or professional opportunities article 9.1 & 9.2, point 1, see the EO Group: "3 CIS JSC; Inter Adria L.L.C. from Prishtina, has not proven that he has signed contracts for the implementation of the non-public 5G network in a minimum value of €2 million. • The Economic Operator Group "3CIS JSC & InterAdria L.L.C" in their tender offer has submitted a general Reference Letter issued by a CISCO representative which recommendation does not have any concrete description of services, products and values. - Letter of reference describes a recommendation for the company 3CIS JSC as Cisco's preferred partner in providing exceptional professional services to Cisco for public and non-public 5G Network implementation over a period of six years, with services provided of USD 1 million in year. Reference letter does not have specific concrete data about projects, clients, quality of engagement in projects, etc. Evidence 1- Letter of Reference dated 14.08.2023; • The Economic Operator Group "3CIS JSC & InterAdria L.L.C" has also provided as evidence the List of references that NOKIA has successfully implemented 5G network projects around the world, despite the fact that NOKIA is not the parent of the Consortium. The list of references submitted by the economic operator NOKIA, which in this case is not part of the consortium at all, for the Group of Economic Operators 3 CIS JSC & InterAdria L.L.C, cannot be taken into account in this procurement activity. Evidence 2- Nokia Private Wireless Public Customer Reference Presentation.

Since the EO Group: "3 CIS JSC"; Inter Adria L.L.C. from Prishtina, along with the offer, did not submit the List of Contracts as requested in the Tender File and Contract Notice, the Contracting Authority, during the evaluation of the offers on 30.09.2023, sent this group of EOs, the Standard Letter - Request for the clarification of the tender where it states: "You do not have the contract list according to the request and proof that it was requested, but you have a reference (no total amount but only approximately one million dollars for years), for a contract if you have it, send it to us with a specified date before submission of bids. You have submitted the reference, but we request the list of the contract which specifies which services you performed within the contract, the request is made according to article 72 of the LPP. Dear operator, send the information through the e-procurement system by 04.10.2023, otherwise your offer will be rejected" - Testimony 3 - Standard letter of request for clarification of the tender dated 30.09.2023 Group of EO: " 3 CIS JSC; InterAdria L.L.C. from Prishtina, on 04.10.2023, the E-Procurement Platform has sent the following documents to the CA-Ministry of Economy clarifications: 1. Declaration for additional clarifications 04.10.2023 2. Clarifying information InterAdria 04.10.2023. The documentation submitted by the Economic Operator Group "3CIS JSC & InterAdria L.L.C" are mainly Purchase Orders issued by CISCO Systems to the company 3CIS JSC as well as Invoices issued by the company 3CIS JSC to CISCO Systems with descriptions for performing these services: - Multi Project Support Services - SP Professional

Service. Also, the documentation submitted with clarifications dated 04.10.2023 contains an agreement as follows Cisco Services Subcontractor Statement of Work (SOW), signed by the company 3CIS JSC and CISCO Systems, which is about the provision of consulting services intended to be provided remotely (Remote) for a specified time not exceeding 12 months after signing of the SOW and the start date T(0) assigned by CISCO Systems with the issuance of the Purchase Order (SO). The services agreed in the SOW are remote services specified Consulting Engineer 4 related to Multi Project Support Services without dates, number of consultants and Contract value (the value is set in USD for one working day of the consultant) and without any evidence of implementation and successful implementation of projects for the implementation of the Non-Public 5G Network (Private Network). Also, this group of EO has sent a table prepared in Excel of the invoices, which does not have the data requested by the CA in the standard letter of request for the clarification of the tender dated 30.09.2023, such as the list of contracts. which specifies which services were performed within the contract related to the reference issued by CISCO on 14.08.2023. The list which this group of EO has submitted together with the clarifications dated 04.10.2023 does not have any section indicating the services performed by the company "3 CIS JSC" during the last three years and this does not it is a list of contracts but it is a list of invoices for which there is no evidence of what services were billed for. This list of invoices also includes invoices that were invoiced after the date of publication of the Contract Notice and after the opening date of the offers of this procurement activity, which was 21.08.2023. Also, this list does not include the name of the Economic Operator, and it is not known who drafted it and which company's data is included in this list. Also, this List does not have any names of EO Group representatives and is not signed by any person authorized by the EO Group: "3 CIS JSC; InterAdria L.L.C. It should be noted that this EO Group has not sent the contract between CISCO and the company "3 CIS JSC", as requested by the Contracting Authority in the Standard Letter of the request for clarification of the tender dated 30.09.2023. All these facts mentioned above testify to the EO Group: "3 CIS JSC; Inter Adria L.L.C. from Prishtina, does not even come close to fulfilling the requirement on technical and/or professional capabilities, article 9.1 & 9.2, point 1, where exactly it is requested by the Contracting Authority that the Economic Operator must provide evidence that he has successfully completed the contracts for the implementation of the Network Non-public 5G (Private Network) in the minimum value of 2,000,000.00 (two million) Euros."

Claim: The Technical Solution offered The Economic Operator Group "3CIS JSC & InterAdria L.L.C" in their tender offer submitted the following technical solution: Nokia DAC Solution: The solution offered by EO "3CIS & Interadria" is Nokia DAC (Digital Automation Cloud) which requires a "CloudManagement" management for the offered system, which means that you must have the private network always connected to the Internet and the Cloud service of Nokis, which in this case presents a security issue. With this option offered "CloudManagement" the solution of EO "3CIS&Interadria": • It is not 100% a Private Network completely "on premise", located in the premises of the Contracting Authority• Cloud Management provided is provided with Subscription Licensing mode; • Considering the fact of the cost of the license - once the system is set up and running, the system must always pay the monthly subscription fee for the licenses. • The licenses offered are subscription-based licenses and are valid for a period of 4 years (48 months). • After the end of the 4-year license validity period, the Contracting Authority cannot

operate with this system if it does not continue with monthly license payments. • The Contracting Authority is hereby obliged to sign ongoing contracts for the subscription of Nokia licenses in order to keep the system functioning.

This represents an objection to the request with Annex LS Mandatory Technical Specification of the request in the tender file. RAN Solution: • The solution of EO "3CIS&Interadria" with the number of antennas and the given configuration is not possible to achieve the minimum throughput of the network (system) DL to be 6 Gbps and the minimum throughput of the network (system) UL to be 3 Gbps . • Coverage of the entire area with four antennas on one pole is not possible to meet the mandatory requirement stated in Annex 1. Mandatory Technical Specification of the requirement in the tender dossier: The minimum SS-RSRP required is ≥ -90 dBm. SS-RSRQ required ≥ -15 Db • Indoor and outdoor planning with this planning radio cannot meet the minimum SS-RSRP requirement of ≥ -90 dbm. -300 simultaneous users are not possible only with an internal antenna provided in the technical solution for Building A offered by EO "3CIS&Interadria". An internal radio for 300 users at the same time will overload this internal RU. With only 7 radios with QAM64 and 20 MHz it is not possible to achieve the minimum UL network (system) throughput of 3 Gbps. • Radio planning (heat map) for outdoor environments is not presented in the solution provided by EO "3CIS&Interadria". • "heat maps" presented for interior spaces without any color description legend presented does not provide any understanding that the system provided meets the required criteria."

Claim: "Functional and quality requirements according to the technical specification • EO Group: "3CIS & Interadria" in their offer did not fulfill Table 6, which was a mandatory requirement. • According to the technical specification, point 3.1.2.2 - Requirements for virtualization infrastructure and management levels, the table required to be completed is: • Table 6: Requirements for virtualization infrastructure and management levels, in which table, among others, are some requirements classified by the CA in specific MANDATORY categories that must be fulfilled by the EO, which are specified in the following tables: Functional Requirements: - Requirement 2.9 and 2.10 • Quality requirements: - Requirement 2.13 and 2.14 Below are the detached points of the Mandatory requirements specified in Table 6: The EO Group "3CIS & InterAdria" has not completed Table 6 at all, and has not responded in the Mandatory requirements of the Contracting Authority requested in Annex no. 1 of the Tender File. Despite all these omissions and shortcomings in their offer, the EO Group "3CIS & Interadria" is classified by the Contracting Authority as technically responsible and the CA has recommended it to be awarded with contracts. We mentioned all these facts in our Request for Reconsideration dated 24.10.2023, but unfortunately the Contracting Authority neglected and did not take these facts as a basis by making the decision to consider our Request for Reconsideration as unfounded, whereas in the decision with no. protocol 3991 dated 26.10.2023 classifies our finding as the basic ipa and justifies that EO "3CIS & InterAdria" responsible: We are quoting: In summary, the offer presents strong points in terms of a single-vendor solution with experience like Nokia and detailed network planning- Evidence 4. : Decision to reject the request for reconsideration of the date 26.10.2023.

Our complaints related to the offer of the EO Group: "Wire Labs Kosova; A&B engineering; WIDELITY L.L.C; Wireless Laboratories INC "Request for reconsideration by the Group of economic operators Cactus Sh.a. & COCUS AG submitted on October 24, 2023 was based on the facts which prove that the Economic Operator Group "Wire Labs Kosova; A&B engineering; WIDELITY L.L.C; Wireless Laboratories INC" has not met the criteria of technical and professional suitability in this regard. Claim 1: References • Economic Operator Group "Wire Labs Kosova; A&B engineering; WIDELITY L.L.C; Wireless Laboratories INC" in their tender offer submitted the Reference of AT&TMobility Labs issued to Wireless Laboratories Inc but did not submit the List of Contracts as requested by the CA in the Tender File and Contract Notice. The document is a letter of recommendation issued to the company Wireless Laboratories Inc. in which it is stated that Wireless Laboratories Inc. has offered professional services and implementation of projects in the total value of 5 million USD in the last 3 years, projects which also include Laboratory Installations (Lab set ups). In the recommendation document, there is no information about completed projects and contracts for the implementation of the Non-Public 5G Network (Private Network). There are no data on projects, clients, in terms of engagement in the project as requested in the tender: contract name, contract amount, start and end date and beneficiary. Despite the lack of evidence and data for completed projects and contracts for the implementation of the Non-Public 5G Network (Private Network), CA finds that the EO can be responsible, does not eliminate it from the competition and ranks it with points with serial number 2. Claim 2: The technical solution conforms to the requirements of the tender file During the meeting with CA on 23.10.2023 and the access allowed to the technical offer of the Economic Operator Group "Wire Labs Kosova; A&B engineering; WIDELITY L.L.C; Wireless Laboratories INC, we noticed that the submitted offer did not present the solution related to Support for Use Cases and did not present data, brochures or technical specifications for any equipment related to this With our request by email dated 01.11. 2023 addressed to CA, dated 02. 11. 2023, the Tender Evaluation Report was sent to us by email, from which we extract the Statement of the bid evaluation commission in which it states that for the Support for Use Cases an obvious deficiency for the cases of proposed use. The somewhat vague mention of support raises concerns about the vendor's commitment and ability to meet specific use case requirements. Despite the Economic Operator Group "Wire Labs Kosova; A&B engineering WIDELITY L.L.C; Wireless Laboratories INC has not presented the solution related to Use Case Support and has not presented data, brochures or technical specifications for any related equipment and rather has had concerns and dilemmas regarding the vendor's commitment and ability to meet the specific requirements of the use cases, the CA does not eliminate it from the competition and ranks it with points with ordinal number 2. Based on the Evaluation Report of the offers dated 11.10.2023 and approved by the Responsible Procurement Officer on 17.10.2023 it is seen that the Bid Evaluation Report is signed by only two members of the bid evaluation committee. The international bid evaluation member Mr. Pierre Kehl has not signed the evaluation report at all. The approval of the Bid Evaluation Report by the Responsible Procurement Officer without the signature of all members of the evaluation commission is a substantial violation of the applicable public procurement legislation in the Republic of Kosovo. Evidence 5: Bid Evaluation Report dated 11.10.2023; From the facts disclosed above in this complaint, it can be seen that the Contracting Authority - Ministry of

Economy, during the development of this procurement activity, committed substantial violations of Article 7, 59 and 60 and 69 of the Law on Public Procurement, No. 04/L-042 amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05//L-092."

Referring to the claims as above, the Complainant "Cactus" Sh.a., considers that the Contracting Authority has acted in violation of Article No. 04/L-042 amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05//L-092. Violations of the provisions of the LPP Article 7 Equality in Treatment/ Non-Discrimination Article 59 Examination, Evaluation and Comparison of Tenders Article 60 Criteria for Awarding the Contract Article 69 Technical and/or Professional Ability, requesting from the Review Panel at PRB that our Complaint is approved in its entirety as well-founded and the matter is returned for re-evaluation.

CA's response to the request for reconsideration for EO "Cactus" Sh.a., "In response to your request for reconsideration according to Article 108A of Law no. 04/L-042 on Public Procurement of the Republic of Kosovo, we inform you that the Contracting Authority claim for list of contracts and references. - Determination of the violation of Article 7. Equality in Treatment/ Non-Discrimination. It does not stand because all operators were treated equally by the commission and were scored with points according to the presentation of the requirements submitted in the offer. The finding is ungrounded.

Finding the violation of Article 28 Technical specifications Dear operator, I inform you that the commission was professional and I, regarding the technical specifications, were unanimous for three offers were in harmony with the Law in force, you really have access to the date 23.10.2023 where you had unrestricted access, you also found that it does not meet the conditions for contractual remuneration, but I trust the evaluation committee and I stand by their recommendation. The Commission has assessed that the offer is technically feasible according to the requirements in the tender, that the proposed solution is technically sound and that it meets the specified requirements. This is essential as it lays the foundation for a successful network.

Single-Vendor Solution: An advantage of this offer is that all devices come from a single vendor with extensive experience, Nokia. Using a single-vendor solution can simplify network integration and reduce compatibility issues, as all components are designed to work seamlessly together. Nokia's experience in this industry further increases confidence in the reliability and performance of the devices. Detailed network planning: Detailed planning of the offer for internal and external network aspects is a positive aspect to be praised. Detailed planning is essential for optimizing network coverage, capacity and performance, ensuring that the solution can meet the specified requirements and provide a high quality service. In summary, the offer presents strong points in terms of a single vendor solution with experience like Nokia and detailed network planning The finding is unfounded. -Determining the violation of Article 59. Examination, Evaluation and Comparison of Tenders The evaluation of offers has been done in accordance with Article 59 and has been checked and verified to the best of your legal capacity. The finding is baseless. -Determining the violation of Article 60 Criteria for Awarding the Contract. A.K. which means the evaluation committee has implemented article 60 precisely and the evaluation of the offers has been done according to the most economically favorable criterion based on the criteria and the weight specified in the tender file and that: You have been awarded

with a point under the price criterion 36.39 point, criterion "Functional Requirements and Quality Requirements according to the technical specification", on 24.31 points and the Durability criterion (maintenance term min. 3 to max. 7 years by the implementer), with 2.14 points. The scoring is done proportionally with the formula. The finding is baseless. - Finding the violation of Article 69 Technical and/or Professional Ability A.K. which means the evaluation commission has implemented article 69 precisely. The evaluation committee was professional, the composition was 2 local and one international. During the evaluation of the offers, in the offer of O.E. awarded has concluded that the reference is in the offer but is not the list of the contract relying on article 59.2 and 72 of the LPP and article 10.1 of Guide No. 001 2023 for public procurement quote: The list of 69 completed contracts may be requested, no clarifying information has been submitted, but Evidence (reference/certificate of acceptance/contract) has been submitted A.K. has acted according to the articles mentioned above and you have accepted them within the legal term and that: - Payments from 2017 to 2023, the contract between the parties CISCO and 3 CIS J S C which has been evaluated by the commission that the request according to article 69 has been fulfilled of the LPP. The tender evaluation committee of the Contracting Authority has qualified such documents as evidence based and evidence for the successful implementation of projects for the implementation of the Non-Public 5G network (Private Network) and has qualified EO "3CIS & Interadria" as responsible. in terms of technical and professional capacity. - The bidder "Group of Economic Operators 3 CIS JSC; InterAdria L.L.C.t — has fulfilled the requirements related to technical suitability, respectively fulfilled the mandatory technical requirements for the 5G-SNPN System, as well as a number of optional requirements, collecting a total of 8 points from the total possible 18. The finding is ungrounded.

Answer for the second ranked member The Bidder "Group of Economic Operators Wire Labs Kosova L L.C.; A & B engineering SH.P.K.; WIDELITY L.LC; Wireless laboratories INC The operator ranked with points with serial number 2 is true that there is a reference for the realization of contracts in the amount of €5 million, according to the request for the file and the notification of the contract that you have access to and requested to send to you, but indeed we have announced it as an unsuccessful operator because we have not requested additional documents from the operator according to article 72 for the list of contracts, because it has not been ranked for reward and we only ask for documents for the operator that we reward, if the operator listed with number 1 fails, then I can ask for a document that is missing and allowed by the Law. But it does not mean that he is irresponsible. The finding is ungrounded.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 10.11.2023 has authorized the review expert to conduct the initial review of the file and claims according to complaint no. 870/23, while on 10.11.2023 the Review Panel authorized the review expert to conduct the initial review of the file and claims according to complaint no. 874/23.

Regarding complaint no. 870/23 dated 20.11.2023, the review/technical expert's report with no. 2023/0870 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 returned for re-evaluation”.

Regarding complaint no. 874/23 dated 27.11.2023, the review/technical expert's report with No. 2023/0874 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 returned for re-evaluation”.

The expertise report with no. 870/23 has been properly accepted by all procedural parties. CA declares that it does not agree with the recommendations of the review expert's report, while EO has not given an answer regarding the review expert's report.

The expertise's report with no. 874/23 was properly accepted by all procedural parties. CA declares that it does not agree with the recommendations of the review expert's report, while EO agrees with the review expert's report.

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 report of the review expert, the submissions and documents of the complainants, the letters and documents of the contracting authority, the relevant documents related to the procurement activity as well as all the evidence that was proposed by procedural parties.

Regarding the claims of EO "Wire Labs Kosova" L.L.C., the review expert through report no. 2023/0870 assessed as follows:

Introductory Clarification: "The complainant (Wire labs Kosova L.L.C) on 24.10.2023 submitted the request for reconsideration to the CA. On 26.10.2023, the CA issued a decision rejecting the request for reconsideration. Appellate claim: The complaining EO claims that the EO recommended for the contract has not fulfilled the request of the tender file for technical and professional capacity, for successfully completed contracts. Circumstances of the case: CA in the published tender file has set the request for technical and professional capacity as follows: "The economic operator must provide evidence that it has successfully completed the contracts for the implementation of the Non-Public 5G Network (Private Network) in a minimum value of 2,000,000.00 (two million) Euros. "For this request, the required documentary evidence is defined as follows: "1. A list of completed contracts, completing the Tender Dossier where the title of the contract, the amount of the contract, the start date and the end date and the beneficiary, as well as references or certificates for the performance of works and services must be attached to the list. . "

In the tender submitted by the economic EO, the list of contracts was not submitted according to the request of the tender dossier. However, the Reference issued by "Cisco" dated 08.03.2023 entitled "3ClS J.S.C Professional Services Reference Letter for Cisco" has been submitted, with the following content: I am writing this letter to express our highest recommendation. for "3ClS", as a preferred partner in providing outstanding professional services to Cisco, for the implementation of public and non-public 5G Networks for a period of six years, with services provided of 51 million US dollars per year. Since our partnership began in 2017, 3ClS has consistently demonstrated an unwavering commitment to excellence, technical expertise and a deep understanding of our requirements in the rapidly evolving 5G technology landscape. Their contributions have played an integral role in the successful creation and maintenance of our 5G network infrastructure. During these six years, the dedication and skill of 3ClS has been outstanding. Not only have they delivered high-quality solutions, but they have also shown exceptional adaptability in addressing the unique challenges presented by public and non-public 5G network implementations. Their ability to collaborate seamlessly with our internal teams, understand our specific needs and provide tailored solutions has been a key factor in the success of our projects. In addition to their technical competence, professionalism and timely execution, 3ClS has significantly contributed to the efficient rollout of our 5G network initiatives. Their consistent delivery of results within tight timelines has been important and has helped us achieve our operational objectives without compromising quality. In conclusion, it is with great pleasure that I provide this letter of reference for 3ClS. Their expertise, dedication and collaborative spirit have had a substantial impact on our 5G network implementation projects. We have enjoyed a mutually beneficial partnership and are confident that any organization that engages with 3ClS will greatly benefit from their professionalism, technical skills and commitment to excellence. If you have any questions or need further information, please do not hesitate to contact me. We look forward to continuing our partnership with 3ClS in the future".

CA dated 30.09.2023, during the evaluation of the tenders, requested additional clarifications from the Group of EOs recommended for the contract: "2. You don't have the list of contracts according to the request and the requested proof, but you have a reference (no total amount before only approximately one million dollars for years) for a contract, if you have them, send them to us with a specified date before submitting the offers. You have submitted the reference, but we request the list of the contract which specifies which services you performed within the contract, the request is made according to article 72 of the LPP. Dear operator, send the information through the e-procurement system by 04/10/2023, otherwise your offer will be rejected.

The group of EOs has submitted the additional documents on 04.10.2023 at 11:08.

1. Statement for additional clarifications, which states: Based on your request for additional clarifications dated 30/09/2023, please find attached the archived folder with the requested information as follows: 1. In the basic folder you can find the reference of the engineer's job description which is signed with the client and which we must adhere to in providing the service based on the specifications presented in the document. In the same document, the price per unit is specified, which we have edited due to the NDA we have with the client. 2. In each additional

folder you can find the PO and the respective invoice for each PO. The PO also contains the start and end date of the service. 3. The invoices and POs provided are from the end of 2019 to date and amount to over 3 Million USD. 4. Also in the base folder you can find a table in Excel summarizing the POs found in each folder.

2. Along with the letter, 29 Purchase Orders (purchase orders or service orders) and 130 invoices issued by the member of the 3CIS group according to the relevant purchase orders were submitted. Purchase orders were issued from June 6, 2019 to August 23, 2023.

3. "Cisco Services Subcontractor Statement of Work" document. This document describes the services offered by 3 CIS JSCs for CISCO, which in the price description have the name "Multi Project Support Services". The document is signed electronically by the parties and in relation to the deadline, it is noted that this document is regulated based on the Subcontractor Agreement of Professional Services (PSSA) in force from March 21, 2018.

On the same day (04.10.2023) at 13:15, the document "List of 3CIS IA contracts" was also submitted. The document has the following fields: Contract number, Date, Billing/contract value, Service start date, Service end date. The data presented in the document are identical to the "Summary of POs" document, that is, the purchase order numbers are entered in the Contract Number field. While the "title of the contract" is not marked as required.

In the decision of the CA to reject the request for reconsideration dated 26.10.2023, the CA gave the following reasoning: "In response to your request for reconsideration according to Article 108A of Law no. 04/L-042 on Public Procurement of the Republic of Kosovo, we inform you that the Contracting Authority claims for lists of contracts and references. - Finding the violation of Article 59. Examination, Evaluation and Comparison of Tenders. The evaluation of the offers has been done in accordance with Article 59, it has been checked and verified. as far as we have legal capacities. The finding is baseless. - Determination of the violation of Article 64 Evidence of requests. A.K. which means the evaluation commission has implemented article 64 precisely and the evaluation of the offers was done according to the request of the evaluation commission, we have made a request for an additional document according to article 72 of the LPP and 10.1. and Guideline No. 001_2023 for public procurement for the list of contracts and within the deadline we have received the document or testimony that means no violation of Article 64. The finding is ungrounded. - Finding the violation of Article 69 Technical and/or Professional Ability A.K. which means the evaluation commission has implemented article 69 precisely. The evaluation committee was professional, the composition was 2 local and one international. During the evaluation of the offers, in the offer of O.E. awarded has concluded that the reference is in the offer but is not the list of the contract relying on article 59.2 and 72 of the LPP and article 10.1 of the guide No-001_2023 for public procurement quote: List of 69 realized contracts it is not submitted clarifying information, but Evidences (reference / acceptance certificate / contract) A.K. has acted according to the articles mentioned above and we have accepted them within the legal term and that: - Payments from 2017 to 2023, the contract between the parties CISCO and 3 CIS JSC which has been evaluated by the commission that the request according to article 69 has been met to LPP. The tender evaluation committee of the Contracting Authority has qualified such documents as evidence based and evidence for the successful implementation

of projects for the implementation of the SG Non-Public Network (Private Network) and has deemed EO "3CIS & Interadria" responsive in terms of technical and professional capacity. The finding is ungrounded.

- Evaluation of the review expert and the technical expert

The review and technical expert clarify that the evidence submitted by the Group of EOs recommended for the contract in the tender and the additional clarifications requested by the CA describe services performed by the member of the GOE (3 CIS) according to the information in the twenty-nine (29) order purchases and one hundred and thirty (130) invoices with the corresponding amounts. However, even in the clarifications sent on 04.10.2023, the Group of recommended EOs did not submit the list of contracts with the relevant information required in the tender file, since the submitted list contains the numbers of purchase orders and not of contracts as and does not have the title of the contract. Also, no contracts have been submitted, but the document-Description of work has been submitted, which is based on the "Professional Services Subcontractor Agreement (PSSA)" Despite the fact that CA in the decision dated 26.10.2023, in the justification for the rejection, states that the Group of EOs has submitted a contract between the parties, the member of the group himself in the explanatory document submitted on 04.10.2023 does not emphasize that he submits a contract between the parties but emphasizes the following: "In the base folder you can find the reference of the engineer's job description which is signed with the client and to which we must adhere in providing the service based on the specifications presented in the document. In the same document, the price per unit is specified, which we have edited due to the NDA we have with the client." Furthermore, some of the Purchase Orders and invoices have been taken for granted by the CA, despite the fact that the deadline for fulfillment is stated in them to be on the dates after the contract notification.

Therefore, the review and technical expert clarify that there is evidence that the member of the "3CIS" group has performed telecommunications services for the company "Cisco" in the required amount, however, the reference issued by "Cisco" and the additional documents received during the clarifications do not prove that the request defined by the CA in the tender file is fulfilled, which is: "Request The economic operator must provide evidence that it has successfully completed the contracts for the implementation of the Non-Public 5G Network (Private Network) in a minimum value of 2,000,000.00 (two million) Euros. Evidence: 1. A list of completed contracts, completing the Tender File where the title of the contract, the amount of the contract, the start date and the end date and the beneficiary must be specified, as well as references or certificates for the performance of works and services should be attached to the list". Specifically, the Group of EOs did not present information about the contracts completed before the contract notification as requested by the CA, therefore the assessment and decision of the CA with the received information is contrary to Article 59, paragraph 4 of the LPP where it is stated "CA 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". Therefore, according to the above clarifications, the complaining claim is grounded.

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 bid. Moreover, the findings of the reviewing 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 "Wire Labs Kosova" L.L.C., has given full confidence to the review expert's report. In this case, the Review Panel has taken into consideration all the facts and evidence. In this way, it has been found that the claims of the complaining economic operator "Wire Labs Kosova" L.L.C., are founded.

Regarding the claims of the complaining economic operator "Cactus" Sh.a., the review expert through report no. 2023/0874 estimated that:

Introductory Clarification: *"The complainant EO Cactus Sh.a (hereinafter EO complainant) on 24.10.2023 submitted the request for reconsideration to the CA. On 26.10.2023, the CA issued a decision rejecting the request for reconsideration. Appellate claim 1 The complaining EO claims that the EO recommended for the contract has not fulfilled the request of the tender file for technical and professional capacity, for successfully completed contracts. Circumstances of the case: CA in the published tender file has established the requirement for technical and professional capacity as follows: "The economic operator must provide evidence that it has successfully completed the contracts for the implementation of the Non-Public 5G Network (Private Network) in a minimum value of 2,000,000.00 (two million) Euros. "For this request, the required documentary evidence is defined as follows: "1. A list of completed contracts, completing the Tender Dossier where the title of the contract, the amount of the contract, the start date and the end date and the beneficiary, as well as references or certificates for the performance of works and services must be attached to the list".*

In the tender submitted by the economic EO, the list of contracts was not submitted according to the request of the tender file. However, the Reference issued by "Cisco" dated 08.03.2023 entitled "3ClS J.S.C Professional Services Reference Letter for Cisco" has been submitted, with the following content: I am writing this letter to express our highest recommendation. for "3ClS", as a preferred partner in providing outstanding professional services to Cisco, for the implementation of public and non-public 5G Networks for a period of six years, with services provided of 51 million US dollars per year. Since our partnership began in 2017, 3ClS has consistently demonstrated an unwavering commitment to excellence, technical expertise and a deep understanding of our requirements in the rapidly evolving 5G technology landscape. Their contributions have played an integral role in the successful creation and maintenance of our 5G network infrastructure. During these six years, the dedication and skill of 3ClS has been outstanding. Not only have they delivered high-quality solutions, but they have also shown exceptional adaptability in addressing the unique challenges presented by public and non-public 5G network implementations. Their ability to collaborate seamlessly with our internal teams, understand our specific needs and provide tailored solutions has been a key factor in the success of our projects. In addition to their technical competence, professionalism and timely execution, 3ClS has significantly contributed to the efficient rollout of our 5G network initiatives. Their consistent delivery of results within tight timelines has been important and has helped us achieve our operational objectives without compromising quality. In conclusion, it is with great pleasure that I provide this letter of reference for 3ClS. Their expertise, dedication and collaborative spirit have had a substantial impact on our 5G network implementation projects. We have

enjoyed a mutually beneficial partnership and are confident that any organization that engages with 3CIS will greatly benefit from their professionalism, technical skills and commitment to excellence. If you have any questions or need further information, please do not hesitate to contact me. We look forward to continuing our partnership with 3CIS in the future.” The CA dated 30.09.2023, during the evaluation of the tenders, requested additional clarifications from the Group of EOs recommended for the contract: "2. You do not have the contract list according to the request and proof that it was requested, but you have a reference (without the total amount only approximately one million dollars per year) for a contract if you have them send them to us by the specified date before submitting the offers. You have submitted the reference, before we ask for the list of the contract which specifies which services you performed within the contract, the request is made according to article 72 of the LPP. Dear operator, send the information through the e-procurement system by 04/10/2023, otherwise your offer will be rejected. "The group of EOs on 04.10.2023 at 11:08 has submitted the additional documents.

1. Statement for additional clarifications, in which it is emphasized: Based on your request for additional clarifications dated 30/09/2023, please find attached the archived folder with the requested information as follows: 1. In the basic folder you can find the reference of the engineer's job description which is signed with the client and to which we must adhere in providing the service based on the specifications presented in the document. In the same document, the price per unit is specified, which we have edited due to the NDA we have with the client. 2. In each additional folder you can find POs and the respective billing for each PO. The start and end date of the service is also found in the PO. 3. The invoices and POs provided are from the end of 2019 to date and amount to over 3 Million USD. 4. Also in the base folder you can find an excel table with a summary of the POs found in each folder.

2. Along with the letter, 29 Purchase Orders and 130 invoices issued by the member of the 3CIS group according to the respective purchase orders were submitted. Purchase orders were issued from June 6, 2019 to August 23, 2023.

3. "Cisco Services Subcontractor Statement of Work" document. This document describes the services offered by 3 CIS JSCs for CISCO, which in the price description have the name "Multi Project Support Services". The document is signed electronically by the parties and in relation to the deadline, it is noted that this document is regulated based on the Subcontractor Agreement of Professional Services (PSSA) in force from March 21, 2018.

"On the same day (04.10.2023) at 13:15, the document "List of 3CIS IA contracts" was submitted. The document has the following fields: Contract number, Date, Billing/contract value, Service start date, Service end date. The data presented in the document are identical to the "Summary of POs" document, that is, the purchase order numbers are entered in the Contract Number field. While the "title of the contract" is not marked as required.

In the decision of the CA to reject the request for reconsideration dated 26.10.2023, the CA gave the following reasoning: "In response to your request for reconsideration according to Article 108A of Law no. 04/L-042 on Public Procurement of the Republic of Kosovo, we inform you that the Contracting Authority claims for lists of contracts and references".

Finding the violation of Article 59. Examination, Evaluation and Comparison of Tenders The evaluation of the offers was made in accordance with Article 59, it was checked and verified as far as we have legal capacities. The finding is baseless. - The finding of violation of Article 64 Evidence of requests. A.K. which means that the evaluation commission has implemented article 64 precisely and the evaluation of the offers was done according to the request of the evaluation commission, we have made a request for an additional document according to article 72 of the LPP and 10.1. and guide No. 001_2023 for public procurement for the list of contracts and within the deadline we have received the document or testimony which means that there has been no violation of Article 64. The finding is unfounded. - The finding of violation of Article 69 Technical and/or Professional Ability A.K. which means the evaluation commission has implemented article 69 precisely. The evaluation committee was professional, the composition was 2 local and one international. During the evaluation of the offers, in the offer of O.E. awarded has concluded that the reference is in the offer but is not the list of the contract relying on article 59.2 and 72 of the LPP and article 10.1 of guide No-001_2023 for public procurement quote: List of contracts of 69 performed it is not submitted clarifying information, but the evidence has been submitted (reference / acceptance certificate / contract) A.K. has acted according to the articles mentioned above and we have accepted them within the legal term and that: - Payments from 2017 to 2023, the contract between the parties CISCO and 3 CIS JSC which has been assessed by the commission that the request according to article 69 has been met to LPP. The tender evaluation committee of the Contracting Authority has qualified such documents as evidence based and evidence for the successful implementation of projects for the implementation of the Non-Public SG Network (Private Network) and has deemed EO "3CIS & Interadria" responsible. in terms of technical and professional capacity. The finding is ungrounded.

- Evaluation of the review expert and the technical expert related to complaint claim 1:

“The review and technical expert clarify that the evidence submitted by the Group of EOs recommended for the contract in the tender and the additional clarifications requested by the CA describe services performed by the member of the GOE (3 CIS) according to the information in twenty-nine (29) purchase order and one hundred and thirty (130) invoices with the corresponding amounts. However, even in the clarifications sent on 04.10.2023, the Group of EOs did not submit the list of contracts with the relevant information required in the tender file, since the list submitted after the other documents were submitted contains the purchase order numbers and not of the contracts and there is no title of the contract. Also, no contract was submitted, but the document - Description of the work was submitted, which is based on the "Professional Services Subcontractor Agreement (PSSA)". Despite the fact that CA in the decision dated 26.10.2023, in the justification for the rejection, declares that the Group of EOs has submitted a contract between the parties, The member of the group himself, in the explanatory document submitted on 04.10.2023, does not state that he submits a contract between the parties, but states the following: "In the base folder, you can find the reference to the engineer's job description, which is signed with the client and which we must adhere to in providing the service based on the specifications presented in the document. In the same document, the unit price is set, which we have edited due to the NDA we have with the client”.

Furthermore, some of the Purchase Orders and invoices have been taken for granted by the CA, despite the fact that the deadline for fulfillment is stated in them to be on the dates after the contract notification. Therefore, the review and technical expert clarify that there is evidence that the member of the "3CIS" group has performed telecommunications services for the company "Cisco" in the required amount, however, the reference issued by "Cisco" and the additional documents received during the clarifications do not prove that the request defined by the CA in the tender file is fulfilled, which is: "Request The economic operator must provide evidence that it has successfully completed the contracts for the implementation of the Non-Public 5G Network (Private Network) in a minimum value of 2,000,000.00 (two million) Euros. Evidence: 1. A list of completed contracts, completing the Tender File where the title of the contract, the amount of the contract, the start date and the end date and the beneficiary, as well as references or certificates for the performance of works and services must be specified. attached to the list." Specifically, the Group of EOs did not present information about the contracts completed before the contract notification as requested by the CA, therefore the assessment and decision of the CA with the received information is in violation of Article 59, paragraph 4 of the LPP where it is stated "CA 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". Therefore, according to the above clarifications, the complaining claim is grounded.

Complaining claim 2

The complaining EO claims that the technical solution offered by the GOE recommended for the contract is not in accordance with the requirements of the tender file and creates additional costs for the CA and the requirements in table 6 of the tender dossier have not been met.

The circumstances of the case; "In the document of the technical solution offered, it is emphasized that GOE offers the Nokia Digital Automation Cloud (Nokia DAC) solution. Further in the Nokia DAC Solution Overview chapter it is noted among other things that " [...] the Nokia DAC solution is offered to customers as a combination of local hardware components and selected cloud services, which are provided on an agreed period basis. " ?In the technical document, in the 5G Core section, on page 16, the licenses are based on subscription and are valid for a total period of 4 years (48 months). Implementation of the project scope is scheduled to be delivered within the first year (6 - 12 months) and the licenses will be valid for an additional 3 years (36 months) period of time. In the submitted technical document, the table with the requirements defined in Table 6: Requirements for virtualization infrastructure and management levels, points (2.9, 2.10, 2.13 and 2.14) is not presented. In the CA's decision to reject the request for reconsideration dated 26.10.2023, the CA gave the following reasoning: "The Commission has assessed that the offer is technically feasible according to the requirements in the tender, that the proposed solution is technically sound and that it fulfills specified requirements. This is essential as it lays the foundation for a successful network. Single-Vendor (Local) Solution: An advantage of this offer is that all devices come from a single vendor with extensive experience, Nokia. Using a single-vendor solution can simplify network integration and reduce compatibility issues. as all components are designed to work seamlessly together. Nokia's experience in this industry further increases confidence in the reliability and

performance of the devices. Detailed network planning: Detailed planning of the offer for internal and external network aspects is a positive aspect to be praised. Detailed planning is essential for optimizing network coverage, capacity and performance, ensuring that the solution can meet the specified requirements and provide a high quality service”.

-Evaluation of the technical expert regarding the complaining claim 2:

The technical expert clarified that in the CA's decision to reject the request for reconsideration, respectively in the reasoning, it is not clarified whether the claims related to the technical offer were addressed. Regarding the offered solution, the CA has stated that the solution offered by the GOE recommended for contract from a single vendor is preferred, however the claims of security issues related to the Nokia DAC Solution option, namely the management by the Nokia DAC regional cloud CA has not dealt with it. Further, based on the fact that as presented above, in the technical offer, the licenses include only the period of 48 months, which may affect the cost of this project (current expenses except for the supply and implementation of the project). Therefore, these are some essential issues that must be addressed by the CA in order to ascertain that all the requirements of the tender file are met and determine the most favorable economic solution for the CA. Furthermore, despite the fact that the evaluation report states that they fulfilled the specified requirements, in the technical document of the recommended GOE offer it is evident that the requirements defined as mandatory (2.9, 2.10, 2.13 and 2.14) in Table 6 have not been described and fulfilled. In conclusion, based on the above clarifications, the technical expert assesses that the complaining claim is grounded.

Complaining claim 3

The complaining EO claims that the Group of EOs: Wire Labs Kosova L.L.C.; A&B engineering LLC; WIDELITY L.L.C; Wireless laboratories INC, has not fulfilled the request of the tender file for the technical and professional capacity, for successfully concluded contracts.

The circumstances of the case; *CA in the published tender file has established the requirement for technical and professional capacity as follows: "I. The economic operator must provide evidence that it has successfully completed the contracts for the implementation of the Non-Public 5G Network (Private Network) in a minimum value of 2,000,000.00 (two million) Euros. "For this request, the required documentary evidence is defined as follows: "I. A list of completed contracts, completing the Tender File where the title of the contract, the amount of the contract, the start date and the end date must be specified and the beneficiary, as well as references or certificates for the performance of works and services must be attached to the list." In the tender submitted by GOE Wire Labs Kosova L.L.C.; A&B engineering LLC; WIDELITY L.L.C; Wireless laboratories INC was delivered the document by the company "AT&T" which bears the date 20.08.2023 with the following content: I, James Wagner, CEO of AT&T Mobility Labs., recommend Wireless Laboratories, Inc. for their exceptional expertise in the field of mobile engineering. With over 30 years of experience and 25 years of engagement with us, they have consistently handled the most complex projects with outstanding skill, dedication and success. Their tenure at AT&TMobility Labs is testament to their deep understanding of the industry and their ability to drive continuous innovation. Wireless Laboratories and its founder*

Robert Hamblet consistently demonstrate a keen problem-solving ability, a strong commitment to teamwork, and a long history of successful project execution. Their deep insight and numerous contributions have undoubtedly left a lasting impact on the mobile engineering landscape. Wireless Laboratories Inc, in the last 3 years has implemented projects, including laboratory installations over 5 million US dollars. In the CA's decision to reject the request for reconsideration dated 26.10.2023, the CA gave the following reasoning: "Response to the second ranked member Bidder "Group of Economic Operators Wire Labs Kosova L.L.C.; A & B engineering SH. P.K.; WIDELITY L.L.C.; Wireless laboratories INC. The operator listed with points with serial number 2 and the fact is that there is a reference for the realization of contracts in the value of 5 million €, according to the file request and the notice of the contract which you have access to and have requested to send you, first of all we have announced it as an unsuccessful operator because we have not requested additional documents from the operator according to Article 72 for the list of contracts because it has not been ranked for reward and documents we only request for the operator who we reward him, if the operator ranked number 1 fails, then I can ask for a document that is missing and the Law allows. But it does not mean that he is not responsible. The finding is ungrounded".

Evaluation of the review expert and the technical expert regarding the complaining claim 3

Review experts and technicians clarify that according to the procedural documents related to the assessment of technical and professional capacity, the Group of EOs, Wire Labs Kosova L.L.C.; A & B engineering LLC; WIDELITY L.L.C; Wireless laboratories INC, has submitted only one reference document or recommendation from the company AT&T. According to the available documentation, the Contracting Authority (CA) has not requested additional clarification regarding the list of contracts, although the contract notice requires evidence in the form of: A list of completed contracts, including information on the contract title, the value of its, start and end dates, as well as the beneficiary, as well as references or certificates for the performance of works and services that must be attached to the list.

Therefore, the EO Group has not submitted this list of contracts with the requested information. This is also confirmed by the CA's reasoning in the decision to reject the request for reconsideration of the EO's complaint, where the CA states that "... we did not request additional documents from the operator according to Article 72 for the list of contracts because it was not in order to reward and documents we ask only for the operator that we reward. If the operator listed with number 1 fails, then we can request the missing document and the law allows".

The CA in the evaluation report and announcement on the decision dated 19.10.2023 has assessed that the Group of EOs meets the requirements set out in the contract notice and the tender file, but their offer is ranked second (2) according to the given criteria . As a result, the assessment and notice of the CA state that the Group of EOs fulfills the defined requirements, including the request for the list of contracts, although the required evidence, the list of contracts, has not been submitted. Thus, the findings of the evaluation commission and the Office of Public Procurement are contrary to Article 59 of the Law on Public Procurement, where it is emphasized that "the CA will consider a tender as responsible only if it is in compliance with all the requirements set forth in the contract notice and in the tender dossier".

Moreover, the reasoning of the CA that additional clarifications in accordance with Article 72 of the Public Procurement Law are required only for EOs that are recommended for contract is not supported by any provision of the Public Procurement Law and the Public Procurement Regulation. The reasoning presents the contradictory assessment of the CA, where in the evaluation report and the notice on the CA's decision it is found that the selection requirements are met, while in the decision to reject the request for reconsideration, the CA states that the evidence was not requested because the GOE did not have been recommended for contract awards. Therefore, the complaining claim on this point is grounded.

According to the above, the reviewing expert handled all the claims of the complaining economic operator "Cactus" Sh.a. in a professional and objective manner. 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 bid. Moreover, the findings of the reviewing 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 "Cactus" Sh.a., has given full confidence to the review expert's report. In this case, the Review Panel has taken into consideration the facts and circumstances presented in the expert's report. In this way, it has been found that the claim of the complaining economic operator "Cactus" Sh.a. is grounded.

-Evaluation and administration of evidence-

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

According to the above, the reviewer/technical expert has handled in a professional and objective manner the claims of the complaining economic operators OE "Wire Labs Kosova" L.L.C., & OE "Cactus" Sh.a., the argumentation in the experts' report is quite detailed, comprehensible and thoroughly grounded relevant documents referring to the procurement activity. The findings in the review/technical expert's report can be confirmed through the tender file as well as the documents with which the tenderers have bid. Consequently, the Review Panel regarding the claims of the complaining economic operator has given full confidence to the review/technical expert's report, without the need for the same to be repeated again. The Review Panel assesses that with the return of this procurement activity to the CA Reassessment, it will treat all economic operators equally and non-discriminatory and will act in a transparent manner, as well as act in accordance with the above recommendations in harmony with the legal provisions of LPP.

Based on the above, the Review Panel considers that the actions and acts of the CA, and the evaluations of the review/technical 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 returned to re-evaluation.

Findings of the review panel

Despite the recommendations, the Review Panel notes that the procurement procedure that was applied in this case is presented in detail in the review/technical 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/technical expert's report, professional and reasoned explanations were given without any objections regarding the complaining assertions.

Therefore, the review panel supports the explanations of the review/technical expert and decides that the CA during the re-evaluation phase should act in accordance with article 59 and 60 of the LPP.

Based on the above, the Review Panel considers that the CA has acted contrary to the provisions of Article 59 of the LPP. The Review Panel considers that the actions and acts of the CA, and the evaluations of the review/technical 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 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.

According to Article 27 of the LPP, according to which the contracting authority compiles the tender file with all relevant information including all its material terms and conditions, applicable procurement procedures, any applicable eligibility requirements or any selection criteria, procedures of the complaint as well as other relevant information as required by this law or as deemed necessary by the contracting authority. In terms of this provision, the tender file is the main procurement document and its publication is supposed to be in full harmony with the goals of the LPP, to ensure the efficient use of public funds, to promote the integrity of the procurement process and of institutional and professional culture.

Although the opinion of the expert is not binding, the Panel, according to its independent opinion, supported the expert's report in the specific case, based on the principle that its probative value is always given in relation to the evaluation, comparison and administration of all other evidence and the nature of an issue in the concrete case.

The return of the procurement activity based on legal contestation 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 requiring 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 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.

For point I of the decision, it was decided based on article 117 of the LPP in relation to article 29 and paragraph 31 of the Rules of Procedure of the PRB.

For point II of the decision, it was decided based on article 131 of the LPP in relation to article 29 paragraph 3 of the PRB Work Regulations.

For point III of the decision, it was decided based on article 31 paragraph 4 and paragraph 6 of the PRB's Work Regulations related to article 118 of the LPP.

From what was said above, it was 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 –**Ministry of Economy;**
1x1 EO – “Cactus ” Sh.a., Wire Labs Kosova L.L.C.;
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.