



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

Psh. No.971/23

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 Kosova (Law no. 04/L-042, supplemented and amended by Law 04/L-237, Law 05/L-068, supplemented and Law 05/L-092) in the composition of Vedat Poterqoi - Chairman, deciding according to the complaint of (EO ) "Ebk Sh.P.K." against the Decision to contract award or a design competition of the “Ministry of Culture RS and ÇjK” in the capacity of Contracting Authority (CA) related to the procurement activity “Renovation of existing sports gyms in regional centers - Sports Gyms in Shtime” with procurement no: 207-23-9716-5-1-1, on the 01/03/2024 has issued this:

### **DECISION**

1. Approved, as grounded the complaint of EO “Ebk Sh.P.K” with no. 2023/971, dated 04/12/2023, while the decision of the CA “Ministry of Culture RS and ÇjK” regarding the procurement activity “Renovation of existing sports gyms in regional centers - Sports Gyms in Shtime” with no. of procurement:207-23-9716-5-1-1.
2. Cancelled the contract award notice related to the procurement activity “Renovation of existing sports gyms in regional centers - Sports Gyms in Shtime” with procurement no: 207-23-9716-5-1-1, initiated by the contracting authority (CA) - Ministry of Culture RS and ÇjK, and the matter is returned to Re-evaluation.
3. Within 10 days, the CA must inform the PRB about all the actions taken regarding this procurement activity, otherwise, for non-compliance with the decision, the PRB can take measures against the CA as provided by the provisions of Article 131 of Law on Public Procurement of Kosova.
4. It is allowed to return the complaint’s fee to the amount deposited when the complaint was submitted to the complaining EO, according to Article 31.4, and the complaining economic operator is obliged to comply with Article 31 point 6 of the PRB's Work Regulations, within a

period of sixty (60 ) days to make a request for the return of the complaint insurance, otherwise the deposit will be confiscated and these funds will go to the Budget of the Republic of Kosova.

## **REASONING**

### *- Procedural facts and circumstances -*

On the 12.09.2023, the Ministry of Culture RS and ÇjK in the capacity of the Contracting Authority has published the Contract Notice B05 related to the procurement activity with “Renovation of existing sports gyms in regional centers - Sports Gyms in Addition” with no. of procurement: 207-23-9716-5-1-1. Meanwhile, on the 17.11.2023 B58 published the Notice on the decision of the Contracting Authority where it awarded the contract to EO “BM Group SHPK & Monting SHPK”.

This procurement activity was developed through an open procedure with the type of work contract and with an estimated contract value of 530,000.00 €.

On the 22.11.2023, EO “Ebk Sh.P.K” submitted a request for reconsideration against the aforementioned decision of the CA. On the 22.11.2023, the Contracting Authority rejected the request for reconsideration as unfounded.

On the 04.12.2023, PRB received the complaint from EO "Ebk Sh.P.K." with no. 971/23 regarding the activity “Renovation of existing sports gyms in regional centers - Sports Gyms in Shtime” with procurement no:207-23-9716-5-1-1.

### *-On the stage of preliminary review-*

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.

### *Claims of the complaining economic operator "EBK SH.P.K." are presented as follows:*

The first claim (I): The complainant claims: "Dear us, dt. 17.11.2023 through the e-procurement electronic platform we were notified with the notice on the decision of the CA where the EO group "BM Group SHPK & Monting SHPK Veternik -Prishtina with a price of €494,431.30 was recommended for the contract, while we have received the standard letter for bidders eliminated with the reasoning that you find attached to the complaint. The reason for the elimination is in complete contradiction with the requirements set in the tender dossier and in the contract notice.

In article 9.1&9.2 of the TDS regarding the technical and professional capacity, it is requested as follows: "4. List of professional staff - Project manager - construction engineer with at least 5 years of professional experience - Workshop leader - construction engineer with at least 3 years

of professional experience - Hydrotechnical engineer - at least 3 years of professional experience - Communication Engineer - at least 3 years of professional experience - Electrical Engineer - at least 3 years of professional experience". While the requested documentary evidence is requested as follows: "Evidence 4 - List of professional staff signed and sealed. Decision on the appointment of the project manager and other positions. Copies of notarized diplomas (Notarization no older than 6 months from the date of publication of the contract notice). CV and references proving the required experience. If the EO does not have permanent staff, then the notarized contracts with the name and number of the project must be provided as proof". As can be seen from the aforementioned request, one of the requests was a Traffic Engineer, while diplomas, CVs and references were requested as evidence. In relation to this request, we have provided evidence for Mr. Ahmet Zukë Krasniqi Bachelor of Communication who graduated on June 23, 2011 and we have attached the employment contract, diploma, CV and proof of work experience. The request of the tender dossier was not a graduate engineer nor a master of traffic, but only the word traffic engineer, therefore the evidence we have provided is the same as the request of the tender file. In a previous decision of the PRB, the engineer and the bachelor were considered equivalent, while a clear distinction was made with the graduate construction engineer. The decision in question is No. 324-336/22 dated 03.10.2022 and the finding is as follows: construction. For this claim, I think that the title Bachelor of Construction and Construction Engineer are Equivalent or equivalent, but this can be compared easily through the points system (Credits-ECTS), and for this I can request clarification from the CA according to the article So in in our case, the Bachelor of Communication title is equivalent to the request of the Communication Engineer tender file. So there is a clear difference when the request is a graduate engineer with an engineer and a bachelor. In this particular case, we do not have a request for a graduate engineer, but only an engineer, while the elimination cannot be done on the grounds that we did not offer a graduate engineer, because it can be acted in violation of article 56.3 of the LPP. So we cannot be eliminated for a request that was not specified in the tender file and in the contract notice. On 22.11.2022, we received the notice on the decision of the CA regarding the request for reconsideration, which the CA rejected on the grounds that it is unfounded. The CA, in its decision to reject the request for reconsideration, noted that a diploma was required and it is true that a graduate engineer was required. Evaluations of offers cannot be made by word of mouth, but must be done based on the requirements of the tender file. We also offered a diploma as evidence for Mr. Ahmet Krasniqi, and in the diploma it is written "Faculty of Mechanical Engineering, Diploma of basic university studies, Ahmet Zeke Kraniqi". The contracting authority further tried to make comparisons with the years of study of the graduated engineer with the years of the Bachelor, but we clarify that in this case we are not dealing with a request for a graduate engineer but only with an engineer, therefore these comparisons are not real. Also, the request of the tender file was not the years of study, therefore in this case the years of study do not apply. As for the years of study, we clarify that with the old system, the title of engineer was obtained with higher education, therefore the student who completed the bachelor's studies has more years of study than the engineer. Bachelor studies last three years, while the engineer title is obtained with 2 or 2.5 years of study. Even in response, the contracting authority has not been able to prove the opposite of what we have claimed. The CA has emphasized that to get the title of engineer one must study for 4 years or take 240 credits, but nowhere does it

support it in any literature, but only refers to the European Education Area. The contracting authority then noted that with the old modules of the education system in the Republic of Kosovo, an engineer is a person or individual who has completed studies of at least 240 credits and with a duration of at least 4 years. This conclusion is completely unstable because with the old system we clarified above that he was given the title of engineer, while we do not know what the CA meant by the old module. Based on the evidence and facts that were mentioned above, it results that the examination, evaluation and comparison of the tenders was not done in accordance with Article 59 of the LPP and at the same time the main criterion for awarding the contract, which was the tender, was not respected. responsible with a lower price according to article 60 paragraph 1.1 of the LPP. Also, the CA has not respected article 7 of the LPP, where even though we have met all the requirements of the TDS and the contract notification, we have not been recommended for a contract. Paragraph 1 of Article 7 of the LPP clearly foresees that "The contracting authority will treat economic operators equally and non-discriminatory and will act in a transparent manner. In this case, article 6 of the LPP economy was not taken into account when it is known that we have offered a much cheaper price, and compared to the EO recommended for the contract, we are cheaper by 62,431.30 euros. Likewise, the contracting authority did not take into consideration article 1 of the LPP, 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 "Ebk Sh.P.K" considers that the Contracting Authority has acted in violation of Article 1, 7, 59, 60, of the LPP. We ask the PRB to make a decision to approve the complaint of EO "EBK" SH.P.K. the examination, evaluation and comparison of offers should be done in harmony with the requirements of the tender dossier, the contract notice and in accordance with the provisions of the LPP.

CA's response to the request for reconsideration: "The Ministry of Education, Science and Technology and the Law on Higher Education in the Republic of Kosova are the tools and institutions that present the equivalent of an academic title and not the decisions of the PRB (even the decisions of the PRB -, both the decisions of the CA and the claims of the EO may be wrong), in this case it is clearly specified that the Bachelor's degree is not equivalent to the Engineer's degree, because to obtain an engineer's degree you must have at least 4 years of study and to have at least 240 credits, while a Bachelor's degree defined by international rules also presented by the European Education Area - Quality education and training for all has 180 credits up to 240, and that with the old modules of the education system in the Republic of In Kosovo, the Engineer is a person or individual who has completed his studies with at least 240 credits and with a duration of at least 4 years (with the new 3+2 year system). The Contracting Authority has requested a Communication Engineer and at the same time has applied for the Diploma (See criteria: Copies of notarized diplomas - Notarization not older than 6 months from the date of publication of the contract notice), so I assume that a Graduated Communications Engineer requested it, because a person without a degree cannot be considered an Engineer. In this case, analyzing photo 1, it is clearly seen that the eliminated EO presented a Bachelor of Communication which did not meet the condition of the Contracting Authority because the same is one year less than the education required by CA. On the other hand, the recommended EO

presented in its offer a Graduated Mechanical Engineer in the Direction required by the Contracting Authority, that of Communications. Please accept the references to see in detail the calculation of ECTS grades (credits) from a prestigious Organization like that: German Grade Calculator (<https://germangradcalculator.net/ectscalculator/#:text=10/9201.points.0/02060/020The%20doctorate%20program%20comprises%20240%20points>) which specifies in detail the difference for the one that you are eliminated. The economic operator annihilating has submitted twice the detail that their offer is cheaper than the offer of the operator recommended for the contract and that this will damage the budget and make the procedure "stuttering". CA Contracting informs the complaining party that the recommended offer for the contract is an offer submitted below the value set for investment in this project and that even you as the complaining Economic Operator have not presented any findings for them means that their offer is responsible and below the estimated value. Knowing that the procedure was intended to reward with a contract an EO which has the lowest price after all the administrative criteria for the contract have been met and in this case you have a lack of documentation. To convince you that you are wrong, in another procedure with identical or similar criteria you as a Traffic Engineer have attached a Traffic Engineer and not the worker in question that you attached to AP - Renovation of existing sports gyms in regional centers — Sports Gym in Shtime with number 207-23-97165-1-1.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 07.12.2023 has authorized the review expert to conduct the initial review of the file and claims according to complaint no. 971/23, while on 11.12.2023 the review expert's report with no. 2023/971 with the following recommendations: Based on the above-mentioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO be approved as grounded, the contract award notice be canceled and recommends that the matter be reassessed.

The expertise's report has been duly accepted by all procedural parties. CA disagrees with the recommendations of the review expert's report, while EO agrees with the expert's opinion.

*- 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 "EBK SH.P.K." - the review expert through report no. 2023/971 assessed as follows:*

First finding (I): "Procurement activity: "Renovation of existing sports gyms in regional centers - Sports Gyms in Shtime" with no. of procurement: "207-23-9716-5-1-1", initiated by the Contracting Authority (CA) - MINISTRY OF CULTURE RS AND ČJK, started with the publication of the contract notice dated 13.09.2023, the opening of offers is made on 23.10.2023, where CA on 17.11.2023 publishes notice B58 recommending EO "BM Group Shpk & Monting

Shpk" for the contract, while EO has eliminated the complainant with the reasoning: "For the traffic engineer request, you presented Mr. A.K., who is a Bachelor of Communication, and this academic title does not meet the criteria defined by the Contracting Authority" Further, after the rejection of the request for reconsideration by the CA, on 04.12.2023 he submitted a complaint to the PRB, claiming that the CA unfairly eliminated the complainant EO and that the CA violated Article 1, 7, 59, 60 of the LPP. The claim of the complaining EO was submitted against its elimination, due to the fact that it is cheaper in price and that it claims to meet the criteria in the Tender File. The review expert after analyzing and reviewing the documents of the case clarifies, CA in the tender file requested 9.1&9.2: 4. List of professional staff - Project manager - construction engineer with at least 5 years of professional experience - Workshop leader - construction engineer with at least 3 years of professional experience - Hydrotechnical Engineer - at least 3 years of professional experience - Communication Engineer - at least 3 years of professional experience - Electrical Engineer - at least 3 years of professional experience Evidence 4 - List of professional staff signed and sealed. Decision on the appointment of the project manager and other positions. Copies of notarized diplomas (Notarization no older than 6 months from the date of publication of the contract notice). CV and references proving the required experience. If the EO does not have permanent staff, then the notarized contracts with the name and number of the project must be provided as evidence. Initially, regarding the claim raised by the complaining EO, since we are not competent to deal with the equivalence of the title, then we requested clarification from the University of Pristina (UP) - Faculty of Mechanical Engineering (FIM), regarding these diplomas as well as qualification obtained. UP-FIM, has responded, we quote: "Diplomas according to the pre-Bologna system from our Faculty are issued with the call: e.g. Graduated mechanical engineer, traffic direction The faculty has not issued diplomas with the title of traffic engineer so far. Based on the above-mentioned AIs, the mechanical engineering graduate is equivalent to the mechanical engineering master's degree now. We clarify that the CA in DT has asked for a traffic engineer, but also the CA has not clearly presented the criteria, due to the fact that according to the UP there is no traffic engineer title, but there is a graduated mechanical engineer - Communication department, which the claim of the EO the appellant is found to be well founded. Furthermore, the recommended EO has a graduate engineer in traffic management machinery, while the complaining EO has offered an engineer who has a bachelor's degree in traffic. Whereas, the other claim of the complaining EO regarding the difference between an engineer and a graduate engineer, UP clarifies the quote (FIM): "Clarification: With the pre-Bologna system, there is a difference, for example, between a mechanical engineer and a graduated mechanical engineer. The title of mechanical engineer was obtained in the Higher Schools, 5 semesters, 2.5 years. The title of graduate mechanical engineer was obtained at the Faculty, 4-5 year studies" In this particular case, in their offers, we have engineers who are registered at UP with the pre-Bologna system, their studies have been completed with the Bologna system, so in 2011. Also, on the website of the University of Pristina-Faculty of Mechanical Engineering, the direction of Communication and Transport is treated as Traffic Engineer And as such, in accordance with the decision of the PRB PSH. No: 324-336/22, which talks about construction engineer and graduate construction engineer, as such I consider that this diploma is equivalent to the "tender file request", which is not well specified. In conclusion, according to the clarifications above, also based on the nature of the procurement

activity "Renovation of the sports gym", I consider that the procurement activity in question should be re-evaluated, recommending the CA to conduct the re-evaluation process in accordance the legal provisions of the LPP. This recommendation comes with the reasoning that initially the CA did not establish clear and well-specified criteria, PSH decision no. 324-336/22, as well as taking into account article 6 of the LPP, the complaining EO has offered the lowest price for 60 thousand euros.

According to the above, the reviewing expert handled the claims of the complaining economic operator "EBK SH.P.K." 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 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 expert's report. In this way, it was found that the claims of the complaining economic operator "Ebk Sh.P.K." are grounded.

*-Findings of the Review Panel -*

The review panel independently and objectively, conscientiously and professionally evaluated all the evidence of the case. In this way, it was found that the Contracting Authority did not act in accordance with the legal provisions for public procurement and the requirements of the tender file related to the procurement activity "Renovation of existing sports gyms in regional centers - Sports Gyms in Additional" with no. of procurement: "207-23-9716-5-1-1". The review panel assesses that the review expert handled the claims of the complaining economic operator "Ebk Sh.P.K." in a professional and objective manner and that the argumentation in the expert's report is sufficiently detailed, comprehensible and based entirely on the relevant documents that refer to the procurement activity. The findings in the 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 expert's report. In this way, it was found that the claims of the complaining economic operator "Ebk Sh.P.K." are grounded.

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 well-founded. Consequently, the Review Panel has decided regarding the procurement activity entitled "Renovation of existing sports gyms in regional centers - Sports Gyms in Shtime" with no. of procurement: "207-23-9716-5-1-1", 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 reviewing the case, the complaint of the complaining economic operator, the concrete analysis and the documentation of the case, sees the complaint of the operator as well-founded, recommending that the procurement activity with "Renovation of gymnasiums" existing sports in the regional centers - Sports Gyms in Shtime" with no. of

procurement: "207-23-9716-5-1-1" to re-evaluate the CA to act in relation to the legal provisions of the LLP and the requirements of the tender dossier and contract notice.

Based on the above, the Review Panel in the sense of Article 1, 6 and 7 of the LPP, 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 complaining statements in this case constitute sufficient basis for the procurement activity to be re-evaluated.

The Review Panel decided in accordance with the legal powers in the sense of Article 104 paragraph 1 in relation to Article 103, Article 105 and Article 117 of the LPP for the implementation of the procurement review procedure in a fast, fair, non-discriminatory manner, with the aim of resolving legal and effective of the subject. Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations, which may appear 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 IV of the decision, it was decided based on article 31, paragraph 4 and paragraph 6 of the Rules of Procedure of the PRB in relation 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

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**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 CULTURE RS AND ÇJK;**

1x1 EO – **EBK SH.P.K;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.