



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

Psh. No.537/24

The Review Panel, appointed by the President of the Procurement Review Body (PRB), based on Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova (LPP) in the composition of Kimete Gashi - President, Batisha Ibrahim and Vedat Poterqoi - member, deciding according to the complaint by the Economic operator “Petrol Company” SH.P.K, as well as the complaint of (EO) "Delta Group" SH.P.K against the Decision on contract award or a design competition of the Kosova Customs in the capacity of the Contracting Authority (CA) related to the activity of procurement “Fuel supply” with procurement number UA/2016-24-2858-1-1-1, initiated by the contracting authority (CA) - Central Procurement Agency on the 28/08/2024 has issued this:

DECISION

1. Approved as partly grounded the complaint of “Petrol Company” SHPK with no. 2024/0537, dated 06/24/2024, regarding the procurement activity "Fuel supply", with procurement number UA/2016-24-2858-1-1-1, initiated by the contracting authority (CA) Central Agency of Procurement, meanwhile the procurement activity is returned to the revaluation for Lot 4.
2. Approved as partly grounded the complaint of "Delta Group SH.P.K., no. 2024/0543, dated 06/24/2024, related to the procurement activity "Fuel supply", with procurement number UA/2016-24-2858-1-1-1, initiated by the contracting authority (CA) Central Agency of Procurement, meanwhile the procurement activity is returned to the revaluation for Lot 7.
3. Within 10 days, the CA must inform the PRB about all the actions taken in relation to this procurement activity, otherwise, the PRB has the right to take measures against the CA for non-compliance with the decision as provided by the provisions of Article 131 of the LPP.
4. It is allowed to return the complaint's fee to the deposited amount, so that the complaining economic operators are obliged to submit a request for the return of the fee in accordance with article 31 par. 6 of the Rules of Procedure of the PRB, under the warning that if the request is not

submitted within the deadline, the deposit will be confiscated and all deposited funds will go to the budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances –

The Central Procurement Agency in the capacity of the Contracting Authority dated 26.03.2024 has published the Notice for Contract B05 related to the procurement activity entitled "Fuel supply", with procurement number UA/2016-24-2858-1-1-1, initiated by the contracting authority (CA) Central Procurement Agency.

On the 07.09.2024, the contract award notice was published, while on the 07.15.2024, the contract signing notice was published.

On the 10.06.2024, the economic operator "Petrol Company" SHPK, as well as on the 08.06.2024, the economic operator "Delta Group" SHPK submitted a request for reconsideration to the CA against the decision to award the contract. On 14.06.2024, the CA rejected the requests for reconsideration of the above-mentioned EOs.

Against the decision cited above, on the 24.06.2024, the economic operator "Petrol Company" SH.P.K has submitted to the PRB complaint no. 2024/0537.

Against the decision cited above, on the 24.06.2024, the economic operator "Delta Group" SH.P.K has submitted to the PRB the complaint no. 2024/0543.

-On the occasion of the preliminary review -

(a) The PRB has determined that the appeal in the present case was made in accordance with Article 109.1 of the LPP, according to which against any decision taken by the CA, any interested party can submit a complaint after the implementation of the preliminary procedure for resolving disputes, as provided for in Article 108/A of this law. Since the complainant has the status of the interested party as defined by article 105, paragraph 1, in relation to article 4, paragraph 1.26 of the LPP, and the complaint contains the essential elements provided for by article 111, of the cited Law, which means that the same fulfills the conditions in terms of the cited provisions and falls under the powers of this body in terms of Article 105 of the LPP, related to Article 9 of the Regulation on the Work of PRB. The Review Panel analyzed all the documents of this case, including all the acts and/or actions of the parties, as described above (procedural facts and circumstances), there are no elements to prevent the conflict of interest, as required in terms of Article 11 of Regulation for the Work of PRB, related to paragraph 1.75, article 4 of the LPP and at the same time analyzed all the documents of this matter, including all acts and actions of the parties and considered that there is no need to convene a hearing with the parties as provided by the paragraph 1, of Article 24 of the PRB Work Regulations.

(b) Based on the actions described above, PRB has appointed the Review Panel according to Article 111, paragraph 5 (ii) of the LPP and engaged the review expert in accordance with

Article 111, paragraph 5 (i) of the LPP, with the duty to the same to do the initial review of the file and complaints, in relation to this procurement activity, in the sense of article 113 and 114 of the LPP in relation to article 17 and 19 of the cited Regulation. Regarding this, on the 18.07.2024, the reviewing expert submitted the evaluation report with no. 2024/0537 recommendations which are described as follows:

- the complaint of the complaining EO is rejected as unfounded and
- the decision of the CA remains in force

Regarding this, on 18.07.2024, the review expert submitted the evaluation report with no. 2024/0543 recommendations which are described as follows:

- the complaint of the complaining EO to be approved as partially grounded,
- cancel the contract award notice and recommend that the matter be reassessed.

Response of the Contracting Authority to the complaining claims of EO "Petrol Company" SH.P.K

CPA, after accepting the request for reconsideration, reviewed it and rejected the claims of the Economic Operator: Petrol Company Sh.P.K. as unfounded. With the decision of the CA-Central Procurement Agency on 04.06.2024, the offer of Petrol Company sh.p.k. for Lot 4 was declared unsuccessful as it was not the cheapest offer among the responsible offers, and on the 10.06.2024 there was uploaded in e-procurement the request for re-examination for Lot 4.

The claim of non-fulfillment of Article 69 Technical and/or Professional Ability by EO recommended by contract is not founded. Article 69 paragraph 1 states: "1. The contracting authority may ask economic operators to provide evidence to show that they possess the minimum qualifications required and specified in the tender file and in the contract notice..." In the tender file, this requirement is specified: "Requirement 1 : The economic operator must provide evidence that it has successfully completed fuel supply in the last 3 (three) years (starting from the date of publication of this contract notice) no less than:..." and "Evidence 1: The Economic Operator must fill in the standard form given in Annex 8 of the Tender File or any other format that includes approximately the data of Annex 8 and attach the relevant certificates or any other document that evidences such delivery, also the Operator In order to fulfill this request, the economic operator can also attach sales invoices (where it must be clearly visible at least: buyer, date, items and amount.) or even presenting references from either the public buyer or the private buyer. " this is in complete harmony with paragraph 2.1 of the same under "the list specifying all the main important supplies of the economic operator carried out in the past three years" therefore it was not requested to offer completed contracts but only supplies completed, which the EO recommended for the contract has presented. As long as we have two different companies "SH.P.K", the references issued for each other are acceptable, and based on the turnover declared in TAK (around 50 million for the past three years) and the comparison with the references presented (about €23 million) there is no doubt that the same has not fulfilled the request of €10 million in fuel supplies as requested for Lot 4.

The claim for an abnormally low price for Lot 4: In the procurement activity Fuel supply, in Annex 10, the price formation table is presented, where all other prices are determined (some are variable and some are fixed) except for the "Premium" price ' where the bidders place their bid, therefore it is stated in the TDS that this will be the price that will be evaluated since the other values presented in Annex 10 do not have the right to be changed by the bidders during the preparation of the bid, in this case if only the offer for Premium is calculated, then the offer of the EO recommended for the contract differs with the second offer and with the average of the accepted offers, but considering that the total values of the offers that also include the other values presented in Annex 10 are very high in relation to the value of the "Premium", the evaluation commission and the responsible procurement official did not evaluate it as an abnormally low offer. So the financial difference in the total of the offers is small between the bidders.

Claims of the complaining economic operator "Petrol Company" SH.P.K in complaint no. 537/24 are presented as follows:

The first claim (I): The complainant claims that: Violation of Article 61 of the LPP - Abnormally Low Tenders In the tender file at TDS point 2.6 - The estimated value is clearly stated "The estimated value for the Premium is the basic value of the activity on to which the deviation +/- 30% of the contract will be applied (or the deviation of the quantity that is the same as the deviation of the premium value) and the evaluation of the offers will be done, while the estimated total value is calculated based on the price of The month of February 2024 is therefore a variable value that with the realization of the contract will change depending on the price movements in the stock market and the only purpose that is presented here and in the contracts is to give a more approximate picture of the financial value that will be spent through this contract. We fully agree with the statement of the CP because it clarifies the reality in this procurement activity for the reason that if we are based on Annex 10-Table for calculating the cost price of fuels, all other prices are determined such as: Excise duty, VAT , The conversion of tons to liters as well as the average monthly rate, but also the average price determined in the berza. Also, the list of prices is indicated: Note/Clarification: The bidder must only fill in column 8-C and the total price will be calculated according to the formula - Total must be set as the total price of the bid". CPA in DT has determined all the elements well during the evaluation did not evaluate in accordance with the Tender Dossier and the legal provisions because it did not address at all Article 61 of the LPP "Abnormally Low Tenders", Article 41 of the Public Procurement Regulation: Abnormally Low Tenders In this case the offer of the recommended EO for Lot 4 contracts fulfills all points of the public procurement regulation, article 41 as a whole and paragraph 41.3 in particular, in this case CPA has also violated article 41 of the Regulation of public procurement. Attached is the calculation according to the example of Article 11 of the Guidelines on public procurement, which article also defines 11.1 In any case when the tenders seem abnormally low, the Contracting Authority will act in accordance with Article 61 of the LPP and Article 41 of the Regulation on Public Procurement. The calculation is made in two forms: 1. Calculation if we do not consider HIB Petrol's offer after it has been eliminated: 2. Calculation if we consider HIB Petrol's offer. In both cases, the condition of treating the offer as an offer with abnormally low prices is met. Therefore, CPA violated Article 61 of the LPP,

Article 41 of the Public Procurement Regulation and Article 11 of the Public Procurement Guidelines. Based on the information provided by the questions asked to us by the journalists, see the attached DUD, it is observed that the import price is higher than the price of supplies according to the CPA formula. Our company has submitted a request for reconsideration to CPA, but CPA has rejected our request on the grounds that CPA has presented Annex 10 in the tender file, where the price calculation formula is presented, where all prices (some fixed and some variable) are determined, except for the price of "premium" where the bidders set their prices and in the decision on the request for reconsideration it has been stated (same as in the FTD) that this is the price (Premium) based on which all offers will be evaluated since in the other values presented in Annex 10, bidders do not have the right to change. It is also stated that if only the value of the premium is calculated, then the bid of the EO announced as the winner has a difference with the second bid and with the average of the accepted bids, but bearing in mind that the total values of the bids including the other values in annex 10 are very high in relation to the "Premium", the evaluation committee and the responsible procurement official have not evaluated them as abnormally low offers and have stated that the financial difference in the total of the offers is small in among the bidders.

With this, CPA has violated the requirements of TD because it has declared in the tender file to TDS point 2.6 - Estimated value clearly stated "The estimated value for Premium is the basic value of the activity on which the deviation will also be applied +/-30 % of the contract (or the deviation of the quantity that is the same as the deviation of the premium value) and the evaluation of the offers will be done, while the estimated total value is calculated based on the price of February 2024, so it is a variable value from the realization of the contract will change depending on the price movements in the stock market and the only purpose presented here and in the contracts is to give a more approximate picture of the financial value that will be spent through this contract. We consider that the CPA did not evaluate in accordance with the request of the TD and therefore with the legal provisions because it did not address at all Article 61 of the LPP "Abnormally Low Tenders" and again during the examination of the request for reconsideration it did not take into account our claim but stated that the evaluation commission evaluated according to the total values and not according to the premium values. So he declared himself that he did not evaluate according to the condition defined in the Tender dossier, respectively in TDS point 2.6. Violation of Article 69 of the LPP Technical and/or Professional Ability Article 69 of the LPP "Technical and/or Professional Ability" defines: During the conduct of the procedures leading to the award of the public contract in which the supply of products is included, economic operators may be required to prove their technical ability through one or more of the following means, according to the type, quantity and purpose of the products that must be supplied: In all the cases included in 2.1, 4.2 and 6.2 of Article 69 of the LPP, the following expression is mentioned: "realized (completed) in the past three years" or "in the past three-year period.."). In the sense of the Law, the expression "the past three years" means: "the time period defined in these articles which is related to the period that preceded the date of publication of the contract notice or, in the case of negotiated procedures without the publication of the contract notice, sending the invitation for participation or tendering. The list of the Operator awarded with a contract has a total of 6 contracts, of which only 3 contracts have the date of completion of the contract, while the other 4 contracts have no completion date, which

means that the contracts are in progress, so they are not completed and this is contrary to Article 69 of the LPP and Article 26.7 of the Public Procurement Rules, which decisively requires "contracts completed (completed) in the past three years. Article 26.7 of the public procurement regulation defines "References for completed contracts can be proven with the final report of the completion of works or with certificates for the completion and/or satisfactory completion of projects, which as evidence is mentioned in Article 69 of the LPP. Also another element is that the first contract presented in the list is a contract where the Seller - Patroni SH.P.K (son of the owner of NTSH Patroni) has supplied the Buyer - NTSH Patroni (father of the owner of Patroni SH.P.K. A reference has been submitted as proof issued by NTSH Patroni for Patroni Sh.P.K and the evaluation commission did not bother to ask for additional clarifications to prove the accuracy of this transaction, knowing the fact that both companies presented as Patroni Shpk and Patroni NTSh use the same office in the same building and that the owner of NTSH Patroni negotiates contracts and also appears on behalf of Patroni Shpk for us this reference is unacceptable for the reason that it is a fictitious reference. Our company has submitted a request for reconsideration to the CPA, but the CPA has rejected our request on the grounds that article 69.1 defines "The contracting authority may ask the economic operators to provide evidence to show that they possess the minimum qualifications required and specified in the tender file and in the notice of the contract...and that in the TD it is determined that the EO must provide evidence that it has successfully completed the supply of fuel in the last 3 years starting from the date of publication of the notice of the contract and has emphasized that they have not been requested completed contracts but completed supplies which the EO recommended for contracts has submitted, we consider that the CPA has not evaluated the offers in accordance with Article 69 of the LPP and Article 26.7 of the Public Procurement Regulation because Article 26.7 of the Public Procurement Regulation decisively defines "References to completed contracts can be proven with the final report of the completion of works or with certificates for completion and/or satisfactory completion of projects, which is mentioned as evidence in Article 69 of the LPP. CPA is not the institution that interprets the legal provisions of the LPP. Also regarding the last claim that the two companies presented as Patroni Shpk and Patroni NTSh use the same office, the same building and that the owner of NTSH Patroni negotiates contract and is also presented in the name of Patroni Shpk for us this reference is unacceptable because it is a fictitious reference, AQP considers that as long as there are 2 different companies the references issued for each other are sufficient and that there are no elements for a fictitious reference because there is cover with circulation declared in TAK.

Response of the Contracting Authority to the complaining claims of EO "Delta Group" SH.P.K

CPA after accepting the request for reconsideration has reviewed it and rejected the claims of the Economic Operator: Delta Group Sh.P.K. as unfounded. With the decision of the CA-Central Procurement Agency dated 04.06.2024 the offer of Group of Economic Operators Delta Group SH.P.K.; Transultraoil SHPK was eliminated for Lot 6 and Lot 7, while for Lot 4 it was declared unsuccessful as it was not the cheapest offer among the responsible offers, and on 08.06.2024 it uploaded the request for e-procurement re-examination for Lot 6 and Lot 7.

Although the reasons for the elimination were mentioned in the Standard Letter for the eliminated tenderer dated 04.06.2024, the complaining EO did not provide any convincing evidence (in fact, it did not provide any evidence at all) to convince CA-CPA that the reasons for the elimination do not stand of the same. In the decision of the CA-CPA, the reason for the elimination was clarified and in no case was the lack of any document mentioned. So the reason for the elimination was the two declarations under oath which were not completed in the right way and in this case Article 10 "Clarification of tenders during the tender evaluation process" of Guideline No. 001/2023 for Public Procurement does not allow any possibility of seeking additional clarifications for the "Declaration under oath". Therefore, seeing that the complaining EO has not provided any evidence that the elimination of the same for Lot 6 and Lot 7 was unfair, CA-CPA rejects the claims and stands behind the decision to eliminate the complaining EO for Lot 6 and Lot 7.

The claim regarding the "name of the EO" recommended for the contract in Lot 7 does not hold and is unreasonable. Allegations for differences in signatures between several documents in the offer of the bidder recommended for contract in Lot 7: CA-CPA clarifies that initially none of the 12 EOs recommended for contracts (total 4 EOs - for all Lots) there is no doubt about the signatures of the Declarations under oath, while CA-CPA cannot verify the signatures, but that all interested parties can address you to the competent bodies, even the EOs mentioned by you already have access to these documents (as this review of review requests is published) and may refer you to the competent authorities if your signature has been misused.

Claims of the complaining economic operator "Delta Group" SHPK in complaint No. 543/24 are presented as follows:

Lot 7 - Fuel supply for the Region of Peja and Gjakova (Local Level). This procurement activity is related to the tender: "Fuel supply", public framework contract with one operator, open procedure, type Supplies. The contract notice was prepared on 02.04.2024 and published on 03.04.2024.

The subject of the contract refers to the supply of fuel for Central and Local Level institutions divided by Lots. Supply includes supply of fuel for cars, heating, generator and spares. The method of delivery and allocation of lots are described in the tender dossier.

On the 15.05.2024, the public opening of tenders took place. On the 04.06.2024, the CA published the announcement on the decision, through which we were informed that our offers for lots 6 and 7 are irresponsible, which resulted in our elimination. On 06.06.2024, we submitted a request for access to public documents. Dissatisfied with the decision of the CA, on 08.06.2024 we addressed the same. On 14.06.2024, we accepted the decision of the CA, by which our request for reconsideration was rejected as unfounded, therefore, dissatisfied with this decision, we are appealing to PRB. The lot that is the object of the complaints is: Lot no. 7: Fuel supply for the Region of Peja and Gjakova (Local Level")

-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 complainant's submissions and documents, the contracts 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.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 01/07/2024 has authorized the review expert to conduct the initial review of the file and claims according to complaint no. 537/2024, which was submitted on 18/07/2024.

Regarding the claims of EO "Petrol Company" SH.P.K, the review expert through report no. 2024/537 assessed as follows:

First finding (I): The review expert in the complaining claim of the complaining party, the technical and professional ability of Article 69 of the LPP, finds that it is unfounded, explaining the reasons as follows: Article 69 paragraph 1 points out that: The contracting authority has act correctly in this particular case because in the contract notice and in the tender file the request is specified which states that: the economic operator must provide evidence that it has successfully completed the fuel supply in the last three years starting from the date of publication of the notice for contract. It was not requested to offer completed contracts but only completed supplies, in this particular case this was achieved through the attached evidence from the EO recommended for awarding the contract. From the above-mentioned clarifications, the examining expert finds that this complaining claim is unfounded.

The second finding (II): The review expert in the party's complaint claims that it is unfounded, explaining the reasons as follows: In Annex 10 of the tender file, the price formation table is presented, where all other prices are determined, except for the Premium price where the bidders place their bid, in this particular case it is specified in the FDT, that this will be the price that will be evaluated, since the other presented values have no right to be changed by the bidders during the preparation of the bid. More correctly, the contracting authority did not evaluate the tender as abnormally low, because in this case only the offer for Premium is calculated, then the offer of the EO recommended for the contract is different from the second offer and from the average of the received offers. The clarification from the side of the contracting authority in this appeal claim is fair and well reasoned. From the above-mentioned clarifications, the review expert concludes that this complaining claim is unfounded.

The expert report was accepted by both procedural parties through the e-procurement system, where the contracting authority did not declare the opinion given in the expert report, while the economic operator did not agree with the opinion given by the review expert.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 01.07.2024 has authorized the review expert to conduct the initial review of the dossier and claims according to complaint no. 543/2024, which was submitted on 18.07.2024.

Regarding the claims of EO "Delta Group" SH.P.K, the review expert through report no. 2024/543 assessed as follows:

First finding (I): The complaining claim by the complaining EO that the commercial name in the declaration under oath is not written correctly, the examining expert finds that this does not hold since the name is written correctly as it is in the business certificate. This complaining claim is considered unfounded.

The second finding (II): The review expert in this particular case finds that this claim is considered partially founded, therefore referring to article 38 of regulation no. 001/2022, for public procurement - Additional clarifications and article 72 of the LPP, Documentation and additional information, states that: The contracting authority may invite economic operators to complete or clarify the certificates and documents presented in accordance with articles 65-71 of this law. The reviewing expert considers that the Contracting Authority should request from the EO recommended for the contract, additional clarifications regarding the signatures contested by the complaining EO in this particular case. This complaining claim is considered partially grounded.

The expert's report was accepted by both procedural parties through the e-procurement system, where the contracting authority did not declare the opinion given in the expert report, while the economic operator agreed with the opinion given by the review expert.

Findings of the Review Panel

The Review Panel, after reviewing and analyzing all the documentation available on the e-procurement platform, as well as the complaint claims and answers given by the case expert, at the session held on 23.08.2024, has carried out an in-depth assessment and details of all evidence and documents presented. The panel has taken into consideration that the expert reports contain the essential elements that are foreseen by the provisions of Article 113 and Article 114 of the Law on Public Procurement (LPP). According to these provisions, the expert is obliged to review all the procurement documentation, including the appeal claims, and provide an independent and professional assessment on the procurement activity and the validity of the complaining claims.

However, it should be noted that the expert report is not binding on the Review Panel and any such report must be evaluated and analyzed in the general context of the case documents, asserted facts and other evidence presented. The Review Panel must consider the nature of potential violations, the course, nature and purpose of the procurement activity to form a full and fair judgment. As a result, the Panel's decision to support or not any report and recommendation is based on its independent and professional judgment, as provided in articles 98, 99 and 105 of the LPP.

Legal Analysis of the Complaint of "Petrol Company" SH.P.K

Regarding the complaint of "Petrol Company" SH.P.K with no. 2024/0537 (protocol no.), the Review Panel has come to the conclusion that the complaint should be approved as partially founded. This decision was taken by examining the claims related to the contracts executed by the complainant. In this context, the Review Panel has come to the conclusion that the trust given to the review expert is not complete, since the expert has not fully addressed the claims raised in the complaint. The Review Panel noticed that the review expert did not fully respond to the

claims related to the contract references. This includes references that have been described as fictitious by the complainant, in particular regarding the companies "Patroni Shpk" and "Patroni NTSh". The complainant claimed that these companies use the same offices and the same facility, and that the owner of "Patroni NTSh" is also engaged in negotiations on behalf of "Patroni Shpk".

The Review Panel has concluded that these claims require further verification by the contracting authority. If it is found that these companies are in fact the same and use different names, then the contracts that have been presented can be considered fictitious and as such should not be accepted as valid. This finding is in accordance with the principles established in the tender documents (TD), which aim to identify economic operators (EO) serious and with real capacity for the realization of the contract, preventing manipulation and the inclusion of fictitious references and circulations.

The Review Panel recommends that the contracting authority take clear and concrete actions in accordance with Article 52.7 of the Law on Public Procurement (LPP). If sufficient evidence is found to suggest that the EO recommended for the contract has submitted incorrect or fictitious information, then this EO should be eliminated from the competition as irresponsible for procurement activities.

As for the claims of abnormally low prices, the Review Panel has decided to return the case for re-evaluation. This is in accordance with Article 61 of the LPP and Article 41 of Regulation No. 001/2022 for Public Procurement. The review expert did not fully address this claim, not doing enough analysis of market prices and not asking for clarifications about prices that seem low.

Regulation No. 001/2022 on Public Procurement in article 41 defines the criteria to evaluate the prices that seem abnormally low. In accordance with this article, the contracting authorities have the opportunity to request explanations for the low prices and to assess the credibility of the tenders. In cases where tenders present prices that are low for reasons other than those provided in paragraph 41.3, the contracting authorities may request clarifications in accordance with other provisions of the regulation and article 61 of the LPP.

In conclusion, the Review Panel obliges the contracting authority to take the necessary steps to ensure that all tendering procedures and documents are in accordance with applicable laws and regulations. This includes the detailed verification of contract and award references, as well as ensuring that all evidence and documentation is true and reliable.

Legal Analysis of the Complaint of EO "Delta Group" SH.P.K

The Review Panel has analyzed the complaint submitted by Economic Operator "Delta Group" SHPK with no. 2024/0543 (protocol no.) and came to the conclusion that the complaint is partially founded. This decision was made taking into account the various aspects of the procurement process, especially in relation to the application procedure for LOT 7.

The Review Panel has concluded that the procurement activity related to LOT 7 should be subject to re-evaluation. This includes the possible invitation by the Contracting Authority to the economic operators to complete or clarify the certificates and documents presented. This is in accordance with the legal provisions of article 52 paragraph 7 as well as with articles 65-71 of the Law on Public Procurement (LPP). In this context, it is necessary for the Contracting Authority to carry out an effective control to verify the authenticity and accuracy of the documents presented by the economic operators. This includes verifying signatures and ensuring that all documents and certificates are complete and correct.

The Review Panel obliged the Contracting Authority to request additional clarifications from the EO recommended for the contract. This process is necessary to ensure that the documents and certificates presented are correct and to eliminate any possible doubts about their authenticity. The panel assessed that in this case, the Contracting Authority acted in violation of Article 59 of the LPP, which requires that all actions and decisions during the procurement procedure be based on clear and justifiable principles.

The Review Panel has emphasized the importance of the efficient and economical use of public funds and resources, as provided for in Article 6 of the LPP. This article determines that the Contracting Authority must ensure that the funds are used in the most economical and fair way, taking into account the purpose and subject of the procurement.

In accordance with this, the Review Panel has underlined that the Contracting Authority must also respect Article 1 of the LPP. This article defines the purpose of the law to ensure an efficient, transparent and fair way of using public funds and resources.

The Review Panel has emphasized that it is essential that the procurement process be carried out in full compliance with the legal provisions to protect the interests of all parties involved and to guarantee the integrity of the procurement process. This process must be fair and transparent to ensure that its results are reliable and accepted by all parties.

Conclusion

Based on the competences provided for the Procurement Review Body (PRB) by Article 105, in relation to Article 106 of the Law on Public Procurement (LPP), and taking into account the provisions of Article 103 of this law, the Review Panel has emphasized that all interested parties should have equal rights in procurement procedures and legal remedies. In accordance with this principle, no decision of the PRB can be made or carried out in a way that discriminates or harms another person in the process, or any enterprise.

PRB starts from the principle that each Contracting Authority (at any level) must exercise its powers and determine needs in accordance with the budget capacity, ensuring that all procedures and actions are carried out in accordance with the law and established rules. The Review Panel, having carefully reviewed all the attached evidence and case documents, has come to the conclusion that it is necessary to apply a solution that reflects the nature and impact of the issue in the present case. The panel considered it fair and reasonable to allow the funds deposited for

the complaint's fees for both complainants, in accordance with legal and regulatory requirements.

In conclusion, the Review Panel has decided that the complaints of economic operators will be reviewed in accordance with the legal provisions of the LPP and the relevant rules of the PRB, and has made a decision in accordance with these principles. The Review Panel's decision is based on a full and fair review of all evidence and claims, and is consistent with the context of applicable law and regulations.

Therefore, the Review Panel has decided as in the provision of this decision.

President of the Review Panel

Mrs. Kimete Gashi

Legal advice:

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

Decision to be submitted to:

1x1 CA – **Central Procurement Agency;**

1x1 EO – **Petrol Company - SH.P.K., Delta Group SH.P.K;**

1x1 Archive of the PRB;