



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

Psh. No.573/23

Review Panel, appointed by the President of the PRB, Pursuant to the article 105, article 106, and 117 of the Law on Public Procurement of the Republic of Kosovo (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-President, deciding according to the complaint submitted by the group of the Economic Operator (GEO) “Alfa.i” & “K-Ing” SH.P.K., regarding the procurement activity with title: “Regulation of the water supply network in the Municipality of Fushë Kosova in the neighborhood 28.29, Bardh i Madhë and Sllatinë e Madhë” with procurement no: “212-23-2115-5-1-1”, initiated by the Contracting Authority (CA) - Ministry of Local Government Administration MLGA, on the 14.11.2023, has issued this:

## **DECISION**

1. Refused, as ungrounded the complaint of the economic operators: "Alfa.I" dated 11. 08. 2023 with No.573/23 as well as the complaint of EO "K-Ing" SH.P.K dated 14.08.2023, No. 582/23, for the procurement activity with title: “Regulation of the water supply network in the Municipality of Fushë Kosova in the neighborhood 28.29, Bardh i Madhë and Sllatinë e Madhë” with procurement no: “212-23-2115-5-1-1”, initiated by the Contracting Authority (CA) - Ministry of Local Government Administration MLGA.
2. The decision of the Contracting Authority remains in force.
3. Since the complaint of the complaining GEO was rejected as unfounded, the same fee that he paid when submitting the complaint is confiscated in accordance with Article 31 paragraph 5 of the Rules of Procedure of the PRB and these funds go to the Budget of the RKS.

## REASONING

### *- Procedural facts and circumstances –*

On the 24.03.2023, the Ministry of Local Government Administration (MLGA), in the capacity of the Contracting Authority, published the Contract Notice related to the procurement activity with title: ““Regulation of the water supply network in the Municipality of Fushë Kosova in the neighborhood 28.29, Bardh i Madhë and Sllatinë e Madhë” with procurement no: “212-23-2115-5-1-1”.

On the 25.07.2023, the notice on the decision of the CA was published.

On the 31.07.2023, EO "Alfa.I" submitted a request for reconsideration to the CA. On the 02.08.2023, the CA Ministry of Local Government Administration by decision rejected the request for reconsideration as ungrounded.

On the 31.07.2023, EO "K-Ing" SH.P.K submitted a request for reconsideration, which was rejected by the CA on the 02.08.2023.

Dissatisfied with the CA's decision dated 11.08.2023, EO "Alfa.I" filed a complaint at the PRB registered with protocol number 573/23.

Also, dissatisfied with the decision of the CA dated 14. 08. 2023, with protocol number 582/23.

The contracting authority has implemented an open procedure, type of contract: Work, estimated value of the contract:3,000,000.00 €.

The EO's appeal was exercised in accordance with Article 109.1 of the LPP, according to which against any decision taken by the CA, any interested party can submit an appeal to the PRB. Since the EO has also applied for reconsideration, it means that its actions also refer to Article 108/A of the cited Law. Therefore, the PRBO considers that the Complaint fulfills the prerequisites in terms of the provisions now cited and the same falls under its competences in terms of Article 105 of the LPP.

### *- Administration and evaluation of evidence -*

Based on the actions described above, the PRB has engaged the evaluation expert in accordance with Article 111, paragraph 5 of the LPP, with the duty that the same in the sense of Article 113 of the cited Law, make the initial review of the file and the complaint claims, in relation to the procurement activity described above. Regarding this, on 26.08.2023, the review expert submitted the evaluation report with the following recommendations:

Complaints are rejected as ungrounded;

The decision of the CA remains in force;

The Review Panel analyzed all the papers of this case, including all the acts and/or actions of the parties, as described above (procedural facts and circumstances) and the actions of the parties and considered there is a need to convene a hearing with the parties, and this session was held on

dt. 19.10.2023. In the session held with the parties, both complaining EOs emphasized that there is a conflict of interest between the reviewing expert and the EO recommended for the contract. The review panel in the continuation of the session heard all the complaining parties about their elimination from the procurement activity and responsibility of the EO recommended for the contract, the same ones reinforced the complaining claims and stood behind them. Likewise, the representative of the CA stands behind the announcement of their decision.

The review panel after the complaining parties declared the possible conflict of interest between the review expert and the EO recommended for the contract, then in order that all parties in the procedure deserve equal treatment and under the spirit of Article 7 of the LPP, then decided to request a super-expertise, even though the panel informed the parties that the merit decision for each case is made only with evidence and arguments and the expertise is not binding for the panel, except as a reflection of the factual situation.

However, based on the actions described above, the PRB has engaged the evaluation expert in accordance with Article 111, paragraph 5 of the LPP, with the duty that the same, in accordance with Article 113 of the cited Law, conduct the initial review of the file and claims complaint, regarding the procurement activity described above by drawing up a super expertise. In this regard, on 03.11.2023, the reviewing expert submitted the super-expertise report for case 2023/0573 with the following recommendations:

Complaints are approved as partially grounded;

The decision of the CA remains in force;

Whereas, regarding case 2023/0582, on 06.11.2023 he submitted the report of the super expertise with the following recommendations:

The complaint is rejected as unfounded;

The decision of the CA remains in force;

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 Regulations 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 it necessary to convene a hearing with the parties, and this session was held with date 19.10.2023.

The report of the super expert has been duly accepted by all procedural parties. The Contracting Authority has notified the Review Panel that it agrees with the recommendations of the expert, while the Complaining Economic Operators have announced that they do not agree with the recommendations of the review expert.

#### *Claims of Complainant "Alfa.I" No. 573/23*

The first claim (I) - The first claim of the complaining EO, the request of the tender file and the contract notice is: Claim 2. - Two (2) leaders of the works, graduated construction engineer,

hydrotechnical direction or Master of hydrotechnical sciences, with a minimum experience of 5 years after graduation and in the management of similar works (requirement 2 of the tender file), the complaining EO states that "actually the contracts were not mandatory and necessary because the experience was proven with CV and references" and "the contracts they do not have any importance or value because this request is clearly defined in the tender dossier". In relation to this request we have provided sufficient evidence to fulfill this request For both workshop leaders Mr. Veton Jahaj and Idriz Shala, as well as for the two surveyors Mr. Valon Bislimi and Mr. Ferid Ahmeti, we have proven their experience through the CV and References, while we have explained to the CA that we cannot submit contracts for Engineers who have signed contracts with other companies as they are not with us regular workers. Regarding these workers, we were asked for additional clarifications and we gave timely answers, where, among other things, we clarified that the contracts of engineers and surveyors with other companies are confidential, but at the same time we told the CA that they can turn to the engineers themselves for these testimonies. However, after consultations with the relevant engineers who have allowed us to present their contracts, we have attached these contracts with a request for reconsideration even though it was not really mandatory and necessary because their experience has been proven with CVs and references.

The second claim (II) - The claim of the complaining EO is related to the request: Request 3. - One (1) graduate engineer of geodesy; Graduated engineer of geodesy or Master of geodesy sciences with minimum experience of three (3) years after graduation, also to be licensed by AKK (Kosovo Cadastral Agency). As for the surveyor introduced by us, Mr. Noble Loshi, we clarify that he has a bachelor's degree in geodesy, while his master's degree was completed in Sweden and his degree in Sweden is in two languages (Swedish and English). In the diploma it is clearly written that Mr. Loshi is a Master of Science, Land Management program and not a Master of Technology as the CA claims, therefore this reason for elimination is unsustainable. In addition, the engineer in question has a surveyor's license and it is valid from 05.10.2018, more years than the request of the tender file (for three years). This property is registered in the Cadastral Agency of Kosovo. We have asked for clarifications from the university where Mr. Fisnik lost and from this university it has been clarified that the title Tekonologie masterexamen in English is translated as Master of Science, and that in Albanian it is translated as Master of Science. This fact is also observed in the syllabus attached by the faculty where it is written: Students who have successfully completed the program will be awarded a "Technology masterexamen", translated into English as "Degree of Master of Science (two years)". Bearing in mind this clarification, it turns out that this reasoning of the CA is unfounded because Mr. Loshi's Diploma is also translated into English, in which it is clearly stated that he is a Master of Science - Land Management. Therefore, in other universities it does not mean that the title is obtained as in the University of Pristina - only geodesy, but it is important to match the study program.

The third claim (II) - In relation to the third reason for elimination, we clarify that in Article 9.1&9.2 of the DT, in Requirements on technical and professional opportunities in requirement 9, the following are requested: Requirement 9. Contracts of the nature of waterworks construction works, successfully completed during the last 3 (three) years, until the date of

publication of this Contract Notice; The Total Value of Contracts of the nature of similar works as such can be considered all references to infrastructure works such as Water Pipes, Sewers, and Roads to be at least 4,000,000.00 Euros. The EO has at least 1,000,000.00 euros, it can be covered with several References for the same works (Waterworks network works). In relation to this request, we have submitted contracts of a similar nature in the amount of 6.3 million euros, therefore we have fulfilled the aforementioned request in the TDS, and we have also fulfilled the criterion for water supply contracts of at least 1 million euros. Even if the CA has not accepted the other two references, that of UP and MA Prizren: MESP Waterworks in Kaçanik - 1,235,638.36 Euro; MA Podujeve Sheshi in Podujeve (water supply, sewerage, road) - 2,269,821.95 Euro KUR Prishtina Water Supply in Lipjan, Podujeve - 170,162.65 Euro, CDI Rehabilitation of wells - 108,985.28 Euro, CDI Water Supply in Malisheve - 253,945.97 Euro, MA Kaçanik Water Supply in Kaçanik - 4 6,396.25 Euros ; MA Istog Waterworks in Banje - 117,300.50 Euro; MA Istog Construction of the water supply scheme - Secondary Network - 246,704.07. The total value of only these references is: 4,448,955.03 Euro, that is, above the value of 1 CA.

*Findings in the super expertise of the review expert for complaint 573/23*

The first finding (I) - the complaining EO for the 2nd request submitted the testimonies for the engineers V.J and I.SH. In the offer, the complaining EO did not attach "Work contract/s which proves 5 years of experience" for the engineers according to the request of the tender dossier. The claim of the complaining EO that "actually the contracts were not mandatory and necessary because the experience was proven with CV and references" and "the contracts do not have any importance or value" does not hold because this request is clearly defined in the tender file. In addition, the complaining EO during the tendering stage had the opportunity to challenge the above request, but did not do so. CA in accordance with article 38.1 of RPP 38.1 In order to facilitate the examination, evaluation and comparison of tenders, CA may request from each tenderer individually for clarification of his/her tender. KRPP has approved a standard form B47 for clarifications to be used by CA "Request for clarification of the tender". The request for clarification and the response must be made through the electronic platform had requested additional clarifications from the complaining EO regarding the evidence related to the evidence of employment contracts for engineers. The complaining EO objected to the giving of evidence with the answer: The experience referred to the complaining EO of Engineer I.SH according to the CV from 2011 - 2021 is with the complaining EO (ALFA I) (except for 2014-2015 which is with Infratek). "Your clarifying answer or answers must be received by us in writing at the above mentioned address of the contracting authority or at the fax number [038 200 64207] or at the e-mail [shkelzen.hoxha@rks-gov.net within two [2] days from the date of this request Without your response to the above questions within the above time limit, your tender will be rejected." The complaining EO has failed to submit the evidence requested by the CA according to the request for clarification and has decided in accordance with article 38 of RPP 001/2022 paragraphs 38.6 that the CA will set a reasonable time limit for the EO to clarify their tender. 38.7 If the EO fails to respond within the time limit specified by the CA according to paragraph 38.6, the relevant tender will be rejected. The reviewing expert assesses that the CA in this point of appeal has acted in accordance with Article 38.7 of RPP 001/2022 and Article 7-Equality in

treatment/non-discrimination and will act in a transparent manner. The contracting authority will titrate economic operators equally and non-discriminatory and will act in a transparent manner. Therefore, the complaining claim on this point is not grounded.

Second finding (II) - The review expert clarifies that with the offer of the complaining EO, he submitted evidence for F.L, who submitted his Master's degree from Sweden with the title "Technology masterexamen" and with the earned degree "Master of Science". The complaining EO refers to the study program as "Land Management". In the nostrification of the diploma by the Ministry of Education with no. 6/4-1641 also confirms that the earned degree is "Master of Science" without referring to the study program. However, F.L was licensed by MESP according to license number 76 dated 05.10.2023 where the same is licensed as a Surveyor, therefore based on the evidence and evidence presented, the review expert assesses that the complaining claim at this point is partially grounded.

Third finding (III) - The review expert explains that the complaining EO with its offer has submitted the list of contracts for which it has attached references or technical acceptances. During the stage of the request for reconsideration, the complaining EO claimed that in the list of submitted contracts there are contracts which it claims meet the criteria according to the tender file according to the list below: CA with the decision on the request for reconsideration has assessed that the contracts do not fulfill the criterion according to the tender file in the value of 4,000.000.00. The reviewing expert explains that the complaining EO in the bid has presented the list of contracts and we estimate that the EO meets and exceeds the request of the CA for similar works. Based on the above, we estimate that the complaining claim is grounded.

*Complaining claims of EO "K-ING sh.p.k., "Urban O.P" & "Hidro Project" Sh.P.K., No. 582/23*

The first claim (I) - As a procedural violation during the phase of this Procurement activity, the tender opening process, the deadline for submission of offers according to the tender dossier (TD) was dated 06.05.2023, at 14:00: 00:00 and the opening of offers on 05.06.2023 at 14:00. While the bid opening was sent on 06.06.2023, after our email request, we were not informed about the problems that the CA gave in the decision on the request for reconsideration, even though the attached documentation does not show the details of the email addressed to PPRC. Requests in the tender dossier regarding the deadline for the submission of tenders and the opening of tenders.

The second claim (II) - It was clarified that the deadline for submission of offers according to the request of DT, dated 05.06.2023, while we received the Notice on the decision of the Contracting Authority dated 25.07.2023, a procedural violation without notifying us for the needs regarding the extension of the term regarding the CA's decision.

The third claim (III) - Statement on facts and arguments: On the 27.07.2023, at 15:31, on the E-procurement platform, we received form B58, Notice of the decision of the CA, with which we initially disagree with the reasons our elimination and then with the recommendation of an economic operator who is irresponsible. In the following, we present our facts and arguments regarding the reasons for the elimination. In the standard letter of the eliminated tenderer as the reason for the elimination, the CA has mentioned a reference which, according to the CA, was

not issued within the period required in the tender dossier and therefore, according to the CA, we do not meet the requirement for 60% of the value of the contracts as a leader. Based on the legal provisions that are defined in article 59 of the LPP, the evaluation of the offers must be done in accordance with the article as a contracting authority, the evaluation of the offers must be done in accordance with paragraph 4 of article 59 of the LPP, because in this paragraph states: The contracting authority will consider a tender as responsive only if the tender in question is in compliance with all the requirements set forth in the contract notice and in the tender dossier. The assessment of the CA that we do not fulfill the request is contrary to paragraph 3 of article 56 of the LPP, because you have eliminated us for a request that does not exist in the tender dossier. From the rationale of the contract, but this request does not exist in the tender file nor in the notices for correction/improvement of errors published on the E-Procurement platform. The request of the CA was very clear, because the contract and references were requested in the last three years until the publication of the contract notice, which means until the date: 24.03.2023 and the technical acceptance according to the claims of the CA that it does not fulfill the request was issued in the month of February, it had to be taken into account because it is within the requirement defined in the tender dossier and we are repeating that this reason given by you is contrary to article 56.3 of the LPP.

The fourth claim (IV) - As for the reason for the elimination, which is about 1 (one) horizontal underground drilling machine with a laser control system up to 500 mm in diameter, where you declare that you have offered the horizontal drilling machine with tracking part dith itch jet track type: 2720, which is not in accordance with the request of the CA. This reason does not mean that with a simple internet search you can verify that the device in question is in full compliance with the tender dossier requirement. We consider that in this case you have violated articles 59 and 72 of the LPP, because it had to be verified as CA, in advance, before deciding whether the device in question meets the technical specifications or not. If the presented documentation was not clear, we had provided you with additional information, with this machine of particular importance are the accessories, with what diameter the drilling will be done, it seems that the diameter of the drilling is determined based on the additional accessories. Since in the tender file it was in request 5, professional technical, CA to verify the equipment offered in the field, we invite you to make a drill with a diameter of 500 mm for the same machine, and remove this dilemma that they have not proven right.

The fifth claim (V) - In the following, we are giving the facts and arguments regarding the EO recommended for the contract, which does not meet the requirements of the tender file where the CA has requested: 9.1 Requirements on technical and/or professional opportunities: Request no. 2 : A Works Leader; Evidence 2. - A notarized copy of the diploma (not older than 1 month), and a statement prepared and signed by the engineer-leader of the works, through which the engineer declares that he will be engaged in this project-contract; A copy of the CV signed by the engineer himself; -A copy of the contract or before the valid employment contract; and At least one reference as supervisor of similar projects; Employment contract proving 5 years of experience. We clarified this claim to the CA, in the request for re-examination, the recommended EO proposed for this request a graduate construction engineer - hydrotechnical direction, Mr. Mirlind Kabashi, based on the access to the documentation and their sifting, we

noticed that the references are prepared enough to fulfill one of the requirements, which was: At least one reference as a supervisor of similar projects. The EO recommended for Mr. Mirlind Kabashi has submitted his CV and references, but neither the CV nor the references prove that Mr. Kabashi has carried out supervision according to the request of DT. We return to the Public Procurement regulation 01/2022 and the Public Procurement guide 01/2023, in the case of the documentation submitted by the recommended EO, for Mr. Mirlind Kabashi - the submitted CV does not meet the requirements - reject the tender. The reference issued by an EO Fidani-L to Mr. Kabashi makes it clear that no supervision of similar projects has been carried out. If we see the CV does not describe any project for the supervision of similar projects, in the third paragraph of the reference issued on 20.01.2023 it is stated: Mr. Kabashi from the establishment of the working relationship in the company as manager of several projects and leader of works (supervision) for projects contracted by our company: So leader of works is not equivalent to supervision, they are two different sides, it is also proven the list of contracts that none of the titles in reference are supervision, which consequently and ultimately falls to Mr. Mirlind Kabashi not having any completed contract in relation to the request in TD of this procurement activity. And where is the absurdity of the answer in the reconsideration decision by the CA, dated 02.08.2023, regarding this claim, we have given as an example how a project title looks in cases of project supervision, while the CA answers that we did not request contract for supervision, a contract we know he did not request, but he requested that the staff have at least one reference as a supervisor of similar projects, according to the request of TD 9.1 request 2. We did not claim that CA requested in the tender file a contract for supervision of projects, I know and we as EO have fulfilled this requirement according to TD requirement 2, of the EO recommended for the contract, respectively Mr. Kabashi does not have any projects in the capacity of supervisor, therefore it is his fault that the recommended EO does not fulfill this requirement.

The sixth claim (VI) - the EO recommended for the contract does not meet the request of the TD regarding the dynamic plan. After we have accepted the offer of the recommended EO for the contract, we have analyzed it and the winner has offered a dynamic plan for only 40 positions, out of a total of 200 positions in the pre-measure, it is worth noting that he has given a dynamic plan for 20% of the pre-measure positions, so the winner does not meet this requirement because a dynamic plan was requested in the dossier, . . .including all the activities (positions) that are included in the pre-measures. The EO recommended for the contract has not provided a dynamic plan as requested for the pre-measure positions. And in the answer to claim no. 5 from the CA, in the request for reconsideration, it is given in this form: In the logical sense, it seems that "as long as the recommended EO has done it, you have also done it", even though we have given a statement about the dynamic plan and at the same time we have provided a dynamic plan for all positions as requested by TD.

The seventh claim (VII) - the EO recommended for the contract, in its offer has submitted the equipment for horizontal drilling and for the same has submitted as evidence a lease contract which is not valid, because: The contract is between to Rcommerce construction and Infra Plus, agreement which is NUL, because this equipment was leased in the state of Bulgaria and in particular this equipment according to the agreement is not allowed to be taken out of the



Bulgarian state, see: Folder no. 17, machines for horizontal drilling, the rights and obligations of the lessee, page no. 36, where the rights of the lessee are limited, related to the use of the machine in question: According to the rights defined in this article, the economic operator has no right to extract outside the territory of the Republic of Bulgaria, therefore the EO recommended for contracts, only to cover the request of the tender dossier, has submitted these evidences, which it can never use because point 6 of article 21 sanctions the taking out of the territory of this equipment.

The eighth claim (VIII) - Another claim is that the contract recommender submitted welders' certificates in non-official languages, i.e. outside the languages in which an EO must present an offer, and which are contrary to Article 13 of the LPP. In detail from the document submitted by EO, outside of Article 13 of the LPP. So, the testimony is contrary to Article 13 of the LPP. So it is not clear what type of welding they were tested for. We request that the review be equal for the parties, according to Article 7 of the LPP, without any friendly bias or other interest and that the procurement activity be re-evaluated equally and without discrimination and that our complaining claim is approved as grounded.

#### Findings of the expert for complaint 582/23

First finding (I) - Regarding the claim of the complaining EO regarding the publication of the minutes of the opening of bids, the reviewing expert explains that the CA in the response to the request for reconsideration of the complaining EO has attached the communication through emails with the help desk in KRPP on the basis of which it has proven that there are problems with the opening of offers. In this case, the CA has acted in accordance with Article Article 35 Opening of Electronic Tenders, paragraph 35.12 The examining expert assesses that the claim on this point of the complaining EO is not grounded.

Second finding (II) - The reviewing expert clarifies that this claim was not part of the claims in the request for reconsideration submitted to the CA, which turns out to be not in accordance with Article 13 of the RRP of PRB point 9. Regarding this claim RRPP 001/2022 article 40.3 The procedure for the examination, evaluation and comparison of tenders, and issuing the notice on the decision of the CA, will be carried out by the CA within the shortest possible time period and not more than 30 days from the opening of the offers. Only in exceptional and justified cases, in particular for contracts of a complex nature, this period can be extended for an additional term of 20 days. The record of the opening of the tender was dated 05.06.2023, while the evaluation was completed on the 24.07.2023. The evaluation of the CA was within the deadline defined by the regulation, but the CA did not attach to the e-procurement system any justification for the extension of the evaluation deadline. Therefore, based on the clarifications as above, the complaining claim is partially grounded.

The third statement (III)-Regarding the claim of the complaining EO regarding the requirements according to article 9.1 & 9.2, the reviewing expert clarifies that according to the tender file, the request is: Request 9: Contracts of the nature of water pipeline construction works, completed Successfully during the last 3 (three) years, until the date of publication of this Contract Notice; The Total Value of Contracts of the nature of similar works as such can be considered all

references to infrastructure works such as Water Pipes, Sewers, and Roads to be at least 4,000,000.00 Euros. Note: In case of consortium, the group leader must cover at least 60% of the references required above. Evidence 9: List of Contracts of the nature of waterworks construction works, References or minutes of technical acceptances for the contracts presented in the list must be attached to the List of Contracts. The complaining EO has submitted 11 contracts in the list of contracts submitted with an offer. During the evaluation, the CA accepted 10 of them while it did not accept the contract no. order 1 which is recorded as completed on 25.02.2020. Based on the announcement on the elimination of the complaining EO, the list of submitted contracts does not meet the required criterion that "the leader covers 60% of the references". According to OGPP article 8 point iii) In all cases included in 2.1, 4.2 and 6.2 of article 69 of the LPP- that 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. Pursuant to Article 69, paragraph 2.1, 4.2 and 6.2, the expression "performed in the past three years" means Contracts for supplies, services and/or works performed (completed) in the past three-year period (the period explained as above) . According to the tender dossier, the contract notice was published on 24.03.2023. The definition according to the OGPP "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", This means that the CA during the evaluation of the list of contracts submitted with the offer of the EO acted in accordance with the OGPP and the LPP. The review expert assesses that the claim of the complaining EO on this point is unfounded.

Finding four (IV)-Regarding the EO's appeal claim related to request 5 - 1 (one) horizontal underground drilling machine with laser system or drilling machine without control laser up to 500 mm diameter. Devices that are registered must be proven with a valid registration booklet, while other devices, the EO must prove with a document about their ownership (invoice, DUD, etc.). Attention! In case the EO does not possess any of the required equipment, it must offer the equipment rental agreement. The agreement must be in the name of this project with the validity of the duration of this contract, signed and sealed by both parties. The reviewing expert explains that with the offer the complaining EO submitted the customs DUD with a description of the Ditch Witch JT 2720 device. In the DUD there is no description that the same device is in accordance with the request of the tender file. The complaining EO in the request for reconsideration and in the complaint in his claim refers that "with a simple request on the Internet it can be easily verified" but he did not attach any evidence to prove his claims or the website on which he verified the same . Therefore, in this case, the reviewing expert assesses that the complaining EO has not met the requirements according to Article 26.8 point 3 c) the minimum qualification criteria. At this point, the CA has acted in accordance with Article 59 paragraph 4 in relation to Article 40.6 point b), c). Therefore, based on the clarifications given above, the examining expert assesses that the appeal claim is not grounded.

The fifth statement (V)-Regarding the claim of the complaining EO which is about the engineer M.K of the EO recommended for the contract in relation to request 2. Request 2: Two (2) leaders

of the works, graduate construction engineer, management hydrotechnical or Master of hydrotechnical sciences, with a minimum experience of 5 years after graduation and in the management of similar works. Evidence 2: At least one reference as supervisor of similar projects. The claim of the complaining EO at this point is that the engineer does not meet the requirement for "minimum one reference as a supervisor of similar projects". The reviewing expert explains that the CA, based on the tender file, requested that request 2 be proven with "references". The EO recommended for the contract submitted two references on behalf of the engineer from EO "Fidani AL" and CA Municipality of Gjakova. The attached references are in accordance with the CA request for project supervision. The CA in the response to the claim of the complaining EO where it refers as an example: the supervision contract with the Ministry of Trade has more correctly assessed that the requirement of the tender file is that the supervision is proven with a reference to the engineer and not to the legal entity (EO). Therefore, the Reviewing Expert assesses that the CA during the evaluation of the EO's offer recommended for the contract at this point acted in accordance with Article 59 of the LPP. The review expert's report, related to the complaint submitted by EO "K-ING" SH.P.K., related to the procurement activity "Regulation of the water supply network in the Municipality of Fushë Kosova in the district 28, 29, Bardh i Madh and Slatinë e Madhe" with procurement number: "212-23-2115-5-1-1, initiated by the Contracting Authority (CA) - Ministry of Local Government Administration MLGA. Therefore, based on the above clarifications, the review expert assesses that the claim is unfounded.

The sixth finding (VI) - Regarding the claim of the complaining EO regarding the dynamic plan of the EO recommended for the contract, the reviewing expert clarifies that the requirement of the tender file is: Requirement 6. The EO must submit with its Offer, "Detailed Dynamic Plan"; Evidence 6. Dynamic Plan - should be presented as detailed as possible (including all activities (positions) that are included in the pre-measures. The complaining EO claims that the recommended EO for contracts has offered only 40 positions out of 200 positions in The reviewing expert explains that the EO recommended for contracts has submitted the dynamic plan for 151 positions. The positions include all the activities that are part of the pre-measure and pre-account part of the tender file. The parts that are not included are related to sub-positions for supplies that are part of the activities included in the dynamic plan. It is worth noting that the deadline for the completion of the dynamic plan has not changed, which means that the material aspects of the tender dossier and contract notice have not been affected. Moreover, the tender file, article 12.1 of the KVK, defines that the dynamic plan is a document that must be updated, so it is a contractual condition. The review expert clarifies that the claim for this point can be qualified as a "minor deviation" in accordance with Article 59.4 point ii) of the LPP related to Article 45.19 and 45.20 of the RRPP. Therefore, based on the explanations given, the examining expert estimates that the claim is partially founded. Seventh finding (VII) - Regarding the claim of the complaining EO regarding the drilling machine and the conditions of the contract for the use of the machine and the finding that "the device cannot be taken out of the Bulgarian state" the reviewing expert clarifies that the recommended EO for contract with his offer, he has submitted the lease agreement with EO "Rai Commerce". So according to the agreement, the device can be used abroad if prior consent is obtained. It is the obligation of the EO recommended for the contract to obtain the necessary consents after signing the contract. The

review expert at this point assesses that the request of the tender file has been fulfilled while the claim of the complaining EO is subject to non-fulfillment of the contractual conditions between the two contracting parties. Therefore, based on the documents administered for this claim, the review expert assesses that the complaining claim is not grounded.

Eighth finding (VIII) - The review expert clarifies that this claim was not part of the claims in the request for reconsideration submitted to the CA, which turns out to be inconsistent with Article 13 of the RRP of PRB point 9. Regarding this claim, the examining expert clarifies that based on the tender file, point Requirement 4. Three (3) HDPE pipe welders, certified according to EN-13067. Evidence 4: Notarized copy of the training certificate issued by an institution authorized for such training. The EO recommended for the contract has submitted the EN13067 certificates. The reviewing expert clarifies that the requirement of the tender file is to prove the EN-13067 certification standard and not the "welding process", therefore he assesses that the documents submitted with the offer are in accordance with the requirements of the tender dossier. Therefore, based on the clarifications given above, the review expert assesses that the claim is unfounded.

#### *Findings and findings of the review panel*

The arguments in the super expertise report cited above of the review expert are detailed, understandable and based on the relevant documents that refer to the procurement activity. The findings in the review expert's report can be confirmed through the tender file as well as the documents with which the tenderers have offered. In addition, the findings of the review expert are also based on the relevant provisions of the LPP and RRPP and consequently the Review Panel regarding the analysis of the claims of the complainants has forgiven the trust in the super expertise report of the review expert. The review panel independently and objectively, with conscience and professional care has evaluated all the evidence of the case and considers that the Contracting Authority has acted in harmony with Article 59 of the LPP. 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 complaints of Economic Operators must be rejected as unfounded. It is worth noting that these findings were also evidenced in the preliminary report of the expertise, which the panel did not take into account. The panel in this case took into consideration all the complaint statements, acts and actions of the CA and the expert's report and based on the legal provisions mentioned in the superexpertise report, as well as based on articles 32 of the RRPP "It is the responsibility of the bidder to upload all the required documents in the electronic procurement system before the deadline for the submission of tenders" based on article 69 of the LPP, as well as the interpretation of the PPRC no. 10 published on its website.

Therefore, the RP assesses that the complaints of EO Alfa.I" and "K-Ing" SH.P.K are partially based, but which have not managed to change the final result of the procurement activity.

Regarding the fact that Alfa I - in accordance with the aforementioned provisions, as well as the request for clarification from the CA, in which it is emphasized that if the same does not submit the documentation, its offer will be rejected, cite the articles of the RRPP "38.6 CA will set a

reasonable time limit for the EO to clarify their tender. 38.7 If the EO fails to respond within the time limit specified by the CA according to paragraph 38.6, the relevant tender will be rejected”.

As for the complaint of King shpk, despite the fact that it may have been unclear in the request of the DT where 3 years until the date of the contract notification is emphasized, the LPP clearly defines also the regulations in force 3 years from the date of the notification for contract, based on article 69 of the LPP, as well as the interpretation of the PPRC no. 10 published on its website, quote "In accordance with Article 87, paragraph 2, under paragraph 2.8 of Law No. 04/L-042 on Public Procurement, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092 based on the question presented, the PPRC offers the following legal interpretation: As for the evidence required by the Contracting Authorities in the FTD of the Tender Dossier and in the Contract Notice regarding technical and/or professional skills, paragraph 4.2 of Article 69 of this law defines: 4.2 the list with which all the main contracts are specified important details of the services performed in the past three-year period, specifying the type of services included, the amount of the contract, the date and the recipient; (i) when the services are provided for the public authority in Kosova or in another country, the copy of the relevant certificate(s) issued or countersigned by such public authority will serve as proof of this provision of services; (ii) when the services are provided to the private buyer, proof of this provision of services must be a copy of any document signed by the buyer and evidence of such provision; In the sense of sub-paragraph 4.2 of the above-cited Article 69, the CA in case it requires the evidence - the list of contracts executed in the last three years, (from the date of the contract notification) this means that the contracts requested by the CA, must be completed (not in progress), i.e. completed within three years from the date of contract notification. Therefore, the period of the end, not the beginning of the contract, should be taken as the basis. Moreover, this means that in this list all the shaded information in this sub-paragraph must be specified: the type of services, the amount of the contract which means the total of the contract, the date and the acceptor"

The review panel clarifies that as regards the criteria which may not be comprehensible or ambiguous, then the EO must present this at the stage before submitting the offer, requesting additional clarifications, and also has the right to address the procurement review body attacking these requests, which in this particular case did not happen by the complaining EO. Therefore, the RP in the present case refers only to the legal provisions on which the CA can present the complaint. Therefore, the complaining EO according to the review expert and PSH, has failed to fulfill the request of the tender dossier regarding the contracts realized within the period of 3 years from the date of publication of the contract notice.

*- Conclusion -*

The review panel considers that the complaining assertions are not grounded, as explained above, while the CA acted in accordance with the provisions of Article 7, 59 and 60 of the LPP. Returning a procurement activity to re-evaluation, without non-controversial facts and evidence and/or without a legal basis, is not in harmony with Article 1 of the LPP, according to which, the purpose of this Law is, among other things, cited: " ...to ensure the integrity and responsibility of public officials, civil servants and other persons who carry out or are involved in a procurement

activity, requiring that the decisions of such individuals and the legal and factual basis for such decisions, do not influenced by personal interests, to be characterized by non-discrimination and a high degree of transparency and to be in accordance with the procedural and essential requirements of this law".

Regarding Article 105, taking into account the requirement of Article 104, paragraph 1, of the cited Law according to which, quoted: "The procurement review procedure will be implemented and carried out in a fast, fair and non-discriminatory manner, which aims at the fair, legal and effective resolution of the matter..." Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations, which may arise during a procurement activity.

The Review Panel requests the Contracting Authority to be attentive during the public procurement procedures, acting in full compliance with the LPP and other legislation in force for public procurement, as well as to act in harmony with the findings of this decision. Otherwise, the PRB may initiate disciplinary procedures against the responsible procurement officials. The Review Panel has 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, in order to legal and effective resolution of the case.

Likewise, the Review Panel is always based on the fact that the contracting authorities exercise their institutional independence in the public procurement process, but it remains within the competences and responsibilities of this body to examine complaints and legality claims in the procurement process and in accordance with Article 24, paragraph 2 of LPP are responsible for the procurement activity to be developed in accordance with the legal provisions in force.

Therefore, referring to the above and based on the comprehensive administration of evidence, available in the documents of this case, the Review Panel based on article 98,99 related to article 104 and 118 of the LPP, decided as in the dispositive of this Decision.

The decision as in point 3 of the provision was made because EO found most of their claims to be grounded or partially grounded. However, they failed to change the final result and change the CA's decision.

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 Local Government Administration MLGA;**

1x1 EO – “ALFA.i” , " K-ING " SH.P.K.;

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.