



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

Psh. no.356/23
373/23
389/23

REVIEW PANEL, appointed by the President Pursuant to the article 105 as well article 106, and 117 of the Law on Public Procurement of the Republic of Kosova no.04/L-042, amended and supplemented by Law No. 04/L-237, Law no.05/L-068, and Law no.05/L-092, composed of: Vedat Poterqoi - President, Vjosa Gradinaj Mexhuani – member and Agon Ramadani - member, deciding on the complaint lodged by the “NPN Euroing SH.P.K.”, with protocol no 2023/0356, complaint of the EO “Astraplan SH.P.K”, with protocol no. 2023/0373, complaint of the EO “Pro & Co Group sh.p.k. with protocol no. 2023/0389, for the the procurement activity: “Construction of the North Prishtina Police Station”, with procurement no: 214-22-10936-5-1-1, initiated by the Contracting authority –Kosova Police, on the 01.08.2023 has issued this:

DECISION

- 1.Rejected as ungrounded the complaint of the economic operator “NPN Euroing SH.P.K, submitted to the Procurement Review Body on the 06/06/2023with protocol number 2023/0356 for the procurement activity “Construction of the North Prishtina Police Station”, with procurement no: 214-22-10936-5-1-1, initiated by the Contracting authority –Kosova Police.
2. Approved as grounded the complaints of EO “Astraplan SH.P.K”, with no. 2023/0373, dated 09/06/2023 and the complaint “Pro & Co Group sh.p.k., with no. 2023/0389, dated 12/06/2023, whereas the decision of the CA-KosovA Police regarding the procurement activity “Construction of the North Prishtina Police Station" with procurement number 214-22-10936-5-1-1 is cancelled, meanwhile the procurement activity returns to Revaluation.
3. Within a period of 10 days, the CA must inform the PRB about all the actions undertaken 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 LPP.

4. It is allowed the return of deposited funds upon filing the complaint, in which case the Complainant must submit a request for the return of the funds within sixty (60) days from the date of acceptance of this decision, otherwise the funds will be confiscated and transferred to The budget of the Republic of Kosova, in accordance with article 31 point 6 of the Rules of Procedure of the PRB;

REASONING

- Procedural facts and circumstances -

On the 14.10.2022, the Kosova Police in the capacity of the Contracting Authority has published the contract notice for the procurement activity entitled: "Construction of the North Prishtina Police Station" with procurement no: 214-22-10936-5-1 -1.

On the 24.05.2023, the CA has published the notice for the cancellation of the procurement activity.

EO participating in this procurement procedure EO "NPN Euroing SH.P.K.", EO "Astraplan SH.P.K", and EO "Pro & Co Group sh.p.k" have submitted a request for reconsideration to the CA. On the 01.06.2023, CA by decision rejected the requests for reconsideration of the complaining EO.

Dissatisfied with the decision of the CA, the complaining EO "NPN Euroing SH.P.K.", with protocol number 2023/0356, the complaint of EO "Astraplan SH.P.K", with no. protocol 2023/0373, the complaint of EO "Pro & Co Group sh.p.k., have submitted a complaint to the PRB, against the notice of cancellation of the Contracting Authority regarding the procurement activity described above.

The contracting authority has implemented an open procedure, type of contract: work, estimated value of the contract: 1 538 842,706.

The EO's complaint 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 PRB 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.

Preliminary review of the complaint

On the occasion of the preliminary review, the Review Panel concluded that the complaint in the present case 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 a complaint to the PRB only after leading a preliminary procedure for resolving the dispute in accordance with Article 108/A of this law.

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 dossier and the complaining claims, in relation to the procurement activity described above.

Regarding the complaint of the economic operator EO "NPN Euroing SH.P.K.", on the 21.06.2023, the review expert submitted the evaluation report with the following recommendations:

- the EO's complaint is rejected as unfounded, respectively the EO is to be treated as a disinterested party in the sense of Article 4.1.26 since it is due to the non-fulfilment of the administrative aspect by the complaining EO.

Regarding the complaint of the economic operator EO "Asraplan SH.P.K.", on the 22.06.2023, the review expert submitted the evaluation report with the following recommendations:

- that the complaint of the complaining EO be approved as grounded, the notice of cancellation of the procurement activity be canceled and it is recommended that the matter be returned for re-evaluation.

Regarding the complaint of the economic operator EO "Pro & Co Group sh.p.k", on the 22.06.2023, the reviewing expert submitted the evaluation report with the following recommendations:

- that the complaint of the complaining EO be approved as grounded, the notice of cancellation of the procurement activity be canceled and it is recommended that the matter be returned for re-evaluation.

Findings and opinion of the review expert

Regarding the complaint of the economic operator EO "NPN Euroing SHP.K."

The expert concludes that the CA during the evaluation and re-evaluation of the offers did not respect the time limits for evaluation and re-evaluation due to the fact that on the 29.11.2023 the public opening of the offers took place, while on the 16.02.2023 the CA gave the result respectively with a decision to award with the contract, but after the submission of requests for reconsideration of the decision, CA dated 03.06.2023. issues a decision and turns the procurement activity into a re-evaluation, since the requests for reconsideration are approved partially grounded.

From 06.03.2023, when a decision was made to re-evaluate, until 24.05.2023, the Contracting Authority did not take any action, and this also contradicts the rules of public procurement, since the legal deadline for evaluation of procurement activity is 30 days, with the possibility of postponement for another 20 days if it is considered that the activity is complex to evaluate or reevaluate.

According to the decision dated 24.05.2023, the Contracting Authority has eliminated the complaining EO with the following reasoning: "the price description list was not completed according to the request that the CA respectively offered the same price as the total without VAT and the total with VAT and VAT did not set prices, but a text that contradicts Article 44.3 of the regulation on public procurement 01/2023" and at the same time as evidence or as an argument he also received an interpretation of the PPRC according to which it is not allowed to correct or there is no intervention in the description of the prices as part of the tender form.

The review expert, based on the general rules as well as the interpretation given by the PPRC in this case, assesses that the CA, in the case of rejecting the request for reconsideration submitted by the complaining EO, acted correctly due to the fact that the price description form was very clear since according to the form (pre-measure and pre-calculation) the prices per unit are requested to be offered without VAT and the VAT rate is added to the total price without VAT in the recapitulation of the pre-measure.

Specifically, the pre-measures were as follows:

Each bidder, when offering prices per unit, is obliged to adhere to the price description form, otherwise it is considered an irresponsible offer, as failure to complete the offer according to the requirements of the CA means elimination from the evaluation process, as it is an administrative condition.

The expert assesses that the CA did not act contrary to the alleged violations in the complaint since the handling of the offer of the complaining EO was rejected in accordance with the provisions of the LPP and the rules for public procurement because the price cannot be the same as the price with VAT and the price without VAT in cases where the VAT rate is applied and the pre-measurement and the pre-calculation are not allowed to set a text but to set a financial value of 18% on the prices without VAT and this has been mandatory to be respected by each bidder in so that the offer is administratively responsible.

The review expert assesses that the CA did not act in contrary to the provisions of the LPP since the complaint of the complaining EO cannot be treated as a responsible offer for the reasons mentioned above.

Regarding the complaint of the economic operator EO "Astraplan SH.P.K. "

Contracting Authority-Kosovo Police through B58-Notice on the decision of the Contracting Authority dated 23.05.2023. Cancels the procurement activity on the grounds that we have no responsive bids.

The main complaining claims are against the cancellation of the procurement activity, namely against the justification for the elimination of the complaining economic operator, the standard letter for the eliminated tenderer dated 26.04.2023 where the CA- Kosova Police has emphasized: Your tender is administratively irresponsible; EO is irresponsible as it has not fulfilled the following points:

In the tender dossier, a mobile crane (truck for carrying construction materials, minimum 7 tons, EO does not have it, it has offered a crane truck of 5 tons and a towing head, which does not meet the condition of AK transport truck.

The complaining EO submits a request for reconsideration dated 26.05.2023, while the CA on the 01.06.23 through the decision rejects the request for reconsideration as unfounded and in this decision, page 3, the answers of the CA for EO "Astraplan" Sh. b.C. Clarifications are given, where CA states that:

“...the request in the tender dossier was as follows: A mobile crane (truck for transporting construction materials min. 7 tons, in your offer you have a crane truck with 2 doors with license plate number 03-827-DI where the maximum weight of the load is 5.2 ton you have offered the towing head with double door crane with plate 03-524-DE where this does not meet the request of the CA as a crane truck was requested and not the towing head as you have offered. So none of the machines offered does not fulfill the request of the CA regarding the mobile crane requested by the CA and your complaint claim is unfounded”.

The complaining economic operator claims to own this machine and has attached the evidence to the electronic e-procurement platform; (document no. 6.4 List of Universal and Unicron equipment pjcsa 3) page 5; Truck with trailer Towing head with license plate 03-524-DE and trailer with license plate 03-436-XB.

Page 6: Booklet (CRA) with no. 1923154, license plates 03-524-DE. Towing head with crane (Fl-carrying weight 7200 kg or (7.2 tons).

Page 7: Booklet (CRA) with no.1542907, license plate 03-436-XB, Trailer, Fl-carrying weight 24900 kg. (24.9 tons)

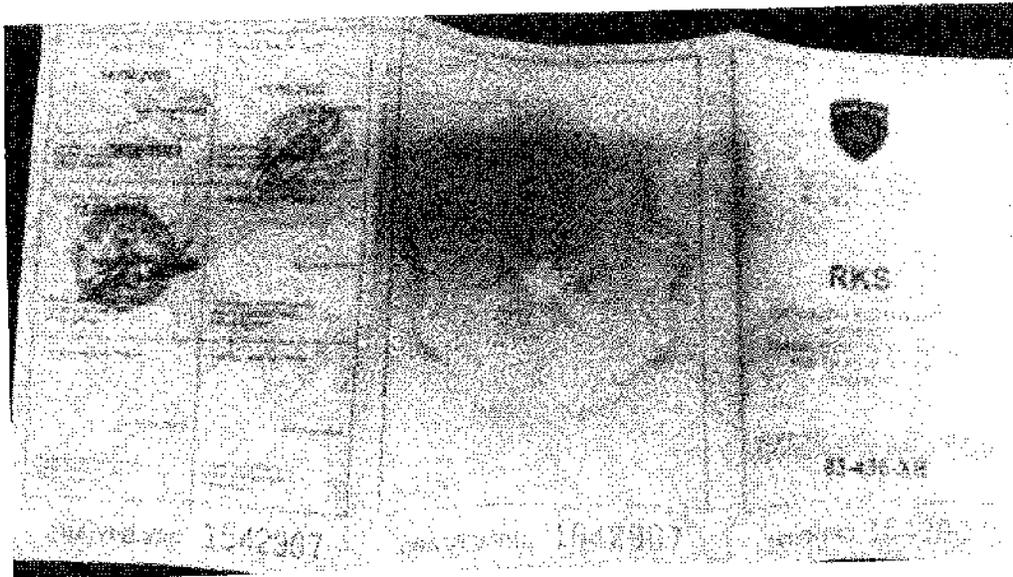
The complaining economic operator states that "The trailer with the pulling head is a complete truck and has a capacity of 7.2 tons of crane and 24.9 tons can carry the transport of materials, together they have 32.1 tons”.

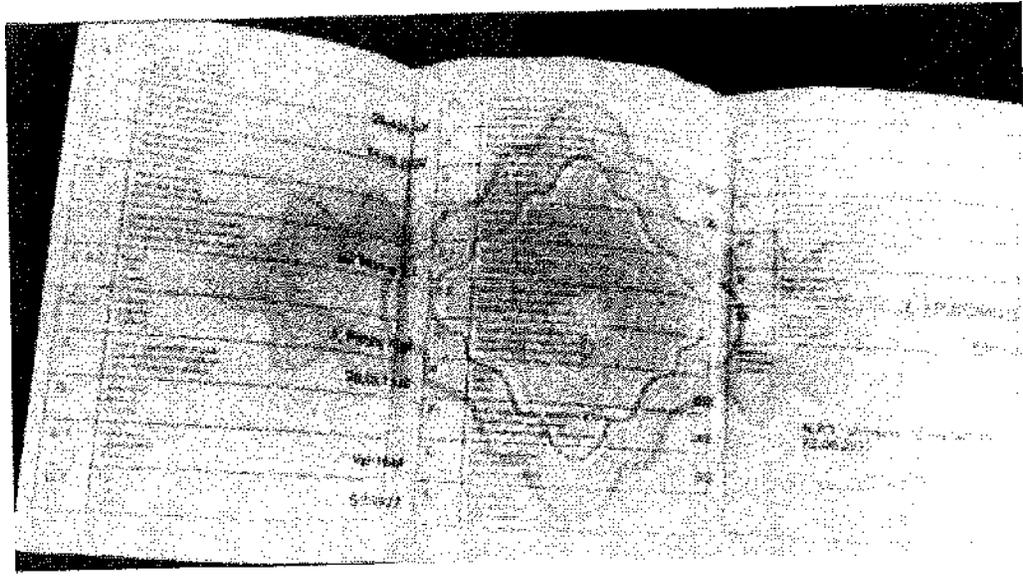
The review expert explains that the complaining EO with the tender has attached the document entitled "6.4 LIST OF UNIVERSAL AND UNICRON SHPC EQUIPMENT PART 3.pdf\ page 5 contains photos of the truck with license plate 03-524-DE, as well as photos of the trailer with license plate 03-436 -XB. In the same document, page 6, there is a booklet (CRA) with no. 1923154 for the vehicle with license plate 03-524-DE, where in this booklet it is stated that the maximum weight of the allowed load is 7200 kg (7.2 tons). Also, on page 7 of this document, there is also the booklet of the trailer Booklet (CRA) with no. 1542907, number plate 03- 436-XB. The trailer. with a maximum permissible load weight of 24,900 kg (24.9 tons).

The reviewing expert, after analyzing the CA's request and the documents attached by the complaining EO, more precisely to the vehicle registration certificate, clarifies that the device/vehicle with license plate number 03-524-DE, towing head with crane, has a carrying weight of 7200 kg (7.2 tons).



While the trailer (carrier) with license plate 03-436-XB according to the registration certificate has a carrying weight of 24,900 kg (24.9 tons). see the testimony below:



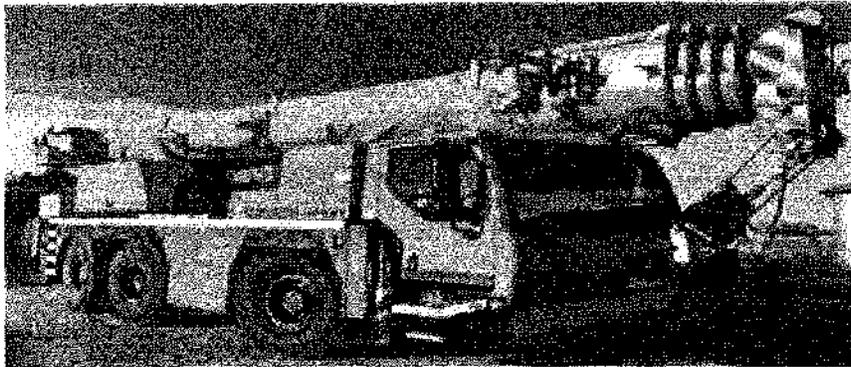
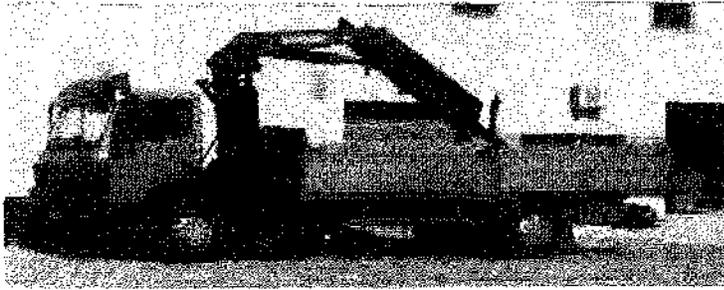




It remains the responsibility of the contracting authority to clarify request no. 5 to Technical and professional capacity during the reevaluation: 9.1 & 9.2 A mobile crane (truck for carrying construction materials min. 7 tons.

Based on the case documents in the e-procurement platform, the reviewing expert came across the request for additional information dated: 27.10.22. from an economic operator related to the request of Technical and professional capacity: A mobile crane (truck for carrying construction materials min. 7 tons.

In this request, the following clarification is requested:



But regarding this clarification requested by the economic operator, the examining expert based on the documents of the case did not come across the response of the contracting authority.

Regarding the claim of the complaining EO against the offer of the economic operator NPN Euroing shpk that it did not submit the sealed and signed technical specifications in the statement, Annex I is not mentioned. with tender EO NPN Euroing shpk has attached the document entitled 3. Request for business secret, specification statement. pdf

Regarding the complaining claim that the economic operator NPN Euroing shpk has not fulfilled the advance according to the request of DT and the correction of the price falls by more than 2%, also in accordance with article 44.3 of the Rruopp and the interpretation of the KRPP. it is premeditated interference. For this claim, the reviewing expert explains that there is an expert report with no. 356-2023.

Regarding the complaint claim that the economic operator NPN Euroing shpk does not meet the criteria, namely the requirements on technical and professional capabilities, only one construction engineer of the constructive direction who appointed him as the head of the workshop covering request 4, while the first point of request no. 2 there is no person covering this request. The EO further emphasizes that the project manager can be used by someone from the staff, but not the works leader, in this case the EO has not fulfilled the request no. 2 of article 9.1&9.2 of the DT. The examining expert, based on the documents of the case, clarifies that the claim of the complaining EO2 does not hold due to the fact that the mc tender EO NPN Euroing

shpk has attached the document with the title: "8. 9.1&9.2. List of professional staff and the decision for the manager of the workshop.pdf "while regarding the other point of complaint, the project manager and the works leader could be appointed from the list of professional staff presented by the participating economic operators, there are no restrictions or other requirements for these two positions as claimed by the complaining EO, hence the claim of the complaining EO does not stand.

The complaining economic operator refers in the complaint to the economic operator NPN Euroing shpk as recommended for the contract, the reviewing expert explains that in the initial assessment by the CA, NPN Euroing shpk was recommended for the contract, but after a request for reconsideration, the CA cancels the procurement activity on the grounds that there is no responsible bidders according to CA requirements, therefore there is no economic operator recommended for awarding the contract as claimed by the complaining EO.

Regarding the claim of the complaining EO that the CA violated the time limits since the initial assessment lasted from the opening on 29.11.2022 to 16.02.2023 the first decision (79 days) new assessment from 27.02.2023 to 23.05. 2023 (85 days), the reviewing expert clarifies that the claim of the complaining EO regarding the further extension of the bid evaluation deadlines is based on the fact that even in cases where the nature of the procurement activity is very complex, the CA must within 50 days (1 month and 20 days) to complete the examination, evaluation and comparison of tenders according to Article 40.3 of REGULATION No. 001/2022 FOR PUBLIC PROCUREMENT. So this legal provision has limited the evaluation of the offers and the deadline for evaluation cannot be extended more than 1 month and 20 days. In this case, the CA opened the bids on 29.11.2022, while the announcement on the decision of the contracting authority was made on 16.02.23, which is close to three months. Likewise, in the second evaluation, the CA acted contrary to the provision of Article 40.3 of REGULATION No. 001/2022 ON PUBLIC PROCUREMENT, where the evaluation was carried out after more than 2 months.

Regarding the complaint of the economic operator EO "Pro & Co Group sh.p.k."

The main complaint claims are against the cancellation of the procurement activity, namely against the justification of the elimination of the complaining economic operator Standard letter for the eliminated tenderer dated 26.04.2023 where the CA - POLICE OF KOSOVO has potentiated Your Tender is administratively irresponsible; EO is irresponsible as it has not fulfilled the following points:

Requirement 3-The Economic Operator must appoint a project manager with a degree in Civil Engineering - constructive or architectural engineering (or master's degree, not bachelor's degree), who must have this work experience at least 5 years after graduation.

The company has not offered a contract or pre-contract for Eng. Shaqir Idrizi according to the evidence requested by the CA.

Requirement 4 - The Economic Operator must appoint a work leader with a degree in Construction Engineering - constructive direction (or master's degree, not bachelor's degree), who must have at least 5 years of work experience after graduation.

The engineer presented by the Sadet Ahmeti company has no work experience 5 years after graduation and referring to regulation 001/2023 for public procurement, article 10.1, where it says:

| | | |
|---|--|----|
| The submitted CV does not meet the requirements | reject the tender without asking for further information | 69 |
|---|--|----|

The complaining EO submits a request for reconsideration dated 29.05.2023. CA dated 01.06.23, through the decision rejects the request for reconsideration as unfounded.

After the administration and review of the case documents against the complaining claims, the complaining economic operator claims that the CA has acted in violation of Article 1, 6, 7, 10, 59, 60, 62, 65, 71, 72 and 108/A of the LPP , and the provisions of the Ruopp and the requirements of the tender file.

Regarding the claim of the complaining EO that the CA has wrongfully eliminated him on the grounds that the company did not offer a contract or pre-contract for Eng. point 9.1 & 9.2 requested: Picture refer to the expertise's report.

The complaining EO with a tender has submitted the list of professional staff, where the experience and position in the company of the staff are described in this list, Ing. Shaqir Idrizi, according to this list, has 15 years of work experience. MC offer for this engineer is attached the decision on appointment as project manager, diploma, cv and references. but the "contract or pre-valid employment contract with the employer" was not attached, as was the requirement of the CA. However, the complaining EO in the case of submitting the request for reconsideration dated 05.29.2023, had presented the list of salary declarations for female workers in TAK for the year 2022 and the first quarter of 2023 and among them was also declared ing, Shaqir Idrizi, had attached the employment contract for a certain time between the employer PRO&Co Group sh .p.k and the employee Shaqir Idrizi, in article 4 of this contract it is stated that the employee establishes a working relationship in the specified time starting from May 4, 2022 to May 4, 2023, this contract was signed between the parties and notarized at the notary on serial number 3860/2022, notarized on 09.06.2022. Also attached was the contract notarized by the notary with serial number 1485/2023 dated 08.03.2023, where through this contract the employment relationship continues until 31.12.2023. Therefore, the review expert clarifies that considering that the opening of offers was made on 29.11.2022, while the notarized contract was made on 09.06.2022 (before the publication of the contract notice and before the opening of offers) for ing. Shaqir Idrizi. as well as proving that this engineer was declared on the payroll at TAK, the reviewing expert considers that CA should have accepted these documents for the reason that the list of workers' wages certified with TAK's seal proves that this engineer was employed and declared in TAK as an employee of this business. If this salary list is analyzed, it can be seen that the declaration of this engineer is in accordance with the 2022 contract, where according to this

contract Shaqir Idrizi was employed in May 2022 and the declaration of this worker in TAK was made in May 2022. Therefore, the claim of the complaining EO is grounded.

Regarding the claim of the complaining EO that the CA has wrongfully eliminated him on the grounds that Ing. Sadet Ahmeti does not fulfill the work experience period of 5 years after graduation, further EO mentions that CA referred to the date of receiving the diploma and not the date of graduation.

Through the offer, the complaining EO has submitted the list of professional staff, where the experience and positions of the staff in the company are described in this list, Ing. According to this list, Sadat Ahmeti has 5 years of work experience. Also for Ing. Sadat Ahmeti, the diploma, contract, decision of MEST - for recognition of diplomas and qualifications of higher education obtained outside the Republic of Kosovo, CV, references and the decision to appoint the leader of the works are attached. According to the diploma presented, Mr. Sadat Ahmeti graduated on September 14, 2017. while the date of issuing the diploma is July 14, 2018. Therefore, the expert clarifies that the date of issuing the diploma is not related to the date of graduation because in the part below the name and surname of the graduate it is stated that on September 14, 2017 he fulfilled all the requirements for the issuance of this diploma..."Therefore, the claim of the complaining EO on this point is grounded.

As for the finding of the CA regarding work experience, where it has been stated that this engineer does not have 5 years of experience after the date of graduation and the references submitted with the request for reconsideration differ from the initial references submitted to me, the reviewing expert clarifies that in the CV of this engineer submitted by tender it is stated that he has work experience at:

1. DEKOR Group LLC Prishtina 2010-2016;
2. Globus Construction-S Gjilan 2018 - 2020;
3. DUA ARCH LLC 2020;
4. LUNARI Company 2019 - 2020 - 2021;
5. EUROTRANS 2018 -2019;
6. Pro & Co Group LLC. 2017-2021
7. Urban Design Studio "Vizion Projecf" 03.01.2014 - 3 L 12.2017;

The Review Expert clarifies that the request of the CA was to prove the work experience with references on the work experience (the years of work from each employer must be specified in the references). After reviewing this DT request and the attached CV for this engineer and the attached references. the reviewing expert explains as follows:

1. The employer "DEKOR Group" is before the date of graduation and this work experience is not according to the request of the CA;

2. For the experience at GLOBUS Construction LLC, it is after the date of graduation, but no reference is attached;

3. For the experience issued by "DUA ARCH" LLC, a reference was issued for the period 05.05.2020 to 31.05.2021, where from this reference it results that he has 13 months of experience with this employer;

4. No reference is attached for the employer LUNARI Compani:

5. The reference issuer "PRO & CO" noted that Sedat Ahmeti is engaged in their company as a graduate construction engineer, but in this reference letter, the period or years of work are not specified, as is the request of the DT, but only the projects realized that Ing. Sadat Ahmeti has led the works in these projects.

The reviewing expert also analyzed the references submitted upon request for reconsideration by the complaining EO, where after examining these references it turns out that the reference issued by '4DUA ARCH' differs from the initial reference submitted by tender (in terms of the number of projects) . Then regarding the experience at "LUNARI", the submitted tender lacked a reference, while the period for the years 2019, 2020 and 2021 was mentioned in the CV, while the reference issued by LUNARI for the years 2019, 2020 and 2021 was attached to the request for reconsideration. The reference issued by Vizion Project for the period "from 01.01.2018 until now" is also attached to the request for review. As for the reference issued by Pro & Co Group and submitted with the request for review, this reference now states that Sedat Ahmeti supervised and managed the projects from January 2017 to November 2022.

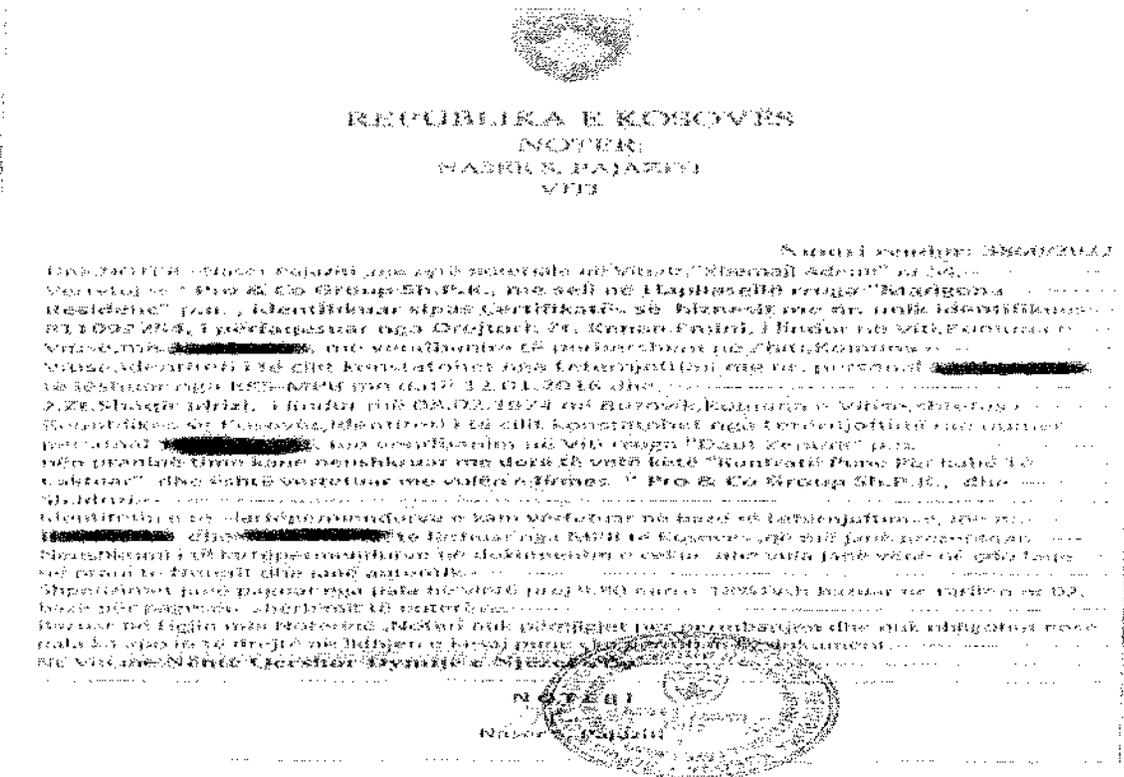
Regarding this reference submitted with the request for reconsideration. the expert estimates that the finding of the CA is correct since the reference submitted the second time differs from the one submitted by tender. After the reference letter issued by Pro & Co Group in the first time, the period is not specified of work as was the request of the tender file to specify the years of work by each employer, while the second time the work period was specified (January 2017 to November 2022). While at the company Globus Construction-S Gjilan, even though it is mentioned in the CV that Ing. Sadat Ahmeti has work experience but did not attach a reference as requested by CA.

Since the information related to work experience is presented in the CV and with some references, to Mr. Sadat Ahmeti and the procurement law allows for clarifications and the completion of missing documents, the contracting authority during the reevaluation in accordance with article 72 of the LPP will have to ask for clarifications addition related to the work experience of engineer Ing. Sadat Ahmeti.

Regarding the claim of the complaining EO against the offer of the economic operator NPN Euroing shpk that it interfered in the price description form where it modified the advance. Further, the EO states that on this matter it has requested legal interpretation from PPRC and PPRC through the answer and interpretation of dt. 02.03.2023 it is established that the same EO is not responsible. For this claim, the review expert explains that there is an expert report with no. 356-2023.

Regarding the claim of the complaining EO against the offer of the economic operator Astraplan, the same has presented an irresponsible offer and found by the CA - Kosova Police. For this appeal claim, the examining expert explains that there is an expert report with no. 373/23.

Evidence: Diploma of Sadat Ahmeti, List of salaries declared in Atk for the year 2022 and 2023, Employment contract of Shaqir Idrizi and Notarial Act no. 3860/2022 dated; 09.06.2022



Therefore, in support of what was described above, the review expert proposes to the review panel that the complaint of the complaining EO be approved as grounded to cancel the notification of the CA for the cancellation of the procurement activity and return the matter to Re-evaluation.

Findings of the Review Panel

The Review Panel found that there are no elements to prevent conflict of interest, as required in the sense of Article 11 of the Regulation on the Work of PRB, therefore it analyzed all the documents of this matter, including all the acts and actions of the parties and considered that no there is a need to convene a public session with the parties because there is sufficient evidence to decide according to paragraph J, article 24 of the cited Regulation. In this case, the panel took into consideration all the complaint statements, acts and actions of the EO and CA as well as the reports of the review experts.

Regarding the complaint of the economic operator EO "NPN Euroing SH.P.K.

Referring to the actions taken as mentioned above, the Review Panel considers that the conditions have been met to decide on this matter in a meritorious manner, as provided by paragraph 1, of Article 24 of the Rules of Procedure of the PRB, taking into account the fact that the acts and the actions and submissions of the parties, the available evidence and the review expert's report, provide sufficient data to decide on the merits of the case.

The Review Panel administered all the documents of this case, including the acts and actions of the CA, the submissions and evidence of the appellant and the review expert's report and by analyzing all of them in the general context of this issue, it created its independent conviction/ because the CA has not violated the provisions cited above, specified and argued in the complaint and in the review expert's report. In this case, the Panel explains that it does not support the expert's report with which the EO treats it as a disinterested party according to Article 4.1.26 of the LPP, because the complaining EO through the complaint claims initially tried to defend its own elimination by alluding that it is responsible and that the CA has not respected the legal provisions in the case of its elimination from this procurement activity, with this action and hint of the EO made it an interested party.

Regarding the complaining claim that concerns the elimination of the complaining EO by the CA on the grounds that it did not complete the list of price descriptions according to the requirements of the CA, initially offering as if the total without VAT and the total with VAT as well as VAT has not set prices but text, PSH finds that the CA has acted fairly and in accordance with the legal provisions for public procurement that are in force, specifically Article 44.3 of RRPP No. 001/2022, which cites: "The purpose of the standard documents is to assist the Economic Operators during the preparation of offers. The declarations must contain the minimum requirements defined in the standard forms without changes in content, without the introduction of additional restrictions or conditions, or without deletion of any condition specified by the contracting authority in the standard format. But the company making the declaration has the right to place the logo, company name or graphics at the top of the header page or anywhere else in the standard documents." The price description is part of the Tender Dossier and not the opening minutes. Therefore, the CA's request in the description of the prices was to set the price without VAT and the price with VAT, which the complaining EO did not comply with the request, in addition to this, instead of VAT, it placed a text, an action which is sanctioned by the legal provision Consequently, based on the legal provisions of PPRC No. 001/2023, articles 40, 40.7, 44 as well as article 40.6, point a and b, the complaining EO for this procurement activity is administratively irresponsible. "The tender will be considered responsible when: a. it is in compliance from the administrative aspect with the formal requirements of the tender file; b. it is in compliance in technical terms with the description, requirements and specifications defined in the tender dossier.

If we refer to the consistency of PRB decisions issued by the current board, namely the expertise report no. 2023/0158 and PSH decision no. 2023/0158 of dt. 30.05.2023, for which the

complaining party has referred you and for the activity which has been forwarded several times with complaints to the CA and the PRB and has been returned to re-evaluation several times, then the PSH clarifies that in this (preliminary) decision it is supported the reasoning of the reviewing expert, which deals with the same issue, and the party was the EO itself, which is now the complainant and which made the same concession. The reviewing expert has documented this omission of the EO and presented it in the expertise report no. 2023/0158, but has recommended that it be taken as a minor deviation in accordance with Article 59.4 of the LPP. PSH decision no. 2023/0158 of dt. 30.05.2023, because unlike the examining expert whose purpose is to examine only the complaining claims, the SHP has the obligation to also take care of the legal principles, the general interest, the purpose, the economy and the equality of the parties in a procedure.

So, if the PSH in a procurement activity has allowed a legal release of the bidding EO to be taken as a minor deviation in accordance with Article 59 of the LPP, it has done so taking into account many circumstances created within a procurement activity and with the nature of the procurement activity, but this does not mean that it gives the right to PRBO to make those concessions continuously legal, and even less it does not give the right to any party to repeat that concession and invoke it in the consistency of a PRB decision.

This complaint was included in point 4 of the provision because the EO thought that this decision should be consistent with the other preliminary decision of the PRB.

The review panel considers that the decision taken in this case is based on the administration of all the evidence available in this case and that in making decisions it always takes into account Article 1 of the LPP, where the purpose of this law is to ensure the way more efficient, more transparent and fairer use of public funds, public resources as well as all other funds and resources of the contracting authorities.

Regarding the complaint of the economic operator EO "Astraplan SH.P.K. "

In fact (of course, regardless of the recommendations) the Panel notes that the procurement procedure that was applied in this case is presented in detail in the review expert's expertise report, explaining all the stages of the process and the actions taken by the parties in the comparative context mc acts in force, especially with the Rules for Public Procurement.

Therefore, referring to article 104.1, of the LPP, according to which it is required that the examination procedure be implemented in a fast, legal and effective manner and also analyzing in their entirety the documents of this case in the context of this procurement process , the panel did not consider it necessary to elaborate again in detail and unnecessarily in this case each appeal claim, as long as they are specifically singled out especially in the contested decision of the contracting authority. Among other things, in the contested decision of the contracting authority and in the review expert's report, explanations were given regarding the complaining statements. The panel notes that the reasons given in the expert's report are professional and well argued with material evidence, without the need to describe them again. Therefore, the Panel supports the explanations of the reviewing expert who explained in his expertise report, as well as supports the expert's recommendation that the case be returned for re-evaluation.

Regarding the complaint of the economic operator EO "Pro & Co Group sh.p.k"

-Finding of the Review Panel -

The Review Panel found that there are no elements to prevent the conflict of interest, as required in terms of Article 11 of the Regulation on the Work of the PRB, therefore it analyzed all the documents of this matter, including all the acts and actions of the parties and considered that there is no need to convene a public hearing with the parties because there is sufficient evidence to decide according to paragraph I, article 24 of the cited Regulation. In this case, the panel took into consideration all the complaint statements, acts and actions of the CA and the expert's report.

In fact (of course, regardless of the recommendations) the Panel notes that the procurement procedure that was applied in this case is presented in detail in the review expert's expertise report, explaining all the stages of the process and the actions taken by the parties in the comparative context with the acts in force, especially with the Public Procurement Rules.

Therefore, referring to article 104.1, of the LPP, according to which it is required that the review procedure be implemented in a fast, legal and effective manner and also analyzing in their entirety the documents of this subject in the context of this procurement process, the panel did not consider it necessary to elaborate again in detail and unnecessarily in this case each appeal claim, as long as they are specifically singled out especially in the contested decision of the contracting authority. Among other things, in the challenged decision of the contracting authority and in the review expert's report, explanations were given regarding the complaining statements. The panel notes that the reasons given in the expert's report are professional and argued without objection to material evidence, without the need to describe them again. Therefore, the Panel supports the explanations of the reviewing expert who explained in his expertise report, as well as supports the expert's recommendation that the case be returned for re-evaluation.

- Conclusion -

Based on the above, the Review Panel considers that the CA has acted contrary to the provisions of Article 59, 62 and 72 of the LPP, cited in the Complaint and in expert reports. The Review Panel considers that the actions and acts of the CA, and the evaluations of the review expert regarding the fulfillment or not of the conditions described above and the complaint statements in this case constitute a sufficient basis for the procurement activity to be re-evaluated again because in the opposite will contradict the scope of the LPP and the argumentative basis of the appeal claims, which the Panel evaluates according to its independent assessment in the sense of Article 104 in relation to Article 105 of the LPP. The return of a procurement activity based on a contested legal re-evaluation, is in harmony with Article 1, of the LPP, according to which, the purpose of this Law is, among others, quoted: "...to ensure the integrity and responsibility of public officials, civil servants and other persons who perform or are involved in a procurement activity, requesting that the decisions of such individuals and the legal and factual basis for such decisions, are not influenced by personal interests, are characterized by non-discrimination and with a high degree of transparency and, to be in accordance with the procedural and essential requirements of this law".

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

Therefore, from the above, the review panel in accordance with article 117 of the LPP decided as in the provisions of this decision.

Head of the Review Panel

Mr. Vedat Poterqoi

Legal advice:

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

Decision to be submitted to:

1x1 CA – Kosova Police;
1x1 Complainant EO;
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.