



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

Psh. No.1008/23

The Review Panel, appointed by the President of PRB, based on Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova (Law no. 04/L-042, supplemented and amended by Law 04/L-237, Law 05/L-068, supplemented and Law 05/L-092) in the composition of Isa Hasani – President, deciding according to the complaint of EO “Gani B. Krasniqi B.I.” against the announcement on the CA's decision regarding the procurement activity “Service and maintenance of official vehicles of MMPHI (former MMPHI)” with procurement no:210-23-10358-2-1-1, initiated by the contracting authority (CA) - Ministry of Environment and Spatial Planning, on the 19/03/2024 has issued this:

DECISION

1. Refused, as ungrounded, the complaint of “Gani B. Krasniqi B.I.” with no. 2023/1008, dated 12.12.2023, related to the procurement activity “Service and maintenance of official vehicles of MMPHI (former MESP)” with procurement no:210-23-10358-2-1-1, initiated by the contracting authority (CA) - Ministry of Environment and Spatial Planning.
2. Remains in force, the notice on the decision of the Contracting Authority, - Ministry of Environment and Spatial Planning regarding the procurement activity with the data as in point I of the provision.
3. The confiscation of the complaint’s fee is ordered in the amount deposited by the complaining economic operator based on article 31 par. 5 of the Rules of Procedure of the PRB, while the funds go to the budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances –

On the 28.09.2023, the Ministry of Environment and Spatial Planning, in the capacity of the Contracting Authority, has published the Contract Notice B05 related to the procurement activity with titled “Service and maintenance of official vehicles of the MMPHI (former MESP)” with procurement no: “210-23-10358-2-1-1”.

Whereas on the 04.12.2023 CA published B58 Notice on the decision of the Contracting Authority where it awarded contracts to “Bastri Ademi "B.I”

This procurement activity was developed through an open procedure with a service contract type and with an estimated contract value of 200,000.00 €.

On the 07.12.2023, EO “Gani B. Krasniqi B.I.” submitted a request for reconsideration against the aforementioned decision of the CA. On the 11.12.2023, the Contracting Authority rejected the request for reconsideration as unfounded.

On the 12.12.2023, PRB received the complaint from EO “Gani B. Krasniqi B.I.” with no. 1008/23 related to the activity “Service and maintenance of official vehicles of MMPHI (former MEMPH)” with procurement no:210-23-10358-2-1-1.

- Administration and evaluation of evidence -

The Review Panel has concluded that the complaint contains all the elements defined through Article 111 of the LPP and as such was submitted within the legal term in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for resolving disputes in the sense of Article 108/A of the LPP, from the economic operator who is an interested party according to article 4 paragraph 1 sub-paragraph 26 of the LPP. In this way, the Review Panel has concluded that it is competent to review this complaint according to Article 105 of the LPP and there is no procedural obstacle to proceed with reviewing the complaint in a meritorious manner.

Claims of the complaining economic operator “Gani B. Krasniqi B.I.” are presented as follows:

The first claim (I): The Contracting Authority (CA) Ministry of Environment, Spatial Planning and Infrastructure has recommended for the contract an Economic Operator who is irresponsible for the fact that he has not fulfilled all the requirements of the tender file and of the contract notification, respectively Requirements on technical and/or professional capabilities 9.1 & 9.2: Technical and professional capacity Requirement no. 3: 3. The Economic Operator must possess tools, facilities and technical equipment that are necessary for the realization of the project a. Hydraulic crane for lifting vehicles, minimum 5 pieces b. equipment for filling air conditioners, minimum 1 piece c. Equipment for diagnosing vehicles, minimum 1 piece. d. Vehicle for transporting vehicles, minimum 1 piece. The required documentary evidence: 3. Evidence with a photo or any other evidentiary document (or of the rental) of the vehicles must be - Unique customs declarations - DUD, photo or any invoice for their purchase, while for vehicles that are in motion for the transport of vehicles, they must be proven with valid vehicle registration

booklets. The economic operator recommended for the contract has not provided the evidence necessary to realize the project in question, for point d. The vehicle for the transportation of vehicles did not provide the comfort vehicle standards required by the MMPHI contracting authority. The economic operator recommended for the contract has presented a truck Transport vehicle (truck) with two doors, blue color, manufactured by IVECO, Type 50.8.1-B, with vehicle identification number ZCFA5070002161910, registration number, plates: 01-891- EA, year of production 1984, with maximum permissible load weight of 3510 KG. Financial offers Part II. List of Vehicles, Technical Specifications and Prices - Vehicle Maintenance and Servicing, Part II. The price list, the Contracting Authority (CA) has presented all the types of vehicles that will be serviced, specifying the type of vehicle, the manufacturer of the vehicle, the year of production and specifying the capacity in cm³. Technical specifications and financial offer - Part II. The price list also includes the Toyota 3.0/4.8 cm³ vehicle, year 1999-2008 (7 vehicles), which is included in the financial offer, and which will be serviced during the execution of the contract, the same vehicle is owned by CA Ministry of Environment, Spatial Planning and Infrastructure.

The second claim (II): "Also, the economic operator recommended for the contract does not fulfill the other requirement of the contract notice and the tender file, where as a requirement, it was the request with no. 3, the Contracting Authority (CA) Ministry of the Environment, Spatial and Infrastructure Planning has recommended an economic operator for the contract who is irresponsible for the fact that he has not met all the requirements of the tender file and the contract notice, namely the requirements on technical and/or professional capabilities 9.1 & 9.2 of request no. 2. Technical and professional capacity Request no. 2: 2. The EO must provide evidence for the professional staff and the following; • (3 workers) Automechanic Documentary evidence required; 2. As evidence, the employment contract or pre-contract specifying the title of the project in question and the time, copies of notarized high school diplomas must be submitted. The economic operator recommended for the contract does not fulfill the above-mentioned request, due to the fact that the same in relation to the above-mentioned request has presented in the offer as an Automechanic worker Mr. Fatmir Mehmeti, and Mr. Armed Gashi, with whom he signed a contract, also presented them with high school diplomas, but did not present the diploma of notarized workers.

The third claim (III): "In the notice for the contract and the tender dossier in Requirements on technical and/or professional capabilities 9.1 & 9.2, Technical and professional capacity, Request no: 6, is requested; Technical and professional capacity: 6. EO to be certified with ISO 9001 2015 - Quality Management for Servicing services. Documentary evidence required: Evidence 6. EO must witness notarized copies of the original ISO 9001-2015 accredited Certificate in Quality Management for Servicing services. The evidence of the request with no: 6. was a copy of the Certificate notarized from the original, the economic operator recommended for the contract presented the ISO 9001:2015 Certificate. The certificate is numbered: SISTEMA/KOS/0322QNE251, issued on 26.03.2021 with validity until 25.03.2024, but the ISO 9001:2015 certificate presented by the economic operator recommended for contracts is not notarized by notary, certificata ISO 9001:2015 issued on behalf of "N.T.SH. EUROPA" does not contain the declaration of the notary, or the authentication from the original to the copy. So it is

very clear that the evaluation of this procurement activity was not evaluated in accordance with the LPP, it is seen that the contracting authority did not act in accordance with the requirements of the contract notice and the tender file, the technical and/or professional requirements of the request no. 6, as documentary evidence requires notarization and authentication of the document from the original to the copy, and the criteria it sets itself as the Contracting Authority does not respect, it recommends the economic operator who submitted the ISO certificate not notarized.

The fourth claim (IV): "Also, the Contracting Authority (CA) Ministry of Environment, Spatial Planning and Infrastructure has recommended for the contract the economic operator who is irresponsible for the fact that he has not fulfilled all the requirements of the of the tender and contract notice, namely Requirements on technical and/or professional capabilities 9.1 & 9.2, Technical and professional capacity Request no: 8. Technical and professional capacity: Request no: 8. EO must have the space of the minimum facility 300 m2; Required documentary evidence: Required evidence of request with no: 8. The space of facilities (services) must be at least 300 m2, proof of ownership (or of renting the facility - service). If the facility - the workshop is owned, copies of the ownership documentation are required as evidence. If the facility - the workshop is rented, a notarized copy of the rental contract is required as proof. The economic operator recommended for the contract has presented a lease contract in this procurement activity. Has presented the contract with number, LRP No. Ord. 12119/2021, Ref. No. 1492/2021. The contract is concluded on 11.08.2021. between Mr. Hajriz (Kamer) Murturi, as lessor, and Bastri Ademi B.I-N.T.SH "EUROPA", as lessee. In the contract presented by the economic operator recommended for the contract, it is Parcel-land, it is not an object as requested by the contracting authority, so the economic operator did not present a contract on the rent for the object/service for vehicle servicing, but the same economic operator owns a lease contract for a plot of land.

The fifth claim (V): "Also, the economic operator recommended for the contract has set manipulative prices in the price description, for the vehicle Reno Talisman 2.0 year 2019, First part Regular servicing, position no: 5. He has set the oil filter prices 55.00 Euro. In the second part, Maintenance and Replacement of Spare Parts - description of items, position with no; 108. Filling the air conditioner, the economic operator has set prices of 250.00 euros. In position no; 187. The economic operator Eye of the Lighthouse has set prices of 65.00 euros. In position no; 198. Oil changer, the economic operator has set prices of 28.00 euros per liter. For the vehicle Audi A 4, 1.9cm3, year 2019, in the description of the price, the first part, regular servicing, position no: 5. The price of the oil filter is 55.00 Euro. In the second part, Maintenance and Replacement of Spare Parts - description of items, position with no; 108. Filling the climate, the economic operator has set prices of 250.00 euros. In position no; 127. Brake pads (front) set prices 175.00 Euro. In position no; 187. Eye of the lighthouse has set prices of 145.00 Euro. In position no; 198. Oil changer, the economic operator has set prices of 28.00 euros for 1 liter. In position no: 231. Boshpumpa has set prices of 1.00 Euro. For the VW Amarok 1.9 cm3 vehicle, year 2023, in the price description, the first part, regular servicing, position no: 5. The price of the oil filter is 56.00 Euro. In the second part, Maintenance and Replacement of Spare Parts - description of items, position with no; 108. Filling the climate, the economic operator has set prices of 250.00 euros. In position no; 127. Braking plates (front) set prices 185.00 Euro. In

position no; 187. Eye of the lighthouse has set prices of 145.00 Euro. In position no; 198. Oil changer, the economic operator has set prices of 28.00 euros for 1 liter. .The main criterion for awarding the contract, which was the responsible tender with the lowest price, as provided for in article 60 paragraph 1.1 of the LPP, was not respected because an irresponsible economic operator was recommended for the contract, and in this case an irresponsible economic operator has been recommended, who is sure that he will not have the technical and professional capacities available to implement the contract in its entirety. Referring to the claims as above, the complaining economic operator considers that the Contracting Authority acted in violation of Articles 1, 6, 7, 59, 60, 69 of the LPP, as well as Articles 4, 40, 41 of the RRUOPP as well as the Rules for submitting the request for reconsideration to the Contracting Authorities and the Rules for Abnormally Low Tenders B57. Based on all the evidence, testimonies and facts that were mentioned above, we ask the Procurement Review Body to issue the following: Decision to Approve the complaint of EO Gani B. Krasniqi B.I - D.P.Z. Suzuki", the notification and decision B58 of the Contracting Authority for awarding the contract for the procurement activity Servicing and maintenance of MMPHI's official vehicles is cancelled, and the matter is returned to Reevaluation. The Contracting Authority is obliged to, during the re-evaluation, examination, evaluation and comparison of the offers be done in harmony with the requirements of the tender dossier, contract notice and in accordance with the provisions of the LPP.

The contracting authority's response to the Request for reconsideration of the complaining EO.

As far as the claim is concerned, the complainant economic EO recommended for the contract has offered with Vehicles for the transportation of vehicles, proving it with the registered and valid Vehicle Booklet with license plate 01-891-EA, bidding in accordance with the criteria of the tender file. In the tender file it is requested: Request on technical and/or professional opportunities 9.1 & 9.2 Technical and professional capacity: The Economic Operator must possess tools, establishments and technical equipment that are necessary for the realization of the project a. Hydraulic winches for lifting vehicles, minimum 5 pieces b. equipment for filling air conditioners, minimum 1 piece. Vehicle diagnostic equipment minimum / piece. d. Vehicles for the transportation of vehicles minimum / pieces Documentary evidence required 3. Photo evidence or any other evidentiary document (or of the rental of vehicles must be - Unique customs declarations - DUD. photo or any invoice for their purchase, while for vehicles that are in motion for transporting vehicles, they must be proven with valid vehicle traffic books. So, under d, vehicles are required for the transportation of minimum/piece vehicles and the required documentary evidence has to be proven with valid vehicle registration books. The EO recommended for the contract has bid with a valid and registered vehicle booklet with license plate number 01-891-EA, bidding in accordance with the criteria of the tender file. So in the tender file, nowhere was it requested that the transport vehicle be of a certain cubic capacity. For this reason, the evaluation commission has assessed that the EO has offered in accordance with this point. It is the responsibility of the EO who signed the contract to transport vehicles in the event of a defect in accordance with the tender file. It is the responsibility of the traffic police in Rep. of Kosovo, how would he transport the cars, whether they conform to the laws in force or not. In the specific case, the EO recommended for the contract has bid in accordance with the criteria of the tender file. Also, the EO recommended for contracts in its offer has stated that it

will fully adhere to the tender file in accordance with the technical specifications. In conclusion, this appeal claim is unfounded. Answer no. 2: As for claim 2 of the appellant, the CA has checked and concluded that the EO recommended for contracts has bid in accordance with the tender file as requested. Request on technical and/or professional opportunities 9.1 & 9.2 was requested in the tender file. EO-ik must provide evidence for the professional staff and the following: (3 workers) Automechanic Documentary evidence required: 2. As evidence, the employment contract or pre-contract specifying the title of the project in question and the time, copies of notarized high school diplomas. The EO recommended for contracts has offered with valid work contracts for AUTOMEKANIK, in this case the contracts have not been requested to be notarized, but pre-contracts have been requested if the bidding EO will engage in this project in advance. As for the diplomas of the workers, the evaluation commission has determined that they were issued by the Public Institutions of the Republic of Kosovo and this can be verified very easily and quickly in the respective schools. However, these diplomas are notarized and certified in accordance with the applicable laws for the notary.

However, there are decisions of the PRB which do not emphasize the notarization of diplomas when it is easily verifiable, especially when they have been issued by the Institutions of the Republic. of Kosovo. This complaint claim is unfounded. Answer no. 3: How many floors of claim 3 did the EO offer with an ISO 9001:2015 certificate, which has a link for verification and is valid from 26.03.2021. EO has offered with this certificate signed by the original. The CA requested on 27.11.2023 from the EO to hand over the notarized certificate. EO has submitted a declaration in e-procurement on 29.11.2023 where it declares that the certificate is valid which can be verified online and has also attached the verification. He also presented the original certificate to the Contracting Authority and notarized it on 29.11.2023. The CA has accepted the evidence of the EO in accordance with Article 72 of the LPP. The complaining claim is unfounded. Answer no. 4: Regarding claim 3 of the complainant, the EO recommended for contracts has offered with notarized rental contracts, attaching also the evidence for the distance of the company's service, which is 1.8 km from the MMPHL facility. The CA Commission during the assessment of offers has come to the site of the facility of the bidding EO and has ascertained the actual condition of the three, assessing that they have offers in accordance with the criteria of the tender file. It is the responsibility of the individuals or even of the Municipality that dealt with the legalization of the facilities whether the facilities should be legalized in certain places or not. EO has proven in its offer that it has concluded contracts with Public Institutions of the Republic of Kosova in that facility where it is rented. In conclusion, this complaining claim is also unfounded. Answer no. 5 As far as the complaining claim for high prices is concerned, the CA has verified that the difference between the two bidding EOs is not that great. The total weighted price difference between the two EOs is 811.96 euros. Taking into account the small difference between the two EO offers, the CA has decided not to ask for additional clarifications regarding the prices, since the commission has researched the market prices of the respective cars and it has been concluded that the prices offered by the EO recommended for contracts are real prices, i.e. market prices with a symbolic profit. In this case, you, as the complaining EO, are not so serious in your complaint, since the position you claim, e.g. SYTI 1 / FARIT, the commission has verified that the new model cars owned by us as CA are real prices. Even when

filling the air conditioner in the new cars that they own, we as CA have researched that the freon (refrigerant) in the new cars is R 1234 yf, which means that it is a real price.

Not leaving it in all the positions where you claim that the EO recommended for the contract has high prices, we have estimated that you, as the EO complaining about the offer, do not have enough knowledge about the cars for which you have applied. Taking into account that we, as the CA, have the commission for evaluation and verification of every part of the car, we have asked you that the parts are new and original with a guarantee, we have researched that all positions have market prices. So your claim is unfounded. We, as CA, have made the assessment. Comparison, examination of offers in accordance with article 59 of the LPP, in accordance with article 1 of the LPP in accordance with article 4 and 10 1 of the RRUOP in accordance with article 6,7,60,69 of the LPP. Therefore, based on the answers given by the CA, we inform you that your request is partially approved. Therefore, we consider that the Ministry of Environment, Spatial Planning and Infrastructure - Procurement Division has met all the criteria set in the tender file, in accordance with the Rules and Law No. 04/L-042 for Public Procurement in the Republic of Kosovo, amended and supplemented by Law No. 04/L-237, Law No. OS/L-068 and Law No. 05/L-092, on the definition of criteria in the contract notice and the tender dossier.

-Administration and evaluation of evidence -

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 03.01.2024 has authorized the review expert to conduct the initial review of the dossier and claims according to complaint no. 1008/23, while on 09.01.2024 the review expert's report with no. 2023/1008 with the following recommendations: Based on the above-mentioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO be rejected as unfounded and that the decision of the CA remain in force.

The expertise's report has been duly accepted by all procedural parties. CA declares that it agrees with the recommendations of the review expert's report, as well as EO Disagrees with the report of the review expert

Evaluation of the review expert through report no. 2023/1008, of the complaint claims of EO "Gani B. Krasniqi B.I." complainant, as follows;

Introductory clarification: "The Contracting Authority - Ministry of Environment and Spatial Planning, during this activity, applied the open procedure, large value, type of service contract, estimated value €200,000.00." CA on 27.09.2023 published the Notice for the contract, while the opening of offers was made on 10.11.2023 and only two economic operators had applied for this procurement activity. CA- Ministry of Environment and Spatial Planning dated 04.12.2023 has published the notice on the decision of the CA where Bastri Ademi B.I has recommended for the contract the value of the offer with a score of €76,003.10. While the offer of the complaining EO was evaluated as an unsuccessful offer. Against the notification on the decision of the CA, the party first submits a request for Reconsideration to the CA on 07.12.2023 within the legal deadline. CA with dt. 11.12.2023 issues a decision on the rejection of the request as unfounded EO dissatisfied with the response of the CA dated 12.12.2023 presents a complaint to the

Procurement Review Body (PRB) with the same claims. The complaining EO, in the complaint, has provided five complaining claims, all complaint claims are related to the recommended offer for the contract.

First finding (I): "After the administration and review of the case documents, we clarify that the complainant in the request for Re-examination and the complaint submitted to the PRB, in the first claim, opposes the offer of the recommended EO for the contract to the request of the tender file placed in the technical and professional capacity or 9&1 and 9&2 exactly its third request. The complaining EO claims that the EO recommended to fulfill the request of the tender file has offered an IVECO type vehicle with a maximum weight of 3510 Kg, while in the description of the price in part II, the CA has also included the Toyota type vehicle JTMCV09JX04007699 , plate registration number 3Z-171-13, year of production 4/3 2009, with vehicle weight 3938 KG. Therefore, the same Economic Operator does not meet the aforementioned requirement due to the fact that in the offer it did not present an adequate truck in accordance with cm3 of vehicles, it does not have a truck for transporting TOYOTA-type vehicles, but it presented a Truck with a maximum weight of the allowed load of 3510 KG, which weight is stated in the registration certificate at serial number (F1). Based on the registration certificate of the truck presented by the EO recommended for the contract, and based on the vehicle registration certificates of the Toyota type manufacturer, it appears that the Economic Operator recommended for the contract does not meet this requirement. The Review Expert explains that, based on the analysis of the facts/testimonies, the CA in the tender dossier for the first claim of the complaining EO had asked under point d. for the EO to possess "Vehicles for the transportation of vehicles, at least 1 piece". It is worth noting the fact that the CA for this procurement activity had received two requests for clarification of the tender file, but in none of them there were questions regarding the request for the tender file which now the complaining EO has presented in the first claim . The 3rd request for technical and professional capacity in the tender file was; 3. The Economic Operator must possess tools, establishments and technical equipment that are necessary for the realization of the project a. Hydraulic winches for lifting vehicles, minimum 5 pieces b. equipment for filling air conditioners, minimum 1 piece c. Equipment for diagnosing vehicles, minimum 1 piece. d. Vehicles for transporting vehicles, minimum 1 piece. Evidence; 3. Evidence with a photo or any other proof document (or of the rental) of the vehicles must be - Unique customs declarations - DUD, photo or any invoice for their purchase, while for vehicles that are in motion for transporting vehicles they to be proven with valid vehicle registration books. The Reviewing Expert clarifies that, based on the request of the tender dossier, the weight of the vehicle has not been limited anywhere for the transportation of vehicles, as the complaining EO now claims. Based on article 56 paragraph 3 of the LPP, the EO cannot be disqualified from the procurement procedure for a criterion that was not foreseen in the contract notice and tender file. Article 56 paragraph 3 of the LPP "The tenderer, during open procedures, or the candidate, during limited procedures and competitive procedures with negotiations, will not be disqualified or excluded from such procedures on the basis of any requirement or criterion that is not mentioned in the contract notice and in the tender dossier. In addition, article 59 paragraph 4 of the LPP considers an offer responsible only when it is in accordance with the criteria provided in the contract notice and tender dossier. Article 59 paragraph 4 of the LPP "The contracting

authority will consider a tender as responsible only if the tender in question is in compliance with all the requirements set forth in the contract notice and in the tender dossier. In conclusion, regarding the first claim of the complaining EO, I consider it unsustainable due to the fact that nowhere in the tender dossier and the notice for the contract is the weight of the vehicle transporting the vehicles limited, as the complaining EO now claims. Therefore, we estimate that the first claim is unfounded.

Regarding the second claim, that the EO recommended for the contract does not even fulfill the second requirement of the tender file in terms of technical and professional capacity, which was; Request no. 2 EO must provide evidence for the professional staff and the following; • (3 workers) Automechanic Testimony; 2. As evidence, the employment contract or pre-contract specifying the title of the project in question and the time, copies of notarized high school diplomas must be submitted. The review expert clarifies that, based on the analysis of the facts on the E-procurement electronic platform, the staff has a total of 5 workers, three of them auto mechanics, one auto electrician, and one auto painter. For the staff, he had submitted copies of notarized diplomas, employment contracts and CVs. As for the claim that the EO recommended for the contract for the workers Fatmir Mehmeti and Armend Gashi did not submit notarized diplomas, because the notary's seals do not state that the diplomas are notarized anywhere. It is worth noting that the EO has submitted diplomas issued by the Ministry of Science and Technology of Kosovo, along with the notarization of the document, but the fact that Mr. Armend Gashi, identified through his personal number, notarized the two-page document, but the name of the document is nowhere mentioned in the template of the notary Skender Dumani from Podujeva. If we look at the diploma attached by Mr. Armend Gashi, the notary's stamp can also be seen in the corners of the submitted diploma, which means that the diploma in question is notarized from the original. See the notary's seal and part of the diploma as proof. The examining expert clarifies that on both pages of the diplomas, in its upper corners, the notary's stamp can be observed, as a small piece and at the end of the complete sheet, the stamp given by the notary, so on this basis, I conclude that the evaluation committee has acted in accordance with the article 59 paragraph 4 of the LPP since the EO recommended for the contract has fully fulfilled the requirement of the tender file regarding the professional staff required in the tender file. Therefore, in accordance with the findings above, we estimate that the second claim of the party in the appeal is unfounded.

Further, the complaining EO in the third claim, points out the fact that the EO recommended for the contract has not fulfilled even the 6th requirement mentioned in the request of the tender file 9&1 and 9&2 in terms of technical and professional capacity, that is; Technical and professional capacity: 6. EO to be certified with ISO 9001 2015 - Quality Management for Servicing services. Documentary evidence required: Evidence 6. EO must witness notarized copies of the original ISO 9001-2015 accredited Certificate in Quality Management for Servicing services. The Reviewing Expert explains that, based on the analysis of the facts in the E-procurement electronic platform, the EO recommended for the contract to fulfill the request of the tender file had submitted the ISO 9001 20215 Certificate, but it was not notarized. CA, dated 27.11.2023 in accordance with Article 72 of the LPP, had requested additional clarifications from the EO recommended for the contract, regarding the fact that in the file it was requested to submit the

ISO certificate notarized from the original, while you submitted only the certificate without notarized. The EO on 29.11.2023 had returned a reply notifying the CA that it had submitted the original certificate and at the same time had submitted the original physical copy to the CA for verification, and had also attached the link for verification. In the capacity of the reviewing expert, to clarify the claim of the complaining party, I have verified through the link www.sistemacerts.com the certificate submitted by the recommended EO, and it is noted that the EO in question possesses the ISO 9001-2025 certificate valid until 26.02.2025 . proof of verification from the official website. As noted from what was mentioned above, the recommended EO is the fact that it has submitted non-notarized certificates with the offer, but from the easily verifiable evidence, it is observed that the same possesses the ISO 9001 2015 - Quality Management for services Servicing, in accordance with the request of the tender file and as such is responsible for this point of complaint. Therefore, in accordance with the findings above, we estimate that the third claim of the party in the appeal is unsustainable.

Regarding the fourth claim of the complaining EO that the EO recommended for the contract does not own a 300m2 object in accordance with the request of the tender file due to the fact that it submitted a contract for the lease of the plot which according to the cadastral register is land and not a business object. The Reviewing Expert explains that, based on the analysis of the facts on the E-procurement electronic platform, but also on the evidence attached by the complaining EO from the Cadastral Agency on this point, it is observed that an object is built on that plot, while based on the decision of the CA - for the rejection of the request for Reconsideration CA has highlighted the fact that; The CA Commission, during the evaluation of the offers, went to the scene and found that the EO recommended for the contract owns the business object for rent in accordance with the requirements of the tender dossier. The CA has also highlighted the fact that the facility built on the plot attacked by the complaining EO is not legalized, but that the EO has provided sufficient evidence that it operates as an auto mechanic in the same facility and that it has carried out and is carrying out contracts with different institutions of the Republic of Kosovo in the same business object. The review expert clarifies that the CA has verified the factual situation through the evaluation commission's visit to the headquarters of the recommended EO and has established that there is a business facility built in the cadastral parcel with no. P-71914059-00178-6, which is part of the lease contract between the recommended EO and the owner of the plot with no. P-71914059-00178-6, in which the business facility is built. Further, the review expert clarifies that the claim of the party in the complaint that plot no. P-71914059-00178-6, from the cadastral unit is meadow, does not stand for the fact that the factual situation clearly proves from the evidence attached by the complaining EO itself that the business facility is built on the aforementioned plot. Therefore, in accordance with the findings above, we estimate that the fourth claim of the party in the complaint, that the recommended EO does not have a business object but that the plot is only meadow/land, is unstable.

Regarding the fifth claim that the recommended EO has offered manipulative and abnormally low prices, this is a bit surprising due to the fact that only two economic operators had applied for this procurement activity with a difference in the total scored price in the amount of €811.96. In addition to this, the complaining EO also made the legal basis for this complaining claim wrongly by referring to empowered documents such as the RROUPP and the B57 rules for

abnormally low tenders. It is worth noting the fact that the above-mentioned documents have been abolished by the PPRC dated 01.11.2022 when the regulation for public procurement with number 001/22 entered into force. The Reviewing Expert clarifies that, based on the analysis of the facts/witnesses documented in the electronic platform E-procurement, despite the fact that the EO presented the legal basis in the complaint incorrectly, no criterion was met for the offer of the recommended EO for the contract to be treated as abnormally low bid. This is due to the fact that for this procurement activity, based on the minutes of the opening of bids, a total of 2 bids had participated with a difference of €811.96 in total of the total scored price. According to article 41.3 of regulation 001/2022 for public procurement; The contracting authorities will ask the economic operators to explain the price offered for responsible tenders, when all the following conditions are met: i. the price offered is more than 30% lower than the average price of responsible tenders; ii. the price offered is more than 10% lower than the price or costs of the second lowest tender; iii. at least 3 (three) tenders have been submitted. Based on the above, I estimate that the criteria set forth in Article 41.3 of Regulation no. 001/2022 for public procurement, that the offer of the EO recommended for the contract be treated as an abnormally low tender or with manipulative prices due to the fact that the two submitted offers have a small difference in value of 811.96 Euros. Therefore, we assess that even at this point the claims of the party in the complaint are not sustainable.

-Findings of the Review Panel -

The Work Regulations of the Public Review Body, which is published on the PRB website, with Article 20, paragraph 2 of the Regulations, defines the requirements for the Contracting Authority and the Economic Operator, that all information and notifications must be submitted and communicated through the public communication platform, if this is possible.

Based on the papers of this case, the Panel considers that regarding the issue in the present case, there is no need to convene a hearing with the parties, in the sense of Article 24 paragraph 1 of the Rules of Procedure of the PRB, taking into account the fact that the claims of the parties and their submissions, evidence as well as the review expert's report provide sufficient data to decide on the merits.

The review panel assesses that the Report of the review expert, drawn up at the request of the Panel regarding the dispute in this matter of the public procurement activity, contains the essential elements of such a document as provided by the provision of article 113 related to article 114 of the LPP, according to who is required by the expert to review all procurement documentation, including all appeal claims and provide the Panel and all disputing parties with an independent and professional assessment of the procurement activity and the validity of the complaining claims.

However, it should be emphasized the legal fact that the expert's report is not binding on the Review Panel and that each such report is evaluated and/or analyzed in the general context of the case documents, asserted facts and other eventual evidence, taking into account the nature of eventual violations, the flow, nature and purpose of the procurement activity, therefore the fact that in which cases and for what, the Panel relies or not, the expert's report and/or any of the

recommendations, belongs to its independent and professional judgment/ thanks, just as these responsibilities are addressed in terms of article 98, 99 related to article 105 of the Public Procurement Law.

The panel assesses that the review expert's report has dealt with the claims of the complaining Economic Operator in a professional and objective manner, the report is based entirely on the relevant documents that refer to the procurement activity. The findings in the expert's report can be confirmed through the tender file as well as the documents with which the tenderers have offered. The Review Panel regarding the claims of the complaining economic operator has given full confidence to the expert's report, according to which the complaining claims of the complaining Economic Operator have been legally assessed as unfounded.

The Review Panel, based on the findings of the review expert, considers that the complainant failed to prove with concrete evidence that there was a legal violation by the Contracting Authority during the development of the said procurement activity. Therefore, the Review Panel has assessed that the Contracting Authority has acted in accordance with the legal provisions for public procurement and the requirements of the Tender Dossier regarding the procurement activity "Service and maintenance of official vehicles of MMPHI (former MESP)" with no. of procurement: "210-23-10358-2-1-1". Consequently, the Review Panel has decided to reject the complaint of the Economic Operator of "Gani B. Krasniqi B.I." and certified the Decision of CA -B58 by which the Contracting Authority, related to the procurement activity, awarded contracts to "Bastri Ademi "B.I."

Based on the fact of the rejection of the EO's complaint, the review panel decided to confiscate the complaint fee in the amount deposited by the complaining economic operator based on Article 31 par. 5 of the Rules of Procedure of the PRB, while the funds go to the budget of the Republic of Kosovo.

The review panel emphasizes that in accordance with articles 1 and 6 of the LPP, that contracting authorities exercise their institutional independence in the public procurement process, but it remains within the competences and responsibilities of this body to review complaints and legality in the procurement process according to article 24, paragraph 2 of the LPP cited "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in full compliance with this law" in relation to article 59.1 cited "The contracting authority shall establish an Evaluation Commission for examination, evaluation and comparison of bids. All members of the Evaluation Committee take full individual responsibility for the performed evaluation of the bid".

The Review Panel has decided in accordance with the legal powers in the sense of Article 104 paragraph 1 in relation to Article 103 and Article 105 of the LPP for the implementation of the procurement review procedure in a fast, fair, non-discriminatory manner, with the aim of resolving legal and effective of the subject. Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations, which may appear during a procurement activity.

The review panel in accordance with Article 117 of the LPP, as well as based on the evidence presented above, decided as in the provision of this decision.

President of the Review Panel

Mr. Isa Hasani

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 Environment and Spatial Planning;**

1x1 EO – **Gani B. Krasniqi B.I.;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.