



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

Psh. No.605/24

The Review Panel, appointed by the President of the Procurement Review Body (PRB), based on Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova (Law No. 04/L-042, supplemented and amended by Law 04/L-237, Law 05/L-068, supplemented and amended by Law 05/L-092) composed of Kimete Gashi Brajshori –President, Batisha Ibrahimimi and Vedat Poterqoi – member, deciding upon the complaint of EO “Besim A. Zejnullahu B.I”, against the Decision to contract award or a design competition of the Ministry of Internal Affairs in the capacity of Contracting Authority (CA) regarding the procurement activity “Services for Deratization, Disinfection, Disinsection for Government Buildings - Re-tender” with procurement number 214-23-13757-2-1-1, on the 27/09/2024, has issued this:

**DECISION**

1. Approved, as partly grounded the complaint of EO “Besim A. Zejnullahu B.I”, with no 2024/0605, whereas the decision of the CA Ministry of Internal Affairs regarding the procurement activity Services for Deratization, Disinfection, Disinsection for Government Buildings - Re-tender with procurement number 214-23-13757-2-1-1 remains in force, while the notification on the Decision of the Contracting Authority dated 18.06.2024 remains in force.
2. Within 10 days, the CA must inform the PRB of all actions taken regarding this procurement activity, otherwise, for non-compliance with the decision, the PRB may take measures against the CA as provided for in the provisions of Article 131 of the Law on Public Procurement of Kosova.
3. The funds deposited in the name of the tariff fee for filing the complaint are returned to the account of the Economic Operator Besim A. Zejnullahu B.I.

## REASONING

-Procedural facts and circumstances –

On the 18.12.2024, Ministry of Internal Affairs in the capacity of Contracting Authority has published Contract Notice B05 regarding the procurement activity.

While on the 21.06.2024, B58 published the Notice on the decision of the Contracting Authority where it awarded the contract to EO "Doctor Exterminator DDD" Sh.p.k.

This procurement activity was carried out through an open procedure with the type of service contract with an estimated contract value of 316,560.00 euros.

On the 25.06.2024, EO Besim A. Zejnullahu B.I. submitted a request for reconsideration against the above-mentioned decision of the CA. On the 28.06.2024, the Contracting Authority rejected the request for reconsideration as unfounded.

On the 05.07.2024, the PRB received the complaint from the EO Besim A. Zejnullahu B.I with protocol number 0605/2024 regarding the procurement activity Services for Deratization, Disinfection, Disinsection for Government Buildings - Re-tender with procurement number 214-23-13757-2-1-1.

-On the stage of preliminary review-

The Review Panel has found that the complaint contains all the elements set out in Article 111 of the LPP and as such has been submitted within the legal deadline in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for the resolution of disputes in the sense of Article 108/A of the LPP, by the economic operator that is an interested party according to Article 4 paragraph 1 sub-paragraph 26 of the LPP. In this way, the Review Panel has found that it is competent to review this complaint according to Article 105 of the LPP and there is no procedural obstacle to continue with the review of the complaint on its merits.

The claims of the complaining economic operator Besim A. Zejnullahu B.I are presented as follows: *First claim (I): "The complaining EO claims that the CA has acted in violation of the provisions of the LPP and the requirements of the tender dossier by eliminating the complaining EO for the ISO standard certifications. Circumstances of the case regarding the complaining claim: The CA in the tender dossier has, among the requirements on technical and/or professional capabilities, defined the following requirements: "1. The Economic Operator or group of economic operators must prove that it is certified with ISO 9001 2015 valid for the field of this procurement activity. 2. The Economic Operator or group of economic operators must prove that it is certified with ISO 14001 2015 valid for the field of this procurement activity. 3. The Economic Operator or group of economic operators must prove that it is certified with ISO 45001:2018 valid for the field of this procurement activity." The evidence required for these requirements is: "1. ISO 9001 2015 Certificate (copy). 2. ISO 14001 2015 Certificate (copy). 3. ISO 45001 2018 Certificate (copy)." CA in the standard letter to the eliminated tenderer dated 21.06.2024 has given the justification for the elimination of the complaining EO as follows: "For these requests, you have submitted ISO standards ISO 9001 2015, ISO 14001 2015 and ISO*

45001 2018 for the member of the group of economic operators Besim A. Agnullahu Ba, but you have not submitted the ISO standards at all for the member of the group of economic operators TRESOR HOME L.L.C as requested in the tender dossier, CA on date 06.06.2024 through standard letter but clarification has requested to send us a copy of ISO standards for the member of the group of economic operators TRESOR HOME L.I.C, according to the requirements in the tender dossier, You have not submitted any evidence that was requested through standard letter within the deadline specified in the standard letter nor with your bid. Therefore based on article 70 of the LPP and Article 26 point 6 of Regulation no. 001/2022 on Public Procurement which states that: Quality assurance certificates are mentioned in Article 70 of the LPP and are intended to certify the compliance of an economic operator with a certain number of quality assurance standards. If the Contracting Authority requires certificates drawn up by independent bodies carrying out certification activities to certify that the economic operator meets certain quality assurance standards based on Kosovo, European or international standards, each member of the group shall prove that it meets the relevant standards. Your offer has been rejected and will not proceed to further evaluation”.

Group of EOs Besim A. Zejnullahu B.I.; TRESOR HOME L.L.C. in the offer has submitted certificates for the standards ISO 9001:2015, ISO 14001 2015 and ISO 45001 2018, for EO Besim A. Zejnullahu B.I. CA on date 06.06.2024 through standard letter for clarification of the tender has requested from the complaining EO additional clarifications as follows: “In order to evaluate your tender properly, based on article 59 and 72 of the LPP, we request that you provide clarification of your tender as follows: Requirements: 1. The Economic Operator or group of economic operators must prove that it is certified with valid ISO 9001 2015, valid ISO 14001 2015, valid ISO 45001 2018 for the field of this procurement activity. Evidence: 1. ISO 9001 2015, ISO 14001 2015, ISO 45001 2018 certificates (copy). For this request, in your bid, you have presented the above-mentioned ISO standards for EO Besim A. Zejnullahu B.I, but you have not offered the ISO standards for the consortium member TRESOR HOME L.L.C. Therefore, based on Article 70 of the LPP and paragraph 26.6 of Article 26 of Regulation No. 001/2022 on Public Procurement We request that you send us copies of ISO standards for the member of the Consortium TRESOR HOME L.L.C, according to the requirements in the tender dossier. Requirements: 8. The Economic Operator or group of economic operators must provide Certificates of Analysis and MSDS for all preparations required in the technical specifications. Evidence: 8. Certificates of Analysis and MSDS. (copy) For this request, you have presented a product brochure and several certificates of analysis for the requested preparations and MSDS, so in order for the evaluation committee to make a fair evaluation of the offers and to facilitate the evaluation and examination of the certificates of analysis and MSDS, please specify or mark or link the items offered with the brochure with the certificate of analysis (e.g. in each certificate of analysis, note “certificate for position 1 according to the catalog or brochure, the same applies to the MSDS”). The complaining EO on 10.06.2024 has uploaded the response with the following text: "Based on your request, we are clarifying your requests as follows: Clarification for request 1 - Based on Article 7414 of the LPP that we as an EO have submitted the requested certificates with the offer on behalf of the group, According to this article, each member of the group is obliged to prove or confirm in accordance with Article 67 of this law, that it is not excluded from participating in the procurement activity under Article 65 of this law. Any

requirement imposed by a contracting authority under Articles 66.2, 68 and 69 of this law will apply only to the group as a whole and not to individual members of the group. In Article 71 of the LPP it is clearly stated what each member of the group must offer and in this Article it is not stated that the requirement under Article 70 will apply to individual members of the Group, also you as the CA in the Tender Dossier have placed this requirement in the Requirements on technical and/or professional capabilities, which we as a group possess the required certificates. Clarification for requirement 2. We have presented a product brochure since it is a criterion in the tender dossier in the Requirements on technical and/or professional capabilities in requirement 7. The Economic Operator or group of economic operators must provide a Catalog or Brochure with a technical description and photos for all the required preparations. According to the list of products in this brochure, we have also attached the Certificates of Analysis and MSDS, but it seems that you have not analyzed them properly, since each document indicates the name of the document and the name of the preparation. However, we will resend you the required documents according to your request.” The complaining EO has attached as evidence the interpretation of the PPRC with reference number KRPP-DRR-07-06-88/2024 dated 07.06.2024. “In accordance with Article 87, paragraph 2, subparagraph 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 questions posed, the PPRC clarifies the provisions of the LPP, as follows: Regarding the first question, the PPRC clarifies: The Rule on the group of economic operators determines Article 71 of the LPP and Article 26 of Regulation No. 001/2022 on Public Procurement. Paragraph 4 of Article 71 of the LPP stipulates: If a tender is submitted by a group of economic operators, each member of the group is obliged to prove or confirm in accordance with Article 67 of this Law that it is not excluded from participation in the procurement activity under Article 65 of this Law. Any requirement imposed by a contracting authority under Articles 66.2, 68 and 69 of this Law shall apply only to the group as a whole and not to the individual members of the group. "License" as a requirement is mentioned in Article 66.2 of the LPP and in accordance with paragraph 4 of Article 71 of the LPP, such a requirement applies to the group as a whole. Therefore, it is sufficient for one member of the group to have the evidence of the License specified in the Tender Dossier and in the Contract Notice and it is considered that the requirement is met. Regarding the second question, the PPRC clarifies: Article 26.6 of Regulation No. 001/2022 on Public Procurement (hereinafter referred to as "PPPR") stipulates: “26.6 Certificates for quality assurance, mentioned in Article 70 of the LPP and intended to certify the compliance of the economic operator with a certain number of quality assurance standards. If the Contracting Authority requires certificates drawn up by independent bodies carrying out certification activities to prove that economic operators meet certain quality assurance standards based on Kosovo, European or international standards, each member of the group shall prove that it meets the relevant standards. The Drafting of the Tender Dossier is a requirement of Article 27 of the LPP and Article 17 of the RRPP. In accordance with Article 17.12 of the RRPP, "In the tender dossier the CA shall state all relevant information for the contract in question that interested EOs need to know for the preparation of tenders without requesting additional information. Such information shall include all specifications, requirements, criteria, deadlines, methodologies, contract conditions, site visits or pre-tender meetings, etc. related to the contract award procedures. Every sentence in

*the tender dossier shall be well drafted, since the tender dossier is the basic material on the basis of which economic operators will create their tenders. The tender dossier shall be prepared in such a way that - as a rule of principle - there is no need for additional explanatory information.” The inclusion of Requirements, criteria, conditions, specifications or evidence in the Tender Dossier and in the Contract Notice is the full competence and responsibility of the Contracting Authority In accordance with paragraph 1 of Article 51 of the LPP, In no case shall the contracting authority include, specify or use selection criteria that are based on considerations other than those permitted by the provisions of Articles 65-70 of this Law”. In accordance with paragraph 3 of Article 56 of the LPP. “The tenderer, during the open procedure, or the candidate during the restricted procedures and competitive procedures with negotiations shall not be disqualified or excluded from such procedures on the basis of any requirement or criterion that is not stated in the contract notice and the tender dossier. According to Article 59 of this Law, the evaluation of tenders is the full competence and responsibility of the contracting authority. According to paragraph 4 of Article 59 of this Law. The contracting authority shall consider a tender as responsive only if the tender in question complies with all the requirements set out in the contract notice and in the tender dossier.”*

*Second claim (II): “The complaining EO claims that the CA acted in violation of the requirements of the tender dossier since the EO recommended for contract award did not submit any catalogue or brochure in the application dossier. Circumstances of the case regarding the complaining claim 2: The CA, in the tender dossier, namely section II. Tender Data Sheet (TDS), the requirements on technical and/or professional capabilities, technical and professional capacity: 9.1 & 9.2.; has determined the request with serial number 7: "The Economic Operator or group of economic operators must provide a Catalog or Brochure with technical description and photos for all the required preparations; 7. The Economic Operator (EO) must provide catalogs or brochures for the required preparations. The Catalogs or Brochures must be accompanied by a detailed description of the technical specifications and be in accordance with the requirements in Annex 1 of the tender dossier.*

*Third claim (III): "The complaining EO claims that the CA has recommended the EO for a contract in violation of the requirements of the tender dossier, not being equipped with certificates of analysis and MSDS for all the required preparations for all products. Respectively for the repellent preparation Rodent Sherif for deratization point c, according to the complainant, the certificate of analysis is missing and the preparation Noë Solution - Castor Oil according to the SDS is not proven as a repellent, but is an Essential oils product. Circumstances of the case regarding the complaining claim 3: CA, in the tender dossier, respectively FDT, the requirements on technical and/or professional capabilities Technical and professional capacity: 9.1 & 9.2.; 8. The Economic Operator or group of economic operators must prove the Certificates of Analysis and MSDS for all preparations required in the technical specifications.; 8. Certificates of Analysis and MSDS.*

*(copy). Further in Annex 1 - Mandatory technical specifications; Deratization; point c) EO must use RODENTICIDE preparations, (poisons) for the elimination of rats, while in some objects such as basements, places near transformers, electrical cables, etc., adequate repellent*

*preparations against rodents (rats) in the form of granules or sprays with organic origin from natural ingredients and that are not dangerous to humans and the environment must be placed around the entrances. Such a preparation is used based on the product label and needs in the field as well as upon request from the project manager.*

*Fourth claim (IV): “The complaining EO claims that the CA has recommended the EO for a contract in violation of the requirements of the tender dossier, since it lacks the certificate of analysis for the insect repellent preparation Mint Insect & Pest control, for which only SDS and 2 were presented. While the preparation offered as insect repellent Nature in Bottle -Peppermint Essential Oil is not an insect repellent but a preparation used to soothe the skin from insect bites. Circumstances of the case regarding the complaint claim 4. CA in the contract notice and tender dossier regarding Annex 1. Mandatory technical specifications, Disinsection g) In some green areas around the buildings, in order to remove insects, insect repellent preparations in the form of granules that are not dangerous for humans and the environment should be used. Repellents can also be equivalent (in the form of spray, liquid, concentrates, etc.).”*

*Fifth claim (V): “The complaining EO claims that the CA has acted contrary to the requirements of the tender dossier by awarding the winner despite the lack of a certificate of analysis for the bird repellent product JT Eaton TRANCPARETN 4 THE Bird repellent (in gel form) and JT Eaton Transparent 4 the Bird repellent liquid) which was not required in the tender dossier. The circumstances of the case regarding the 5th complaint claim of the CA in the contract notice and tender dossier in relation to Annex 1. Mandatory Technical Specifications, 2. Prevention of the development/removal of other pests such as: snakes, various reptiles, birds, etc. Point i) For the removal of birds, repellent preparations in gel form containing Canfora oil or equivalent should be used.”*

*Sixth claim (VI): “The complaining EO claims that the CA acted in violation of Article 59 of the LPP by recommending for a contract an EO that does not meet the technical and professional capacity requirement for similar contracts executed in value. Circumstances of the case regarding the complaining claim 6: The CA in the tender dossier has, among the requirements on technical and/or professional capabilities, defined the requirements as follows: “9. The Economic Operator or group of economic operators must prove that they have concluded contracts for similar services, the amount of which has been in the amount of not less than €200,000.00, carried out in the past three years, prior to the date of publication of this contract notice.” To prove the fulfillment of the requirement, the CA has determined as documentary evidence that the EOs must submit: “9. List of contracts, projects specifying the services included, the amount of the contract, the date and the recipient. The list must be accompanied by a copy of the certificate(s) or reference, signed by the recipient of the services for the contracts and projects specified in the list.” The EO recommended for the contract has submitted the List of contracts in which 13 contracts are recorded. According to the data presented, contracts with serial numbers 4, 6 and 13 end in 2024, i.e. after the date of publication of the contract notice, which is 18.12.2023. Meanwhile, regarding contract with serial number 1 entitled "Deratization, Disinfection and Disinsection of Government Buildings Managed by the Ministry of Interior-Ritender" with procurement number 214/20/028/211, the EO has presented it as a cooperation*

agreement. The complaining EO in the request for reconsideration and in this complaint has attached this contract in which it is evidenced that the CA-Ministry of Interior has signed a contract with another entity D.D.D. SH.P.K.-Prishtina with unique identification number 811319955. In the contract, in Article 4, Subcontracting, respectively paragraph 1, which states "A subcontract is valid only if there is a written agreement through which the Service Provider entrusts the execution of a part of its contract to a third party." Further, in the next paragraph 2, it is determined: "The elements of the contract to be subcontracted and the identity of the subcontractors shall be made known to the Contracting Authority upon submission of the bid. In the event of a change in the subcontractors during the implementation of the contract, the Service Provider must notify the Contracting Authority in writing. The Contracting Authority shall notify the Service Provider of its decision within 30 working days of receipt of the notification, stating its reasons if the authorization is not issued. The Service Provider shall not subcontract without written authorization from the Contracting Authority. All proposed subcontractors must meet the eligibility requirements". The complaining EO had submitted in the request for review the complaining claim that this contract should not be taken into account since the recommended GOE was not declared as a subcontractor under this contract. In the CA's decision to reject the request for reconsideration, the CA provided the following justification regarding this claim: "This criterion has been met in accordance with the CA's requirements, significantly exceeding the request, even if the contracts you claim are not based on, supported by the above-mentioned explanations, this complaint claim does not stand and is rejected as unfounded.

Referring to the above requests, Besim A. Zejnullahu B.I considers that the Contracting Authority has acted in violation of Articles 1, 6, 7, 28, 51, 56, 59, 60, 69, 69.4, 71, 72, 108/a of the LPP as well as the PRB Decision no. 2023/0642 of 08.12.2023 and the decision no. 2023/0626 of 03.11.2023 and the PPRC Legal Interpretation of 07.06.2024 with no. KRPP-DRR-07 -06- 8812024. We request the PRB to take: Decision 1. The complaint of GOE is approved as grounded. "Besim A. Zejnullahu B.J; Tresor Home L.L.C" regarding the tender "Services for Deratization, Disinfection, Disinsection for Government Buildings - Re-tender" with procurement no. 214-23-13757-2-1-1. 2. The contract award notice is canceled and the case is returned for re-evaluation. 3. We are awarded the contract as the responsible GOE since we meet the required criteria of the TD and are awarded with the contract."

**CA's response to the request for reconsideration:** "Response to Complaining claim No. 1 - The Ministry of Internal Affairs-ZPO and the evaluation committee acted in full compliance with the Criteria set out in the Contract Notice and Tender Dossier and Technical and/or Professional Capability.1. The Economic Operator or group of economic operators must prove that it is certified with ISO 9001 2015 valid for the scope of this procurement activity. 2. The Economic Operator or group of economic operators must prove that it is certified with ISO 14001 2015 valid for the scope of this procurement activity. 3. The Economic Operator or group of economic operators must prove that it is certified with ISO 45001 2018 valid for the scope of this procurement activity. Evidence: 1. ISO 9001 2015 Certificate (copy). ISO 14001 2015 Certificate (copy). 3. ISO 45001 2018 Certificate (copy). For these requests, you have submitted the ISO standards ISO 9001 2015, ISO 14001 2015 and ISO 45001 2018 for the member of the

group of economic operators Besim A. Zejnullahu B.I, but you have not submitted the ISO standards for the member of the group of economic operators TRESOR HOME L.L.C as requested in the tender dossier, CA on 06.06.2024 through a standard letter for clarification has requested that you send us copies of the ISO standards for the member of the group of economic operators TRESOR HOME L.L.C, according to the requirements in the tender dossier, You have not submitted any evidence that was requested through the standard letter within the deadline specified in the standard letter. The Contracting Authority - Ministry of Internal Affairs has acted in full compliance with Regulation No. 001/2022 on Public Procurement, Article 26.6. Quality assurance certificates are mentioned in Article 70 of the LPP and aim to certify the compliance of the economic operator with a certain number of quality assurance standards. If the Contracting Authority requires certificates drawn up by independent bodies carrying out certification activities to certify that the economic operator meets certain quality assurance standards based on Kosovo, European or international standards, each member of the group will prove that it meets the relevant standards. While regarding the decisions of the PRB no. 2023/0642, it is worth noting the fact that the complaining EO was incorrectly called at this point because this decision speaks of the time that the RRUOPP was in force. which was in force until 01.11.2022 and from this date the REGULATION No. 001/2022 ON PROCUREMENT entered into force which correctly clarifies this issue. Also, this situation is also clarified by the interpretation of the PPRC dated 29. 22.06.2023 According to Article 26.6 of the Public Procurement Regulation, In case the CA requires a Certificate that confirms the conformity of the product with a certain number of quality assurance standards, in the case of a group of operators, should such a certificate be required from all members of the group or is it sufficient for one of them to be equipped with this certificate? In accordance with Article 26.6 of the Public Procurement Regulation, "Quality assurance certificates are mentioned in Article 70 of the LPP and are intended to confirm the conformity of the economic operator with a certain number of quality assurance standards. If the Contracting Authority requires certificates drawn up by independent bodies carrying out certification activities to prove that the economic operator meets certain quality assurance standards based on Kosovo, European or international standards, each member of the group shall prove that it meets the relevant standards. Consequently, whenever the CA requires certificates certifying the quality of the company's management, for example ISO 9001 Certificate, each member of the group must be equipped with such a certificate. Such a certificate may be required in the case of service contracts where all members of the group will be engaged in the provision of the service. In the case of supply contracts, where the Contracting Authority requires evidence Certificates drawn up by official quality control institutes attesting to the conformity of products that can be clearly identified based on the relevant specifications and standards (Article 69, paragraph 2, sub-paragraph 2.5 of the LPP), then such evidence shall suffice to be brought by the member of the group who will carry out the supply, in order to consider that the requirement has been fulfilled by the group as a whole. Notwithstanding this, in the event that all members of the group participate in the execution of the contract by delivering supplies produced by them, then all members of the group must be provided with such certificates, in order for the CA to ensure that the supplied products are of quality according to the relevant standards specified in the tender documents. In accordance with Article 71 of the LPP, as well as Article 26.10 of the Public Procurement



*Regulation, the CA in the tender dossier and in the contract notice, will clearly specify the requirements that must be met by the members of the group (consortium) by clearly defining the evidence that must be brought by each member of the group together with their tender. Also, regarding the decisions of the PRB no. 2023/0626, it is worth emphasizing the fact that the complaining EO was wrongly called in this decision because the requirements of the CA are clear as explained above. As can be seen from the EO's claim, it has deliberately tried to misinterpret Article 26.6, deviating from Article 26.6 to 26.5, because Article 26.6 clearly states that in cases of a consortium, the quality assurance certificate (ISO Standards) must be proven by each member of the group that it meets the relevant standards, so we are dealing with quality certificates and not Authorizations/Licenses and Business Certificates as the expert called them. Based on the above-mentioned explanations, this complaint claim does not stand and is rejected as unfounded. Response to Complaint claim no. 2. The Contracting Authority - Ministry of Internal Affairs - ZPO and the evaluation commission have acted in full harmony with the Criteria set out in the Contract Notice and the Tender Dossier and the Technical and/or Professional Capability. The EO recommended for the contract has submitted all the necessary documentation (catalogs or brochures of certificates of analysis and MSDSs, etc.) according to the requirements of the CA and fully meets this requirement, so your claim does not stand at all. Based on the above-mentioned explanations, this complaint claim does not stand and is rejected as unfounded. Response to Complaint claim no. 3 The Contracting Authority - Ministry of Internal Affairs - ZPP and the evaluation committee have acted in full compliance with the Criteria set out in the Contract Notice and the Tender Dossier and the Technical and/or Professional Capability. 7. The Economic Operator or group of economic operators must provide Catalog or Brochure with technical description and photos for all required preparations., 7. The Economic Operator (EO) must bring the catalogs or brochures for the required preparations. The Catalogs or Brochures must be accompanied by a detailed description of the technical specifications and be in accordance with the requirements in Annex 1 of the tender dossier. The EO recommended for the contract has submitted all the necessary documentation (catalogs or brochures) according to the requirements of the CA and fully meets this requirement, so your claim does not stand at all. Based on the above-mentioned explanations, this complaint claim does not stand and is rejected as unfounded. Response to Complaint No. 4 The Contracting Authority - Ministry of Internal Affairs - ZPP and the evaluation commission acted in full harmony with the Criteria set out in the Contract Notice and Tender Dossier and Technical and/or Professional Capability. and Annex 1 of the DT. We would like to clarify that regarding the preparation Rodent Sheriff, the manufacturing company does not provide a certificate of analysis but only an MSDS in which it specifies the exact composition of the product and indicates the purpose of use in repelling rodents. Regarding the preparation NOW Solution Castor Oil, the winning EO has provided an MSDS and a Certificate of Analysis for repelling rodents and insects. According to our research, we have found that Castor Oil is: Natural and Non-Toxic - Castor oil is a natural and non-toxic way to repel rodents, making it a safer alternative to chemical-based repellents. Castor oil is a very effective way to repel rodents, as it has a strong, unpleasant odor and taste that deters them from entering or staying in an area. Castor oil can remain effective for several weeks, depending on the concentration and application method used. Castor oil can remain effective for several weeks, depending on the*

concentration and application method used. Castor oil has a wide range of uses: repellent, as well as for human use. Based on the above-mentioned explanations, this complaint allegation does not stand and is rejected as unfounded. Response to Complaint No. 5 The Contracting Authority - Ministry of Internal Affairs - ZPP and the evaluation commission acted in full compliance with the Criteria set out in the Contract Notice and Tender Dossier and Technical and/or Professional Ability, and Annex 1 of the DT EO recommended for contract regarding the product Mighty Mint Insect & Pest Control, the manufacturing company does not provide a certificate of analysis but only an MSDS in which it specifies the exact composition of the product and indicates the purpose of use in repelling insects. Mighty Mint Insect & Pest Control is a plant-based spray (peppermint oil) that effectively kills insects and keeps them away without compromising safety for people. The formula is made with peppermint essential oil, which is well documented as a highly effective insect repellent, including flying and crawling insects. Regarding the Nature In Bottle product, the winning EO possesses an MSDS and certificate of analysis, and it is an organic preparation for multiple uses such as: insect repellency. Based on the above-mentioned explanations, this complaint claim does not stand and is rejected as unfounded. Response to Complaint claim no. 6 Contracting Authority - Ministry of Internal Affairs - PPO and the evaluation commission has acted in full compliance with the Criteria set out in the Contract Notice, Tender Dossier and Annex 1 of the DT. The EO recommended for the contract has offered three products for repelling birds, two of which: JT Eaton Transparent 4 the Bird Repellent and JT Eaton Transparent 4 the Bird Repellent Liquid, the manufacturing company provides MSDS with which it accurately specifies the exact composition of the products and indicates the purpose of use in repelling birds. Regarding the third product Nature In Bottle, the winning bidder has an MSDS and Certificate of Analysis, and is an organic preparation for multiple uses such as: repelling birds. According to our research, we have found that Peppermint Oil is a natural and effective way to repel birds from unwanted areas. Based on the above-mentioned explanations, this complaint claim does not stand and is rejected as unfounded. Response to Complaint Claim No. 7 The Contracting Authority - Ministry of Internal Affairs - ZPP and the evaluation committee acted in full compliance with the Criteria set out in the Contract Notice and the Tender Dossier and Technical and/or Professional Capability. Requirement 9. The Economic Operator or group of economic operators must prove that they have completed contracts for similar services, the amount of which has been in the amount of not less than €200,000.00, carried out in the past three years, prior to the date of publication of this contract notice. Evidence: 9. List of contracts, projects specifying the services included, the amount of the contract, the date and the recipient. The list must be accompanied by a copy of the certificate(s) or reference, signed by the recipient of the services for the contracts and projects specified in the list. This criterion has been met in accordance with the requirements of the CA, which seems to have significantly exceeded the requirement even if the contract it claims is not taken as a basis. Based on the above-mentioned explanations, this complaint claim does not stand and is rejected as unfounded.

Based on Article 111 paragraph 5 in connection with Articles 113 and 114 of the LPP, the Review Panel on 17/07/2024 authorized the review expert to conduct the initial review of the file and claims according to the complaint with no. 0605/2024, while on 26/08/2024 the review expert's report with no. 2024/0605 was submitted with the following recommendations: Based on

the aforementioned clarifications, the review and technical experts propose to the review panel that the complaint of the complaining EO be approved as partially grounded, the contract award notice be canceled and the case be returned for re-evaluation.

### **-Findings of the review expert-**

**Response to the first claim:** *“The expert explains that the PPRC's interpretation regarding the requirements for quality assurance standards emphasizes the care with which the CA formulates the requirements or criteria in the tender dossier, consequently determining that each sentence in the tender dossier will be well drafted, since the tender dossier is the basic material. In this sense, the formulation of the request by the CA where it is stated that “The Economic Operator or the group of economic operators...” does not specify that in the case of a group all members must fulfill the request. Being so, in accordance with paragraph 3 of Article 56 of the LPP which states that the tenderer shall not be disqualified or excluded from the procedure on the basis of any request or criterion that is not stated in the contract notice and in the tender dossier, then the reason for the elimination does not stand. Consequently, the complaint claim is unfounded.*

*Response to the second claim: “The technical expert initially explains that based on documents 2, 3, 4, 5 and 6, the claim listed by the complaining EO as “violation no. 3” does not stand for the fact that the EO awarded by the CA has presented evidence which is in fact brochures and catalogs of the products offered with the accompanying specifications. As such, the expert assesses that the complaining claim is unfounded.*

*Response to the third claim: “After verifying the documents submitted according to the complainant's claims, the technical expert clarifies that claim no. 4 stands, because, for the Rodent Sherif repellent preparation, no certificate of analysis was presented, but only an SDS (safety data sheet). While the preparation Noë Solution - Castor Oil is not proven to be a repellent based on the SDS, the certificates presented and the research for the product offered in the photo.*

*Response to the fourth claim: “After verifying the evidence submitted with the bid, the expert clarifies that claim no. 5 stands, because, for the insecticidal repellent preparation Mighty Mint Insec & Pest Control, no certificate of analysis was presented, but only an SDS (safety data sheet). Also, the preparation offered as the insecticidal repellent Nature in Bottle Peppermint Essential Oil, based on the SDS and certificate of analysis, is not an insecticidal repellent but is used in cosmetics or for skin treatment as a sedative for insect bites.*

*Response to the fifth claim: "After verifying the files according to the complainant's claims, the expert clarifies that claim no. 6 stands, because for none of the bird repellent preparations were the Certificates of Analysis proven in the application files.*

*Response to the sixth claim: "The expert explains that from the list of contracts submitted, the recommended EO had evidenced that 3 contracts (4, 6 and 13) had not been completed at the time of publication of the contract notice, therefore they cannot be taken as a basis as contracts implemented to prove the fulfillment of the CA's request. Further, regarding the contract with serial number 1, the complaining EO presented as evidence the contract concluded between the*

*CA-MPB and EO D.D.D SH.P.K, in which it is not noted that the recommended EO was a party, including as a subcontractor. Moreover, in the CA's decision to reject the request for reconsideration, the CA, without providing any evidence, indirectly accepts the non-inclusion of this contract as evidence of the fulfillment of the criterion. However, the CA argues that other contracts meet the criterion of a value of at least 200,000.00 of similar contracts. The expert explains that without counting contracts with serial numbers 1, 4, 6 and 13, the total amount of other contracts executed (2, 3, 5, 7, 8, 9, 10, 11 and 12) according to the list of contracts is 182,195.60 euros. Consequently, the fulfillment of the requirement of the tender dossier determined by the CA is not proven. Therefore, the complaint claim is based on this point. "*

The Panel found that there are no elements for preventing conflict of interest, as required in the sense of Article 11 of the PRB Work Regulation, in connection with paragraph 1.75, Article 4 of the LPP and at the same time analyzed all the documents of this case, including all the acts and actions of the parties and considered that it is necessary to hold a hearing with the parties, which was held on 23.09.2024. The hearing was attended by all parties that are part of the process, including the representative of the CA; the review expert and the technical expert; the representative of the complaining EO. The hearing was also attended by monitors from D+ and monitors from GLSP. The session began without delay, where all parties involved in the procedure had the opportunity to speak and submit their final written statement.

#### **- Findings of the Review Panel -**

The Review Panel has independently and objectively, with due diligence and professional care, assessed all the evidence in the case. In this way, it has been found that the Contracting Authority has acted in accordance with the legal provisions on public procurement and the requirements of the tender dossier related to the activity of "Services for Deratization, Disinfection, Disinsection for Government Buildings - New tender" with procurement no.: "214-23-13757-2-1-1". The Review Panel, after assessing and administering the evidence according to the submitted complaint, clarifies that the findings in the report of the review expert and the technical expert for this case are partially consistent. Consequently, the Review Panel regarding the claims of the complaining economic operator has only partially trusted the findings of the review expert, while the Review Panel finds that the report drafted by the two experts is not drafted in a professional manner and is not based on evidence and arguments, because none of the experts has assessed the real situation vis-à-vis the EO recommended for the contract,

It is worth noting that for the Review Panel, the findings and recommendations of the review experts are not binding, but serve only as evidence among all other evidence that it evaluates in each case separately. The Review Panel decides independently, objectively and with due professional care, always protecting the public interest through the LPP and the secondary legislation in force for public procurement.

Regarding the first complaint claim of the Public Procurement Review Panel, it has been found that in the specific case it is not at all disputed that the complaining economic operator submitted an irresponsible bid. This fact as such contains a violation of the legal provisions of Article 70 of the LPP and the legal provisions of Article Regulation No. 001/2022 On Public Procurement,

Article 26.6 Quality assurance certificates which aim to certify the compliance of the economic operator with a certain number of quality assurance standards where each member of the group will prove that it meets the relevant standards. In this case, the EO has not met the criteria set out in the TD where: .1. The Economic Operator or group of economic operators must prove that it is certified with ISO 9001 2015 valid for the scope of this procurement activity. 2. The Economic Operator or group of economic operators must prove that it is certified with ISO 14001 2015 valid for the scope of this procurement activity. 3. The Economic Operator or group of economic operators must prove that it is certified with ISO 45001 2018 valid for the scope of this procurement activity. as Evidence: 1. ISO 9001 2015 Certificate (copy). ISO 14001 2015 Certificate (copy). 3. ISO 45001 2018 Certificate (copy)., The PSH regarding this request finds that the complaining EO has submitted the ISO standards for the member of the group of economic operators Besim A. Zejnullahu B.I, but the ISO standards for the member of the group of economic operators TRESOR HOME L.L.C have not been submitted at all, as requested in the tender dossier, also the Review Panel confirms that the CA on date 06.06.2024 through a standard letter for clarification has requested that copies of the ISO standards be sent for the member of the group of economic operators TRESOR HOME L.L.C, according to the requirements in the tender dossier, even after receiving this request from the complaining EO, the evidence that was requested through a standard letter by the CA has not been submitted. For the Review Panel, it is a well-known fact that this request concerns the economic operator which is automatically categorized as a request of Article 70 and the legal provision of Article 26.06. of the Public Procurement Regulation, and which must be provided by all members of the group. Therefore, in consistency with other decisions of the PRB for similar cases, in this case too, the Review Panel supports the CA, some of the decisions of the PRB with NO. 2024/0280, 2024/0188, 2023/1056, 2024/0577, 2024/0551.

Regarding the complaint claims 2,3,4,5, the Review Panel during the session held on 23.09.2024, noted that the authorized representative of the CA stated that all certificates of the EO recommended for the contract are attached to the bid submitted by the recommended EO, then on 23.09.2024 the Review Panel by email requested the CA (officials of the Ministry of Internal Affairs) to complete/submit these certificates to the PRB, which request by the CA was fulfilled on 24.09.2024, with which email - the CA has removed from the bid of the recommended EO only the certificates for which it is claimed that they were not submitted. The PRB has emails and documents and evidence that argue the factual situation of the recommended EO, as well as these certificates in the bid submitted by the recommended EO for the contract in the E-procurement program. Consequently, based on the response of the CA and the verification of these documentation submitted by the recommended EO, the Review Panel found that these complaints by the complaining EO are not grounded. The issue of whether these requests for these certificates were necessary and relevant, the PRB considers that they should be addressed in the pre-bidding phase and for these requests according to Article 51.3 of the LPP fall under the responsibility of the CA, quote *All selection criteria and the required documents and information set out and described in this article must be directly relevant and proportionate to the subject matter of the relevant contract.*

Regarding the complaint claim 6, the Review Panel did not give credence to the response given by the review and technical expert in their report because the same ones have invalidated the cooperation agreement between DDD SHPK and Lulzim Katanolli, a business that has changed its name to Doctor Extermination DDD SHPK, which in the submitted bid also has a reference and consequently the PS finds that the EO recommended for the contract has fulfilled the requirement set in the TD. This TD requirement set by the CA is to prove the professional capacity of an EO, the evidence of which is attached, while another issue is the Procurement activity of 2020, whether it allowed subcontractors or not, an issue that has not been the subject of treatment in this case.

The review panel, after administering and evaluating the evidence, fully ascertaining the factual situation, relying on the LPP as the applicable material law, after reviewing the complaint claims, taking into account all the case files and the recommendations of the review expert, has found that the complaint of the Economic Operator is approved as partially grounded. Consequently, the Review Panel has decided regarding the procurement activity with the title "Services for Deratization, Disinfection, Disinsection for Government Buildings - Re-tender" with procurement no.: "214-23-13757-2-1-1", that the contract award notice remains in force. The Review Panel, taking into account the description and the above-mentioned facts and after reviewing the case, the complaint of the complaining economic operator, the concrete analysis and the documentation of the case, sees the operator's complaint as partially grounded, recommending that the procurement activity with "Services for Deratization, Disinfection, Disinsection for Government Buildings - Re-tender" with procurement no.: "214-23-13757-2-1-1", the PSH considers that the decision of the CA remains in force which was issued by a professional commission and which is responsible according to Article 59.1 of the LPP and under the responsibility of the CA in accordance with Article 24.2 of the LPP.

The Review Panel has decided in accordance with the legal powers within the meaning of Article 104 paragraph 1 in conjunction with Article 103, Article 105 and Article 117 of the LPP to implement the procurement review procedure in a prompt, fair, non-discriminatory manner, with the aim of resolving the case legally and effectively. 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.

Point I of the decision was decided based on Article 117 of the LPP in conjunction with Article 29 and 31 paragraph of the PRB Work Regulations.

Point II of the decision was decided based on Article 131 of the LPP in conjunction with Article 29 paragraph 3 of the PRB Work Regulations.

Point III of the decision was decided based on Article 31 paragraph 4 and paragraph 6 of the PRB Work Regulations in conjunction with Article 118 of the LPP.

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

**President of the Review Panel**

Mrs. Kimete Gashi

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**Legal advice:**

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

Decision to be submitted to:

1x1 CA – **Ministry of Internal Affairs;**

1x1 EO – **“Besim A. Zejnullahu B.I.”;**

1x1 Archive of the PRB;