



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

Psh. No.1115/24

The Review Panel, appointed by the Acting President of the Procurement Review Body (PRB), pursuant to Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova (LPP), composed of Batisha Ibrahim- President, Isa Hasani and Kimete Gashi-Members of the panel deciding on the complaint of the Economic Operator (EO) “Gerber Architekten International GmbH”, against the Decision to contract award or a design competition of the Ministry of Culture of the Republic of Kosova and the Kosova Public Service in the capacity of Contracting Authority (CA) regarding the procurement activity: “Development of conceptual and detailed architectural and engineering project for the construction of the ‘Kosova Opera and Ballet Theatre, in Pristina, in the Republic of Kosova - Re-tendering” with procurement number 207-24-1140-4-1-3, on the 20/01/2025, has issued this:

## DECISION

1. **Approved**, as partly grounded the complaint of EO “Gerber Architekten International GmbH” with no. 2024/1115, dated 15/11/2024, regarding the decision of the CA Ministry of Culture of the Republic of Kosova and the Kosova Public Procurement Agency for the procurement activity "Development of the conceptual and detailed architectural and engineering project for the construction of the 'Kosova Opera and Ballet Theatre, in Prishtina, in the Republic of Kosova - Re-tendering" with procurement number 207-24-1140-4-1-3.
2. Remains in force B58 Notification on the decision of the CA for the procurement activity as described in the provision I of this decision.
3. Since the complaint of the complaining EO is approved as partially grounded, the complaint fee is refunded in the amount deposited when submitting the complaint. The complaining EO is obliged to, in accordance with Article 31, point 6 of the Rules of Procedure of the PRB, within a period of sixty (60) days, make a request for the return of the complaint security, otherwise the deposit will be confiscated, and these funds will be transferred to the Budget of the Republic of Kosova.

## REASONING

### *- Procedural facts and circumstances –*

The Ministry of Culture Youth and Sports, in the capacity of the Contracting Authority, on 16.02.2024, has published the Contract Notice - Design Competition regarding the procurement activity entitled "Development of conceptual and detailed architectural and engineering project for the construction of the 'Kosovo Opera and Ballet Theatre, in Pristina, in the Republic of Kosovo - Re-tendering" with procurement number 207-24-1140-4-1-3.

The contracting authority has implemented an open procedure, type of contract: service, estimated contract value: 2,700,000 €.

The Notice on the Decision of the CA for the award of the contract, where it was recommended for the first price (1) to GOE BIG Partners Ltd & ALB ARCHITECT, was published on 31.10.2024.

EO "Gerber Architekten International GmbH" on 05.11.2024 has submitted a request for reconsideration against the Notice on the Decision of the Contracting Authority. CA on 06.11.2024 has rejected the request for reconsideration of the EO.

Against the decision cited above, on 15.11.2024, the operator "Gerber Architekten International GmbH" has filed with the PRB complaint no. 2024/1115 (Protocol No.).

### **On the preliminary review phase:**

(a) The PRB has found that the complaint in the present case was filed in accordance with Article 109.1 of the LPP, according to which any interested party may file a complaint against any decision taken by the CA after the implementation of the preliminary procedure for the resolution of disputes, as provided for in Article 108/A of this Law. Since the complainant has the status of an interested party as defined in Article 105, paragraph 1, in conjunction with Article 4, paragraph 1.26 of the LPP, and the complaint contains the essential elements provided for in Article 111 of the cited Law, which means that it meets the conditions in terms of the cited provisions and falls under the competences of this body in terms of Article 105, of the LPP, in conjunction with Article 9, of the Rules of Procedure of the PRB. The Review Panel analyzed all the documents of this case, including all the acts and/or actions of the parties, as described above (facts and procedural circumstances), the elements for preventing conflict of interest, as required in the sense of Article 11 of the PRB Rules of Procedure, in connection with paragraph 1.75, Article 4 of the LPP, do not exist, and at the same time analyzed all the documents of this case, including all the acts and actions of the parties, and considered that there is no need to convene a hearing with the parties as provided for in paragraph 1, Article 24 of the PRB Rules of Procedure.

(b) Based on the actions described above, the PRB has appointed the Review Panel pursuant to Article 111, paragraph 5 (ii) of the LPP and has engaged the review expert in accordance with Article 111, paragraph 5 (i) of the LPP, with the task of conducting the initial review of the file and the complaining claims, regarding this procurement activity, within the meaning of Article

113 and 114 of the LPP in connection with Article 17 and 19 of the cited Regulation. In this regard, on 30.12.2024 the review expert has submitted the Evaluation Report with recommendations which are described as follows:

The complaint of the complaining EO shall be approved as partially grounded,

The decision of the CA shall remain in force.

Response of the Contracting Authority to the complaint claims of the EO “Gerber Architekten International GmbH”

Response to complaint claim 1: The criterion determined by the Contracting Authority is as follows: Requirement 1.2.: The economic operator [designer/ Group of economic operators- Consortium [designer], must provide evidence of the economic situation and financial capacity

to meet the requirements of the subject of this procedure. For this purpose, the economic operator [designer]/ Group of economic operators- Consortium [designer], must prove that

during the past three [3] fiscal years- 2021,2022 and 2023, it has secured a minimum annual gross income, in the amount of over € 4,000,000.00 and the required documentary evidence- Requirement 1.2.: Financial reports, for each of the three (3) fiscal years, certified by a licensed audit firm or by a licensed independent auditor [In the case of a Group of Economic Operators- Consortium (designer), the evidence must be submitted separately for each Economic Operator (designer)]:- One [ 1 ] copy of the original, certified by a notary.

So, the Contracting Authority in the Tender Dossier Form clearly specified that in the case when Economic Operators are submitted as a group, the Reports / Evidence must be submitted separately for each Economic Operator. Therefore, you have failed to submit the documentation as requested in the Tender Dossier. You have also specified that you submitted the audit report in German (which is in violation of the Law on Public Procurement of the Republic of Kosovo No. 04/L-042 as amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092, respectively with Article 13 Use of languages in public procurement documents, where it is specified in point 4 An economic operator may submit a tender, a request for participation or any other document required or permitted to be completed during the procurement activity, in Albanian, Serbian or English). Therefore, you have failed to submit the documentation as requested in the Tender Dossier.

You have been eliminated in full compliance with the Law on Public Procurement and Regulation 001/2022 on Public Procurement, point 26.5. which specifies: 26.5 Each member of the group must individually submit a Business Registration Certificate. Any requirements imposed by a contracting authority under Article 66.2 (Authorization/License), Article 68 of the LPP, economic and financial standing and Article 69 of the LPP, technical and/or professional capacity, shall apply only to the group as a whole and not to individual members of the group. Therefore, you have not submitted the economic and financial standing for all members of the group.

Response to Complaint 2: The complaint by Gerber Architekten International GmbH (5641) does not stand because this issue is regulated by Article 71 of the LPP, point 4. 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 individual members of the group. And Article 26.5 of

Regulation 001/2022. Each member of the group must individually submit a Business Registration Certificate. Any requirements imposed by a contracting authority under Article 66.2

(Authorization/License), Article 68 of the LPP, economic and financial standing and Article 69 of the LPP, technical and/or professional capacity, shall apply only to the group as a whole and not to the individual members of the group. Therefore, knowing that the financial reports submitted by the company meet the criteria as an Authority based on other reports submitted and notarized, by completing the financial amount, we have considered and consider that the request from the company declared the winner fully meets the criteria as requested by the contracting authority. So, the fact is different when an EO within the group has not submitted any reports at all and it is different when it has submitted (only for 2 years) and has submitted a statement that the audit is done on other dates and that it meets the criteria set by the contracting authority.

Response to Complaint 3: The Contracting Authority, Ministry of Culture, Youth and Sports, has not eliminated you for any of the reasons for elimination for this issue that you, as an EO, have not fulfilled, but you have been eliminated for completely different issues:

The audit report by the Gerber leader is in German.

The audit report translated by the legal translator was submitted 3 hours after the deadline.

The audit reports requested by the Contracting Authority were not submitted at all by the member of the HARK Architecture consortium.

Therefore, your elaboration of the request does not stand as a result of your elimination for other reasons.

Response to Complaint 4: The Contracting Authority Ministry of Culture, Youth and Sports has submitted a request for additional clarifications to the company Gerber Architekten International GmbH (5641) in order to complete the documentation according to the request "the documentation was uploaded to the platform on 16.10.2024 during official working hours "see the attached documentation in the form of a photograph". Based on the Law on Public Procurement Article 5 Calculation of time limits 1-The time limits of this law must start on one working day and end on one working day. The deadline runs until 16:00 on the day of expiration. The operator Economic Gerber Architekten International GmbH (5641) submitted the documentation on the 5th at 19:08 and as such the documentation, in addition to being submitted after the deadline, does not meet the criteria since its notarization was not presented in Albanian,

English or Serbian. Therefore, GOE has managed to submit the documentation 3 hours and 8 minutes after the deadline and that the same has not managed to submit or complete the documentation within the deadlines according to the request of the Contracting Authority. In this way you have been eliminated and that your offer is an irresponsible offer.

Response to Complaint Claim 5: The Contracting Authority has fully respected your request for business secrets and this is clearly seen in the request submitted by the company now declared the winner where it specifies: So even the Request for Reconsideration itself submitted by: GOE BIG Partners Ltd & ALB ARCHITECT, is a claim that we have not provided your company's documentation and that all the complaint claims submitted by this company were alleged claims alluding to the fact that you do not meet these criteria. The Authority has similarly acted in the case of your request for access to official documents where it has prepared the file for access only to the extent that the EO has submitted as documents that are not business secrets.

The claims of the complaining economic operator “Gerber Architekten International GmbH” in the complaint No. 1115/24 are presented as follows:

First claim (I): The claims of the CA in the Notice of Decision dated 31.10.2024, for the procurement activity no. 207-24-1140-4-1-3, regarding the elimination are that “GOE Gerber Architekten International GmbH & HARK architecture” because they “[did not manage to] submit the notarized audited reports as requested (since the report was in German and as such it falls outside the official languages recognized under the Public Procurement Law, specifically in violation of Article 13 Use of languages in public procurement documents. where specified in point 4 An economic operator may submit a tender, a request for participation or any other document required or permitted to be completed during the procurement activity, in Albanian, Serbian or English). Following the request from the CA, the Economic Operator in question submitted a report in Albanian but the same is not notarized, this report was uploaded to the electronic system by the company at 19:10 three hours after the deadline set by the CA, also the same did not submit the document in question in physical form as requested by the CA. In this criterion, the other company in the HARK architecture consortium has managed to meet the criterion: 1.2-Financial reports, for each of the three (3) fiscal years, certified by a licensed audit firm or by a licensed independent auditor. In the case of a Group of Economic Operators - Consortium (designer), the evidence must be submitted separately for each Economic Operator (designer) (since the company was opened in February 2024). These claims are unfounded due to the fact that: 1.1. According to the tender dossier, within the framework of the requirements on the economic and financial situation, respectively point 1.2 of the requirements for Economic and Financial Capacity, the Group of Economic Operators - the [designer] Consortium, was required to prove that during the past three [3] fiscal years - 2021, 2022 and 2023, it has secured a minimum gross annual income, in the amount of over €4,000,000.00. While the required documentary evidence, the Contracting Authority has requested that the Consortium submit “Financial reports, for each of the three (3) fiscal years, certified by a licensed audit firm or by a licensed independent auditor. In the case of a Group of Economic Operators - Consortium

(designer), the evidence must be submitted separately for each Economic Operator (designer): A copy of the original, certified by a notary.” GOE Gerber Architekten

International GmbH & HARK architecture in accordance with the law and the request of the Contracting Authority

has sent a copy of the original in German of the notarized financial audit for three fiscal years. In the implementation of procurement activities NR.207-23-3235-5-1-1 The company HARK

architecture SHP.K. established at the beginning of 2024 is part of the consortium GOE Gerber

Architekten International GmbH & HARK architect and as such is not obliged to prove the fulfillment of the financial criteria as separate from the Consortium of which it is a part in this procurement activity.

It is worth noting that on 23.09.2024, the CA assessed the project for the first time as the best and most successful project and declared the consortium GOE Gerber Architekten

International GmbH & HARK - architect the winner. This decision was made on the basis of the financial and technical documents submitted by this consortium, which were in accordance with all the requirements and criteria set out in the tender conditions. Considering that the consortium has fulfilled all the criteria and there has been no change in the submitted documentation, its elimination from the activity process, on 31.10.2024, is completely unclear. This elimination creates a direct contradiction with the initial evaluation and announcement of the winners by the CA.

In this context, it remains unclear and unacceptable why a contracting authority that has declared a consortium the winner for the best project, has subsequently eliminated it without a clear justification and without any substantial changes to the submitted documentation. This raises doubts about the transparency and sustainability of the project evaluation and elimination process.

Second claim (II): The decision to eliminate GOE from the procurement activity is in contravention of the Public Procurement Law No. 04/L-042 and as follows: The CA has eliminated GOE & Gerber Architekten International GmbH & HARK architecture in contravention of Article 7 of the Public Procurement Law relating to Equal Treatment/Non-Discrimination. The CA in the specific case has acted in contravention of the LPP Article 7, Regulation No. 001/2023, Guideline 001/2023 and the practice built over the years by the CA - MCYS itself.

To confirm the fact of unequal treatment and our discrimination, it is enough to look at the case files in the tender with no. 207-24-1140-4-1-3 Tender: Development of the conceptual and detailed project, of architecture and engineering, for the construction of the Kosovo Opera and Ballet Theatre, in Pristina, in the Republic of Kosova - Re-tender, implemented by the CA - MCYS itself.

In this tender, in order to declare GOE BIG Partners Ltd & ALB ARCHITECT the winner, different standards were used in the evaluation of the documentation, in particular the financial one. The winning consortium, in the letter sent on April 5, 2024 by Iain Thom, explained that they could not submit the financial documentation for 3 years due to the fact that the fiscal year ends on September 30, 2024, while in the case of GOE “Gerber Architekten International GmbH & HARK architecture, the same were eliminated due to the fact that the consortium member was unable to fulfill the same request, na Let us not forget that the same company has made a company registration declaration

on 29.02.2024 and that the same cannot provide audited financial reports because

the audited reports and financial statements are obtained in April of the following year, this document

has been submitted in the original, signed and stamped, as well as in 2 copies in the competition copy files.

Therefore, this reason of the CA represents a discriminatory approach and unequal treatment between economic operators, which is in violation of Article 7 of the Law on Public Procurement. mely the financial condition of submitting financial statements, during the last 3 years.

Third claim (III): The CA has eliminated the GOE “Gerber Architekten International GmbH & HARK architecture in violation of Article 71 in conjunction with Article 68 of the Law on Public Procurement relating to Groups of Economic Operators and Foreign Economic Operators and Economic and Financial Situation. The CA in the standard letter has explained that one of the reasons for the elimination was that HARK architecture, one of the companies within the Consortium, failed to meet the criterion: 1.2-Financial reports, for each of the three (3) fiscal years, certified by a licensed audit firm or by a licensed independent auditor. In the case of a Group of Economic Operators - Consortium (designer), the evidence must be submitted separately for each Economic Operator (designer) (since the company was opened in February 2024). Article 71 par. 4 of the LPP stipulates that “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 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 shall apply only to the group as a whole and not to the individual members of the group”. Whereas Article 68 par. 1 stipulates that “The contracting authority may require economic operators to submit data to demonstrate that they meet the minimum economic and financial conditions specified in the tender dossier and in the contract notice. Where required, the minimum annual turnover that economic operators must have shall not exceed twice the estimated value of the contract. The requirements on the economic situation must be expressed in figures and will refer to a maximum of the last three financial years...”.

So in the specific case the documentary evidence required in the case of a Group of Economic Operators-Consortium (designer), the evidence must be submitted separately for each Economic

Operator (designer) and the elimination of the consortium for failure to meet this criterion by a member of the consortium is in violation of Article 71 of the LPP.

Fourth claim (IV): The CA has eliminated GOE “Gerber Architekten International GmbH &

HARK- architecture because the submitted financial audit report for the 3 fiscal years has not been notarized. According to the request for documentary evidence, the CA has requested that a [1] copy of the original audit be certified by a notary. The consortium has submitted a copy of the notarized original which is in German, and upon the request of the CA, Gerber Architekten International GmbH has also submitted a translation of this document. Nowhere in the tender dossier is it required that the translation of the documents be notarized. Such a requirement is not provided for in the LPP either; on the contrary, Article 67 of the LPP stipulates that “the PPRC shall prepare and adopt rules regarding the types of documents, evidence and/or declarations that the economic operator must submit to prove that he is not excluded under the provisions of Article 65 of this law. The PPRC shall also prepare and adopt rules regarding the types of documentation that the contracting authority may request from an economic operator to prove his professional suitability under Article 66 of this law. The PPRC shall ensure that the rules in question do not strictly require the submission of documents or statements that are not available in certain countries or regions. The PPRC shall ensure that the rules in question reasonably allow economic operators to submit declarations under oath, notarized declarations and the like. In all cases, the economic operator is required to accept the possibility of criminal and civil sanctions as well as its liability for penalties and damages, if the economic operator intentionally or negligently submits a materially incorrect or misleading document, statement or report. Thus, the LPP requires that only affidavits and other similar statements of a personal nature be notarized, but in no case is notarization of official documents required. The CA has the full competence to verify the accuracy of the documents and at any time that the contrary is proven, the CA has the right to terminate the procurement activity for that reason and to hold the economic operator criminally and civilly liable if it “presents a materially incorrect or misleading document, statement or report” as defined in Article 67 of the LPP. Furthermore, the GOE “Gerber Architekten International GmbH & HARK architecture” as requested by the CA has submitted a notarized copy of the original financial audit for 3 years, notarized by the notary Catherine Westerwelle with the notarization date 10.04.2024 in Dortmund, Germany, while the translation was also submitted by Haxhi Berisha, a translator licensed by RTC Treuhand GmbH & Co, KG [NORDDEUTSCHE AG] 5606128 | 644, which are found in the tender dossier. Therefore, the elimination of the Consortium because the translation is not notarized is in contradiction with the CA's own request for the submission of a notarized copy of the document, and in this case, a notarized copy of the audit report was submitted, and is in contradiction with the public procurement legislation.

Fifth claim (V): The CA in the standard letter justified the elimination of GOE “Gerber Architekten International GmbH & HARK architecture” with the fact that the Economic Operator in question



has submitted a report in Albanian but that the same is not notarized, this report was uploaded to the electronic system by the company at 19:10 three hours after the deadline submitted by the CA, and the same did not submit the document in question in physical form as requested by the CA.

Such a reason for the elimination of the consortium is contrary to the Law on Administrative Procedure, which is a special law (*lex specialis*) for determining deadlines in the administrative procedure, a procedure that is also carried out in procurement activities by the Contracting Authority. Article 81 of the Law on Administrative Procedure stipulates that<sup>1</sup>. Unless otherwise provided by law, time limits shall be determined in days, months or years. The end of the time limit may also be determined by a specific calendar date. 2. When the time limit is determined in days, the day on which the event from which the time limit begins to run occurs shall be excluded from its calculation.” Also, the public procurement legislation defines all deadlines in days, as did the CA that requested the completion of the documentation within 5 days. The CA, with the letter dated 16/10/2024, gave the Consortium a 5-day deadline to complete the documentation. Thus, the 5-day deadline began to run from 17/10/2024 and ends on 21/10/2024 at 23:59, when the day ends, because the deadline is defined in days and not hours. The elimination of the Consortium on the grounds that it has exceeded 3 hours of working hours, namely that it was uploaded to the system at 19:10, is in violation of the Law on Administrative Procedure and the Public Procurement Legislation. Therefore, the CA has requested clarification from the GOE based on RRUOPP point 39, based on which the CA may request clarification of the tender dossier and point 39.6 states "The CA will set a reasonable time limit for the EO to clarify their tender" and the CA has violated the same law by not respecting the deadline that it reasonably set in the request for clarification of the tender dossier documents. The CA has also announced the winner of the bid to GOE BIG Partners Ltd & ALB ARCHITECT with 46.87 points for the conceptual project (third place in design) and 20 points for the financial offer, a total of 66.87 points. The same has requested a review based on their “suspensions” that GOE “Gerber Architekten International GmbH & HARK architecture did not have documents in the official language acceptable to the MCRS, despite the fact that such documents should have been protected based on our request for business secrecy. In this case, the CA has violated RRUOPP point 7 by providing access to other operators to documents that were confidential. Except for documents classified as confidential business information, the CA shall provide any interested party who requests it with prompt and reasonable access to all data relating to the procurement activity. The interested party concerned shall have access to the documents by consulting them at the procurement office. Consultation at the procurement office, if it concerns less than 20 A4 pages and direct access to the electronic form shall be exempt from the fee.

- Administration and evaluation of evidence — In order to fully establish the factual situation, the review panel has administered as evidence the expert report, the opinions of the parties regarding the expert report, the complainant's submissions and documents, the contracting authority's letters and documents, the relevant documents related to the procurement activity, as well as all evidence proposed by the procedural parties.

Based on Article 111 paragraph 5 in connection with Articles 113 and 114 of the LPP, the PRB on 11.12.2024 authorized the review expert to conduct the initial review of the file and the claims according to the complaint with no. 1115/2024, which was submitted on 30.12.2024.

Regarding the claims of the EO "Gerber Architekten International GmbH", the review expert through report no. 2024/1115 assessed as follows:

Finding (I): The first complaint allegation according to complaint 1152/24 concerns the reason for the elimination of the complaining EO, where according to the CA a member of the consortium has not fulfilled the requirement of the dossier for economic/financial capacity, specifically has not provided audited financial statements. The complaining EO claims that the requirements for economic/financial capacity should be applied to the group as a whole, and not to individual members of the group. The review expert's assessment is that the complaining claim is grounded and that this request should not be applied to each member of the group.

Finding (II): The second complaint allegation again relates to the request for economic financial capacity, where according to the CA the Albanian version is not a notarized copy. After analyzing the case files, we clarify that the request of the file was to provide a notarized copy of the audit report of the financial statements, but we assess that this request cannot be extended/followed also for the translation of the document. The EO has provided a notarized copy of the audit report, and the notarization of the "translation" of the document cannot now be requested. Based on the above, we assess that the complaining claim is grounded.

Finding (III): The last (and main) claim relates to the reason for elimination, where according to the CA the complaining EO has provided clarification/completion of the document in the official language outside the deadline set by the CA, specifically that the same has provided the requested documents on the last day at 19:08, while the legal deadline according to the LPP ends at 16:00. The EO claims that the same in accordance with Article 81 of the Law on Administrative Procedure (according to which law the legal deadline is until the end of the day) has provided the documents within the legal deadline. After analyzing the case files, we found that the complaining EO, as claimed by the CA, uploaded the requested document on the last day (the fifth day) at 19:08. We clarify that the procurement procedures are carried out based on the Law on Public Procurement in force, according to which the time limit runs until 16:00 on the day of expiration. In the specific case, also according to the Law on Administrative Procedure, the first provision in Chapter III, the rules on deadlines, Subchapter I - Deadlines for procedural actions for the parties, postponement and reinstatement. Article 78 Determination and postponement of procedural deadlines 1. Deadlines for the performance of a procedural action by the parties (hereinafter: "procedural deadline"), are determined by law or sub-legal act. In the specific case, as we emphasized above, the deadlines are determined by the LPP in force, but also according to the "Lex Specialis" principle, the law that regulates a specific field (LPP for Procurement) prevails over the general law (Law on Administrative Procedure). We consider that the deadline of 5 days was a reasonable and sufficient time for providing a translation of a document, on the other hand, we are not aware of any legal remedy or legal provision as a counter-argument to the decision of the CA regarding the elimination of the complaining EO on the basis of violation of the deadline for completing the bid. Based on the above, we assess that

the complaint is unfounded and that the CA's decision is in accordance with Article 5, paragraph 1 of the LPP.

Finding (IV): The complaining EO claims that the CA has provided access to another EO to the documents/bid of the complaining EO, including access to documents declared as business secrets. The CA in response states that the same EO has not been given such access, which according to the CA is also evidenced by the request for reconsideration of the EO who contests the offer of the EO (now the complaining EO) on the basis of “suspicions” that the same does not meet certain requirements. From the access we have in E-Procurement, we have not found evidence that the EO has provided access to any EO to documents declared as business secrets, therefore we cannot confirm or deny such a complaining claim.

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

- Findings of the Review Panel —

The Review Panel, after reviewing and analyzing all documentation on the e-procurement platform, complaint claims, responses provided by the expert on the matter engaged by the PRB, considers that the expertise reports contain a priori the essential elements of such a document as provided for by the provision of Article 113 in conjunction with Article 114 of the LPP, according to which the expert is required to review all procurement documentation, including all complaint claims and to provide the panel and all parties with an independent and professional assessment of the procurement activity and the validity of the complaining claims.

However, it should be noted that the expert report is not binding on the Review Panel and that any such report is assessed and/or analyzed in the overall context of the case files, the alleged facts and any other evidence, taking into account the nature of the possible violations, the course, nature and purpose of the procurement activity. Therefore, the fact in which cases and for what, the Panel relies or not, on any report and/or any of the recommendations, is a matter of his/her independent and professional judgment, as these responsibilities are addressed within the meaning of Article 98, 99 in conjunction with Article 105 of the LPP.

Based on the above, the review panel, supporting the expertise report, assesses that the CA's decision to award the contract was made in accordance with Article 59 of the LPP, therefore, as such, it should remain in force. However, because the first two complaint claims of the complaining EO are sustainable, the review panel assesses the complaint of the EO as partially founded, but these claims do not constitute sufficient grounds for the procurement activity to be subjected to the reassessment procedure.

-Conclusion-

Based on the competences of the PRB provided for in Article 105, in conjunction with Article 106 of the LPP,

the Review Panel noted, inter alia, and Article 103 of the cited Law, that all interested parties shall have equal rights in procurement procedures and legal remedies and that no decision of the PRB shall be taken or made to discriminate or harm another person in the process or a person or enterprise.

The PRB starts from the fact that each CA (at every level) enjoys full knowledge in the exercise of competences and the determination of needs in harmony with the budget capacity. Therefore, starting from the above and carefully administering all the evidence attached to the documents of this case, the Review Panel has stood as in the provision of the decision taken, convinced that it has applied the appropriate solution in accordance with the impact on and the nature of the issue in the concrete case, considering it also fair and reasonable to allow the funds deposited in the name of the complaint's fees, for the complainant.

The review panel, based on the fact of partial approval of the EO's complaint, decided to return the complaint fee in the amount deposited by the complaining economic operator based on Article 31, paragraph 4. 6 of the PRB's Rules of Procedure.

From what was said above, it has been decided as in the provision of this decision.

### **President of the Review Panel**

Mrs. Batisha Ibrahim

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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 Culture , Youth and Sports;**  
1x1EO–**“ Gerber Architekten International GmbH;**  
1x1 Archive of the PRB;