



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

Psh. No.0023/24

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) composed by Isa Hasani – President, Vedat Poterqoi - member, Vjosa Gradinaj Mexhuani – member, deciding according to the complaint of EO “Tali” SH.P.K, against the Decision on contract award or a design competition related to the procurement activity “Winter maintenance of the Roads in Gjilan” with procurement number 651-23-10479-2 -1-1, of the Municipality of Gjilan as the contracting authority (CA), on the 24/01/2024 has issued this:

### **DECISION**

1. Refused, as ungrounded the complaint of EO “Tali” SH.P.K with no.2023/0023 of the 08/01/2024, related to the procurement activity “Winter Road Maintenance in Gjilan”, with procurement number 651-23-10479-2-1-1, initiated by the contracting authority (CA) - Municipality of Gjilan.
2. It is verified the “Notice on the Decision of the Contracting Authority” published on the 22.12.2023, of the Contracting Authority, Municipality of Gjilan, regarding with the procurement activity with number: 651-23-10479-2-1-1.
3. In accordance with Article 31 paragraph 5 of the Rules of Procedure of the PRB, the funds deposited in the name of the complaint’s fee are confiscated and the same are transferred to the Budget of the Republic of Kosova.

### **REASONING**

*- Procedural facts and circumstances -*

On the 09.10.2023, the Municipality of Gjilan, in the capacity of the Contracting Authority, published the Contract Notice B05 related to the procurement activity “Winter maintenance of the Roads in Gjilan” with procurement number 651-23-10479-2-1-1.

The contracting authority has implemented an open, negotiated, limited procedure, type of contract: work, supply, service, estimated value of the contract: 390,000.00 € according to number: 93000000-8.

The municipality of Gjilan on the 22. 12. 2023 has published the notice for contract award to the economic operator “El Bau”.

On the 27.12.2023, EO “Tali SH.P.K”, has submitted a request for reconsideration to the -CA - Municipality of Gjilan. On the 29.12.2023, the CA presented the Decision on the rejection of the Request for reconsideration.

On the: 08.01.2024, EO “Tali SH.P.K”- Prishtina, submitted a complaint with no.: 2024/0023, related to the procurement activity: “Winter maintenance of the Roads in Gjilan” with procurement no: “651-23-10479-2-1-1”, initiated by the Contracting Authority (CA) – Municipality of Gjilan.

*-On the stage of preliminary review-*

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.

*The decision of the Contracting Authority-Municipality of Gjilan dated 29.12.2023, regarding the Request for Review of the complaining Economic Operator "Tali SH.P.K.", as follows;*

Regarding the complaint claims as the object of consideration of this request, based on the relevant letters and documents related to the procurement activity as well as relying on the LPP as applicable material law, the secondary legislation - Regulation No. 001/2022 on Public Procurement, as well as in accordance with all the relevant provisions of other laws applicable to the issues as in the present case, the CA - Municipality of Gjilan has assessed as follows: 1. The main complaints that consist of the assertion that from the of the CA, the provisions for the promotion of transparency according to article 10 and 11 of the LPP as well as 7 of Regulation No. 001/2022 on Public Procurement, are unfounded because the truth is that the CA has offered you access to the documents of the EO file recommended for awarding the contract that are considered accessible (public) to interested parties in the sense of Article 10 paragraph 3 and 5 of the LPP and on the other hand has limited your access to the documentation classified as a business secret related to the documents defined according to article 68 and 69 of the LPP according to Annex 3 of the EO tender file mentioned above in accordance with the legal

restrictions according to 11 paragraph 3, 4 and 5 of the LPP related to article 7 of Regulation no. 001/2022 for Public Procurement ssi and in accordance with the general administrative rules according to Article 5 and 9 of Law No. 05/L-031 for the General Administrative Procedure. The CA has provided and enabled your representative with authorization full access to information and documents accessible to interested parties as guaranteed by article 10 par.3 and 5 of the LPP, with the exception of documentation classified as a business secret according to the request of the awarded EO with a contract in the sense of Article 11 of the LPP and other provisions mentioned above. Specifically, we have offered you access to the following information and documents: business certificate; the list of completed contracts (because the contracts are public in e-procurement) where the title of the contract, the amount of the contract, the start and end date and the beneficiary are described; certificates for the performance of works, the list of tools and technical equipment for the realization of the project according to Annex 7 of the DT where the relevant data of these equipment are described, or any other document that is not limited as a business secret according to Article 11 of the LPP. But you have not expressed interest in accepting the information and documents described above, so we use this opportunity to attach them to this decision and send them to your email address talishpk17@hotmail.com at so that they are not published in e-procurement, given that there are no other interested parties for access.

Therefore, as you prove with the key claims of the request (see page 4 and page 5), your insistence has been to offer you access to information and other evidence classified as a business secret related to the economic and financial statements (financial reports of the declaration (CD) in TAK) according to article 68 of the LPP, information about technical and/or professional opportunities (diplomas, employment contracts or agreements with the employer, references and CV of technical and professional staff, invoices, DUD- a, booklets, agreements) according to article 69 of the LPP as well as the financial offer which at this stage of the process is considered a business secret of the EO in question since we do not have a binding decision on contractual agreements until the review decision and the expiration of the legal term for appeal so that the measure is public according to points (d) and (e) of Article 28 of Regulation No. 001/2022 for Public Procurement.

In this sense, the request of the complaining EO to have unlimited access to all the data of the file of EO "El-Bau" temporarily awarded with a contract did not have any legal support because EO "El-Bau" in the case of bidding has completed Annex 3 of the DT through which it has requested from the CA - Municipality of Gjilan that the information and evidence according to Article 68 and 69 of this law be classified and remain as a business secret for all parties, excluding the parties defined in Article 7.3 of Regulation No. . 001/2022 for Public Procurement. According to the request in question, EO "El-Bau" requested the protection of commercial confidentiality on the grounds that the information or documents in question are not related to public documents, and that making them available to competing EOs or other parties, as well as the disclosure of intentionally or negligently would result in material and non-material damage to the legitimate commercial interests of his business.

So, this factual situation proves that the request of the EO awarded with the contract "El-Bau" Sh.p.k. through the declaration of Annex 3 of the DT that the evidence related to the economic and financial statements according to article 68 and the evidence related to the technical and/or professional opportunities according to article 69 of the LPP are classified and remain as a business secret for all parties with exceptions of article 7.3 of the RRPP, cumulatively fulfills the three conditions of paragraph 3 of article 11 of the LPP as defined that: that it has been sent by an economic operator in accordance with the request determined by such contracting authority according to article 68 or 69 of this law; that the relevant economic operator has sent a written request to the contracting authority expressing his desire for the contracting authority to keep such articles as secret; and such written request shall contain a written statement (i) certifying that such element is not public property, and that the data is protected by the economic operator from intentional or negligent disclosure, and (ii) with which the reasons are presented, which convincingly demonstrate, according to the reasonable judgment of the contracting authority, that public access to such element would result in material damage to the legitimate commercial interests of such economic operator".

On the other hand, since you have tried to confuse and misinterpret the provision of Article 41 of the Constitution of the Republic of Kosovo, we clarify that this very constitutional provision that deals with access to public documents in paragraph 2 of this article defines exceptions to information that is limited by law due to privacy and business secrets.. In this legal point of view, the criterion for the purpose of protecting commercial confidentiality is also defined by Law No. 03/L-215 For Access to Public documents to which you have referred. Specifically, this issue is regulated by paragraph 2.7 of article 17 of this law which stipulates that: "The limitation of the right to access public documents is exercised in accordance with the principle of proportionality according to the relevant law on the general administrative procedure, in accordance with this law and only for the purposes of protecting: commercial confidentiality such as business secrets, professional or company secrets. This issue is also clearly explained in the interpretations (questions and answers) published on the website of the Public Procurement Regulatory Commission.

So this factual and legal situation clearly proves that documents such as: diplomas, employment contracts or agreements with the employer, references and CVs of technical and professional staff, invoices, DUDs, booklets, agreements, financial declaration reports (CD) in TAK, enter into the scope of personal data of business secrets. Within confidential data is any information such as: name and surname, personal ID number, salary data that is defined in the contract, education data (diploma), tax returns, network identifier (IP address), etc. subjecting you to the legal obligation of confidentiality regulated by the relevant legislation. Therefore, starting from the comparison of your claims with the factual and legal/law situation, it is clearly seen that the actions of the complaining EO are intentional to create a wrong reflection of the factual and legal situation that does not exist, therefore it does not match at all with reality. All this is a deliberate attempt to create the impression that something illegal has happened to the detriment of the complaining EO despite the fact that the complaining EO is aware/or the opposite that the reality is quite different. But even if, hypothetically, the "arguments" of the complaining EO were well-founded, they would not affect the final decision-making result of this decision related to the

Notice Decision of the CA dated 22.12.2023 because the EO was awarded with a contract , ranked before the complaining EO, has fulfilled the qualifying and evaluation criteria of the responsible tender with the offer with the lowest price. Therefore, based on the above, the CA considers that in this matter it has acted in accordance with all the requirements of the legal provisions for the promotion of transparency according to Article 10 and 11 of the LPP related to Article 7 of Regulation No. 001/2022 on Public Procurement as well as in accordance with the general administrative rules according to Article 5 and 9 of Law No. 05/L-031 for the General Administrative Procedure.

2. The complainant's claim regarding the assertions of violation of Article 7 of the LPP is unfounded because the actions, evaluations and decisions of the CA during the process of this activity until its completion are fair, legal and transparent and non-discriminatory in accordance with all the basic principles of the LPP, especially taking into consideration article 6 and 7 of the LPP, not creating any favor or disadvantage to the detriment or benefit of one or the other party. Therefore, the claims raised by the complaining EO are not substantiated with any concrete fact or evidence from a factual and legal point of view, as defined in points (f) and (h) of paragraph 3 of Article 60 of Regulation No. 001/2023 for Public Procurement. This is because the complaining EO has tried to create pretexts by inventing unknown facts and situations that represent his desire or intention and not the factual situation and legal requirements applicable in this case.

3. Complaining claims regarding assertions of violation of Article 59 and Article 69 of the LPP are unfounded because the actions, evaluations and decisions of the CA regarding the offers/tenders submitted by the competing EO are fair and legal in accordance with all the qualifying criteria and the criteria for awarding the contract defined in the tender file as well as in full compliance with article 59 paragraph 4 related to articles 68 and 69, article 60 paragraph 1.1 of the LPP, having in considering article 1 and 6 of this law as well as simultaneously according to article 40 paragraph 1, 6 and 13 of Regulation No. 001/2022 for Public Procurement. This is because the tender/offer presented by the EO awarded with the contract "El-Bau" Sh.p.k. is in compliance from the administrative aspect of the formal requirements of the tender file and in compliance with all conditions as well as the qualifying criteria and other relevant specifications of the tender file and contract notice in full compliance with Article 59 in relation to Article 68 and 69 of LPP as well as article 40.6 of the RRPP. And since he met the qualifying criteria and even exceeded them, and on the other hand, since his offer of €38.06 per unit is cheaper compared to the complaining EO's offer of 39.99 € per unit, then it follows that the offer / his tender has met the criteria for awarding the contract according to the criteria for awarding the contract defined in the contract notice / tender dossier and in accordance with Article 60 paragraph 1.1. of the LPP. Therefore, since the offer/tender of EO "El-Bau" Sh.p.k. has fulfilled the qualifying criteria and the criterion for awarding the contract in relation to the offer/tender of the complaining EO, the CA has rightly made a decision within the legal provisions by which it has awarded it with the award of the contract as the responsible tenderer with the cheapest price of €38.06 per unit. In addition, the CA has taken into consideration the purpose of the procurement of this law to ensure the most efficient, transparent and fair way of using public funds and resources as provided in Article 1 of the LPP as well as the principle of

economy and efficiency to ensure that public funds and public resources are used in the most economical way, as provided in article 6 of the LPP.

For these reasons, the CA comes to the conclusion that the claims presented in the justification of the request for reconsideration are not based on any relevant fact or evidence since the process of evaluation and examination of the tenders was conducted in a fair and legal manner, therefore as a result the decision to award the contract to EO "El-Bau" Sh.p.k. and the Standard Letter for the unsuccessful tenderer in relation to the complaining EO "Tali" Sh.p.k. it is grounded and legal. The complaining EO in the claims presented in no case has presented any facts or evidence to describe the factual circumstances for the violation caused and the way it was caused to you according to point (f) and (h) of paragraph 3 of article 60 of the RRPP in relation to the one recommended for the contract which is at a cheaper price listed before the complainant. In this sense, the CA considers that the claims of the complaining EO do not have an argumentative and evidential basis for the activity to be returned to re-evaluation because the return of an activity to re-evaluation without a legal basis is contrary to the basic principles of public procurement (justice/non-discrimination, efficiency & effectiveness, economy, competition) and with article 1 and 6 of the LPP. But the commonality of all the claims of the complaining EO is related to the obstruction and complaints of the realization of this project without any legal violation and no damage suffered for the complaining EO despite the fact that the same is aware of its importance in relation to people's lives and public safety since we are in the winter season.

The allegation of violation of Article 97.1 of the RRPPP is unfounded because all actions and decisions of the CA as described above are in accordance with the powers, responsibilities and legal discretion of the CA exercised in accordance with all relevant legal provisions of LPP, RRPP and other relevant laws in force.

*Claims of the complaining economic operator EO "Tali Sh.P.K." submitted to PRB, as follows:*

The first claim (I): According to the complaining EO, it has to do with: the violation of article 10 and 11 of the Law on Public Procurement of the Republic of Kosovo no. 04/L-042 amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092 and Article 7 of Regulation 001/2022, on the grounds that the Declaration of Business Secret by the EO recommended for the contract did not specify what bull we are talking about.

The second claim (II): EO "TALI SH.P.K" filed a complaint and in claim 2, the focus of the complaint is that the Recommended EO for the Contract does not possess or meet the equipment criteria as requested in Annex no. 7 - Mandatory equipment and mechanization.

The third claim (III): EO "Tali SH.P.K" claim 3 declares that CA- Municipality of Gjilan has presented criteria that have tried to eliminate competition between economic operators by introducing unnecessary requirements.

The fourth claim (IV): EO "Tali SH.P.K" filed a complaint and in claim 4, the focus of this claim was that CA acted contrary to Article 7 of LPP 1. The contracting authority will treat economic operators equally and non-discriminatory and will act in a transparent manner.

Fifth claim (V): EO "Tali SH.P.K." filed a complaint and in claim 5, the focus of this claim was that the CA acted contrary to Article 10 of the LPP: Article 10 Means for promoting Transparency paragraph 3. Upon written request from any interested party, the contracting authority of provides reasonable access to the party requesting access to the data described in paragraph 1 and 2 of this article, except for confidential business information which is certified as such by a relevant authority related to any procurement activity that has been closed . For the purposes of paragraph 3. of this article, the procurement activity is considered closed (i) on the date of publication of the contract award notice or the design competition results notice, (ii) on the contract award date in case of tenders according to Article 37 of this law, or (iii) if the procurement activity has been formally canceled or otherwise terminated before the award or selection of the winner, then on the date of the cancellation notification according to paragraph 2. of Article 62 of this law or on the date when the activities were completed. EO "TALI SH.P.K." - Prishtina filed a complaint and in claim 5, the focus of this claim was that the CA acted contrary to article 11 of the LPP, specifically paragraph 4. The contracting authority that classified an element of information as business secret information according to paragraph 3. of this article, will prepare the "cleaned" version of each document, if such an element is found in the document in which the information that is not considered to be secret is also found. Such cleaned version must be included in the material to which the public and interested parties have access according to article paragraph 3. of article 10 of this law. The contracting authority shall attach to the front of such cleaned version a notice stating that (i) the contracting authority has classified certain elements of information in the original document as business secret information, at the request of the relevant economic operator, and (ii ) the attached cleaned version has been prepared by the contracting authority and is an exact copy of the original after removal or deletion of such business secret information.

The sixth claim (VI): EO "Tali SH.P.K." filed a complaint and claim 6, the focus of this claim was that the CA violated the law during the examination, comparison and evaluation of the tender and requesting evidence from the Economic Operators to show that they minimally meet the criteria defined by the CA.

The seventh claim (VII): EO "Tali SH.P.K." filed a complaint and claim 7, states that Gjilan Municipality CA has violated Article 7 of the RROUPP and the main focus in this violation is that only information classified by EOs and accepted by CA as a business secret will remain a secret.

The eighth claim (VIII): EO "Tali SH.P.K." filed a complaint on claim 8, emphasizing that the CA- Municipality of Gjilan did not comply with the Law on Access to Public Documents.

*-Administration and evaluation of evidence -*

In order to fully verify the factual situation, the review panel administered as evidence the expert's report, the opinions of the parties related to the expert's report, the submissions and documents of the complainant, the letters and documents of the contracting authority, the relevant documents related to the procurement activity as and all the evidence that has been proposed by the procedural parties.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 09/01/2024 has authorized the review expert to conduct the initial review of the dossier and claims according to complaint no. 23/24, while on 17/01/2024 the review expert's report with no. 2024/0023 with the following recommendations: Based on the clarifications and findings of this expertise, the professional review expert proposes to the Review Panel that the complaint of Tali SHPK be rejected as unfounded, and that the Decision of the Contracting Authority of the date remains in force 22.12.2023 published on the electronic e-procurement platform.

*Regarding the claims of EO "Tali" SHPK, the review expert through report no. 2024/0023 assessed as follows:*

First finding (I): EO recommended for contract by CA-Municipality of Gjilan, according to the offer link: Company name and full address: EL-BAU SH.P.K., LIMON STANECI P.N has submitted to the Documentation Annexes, the Declaration on Confidentiality (Annex 3) according to the Tender File, and that the CA has the duty to maintain the confidentiality presented and requested by the Bidding company, this is implemented in that: relying on Article 11 of the Law on Public Procurement of the Republic of Kosovo no. 04/L-042 amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092. Specifically point 3. The contracting authority can classify other information as business secret information only if the relevant information fulfills these three criteria: under paragraph 3.1 that it was sent by an economic operator in accordance with the request determined by such contracting authority according to article 68 or 69 of this law. Based on the Decision Rejecting the Request for Reconsideration, The CA has responded to each claim separately, where your first claim has emphasized that it has offered you access to the documents that competing companies are allowed to have, and that you have refused access to these documents. Regarding the decision of EO TALI SHPK, it has not attacked at all, the clarifications presented in the decision of the CA, since the CA has offered you access to the documentation that the interested parties are allowed to have access to. Final words from the Expert: The claim of EO TALI SHPK is unfounded, since access to documents is regulated by law and documents are classified through Article 11 of the LPP.

The second finding (II): EO recommended for contract in dossier (at the offer link), number 10, the Machinery has submitted a documentation related to the mechanization required by the CA where it has signed and stamped as requested in Annex 7 and has attached a list of equipment with 52 different equipment and several agreements for renting machinery from other companies and as such the reviewing expert claims that the EO has fulfilled this criterion determined by the Contracting Authority. This dossier has a documentation capacity of 41 pages which have the machinery booklets, the lease agreements sealed and notarized. Final word from the Expert: The claim of EO TALI SHPK is unfounded, since access to documents is regulated by Law and that documents are classified through Article 11 of the LPP and that this documentation is covered according to Article 11, which is related to Article 68 and 69 of the LPP.

Third finding (III): The professional expert cannot present a legal definition regarding this claim (since it is not under his mandate) the judgment of the aspects for which the deadline has passed,

regarding this claim you as the EO will be able to Did you attack the PRB, the Tender File Form even before the opening of the offers, since such a thing is also regulated by the LPP and is allowed. Therefore, the finding is that this claim is not addressed.

Fourth finding (IV): The professional expert emphasizes that from what was seen above, the CA has given the documentation allowed by the LPP, EO Tali ShPK and that the failure to provide the documentation that is covered by the LPP, specifically Article 11 does not it means that CA has treated EO Tali SHPK in an unequal and discriminatory manner. The claim is unfounded.

Fifth finding (V): The professional expert emphasizes that from what was seen above, the CA has provided the documentation allowed by the LPP, as well as article 10 of the LPP clearly states: 3. With the written request from any party of interest, the contracting authority provides reasonable access to the party. Therefore, the CA has not been able to allow access to the EO with the documentation which finds application in what is considered a business secret. The claim is unfounded. As presented above, the CA in the decision dated 29.12.2023 emphasized that EO TALI SHPK refused to receive the classified documentation, where it emphasized that the CA allowed full access to the permitted documentation to the person that you as a company you have authorized, highlighting in particular all the documentation that is allowed where you as the EO have not expressed interest in accepting the documentation and as such the CA has also submitted it to talishpk17@hotmail.com. As such your claim is ungrounded.

Sixth finding (VI): Based on the claims presented by you (all of which are based on the lack of access to official documents) even though CA claims to have sent them to you, you as an Economic Operator have not presented any concrete claim that the recommended EO does not meet criteria 1 or 2, or similar, for the only claim you sent you sent for the list of machinery and that you accepted the details presented above as such your claim is unfounded and that from claim 1 to 6 (not including claim 2) are identical claims that have received detailed answers from the CA and the professional expert.

Seventh finding (VII): Based on what was said above, after analyzing the legislation, it is emphasized that this Regulation is now repealed, as such the specification on a repealed regulation is considered unfounded since the regulation itself is not has a mandate for a procedure started after 01.11.2022. The aspect of article 97.1 point C, Disallowing and/or neglecting access to official documents upon written request submitted by the interested party when such requested access is in accordance with article 10 and 11 of the Public Procurement Law, was based on the fact that the CA gave access to the TALI company, this claim is also unfounded.

Eighth finding (VIII): The claim presented by EO TALI SHPK is UNGROUNDED since the Law on Access to Public Documents does not cover the aspect of the Law on Public Procurement and other regulations in force, this Law states that interested parties may to get access to an Authority and that the Authority must present these documents by the deadline of 7 days after submitting the Request (in this form, the EO is unable to submit a Request for Reconsideration which has a deadline of 5 days after the Notification on the Decision is presented Contracting Authority). The Law on Access to Public Documents, nowhere specifies

that if a Provision of another Law provides for the prohibition of the publication of certain documents (also these must be given to other parties), therefore the reference to this Law is wrong on the part of EO -'s.

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, while EO has not agreed with the review expert's report.

*- Findings of the Review Panel -*

The Working Regulation of the Public Review Body no. 83/20, dated 03.03.2020, which is published on the PRB Website, with article 20, paragraph 2 of the Regulation, defines the requirements for the Contracting Authority and the Economic Operator, that all information and notices 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 review panel, with the aim of fully verifying the factual situation, administered as evidence: the Review Expert's Report, the Economic Operator's complaint, the Notice on the Contract, the Notice on the Decision of the Contracting Authority, to reward EO with contracts for the procurement activity, the Report of the Evaluation of the Evaluation Commission of the CA, the Decision of the Contracting Authority regarding the Request for reconsideration.

The review panel after evaluating and administering all the evidence according to the complaint submitted with protocol number No. 23/24 clarifies that the findings in the review expert's report

can be confirmed through the tender dossier as well as the documents with which the tenderers have offered and are also based on the relevant provisions of the LPP and RRPP. The Review Panel regarding the claims of the complaining economic operator "Tali" SHPK has given full confidence to the review expert's report. In this case, the Review Panel has taken into consideration the answers of the parties regarding the expert's report and the answer given by the Contracting Authority. In this way, it has been found that the claims of the complaining economic operator are unfounded.

The Review Panel, based on the findings of the review expert, finds that the complainant failed to prove with concrete evidence that there was a legal violation by the Contracting Authority during the development of the procurement activity in question. Therefore, the Review Panel has assessed that the Contracting Authority has acted in accordance with the legal provisions, Article 59 of the LPP and the requirements of the Tender Dossier regarding the procurement activity "Winter Road Maintenance in Gjilan", with procurement number 651-23-10479- 2-1-1,. Consequently, the review panel has decided to reject the complaint of Economic Operator "Tali" Sh.P.K, and has certified the Decision of CA -B58 published on 22. 12. 2023, of the Contracting Authority, Municipality of Gjilan regarding the procurement activity.

Based on the clarifications of the review expert, the panel assesses that based on the course of this procurement activity presented in the documentation of the procurement procedure, the Contracting Authority has done the Examination, Evaluation and Comparison of Tenders, in accordance with Article 59 par. 4 of the LPP, because the EO recommended for the contract has submitted all the evidence in compliance with the request required in the Tender File. Therefore, based on the analysis of the presented documentation, the complaints of the Economic Operator "Tali" shpk, against the recommended Economic Operator "El Bau", are unsustainable, since the Contracting Authority has declared the EO the winner, which has submitted the administratively responsible tender and with the lowest price, the complaining EO "Tali" shpk, offered at a price of 39.99 euros, while the recommended EO "El Bau" offered at a price of 38.06 euros.

Without the need for further analysis of complaint claims and other evidence, PRB always starts from the fact that each CA (at any level) enjoys complete independence in the exercise of powers and the assignment of needs in harmony with budgetary capacity, but the CA must take care ex-officio also for the basic principles of the LPP and during the drafting of tender file criteria not to draft technical specifications that conflict with the provisions of the LPP. The panel always starts from the rules, solutions and principles of the LPP according to which each CA exercises his/her independence in the sense of article 8 and 9 regarding procurement planning and forecasting needs, but the aforementioned criteria must always guarantee the equality of the EO which are foreseen as such with the TD which, in the sense of Article 27, in connection with Article 28, constitutes the key public procurement document. In no case, the contracting authority must not include, specify or use selection criteria that are based on considerations other than those allowed by the provisions of articles 65-70 of this law.

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 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

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**Legal advice:**

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

Decision to be submitted to:

- 1x1 CA – **MUNICIPAL ASSEMBLY- GJILAN;**
- 1x1 EO – **TALI SH.P.K;**
- 1x1 Archive of the PRB;
- 1x1 For publication on the website of the PRB.