



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

Psh. No.0048/24

Psh. No.0048/24;0050/24;0056/24;0057/24;0058/24;0059/24

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 (LPP) in the composition of Vedat Poterqoi - President, Vjosa Gradinaj Mexhuani - Member and Isa Hasani - Member, deciding on the complaint of the economic operator (EO) "N.P. Victoria Invest International Sh.p.k.", complaint of (OE) "RSM Company Sh.P.K", complaint of (OE) "Sallahu Sh.P.K.", complaint of (OE) "Granit" Sh.P.K", complaint of (GOE) "Construction Ing Sh.P.K.; N.N.Sh. World Medium; Adnan Bislimi B.I.; Adea Construction Sh.P.K.; Agim Morina B.I.; Riviera Company 2008; Mendregjoni", as well as the complaint of (GOE) "N.N. 100% Design LLC; Haxha Kom Sh.P.K.; Haxha Company Sh.P.K.; Integral Sh.P.K.; Milenium Konstruction Sh.P.K.; Capital Sh.P.K" submitted against the Decision dated 29.12.2023, for awarding the contract for the procurement activity "Extension of the National Road N9-Segmenti Kijeve - Dollc, Lot 1, 2, 3, 4" with procurement number: " 205-23-1843-5-1-1", of the Ministry of Infrastructure in the capacity of contracting authority (CA), on the 19.03.2024 has issued this:

DECISION

1. Approved, as partly grounded the complaint of EO "Sallahu Sh.P.K." dated 18.01.2024 (No. 2024/0056), complaint of EO "Granit" SH.P.K dated 18.01.2024 (No. 2024/0057), complaint of GOE "Construction Eng Sh.P.K.; N.N.Sh. World Medium; Adnan Bislimi B.I.; Adea Construction Sh.P.K.; Agim Morina B.I.; Riviera Company 2008; Ndregjoni" dated 18.01.2024 (No. 2024/0058), for the appeal claims for LOT 1;
2. Rejected as ungrounded, the complaint of EO "N.P. Victoria Invest International Sh.p.k" dated 11.01.2024 (No. 2024/0048), the complaint of EO "RSM Company SH.P.K" dated 15.01.2024 (No. 2024/0050), and the complaint of GOE "N.N. 100% Design LLC; Haxha Kom Sh.P.K.; Haxha Company Sh.P.K.; Integral Sh.P.K.; Milenium Konstruction Sh.P.K.; Capital Sh.P.K" dated 18.01.2024 (No. 2024/0059).

3. It is allowed to withdraw the complaint from EO "Sallahu Sh.P.K." dated 18.01.2024 (No. 2024/0056), to LOT 3.
4. The decision of the CA on the award of the contract dated 29.12.2023, for LOT 2, LOT 3 and LOT 4, related to the procurement activity "Extension of the National Road N9-Segmenti Kijeve - Dollc Lot 1,2,3" remains in force. ,4" with procurement number: 205-23-1843-5-1-1, of the Ministry of Infrastructure in the capacity of contracting authority (CA).
5. The Decision of the CA dated 29.12.2023 for LOT 1 is annulled, and the matter is returned to Reassessment only for LOT 1.
6. The funds deposited in the name of the complaint's fee for the complainants are confiscated as follows: "N.P. Victoria Invest International Sh.p.k." (No. 2024/0048), "RSM Company SH.P.K (No. 2024/0050), "N.N. 100% Design LLC; Haxha Kom Sh.P.K.; Haxha Company Sh.P.K.; Integral Sh.P.K.; Milenium Konstruction Sh.P.K.; Capital SH.P.K" (No. 2024/0059). Confiscated funds go to the Budget of the Republic of Kosova as provided by Article 31.5 of the Rules of Procedure of the PRB.
7. The return of funds deposited in the name of the appeal fee is allowed for the following appellants: EO "Sallahu SH.P.K." (No. 2024/0056), EO "Granit" Sh.P.K." (No. 2024/0057), EO "Construction Ing Sh.P.K.; N.N.Sh. World Medium; Adnan Bislimi B.I.; Adea Construction Sh.P.K.; Agim Morina B.I.; Riviera Company 2008; Ndrejoni" (No. 2024/0058), the complaining subjects, listed according to this paragraph, have the right to submit a request for the return of funds within sixty (60) days from the day of acceptance of this decision, otherwise the funds are confiscated and transferred to the Budget of the Republic of Kosovo, according to article 31 point 6 of the Rules of Procedure of the PRB.
8. Within a period of 10 days, the CA must inform the PRB about all the actions taken regarding this procurement activity, otherwise the PRB has the right to take measures against the CA for non-compliance with the decision, as provided by the provisions of the article 131, of the Law on Public Procurement of the Republic of Kosova.

REASONING

- Procedural facts and circumstances –

On the 08.03.2023, the Ministry of Infrastructure, acting in the capacity of the contracting authority, has published the Contract Notice, related to the procurement activity "Extension of the National Road N9-Segmenti Kijeve - Dollc, Lot 1, 2, 3, 4" with procurement number: "205-23-1843- 5-1-1".

On the 24.04.2023, CA (with data as above) through the publication, has informed the interested parties regarding the correction of errors which refer to previously published notices, while the opening of offers for this procurement activity was carried out on 04.05 .2023.

On the 29.12.2023, the CA has published its decision on awarding the contract, regarding the procurement activity, which with date, number and name is now described as above where they are recommended for the contract for Lot 1 - Group i EOs "R & Rukolli"; "Saba Belca" Branch in Kosovo; "Elmazaj Construction"; "Tekno - Konstrukt" SH.P.K.. Lot 2 - Group of EOs "Empreus" SH.P.K.; "Jaha Company" sh.p.k.; "Premium - KS" LLC; "Toifor" Sh.p.k.; NNT "ABC" LLC; "Metag Insaat Ticaret" A.S., Lot 3 - Group of EOs "Lika Trade" Sh.p.k.; "TOFI" doo; "Lika Company" Sh.P.K. Lot 4 - Group of EO "Famis Co-Hc" SH; "KIT-AK", "Gradnje", d.o.o.; "KAG - Asphalt Company" Sh.P.K.

On the 03.01.2024, EO as follows "N.P. Victoria Invest International Sh.p.k.", EO "RSM Company Sh.P.K.", EO "Sallahu Sh.P.K.", EO "Granit" Sh.P.K.", GOE "Nndirtimi Ing Sh.P.K."; N.N.Sh. World Medium; Adnan Bislimi B.I.; Adea Construction Sh.P.K.; Agim Morina B.I.; Riviera Company 2008; Fix it", GOE "N.N. 100 % Design Sh.P.K.; Haxha Kom Sh.P.K.; Haxha Company Sh.P.K.; Integral Sh.P.K.; Milenium Konstruktio Sh.P.K.; Capital Sh.P.K." submitted requests for reconsideration, which were rejected as unfounded with Decision of CA dated 09.01.2024.

Dissatisfied with the CA's decision to award the contract dated 11.01.2024, they filed a complaint with PRBO EO "N.P. Victoria Invest International Sh.p.k." with No. (0048/2024), dated 15.01.2024 filed a complaint EO "RSM Company SH.P.K" with No. (No. 2024/0050), dated 18.01.2024 EO "Sallahu SH.P.K." with No. (2024/0056), EO "Granit" LLC" with No. (2024/0057), GOE "Construction Ing Sh.P.K.; N.N.Sh. World Medium; Adnan Bislimi B.I.; Adea Construction Sh.P.K.; Agim Morina B.I.; Riviera Company 2008; Edit" with No. (2024/0058) as well as GOE "N.N. 100 % Design Sh.P.K.; Haxha Kom Sh.P.K.; Haxha Company Sh.P.K.; Integral Sh.P.K.; Milenium Konstruktio Sh.P.K.; Capital Sh.P.K." with No. (2024/0059).

-In the preliminary review phase:

The PRB has concluded that the appeals in the present case were exercised in accordance with Article 109.1 of the LPP, according to which against any decision taken by the CA, any interested party has the right to submit an appeal after the implementation of the preliminary procedure for resolving disputes, such as provided by Article 108/A of this law. Since the complainants have the status of the interested party as defined by Article 105, paragraph 1, in relation to Article 4, paragraph 1.26 of the LPP, while the complaints contain the essential elements foreseen by Article 111, of the cited Law, which means that they meet the conditions in terms of the cited provisions and fall under the powers of this body in terms of Article 105 of the LPP, in relation to Article 9 of the Regulation on the Work of PRB.

Referring to the complaints as above, their content and purpose, it is preliminarily established that in connection with the case in the present case, Article 16 (Unified cases) of the cited Regulation is applied, according to which the President of PRB has the right to combine the

Cases /complaints which, in the sense of complaint claims, are related to the same subject or tender, may be included in the initial review report by the same expert and the same Review Panel has the right to decide.

Based on the actions described above, PRB has appointed the Review Panel according 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 duty that the same do the initial review of the file and the complaint claims, in relation to this procurement activity, in the sense of article 113 and 114 of the LPP in relation to article 17 and 19 of the cited Regulation. Regarding this, it is established that:

The expert To approve as partially founded the complaints of the complaining EOs No. 48/24, No. 50/24, No. 56/24, No. 57/24, No. 58/24 and No. 59/24

To annul the Decision of the CA dated 29.12.2023 and to re-evaluate Lot 1 and Lot 4

The decision of the CA of 29.12.2023 for Lot 2 and 3 remained in forceise's report, dated 21.02.2024, contains the following recommendations:

The expert reports contain the essential elements as required by article 113, paragraph 3 of the LPP and the same have been accepted by the parties, in accordance with article 115 of the LPP in relation to article 20 of the cited Regulation. In this case, it is evident that for the complaint No. 48/24, the CA did not agree with the review expert's report, while the EO was not declared. For complaint no. 50/24, the CA agreed with the expert's recommendation, while the EO did not agree. For complaint no. 56/24, the CA did not agree with the review expert's opinion, while the EO agreed. For complaint no. 57/24, the CA agreed with the opinion given by the reviewing expert, while the EO did not agree. For complaint no. 58/24, CA did not agree, while EO partially agreed. For complaint no. 59/24, CA has not agreed, while EO has not declared.

The parties are aware of the documents of this matter as required in accordance with paragraph 2 of Article 20 of the cited Regulation and it is established that there are no elements to prevent conflict of interest, as required in the sense of Article 11 of the Regulation on the Work of PRB. Therefore, the Panel further analyzed the papers of this case, including all the acts and actions of the parties and their statements, considered that there is no need to convene a public session with the parties because there is sufficient evidence and there are conditions to decide meritoriously regarding the complaints in the specific case, as provided by paragraph 1, of article 24 of the cited Regulation. In this case, the Panel preliminarily concluded that the CA has implemented:

- a. open procedure, as defined by paragraph 1.37. of Article 4 of the LPP;
- b. type of contract: Work, as provided by paragraph 3, of article 27, of the LPP;
- c. estimated value of the contract: 32,000,000.00 € (for all parts), large value, as defined by paragraph 1.28 of article 4, related to paragraph 1, of article 19, of the LPP
- d. The contract award criterion is the most economically favorable price determined according to the weight of the criteria described in Annex 6 of the tender dossier.

-Administration and evaluation of evidence -

The review panel (in a collegial composition) administered all the documents of this case, analyzing all the complaint statements, acts and actions of the parties which (in summary) it reviewed as follows:

a) Complaining claims of EO "N.P Victoria Invest International SH.P.K" No. 0048/2024

The complainant (with data as above) in this procurement activity has submitted an offer for Lot 1 and Lot 2, therefore the complaint claims are for these Lots. The complaining EO submitted the request for reconsideration to the CA on 03.01.2024, with the claims related to the reasons for the elimination of the complaining EO. CA dated 09.01.2024 has made a decision to reject the request for reconsideration.

The complaining EO claims that the CA acted contrary to the provisions of the LPP when it decided that the complaining EO does not meet the requirements of the tender file related to the executed contracts as well as for the other reason regarding the dynamic plan which is not, In this case, CA has assessed that the executed contracts are not in the required field (asphalting, construction, rehabilitation, reconstruction of roads), as well as the dynamic plan is not according to the requirements of TD. In relation to these two complaints, the Expert explains that the contracts for the subject Victoria Invest International Sh.p.k. In this regard, according to the opinion of the KRPP, the determination of the nature of similar contracts is the exclusive competence of the CA. While in relation to the contract and the evidence of the subject Victoria Invest Sh.p.k, the submitted evidence is only a monthly payment certificate and is not an evidence conforming to the request of the CA for the realization of the project with the relevant data. Therefore, the appeal claim is unfounded. Whereas, the wording of the request for the dynamic plan is relative and not clear, even more so by using the word "as detailed as possible", therefore, based on such wording, which for the CA is subjective in the sense of evaluation of this criterion, as well as the fact that the EO has submitted a plan which can be considered less detailed but which gives a clear overview of the evaluation indicator "time", therefore the issue of the aspect "as detailed as possible" is a subjective assessment. Consequently, the appellant's claim on this point is partially grounded.

The panel notes that in relation to these claims, the complaints were analyzed by the expert in a detailed, comprehensible way and based on the documentation of the TD and the offer and as required by article 113 and 114 of the LPP and agrees with the findings of the expert without the need to they are now again included and/or described in this case. Therefore, based on these findings, it turns out that the EO complaining about this procurement activity is not responsible, since the executed contracts are not according to the terms of the TD.

Regarding the complaint claims presented to the CA that it acted in violation of Article 59 of the LPP by recommending a contract for Lot 1. The Review Panel decides in accordance with legal provisions that the complaint claims which were not submitted in time during the phase preliminary according to the authorizations of the legislator in the sense of article 108/A and 109 of the LPP related to article 64.2 of the REGULATION No. 001/2022 ON PUBLIC PROCUREMENT by the complaining EO and the same have not been the subject of review by

the PRB. Although the Review Panel clarifies that most of these claims against the EO recommended for the contract for LOT 1 have been examined in the appeal claims of other complaining EOs. The Review Panel emphasizes that each contracting authority (at the central and local level) enjoys autonomy in procurement planning (Article 8) and in determining the needs that must be met (Article 9), of course in accordance with the budget capacity and that the CA in the specific case has have the right to also decide on the EO recommended for the award of the contract based on article 24 paragraph 2 of the LPP quoted "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in compliance with complete with this law".

The panel notes that in relation to these claims, the complaints were analyzed by the expert in a detailed, comprehensible way and based on the documentation of the TD and the offer and as required by article 113 and 114 of the LPP and agrees with the findings of the expert without the need to they are now again included and/or described in this case. Therefore, based on these findings, it turns out that the EO complaining about this procurement activity is not responsible, since the executed contracts are not according to the terms of the TD.

Regarding the complaint claims presented to the CA that it acted in violation of Article 59 of the LPP by recommending a contract for Lot 1. The Review Panel decides in accordance with legal provisions that the complaint claims which were not submitted in time during the phase preliminary according to the authorizations of the legislator in the sense of article 108/A and 109 of the LPP related to article 64.2 of the REGULATION No. 001/2022 ON PUBLIC PROCUREMENT by the complaining EO and the same have not been the subject of review by the PRB. Although the Review Panel clarifies that most of these claims against the EO recommended for the contract for LOT 1 have been examined in the appeal claims of other complaining EOs. The Review Panel emphasizes that each contracting authority (at the central and local level) enjoys autonomy in procurement planning (Article 8) and in determining the needs that must be met (Article 9), of course in accordance with the budget capacity and that the CA in the specific case has have the right to also decide on the EO recommended for the award of the contract based on article 24 paragraph 2 of the LPP quoted "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in compliance with complete with this law".

b) Complaining claim of EO "Rsm Company Sh.P.K." No. 0050/2024

The complainant (with data as above) in claim 1 states that the CA acted contrary to the provisions of the LPP when it decided that the complaining EO does not meet the requirements of the tender file related to the agreement on the establishment of the group and that the leader) of the group is the member- EO "Groma Hold EOOD". Regarding this claim, the Expert explains that the written evidence submitted by GOE is contradictory. In order to fulfill the requirement defined in Article 11.1, point c) of the TDS, regarding the creation of the group of EOs, the authorization document has been submitted, which states that: Mr. Agim Kola is authorized (i.e. the owner but not the main partner as defined in the request) to act on behalf of the group, for all necessary actions, signing the tender and any documentation related to the tender. On the other hand, regarding the fulfillment of requirement number 2 of the economic and financial capacity

of the tender file, where it is required that the group leader must have min. 40% of bank support, GOE has submitted the bank statement issued by Investbank AD it is described that the member "GROMA HOLD EOOD" has its own funds in the bank account at Investbank in the amount of over two million euros for the financing of the tender procedure and that the bank reference serves the Ministry of Infrastructure of the Republic of Kosovo, for the participation of the company as a joint group Groma Hold EOOD main partner - 52% and RSM Company LLC - 48%. Also, in the complaint allegations in the request for reconsideration and in this complaint, the complaining EO states that the group member Groma Hold EOOD is the leader of the group. Further, the members of the group, as explained above, submitted separate statements regarding the request defined in Article 11.1, point a) of the TDS. In both statements, the last part of the text of the request "in case the group is awarded a contract, for the execution of the contract" is missing. In the notarized contract for the creation of the group, signed by the parties, it is stated that the contract will be executed through the partner RSM Company Sh.p.k and that Groma Hold EOOD, in the capacity as a partner in the group, will only and exclusively perform consultancy services for the execution of the contract with the customer and will not bear any responsibility regarding the execution of the contract. Therefore, according to the clarification above, the evidence submitted by GEO does not conform to the requirements of Article 72, paragraph 3 of the LPP, Article 26, paragraph 1, of the Regulation on Public Procurement and the requirement defined in Article 11., point a) of TDS. Consequently, the appeal claim is unfounded. Also, in claim 2, the complaining EO claims that the CA acted contrary to the provisions of the LPP when it decided that the complaining EO does not meet the requirements of the tender file related to the dynamic plan. Regarding this claim, the examining expert has classified it as partially founded.

The panel notes that in relation to these claims, the complaints were analyzed by the expert in a detailed, comprehensible way and based on the documentation of the TD and the offer and as required by article 113 and 114 of the LPP and agrees with the findings of the expert without the need to they are now again included and/or described in this case that the offer of the complaining EO contains deficiencies which may directly affect the execution of the contract. Therefore, the review panel supports the findings of the review expert, where consequently the complaining EO turns out to be irresponsible for this procurement activity.

c) Complaining claims of EO "Sallahu" SH.P.K No. 0056/2024

The complainant (hereinafter the complaining EO) submitted the request for reconsideration to the CA on 03.01.2024, while the CA on 09.01.2024 made a decision to reject the request for reconsideration. In this procurement activity, the complaining EO has submitted an offer for Lot 1, Lot 2, Lot 3 and Lot 4. The complaining EO dated 05.02.2024 has uploaded the letter through which it withdraws the complaining claims regarding Lot 3.

Complaint claims are related to the reasons for elimination given by the CA in the Standard Letter for the eliminated tenderer:

The appellant (with data as above) in claim 1 asserts that the CA acted contrary to the provisions of the LPP when it decided that the appellant EO does not meet the requirements of the tender

dossier related to the equipment. Regarding this claim, the examining expert clarified that of the 5 equipment - Grader presented in the list of equipment, according to the submitted evidence, the equipment with serial number 1 has a weight of 16,200 kg or 16.2T, which is outside the range presented by CA for the weight of the device 12-16T. The complaining EO in relation to this position in the complaint claims that the fact that the device exceeds the weight by 200 kg has no impact on the performance of its function and quality and the CA should have accepted as a minor deviation in accordance with article 59 of the LPP paragraph 4 taking as a basis the difference in price with GOE recommended for Lot 1, which is more expensive by 233,128.00 euros than the offer of the complaining EO. Regarding this point, the expert explains that, in relation to the total weight, the minimal difference is evident. However, the expert cannot ascertain the acceptance of the deviation since this is the responsibility of the CA and in case of reassessment, the CA can assess how acceptable the deviations are in accordance with Article 59 of the LPP, provided that the deviations are quantified and the EOs to be treated equally for everyone according to Article 7 of the LPP. Regarding equipment with serial number 3 (brand O&K, type 106A) and 4 (Caterpillar 120M2), according to the documents submitted with the offer, the weight of the equipment cannot be verified. In relation to the device serial number 3, the complaining EO in the complaint has attached as evidence an image from the internet search where the weight of 12T can be seen, however, the expert recommends that the review panel ask the CA to comply with Article 72 of the LPP for these devices ask for additional clarifications in order to assess the fulfillment of the requirements. Therefore, the appeal claim is partially based on this point according to the review expert.

The panel clarifies that this omission made by the complainant EO "Sallahu" SH.P.K regarding "non-identification of their equipment" was also observed in a previous case, where he/she was eliminated by the same Contracting Authority (CA), the Ministry of Infrastructure, and his/her complaint was also rejected by the PRB. The panel notes that in none of these cases, neither then nor now, has the appellant brought as evidence the customs documentation to conclude the case and prove his responsibility as a bidder. Therefore, the Panel assesses that in such circumstances, there is a lack of seriousness on the part of the complainant towards public authorities such as CA-MI, when he/she presents his/her offer to win a public contract.

According to public procurement guidelines and public procurement rules No. 001/2022, the Contracting Authority is not legally obliged to request additional information or clarifications for any documentation and in any case. Because the documentation presented by the bidders must be complete, clear and verifiable, while the CA during the evaluation must ensure that the principles of equality in treatment, non-discrimination, competition and transparency are fully respected. In this particular case, according to the professional assessment committee within the CA, the complainant for four of the devices presented in his/her offer did not provide documentation as was expressly requested in the tender dossier (TD) and in the contract notice (CN), therefore cannot be accepted as such due to their ambiguity and verifiability.

Finally, the Review Panel has decided to eliminate the complainant EO "Sallahu" as a non-responsible tenderer for LOT 2 and LOT 4, taking into account the number of equipment required in the DT, which the complainant has not proven to have, and since the activity is

returned in the reassessment for LOT 1, CA to act in accordance with the law to request additional clarifications in accordance with article 59 and 72 of the LPP to bring the originals of documents whose weight you do not notice and which can be verified to match the copies attached to offer, as well as taking into consideration the requirements of articles 6 and 7, related to article 59.4 of the LPP.

Complaint claims against the recommended EO for Lots 1, 2 and 4.

The complainant has also presented other complaints claiming that the CA Authority has acted contrary to Article 59 of the LPP by recommending a contract for Lot 1 GOE which does not meet requirement 7 of the tender file related to the license for the production of asphalt base, does not meet requirement 4 of the technical and professional capacity of the tender file regarding the experience of the surveyor, does not meet requirement 5 of the TD that the traffic engineer's experience does not correspond to the requirement of the tender file, which in this case is the construction, rehabilitation, or reconstruction of roads, has failed to fulfill requirement 8 of the technical and professional capacity of the contract notice and tender file. According to the above clarification, the GOE recommended for Lot 1 submitted the Traffic Management Plan document, failed to prove that it fulfills the requirement for the mandatory equipment and mechanism according to the DT table, namely requirement 10 of the Grader 12-16t Equipment List - 3 pieces. Regarding all these claims, the reviewing expert has reflected them in detail in the expert report which is known to the parties in the procedure and answering you with reasons that are based on legal provisions and which are also supported by the Review Panel by qualifying them these complaining claims as partially founded.

The complainant claims that the CA acted contrary to the provisions of the LPP since the GOE recommended for the contract for LOT 1 does not meet the requirement for the project manager. Regarding this, the Expert clarifies that in relation to notarial procedures, he is not competent to examine the documents issued by a notary and for any doubts the complaining EO can refer the case to the relevant institution. Therefore, based on the above clarifications, the expert assesses that the complaining claim is unfounded. The Review Panel supports the reasoning of the review expert, which is presented in detail in the expertise report.

The complainant claims that the CA acted contrary to the provisions of the LPP by recommending for the contract for Lot 2, GOE which did not submit the agreement for the establishment of the group in accordance with the requirements of the tender file. Regarding this claim, the Expert explains that the GOE submitted the evidence according to the request of Article 11.1 of the tender file. Therefore, the appeal claim is unfounded on this point. The Review Panel supports the reasoning of the review expert, which is presented in detail in the expertise report.

The complainant asserts that the CA acted contrary to the provisions of the LPP by recommending a contract for Lot 4 EO which submitted an illegible Dynamic Plan. Regarding this complaint claim, the reviewing expert explains that the plan provides a clear overview of the period of contract implementation as a measuring indicator of the sub-criterion of the dynamic plan in order to evaluate the degree of weighting in addition to this sub-criterion, and in fact the

claim of the complainants. Therefore, the Review Panel supports the reasoning of the review expert, which is presented in detail in his report.

The complainant further claims that the CA has acted in the contrary to the provisions of the LPP by recommending the contract for Lot 4, the GOE which is irresponsible and should be eliminated from the procurement procedure, as they have failed to provide the evidence related to the Claims of eligibility according to the Tender File, has not submitted the agreement for the establishment of the group in accordance with the requirements of the tender dossier. In relation to this claim, the expert concluded that the GOE recommended for the contract submitted evidence for the establishment of the group according to the requirements of Article 11.1 of the tender file. Despite the fact that the statements are marked "representatives of the two companies", based on the fact that the names of the three companies and their representatives are described at the head of the testimony, as well as the fact that the statements were signed and sealed by the three companies, while the part of the text where it is described "representatives of two companies" may be considered a technical error and under no circumstances does such an assertion invalidate the statements submitted by the group members. The review panel supports the review expert's report regarding this claim, which qualified it as ungrounded.

Regarding the complaining claims presented to the CA, according to which it acted in violation of Article 59 of the Law on Public Procurement (LPP), when it recommended a contract for Lot 4, GOE, which does not meet requirement No. 4 of technical capacity and professional of DT, related to work experience for surveyor and electrotechnical engineer. The review panel, in order to clarify these claims and findings of the expert, on 12.03.2024, addressed the CA for clarification, which on 13.03.2024, submitted the email with the cited clarification "Based on the LPP and Regulation No. 001/2022 on Procurement Public, article 64, [Complaint submission and time limits for submitting a complaint to PRB], paragraph 64.2 The complaint will be prepared and submitted to the Procurement Review Body, through the electronic procurement system, dedicated function "Complaints". Complaint claims must be the same as those presented in the request for reconsideration before the Contracting Authority. Therefore, as a result of this, we request from the review panel, that in the shortest possible time it is decided regarding this matter, the decision of the CA remains in force, while the complaints of the EO are dismissed as unfounded.

The Review Panel after the administration of the relevant evidence and the answer given by the CA which points out that the appeal claims are not the same as those presented in the request for reconsideration and according to Article 64.2 of the Regulation, this makes them not admissible for examination by the review panel. The review panel, based on the legal and regulatory provisions, respectively article 108/A and 109 of the LPP and the Regulation on Public Procurement, article 64.2, decides that it cannot evaluate the appeal claims which have not been properly submitted and in time during the preliminary phase according to the authorizations of the legislator, while based on Article 24 of the LPP clarifies that the contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in full compliance with this law.

The complainant further describes in his claims that the Contracting Authority (CA) acted contrary to the provisions of the Law on Public Procurement (LPP) by not proving the fulfillment of the requirements specified for the equipment in his offer. Specifically, it discusses the equipment requirements in the Detailed List (TD) for Lot 4 respectively, and claims that the recommended bidder has not adequately met these requirements. His claims were evaluated as well-founded by the examining expert. However, the review panel cannot fully support the expert in his findings, as some data that was used in the evaluation may have been collected from websites and cannot be considered as conclusive evidence, as long as the professional evaluation committee within the CA as the initiator of this activity, has recommended the same for the contract. Therefore, the review panel based on the fact that the CA enjoys the right with the LPP to implement article 59.4 which the CA has at his/her discretion, and since even the complaining EO does not complete these devices in accordance with the requirements of the TD, decides to give the right to the CA and to leave in force the decision of the CA for LOT 4, this decision was issued by an evaluation commission which is supposed to be professional in accordance with article 59 par. 1 of the LPP.

d) Complaining claims of EO "Graniti" Sh.P.K. No. 0057/2024

The complainant - EO Graniti SH.P.K (further the complaining EO) submitted the request for reconsideration to the CA on 03.01.2024, while the CA on 09.01.2024 made a decision to reject the request for reconsideration. The complaining GOE has submitted a complaint for Lot 1 and Lot 4. The complaining claims are related to the recommended EO tenders for Lot 1 and 4.

Complaining claims are related to the reasons for elimination given by the CA in the Standard Letter for the eliminated tenderer:

The complaining EO in claim 1 asserts that CA acted in violation of Article 59 of the LPP by eliminating the complaining EO in Lot 1 and 4 for grader equipment. Regarding this claim, the Expert clarifies that in relation to Greider equipment, the CA has determined the demand for quantities that differ according to Lots. Accordingly, for Lot 1 the request is 2 graders with a weight in the range of 12-16T. While for lots 2, 3 and 4, 3 graders were requested. According to the evidence submitted by the GOE only one grader (HBM BG 160 TA) meets the requirement for the 12-16T weight range. While for one, no weight data was presented, and according to CA, during internet research, it was found to meet the weight. Therefore, according to the above explanation, according to the submitted evidence, GOE has 4 devices available, 2 of which exceed the weight range as requested by the CA, and based on the fact that 3 graders were requested for Lot 2, 3 and 4, the claim the complaint is unfounded. The panel notes that in relation to these complaint claims, they have been analyzed by the expert in a detailed, comprehensible and based on the documentation provided for this procurement activity and as required by article 113 and 114 of the LPP and agrees with the expert's findings without the need for them to be included and/or described again in this case, as it also supports the review expert's finding regarding the complaining claim regarding his/her elimination regarding the dynamic plan.

Therefore, the Review Panel, starting from the administration of the evidence as above and their explanation, without the need to repeat again, asks the CA that in the re-evaluation phase for LOT 1, in relation to this procurement activity, it should take into consideration the requirements of the articles 6 and 7, related to article 59.4 of the LPP.

Complaint claims are related to the irresponsibility of the EO recommended for the contract for LOT 1 and 4

The complainant claims that the CA Authority has acted contrary to Article 59 of the LPP by recommending a contract for Lot 1 GOE which does not meet requirement 7 of the tender file related to the license for the production of asphalt base, has failed to prove that it fulfills the requirement for mandatory equipment and mechanism according to table DT, namely requirement 16 of the List of equipment, Cylinders with combined wheels (rubber and iron), min. 6.5 t, submitted incorrect data in the list of completed contracts. Regarding the complaint claims presented to the CA that it acted in violation of Article 59 of the LPP by recommending a contract for Lot 1. The Review Panel decides in accordance with legal provisions that the complaint claims which were not submitted in time during the phase preliminary according to the authorizations of the legislator in the sense of article 108/A and 109 of the LPP related to article 64.2 of the REGULATION No. 001/2022 ON PUBLIC PROCUREMENT by the complaining EO and the same have not been the subject of review by the PRB. Although the Review Panel clarifies that most of these claims against the EO recommended for the contract for LOT 1 have been examined in the appeal claims of other complaining EO.

The complainant claims that the CA acted contrary to the provisions of the Public Procurement Law (PLP), since the GOE recommended for the contract for Lot 4 submitted documents in the Slovenian language, thus violating Article 13 of the LPP. Also, it is claimed that 3 contracts from the presented list are ongoing and should not be taken into account. The panel notes that these claims have been analyzed in detail by the expert and are based on the documentation provided for this procurement activity, referring at the same time to the interpretation of the Public Procurement Regulatory Commission (KRPP) regarding the issue of languages and agrees with the findings of the expert without the need for them to be included and/or described again in this case. Regarding the other claims of the complainant regarding the list of contracts, the panel clarifies that it has not provided concrete and convincing evidence. On the other hand, the expert did not make any findings that the list of contracts offered by the recommended EO does not meet the requirements of the DT. As a result, the review panel considering that the appellant is not responsible for Lot 4 and starting from the principle of proportionality does not find sufficient reason to eliminate the recommended EO and annul a decision of a CA, which is responsible, initiator and enforcer of the contract as a whole.

e) Complaining claims of GEO "Construction Ing SH.P.K.; N.N.SH. World Medium; Adnan Bislimi B.I.; Adea Construction SH.P.K.; Agim Morina B.I.; Riviera Company 2008; Edregoni SH.P.K" No. 0058/2024

The complainant (data as above) submitted the request for reconsideration to the CA on 03.01.2024, while the CA took a decision on the rejection of the request for reconsideration on

09.01.2024. The complaining GOE submitted a complaint for Lot 1. The complaining claims are related to the reasons for the elimination of the complaining GOE and the same were presented in the request for reconsideration.

The complainant in claim 1 asserts that CA acted contrary to the provisions of the LPP when it decided that the complaining EO does not meet the requirement for the economic and financial condition point 2. In relation to this assertion, the expert clarifies that according to the evidence submitted by GOE, the member "ING Construction LLC" has 584,326.74 euros in cash in TEB bank, while in Raiffeisen bank it has 315,291.74 euros, approved loans of about 100,000.00 euros, overdraft 5,000.00 euros. So the member of the "ING Construction SH.P.K" group had assets in the account of 899,618.48 euros, as well as 105,000.00 euros in loans and approved overdrafts. The other member, BURIM ZABELAJ BI (World Medium), according to the submitted evidence, had 331,070.74 euros in cash, 90,000.00 (of which 60,187.00 is the risk) and 5,000.00 credit card limit. While in the Economic Bank there were 543,878.57 euros of funds in the account as well as approved loans of 200,000.00 euros, overdrafts of 290,000.00 euros and card loans of 10,000.00 euros. So the member BURIM ZABELAJ BI (World Medium) had total funds in the account of 874,949.31 euros, and access to loans, overdrafts and card loans in the amount of 505,000.00, not counting the part of the loan in the TEB bank where a part is recorded as risk. So, according to the submitted evidence, GOE fulfills the requirement of the contract notice and the tender dossier on the economic and financial situation, point 2, including the condition of a minimum of 40% of the amount for the group leader. In case of doubt about the conditions or any doubt regarding this request (but not limited to this request) in accordance with article 52, paragraph 7 of the LPP, the CA will carry out an effective control of the information and documentation of the tender. Accordingly, the appeal claim is based on this point. The panel notes that in relation to these complaint claims, they have been analyzed by the expert in a detailed, comprehensible and based on the documentation provided for this procurement activity and as required by article 113 and 114 of the LPP and agrees with the expert's findings without the need for them to be now, again included and/or described in this case.

The complaining EO in claim 2 states that the CA acted contrary to the provisions of the LPP when it decided that the complaining EO does not meet the dynamic plan requirement. Regarding this claim, the expert clarifies that the Dynamic Plan is a requirement established by the CA in annex 1 of the tender file within the proposed criteria of the criteria for awarding the contract, namely as a sub-criterion defined by the CA in annex 6 of the tender file in order to select the EO according to the tender criterion with the most economically favorable price. The wording of the request is relative and not clear, even more so by using the word "as detailed as possible", thus leaving it up to the EOs to delve into the details if they can. Further, the way of formulating the criterion "The shortest and best detailed dynamic plan. creates the impression that the criterion is evaluated in two subdivisions, first as short as possible in terms of time frame and the second part as detailed as possible. According to the scoring table sent by the CA, during the evaluation, only the time limit declared by the EOs for the implementation of the works in the relevant lot was taken as a basis. Therefore, taking as a basis such a formulation which for the CA is subjective in the sense of evaluating this criterion, as well as the fact that the EO has submitted a plan which can be considered less detailed but which gives a clear overview of the

evaluative indicator "time", therefore the issue of the aspect "as detailed as possible" is a subjective assessment. Consequently, the appellant's claim on this point is partially founded. The panel notes that in relation to these complaint claims, they have been analyzed by the expert in a detailed, comprehensible and based on the documentation provided for this procurement activity and as required by article 113 and 114 of the LPP and agrees with the expert's findings without the need for them to be included and/or described again in this case, Consequently the complaining EO should be included in the re-evaluation phase for LOT 1, since the complaining claims of the complainant were only for LOT 1.

f) *Complaining claims of GOE "N.N. 100% Design LLC; Haxha Kom Sh.P.K.; Haxha Company Sh.P.K.; Integral Sh.P.K.; Milenium Konstruktion Sh.P.K.; Capital Sh.P.K.", No. 0059/2024*

The complainant (hereinafter GOE complainant) submitted the request for reconsideration to the CA on 03.01.2024, while the CA took a decision on the rejection of the request for reconsideration on 09.01.2024. The complaining GOE submitted a complaint for Lot 1, 2, 3 and 4. The complaining claims are related to the reasons for the elimination of the complaining GOE and the same were presented in the request for reconsideration. In this complaint, complaints are also filed regarding the recommended EOs for Lots 1 and 4.

In claim 1, the complainant with data as above, asserts that there is no reason for elimination related to the request for economic and financial capacity number 2, of the tender file. In relation to this claim, the expert clarifies that in the finding of the CA that the GOE does not meet this requirement, no concrete explanation was given as to which element of the evidence submitted does not meet the requirement. According to the evidence submitted, GOE fulfills the requirement of the contract notice and the tender file on the economic and financial situation, point 2, including the condition of a minimum of 40% of the amount for the group leader, based on the statement from the bank about the possibility of financing up to in two million euros. In case of doubt of the conditions or any doubt regarding this request (but not limited to this request only) in accordance with article 52, paragraph 7 of the LPP, the CA was able to carry out an effective control of the information and documentation of the tender. Accordingly, the appeal claim is based on this point.

In claim 2, the Complainant asserts that the CA acted contrary to the provisions of the LPP when it decided that the complaining EO does not meet the dynamic plan requirement. In relation to this claim, the expert clarifies that the appeal claim at this point is partially founded.

Appellant in claim 3 asserts that the CA acted in violation of Article 56.3 of the LPP and Article 59 of the LPP when it decided that the complaining GOE does not meet the requirement for equipment and mechanisms. In relation to this claim, the expert clarifies that the finding of the CA in the standard letter for the eliminated tenderer constitutes an inaccuracy regarding the equipment since the complaining GOE did not submit evidence for such equipment. Further, the expert clarifies that from the evidence submitted by the complaining GOE for the 5 equipment - Grader, their weight is not in the weight range as requested by the CA in annex 1 of the tender dossier (12-16T). Therefore, the complaining claim on this point is unfounded.

The panel notes that in relation to these claims, the complaints were analyzed by the expert in a detailed, comprehensible way and based on the documentation of the TD and the offer and as required by article 113 and 114 of the LPP and agrees with the findings of the expert without the need to they are now again included and/or described in this case. Therefore, based on these findings, the complaining EO regarding the request for grader equipment in which all are outside the weight range required by the CA, then it follows that the complaining EO for this procurement activity is not responsible.

Regarding the complaint claims presented to the CA that it acted contrary to Article 59 of the LPP by recommending a contract for Lots 1 and 4. The Review Panel decided in accordance with the legal provisions that the complaint claims that were not submitted in time should not be issued for evaluation during the preliminary phase according to the authorizations of the legislator in the sense of article 108/A and 109 of the LPP related to article 64.2 of Regulation No. 001/2022 on Public Procurement by the complaining EO.

The review panel, after evaluating all the claims presented by the bidders and the reasons for their elimination, notes that all the complaining bidders had defects in the equipment offered in their bids. This has prompted the need for a detailed analysis to determine their exclusion from the procurement process. On the other hand, according to the current legislation, in Article 59.4 of the Law on Public Procurement (LPP), CA has the right to consider some of these deviations in the equipment offered as "minor deviations". In these circumstances, CA has exercised its discretion in accordance with the provision cited above, accepting some of them as minor deviations. On the other hand, the complaining bidders for LOT 2,3 and 4 failed to prove with concrete facts and evidence that they bid in accordance with all the technical requirements required in TD and CN. Therefore, the review panel has decided to accept and respect this decision of the CA for these LOTs. This decision was issued by an evaluation commission within the CA, which is supposed to be professional and have full individual responsibility for the evaluation of the bid, based on article 59 paragraph 1 of the Law on Public Procurement (LPP). In addition, the review panel emphasizes that, in accordance with Article 8 and 9 of the LPP, each contracting authority, such as the CA in this case, enjoys autonomy to plan and determine procurement needs in accordance with budgetary capacity. Also based on article 24 paragraph 2 of the LPP, which gives the CA the responsibility to ensure that all procurement activities are executed in compliance with the law.

Finally, the review panel, in accordance with Article 1 of the Law on Public Procurement (LPP), the purpose of this law is to ensure the most efficient, transparent and fair way of using public funds, public resources as well as all funds and resources other contracting authorities in Kosovo. In order not to prolong this procurement activity even further (infinitely), the review panel has decided to accept the decision of the CA and allow it to remain in force for LOT 2, 3 and 4. This action was taken in good of the country's citizens in accordance with article 104.4 of the LPP."

- Conclusion -

The Review Panel, analyzing the papers of this case and the actions taken by the parties, considers that most of the findings of the review expert and his opinion are acceptable by this Panel.

Based on the powers of the PRB provided by Article 105, in relation to Article 106 of the LPP, the Panel implemented, among others, Article 103 of the cited Law according to which all interested parties will have equal access to the procedures for reviewing procurement and legal remedies and that no decision of the PRB will be taken or made in a way that discriminates in favor or to the detriment of a participant in the procedure or of another person or enterprise.

The panel clarifies that in addition to article 1, 6, 7, 27, 28 and 56 of the Law on Public Procurement, it is important to note that all bidders are aware of the process of application and submission of documentation in accordance with the tender file and the notice for contract. They have sufficient experience in this field and are constant participants in tenders that are published in the Republic of Kosovo, contributing to an honest and fair application for everyone. This ensures an equal and fair competition for all bidders and avoids the impact on the prolongation of the procurement procedures, with "requests for continuous clarifications from the bidders" for the documentation that they constantly process for applications in their bids. Therefore, the panel clarifies that in this case the responsibility falls on the bidder, who tends to win.

Because it is obvious and known to everyone, that in every case of contract notification, each bidder who does not possess the "equipment" with the required specifications TD, should, in the preliminary phase, oppose the same or eventually raise questions or to request clarifications from the CA, regarding the acceptability of the equipment that the bidders currently have in their possession and that according to the criteria established in the TD do not match each other, on the other hand the panel clarifies that under no circumstances [this flaw found in the bids of the complainants regarding the technical specification from the CA cannot be clarified now in the evaluation procedure before the professional commission, unless they present any evidence/evidence that they possess the equipment exactly according to the TD, rejecting at once all the reasons for elimination, which are listed in the standard letters for tenderers eliminated by the CA, for each complainant, without the need to describe them again in detail.

Although the expert's opinion is not binding, the Panel, in its independent opinion, supported the expert's report in the specific case for LOT 1, 2 and 3, based on the principle that its probative value is always given in relation to the evaluation, comparison and administration of all other evidence and the nature of an issue in the specific case, while for LOT 4, the Review Panel did not support the review expert's recommendation as a whole in its findings, as some data that were used in the evaluation were collected from websites and cannot be considered as conclusive evidence, as well as some claims were not the same as in the request for re-examination according to the response of the CA, while the professional evaluation commission within the CA, as the initiator of this activity, has recommended the same for the contract. Therefore, the review panel based on the fact that the CA enjoys the right with the LPP to implement article 59.4 which the CA has at his/her discretion (small deviation), and since the complaining EO also has deficiencies in fulfilling DT's requirements, in terms of articles 1 and 7 of the LPP, decides to give the right to the CA and to leave in force the decision of the CA for LOT 2, 3 and 4, this

decision which was issued by an evaluation commission which is assumed to be professional and responsible in accordance with article 59 par. 1 of the LPP. While LOT 1 returns to re-evaluation.

In this context, even according to the independent judgment of this panel, the CA, nor the EO, should not invoke by-law provisions to request additional clarifications for the bidders' documentation in any case, since as explained above, all bidders are aware for obligations and application procedures in tenders. The complainant's request for the completion of documentation regarding his/her machinery should not be seen as a valid reason to interfere with the procurement process in an insufficiently reasonable manner. This ensures that procurement procedures remain efficient and fulfill their purpose of securing public contracts in an orderly and fair manner for all stakeholders.

The panel also clarifies that in view of the requirements of the contracting authority which are specified in the tender file and as such are made public to all potential bidders, everyone should be guided by the principle of care in fulfilling the formal conditions in time and within the deadline, whereas the return of a procurement activity in the absence of non-controversial evidence does not provide a legal basis for its eventual re-evaluation and is not in harmony with Article 1 of the LPP. In fact, the purpose of this procurement activity also refers to article 104 paragraph 4 of the LPP, according to which in undertaking the measures defined in this Part IX, the PRB must (i) act as quickly as possible and take based on the possible consequences of actions or measures in all interests that may be harmed, including the public interest, as long as this same procurement activity has been twice subjected to the re-evaluation process.

In making this decision, the review panel also took into consideration the requirements of Article 104, paragraph 4 of the LPP, according to the PRB, it must act as quickly as possible, act proportionally to the alleged violation or the matter for which the complaint is filed, and take as a basis the possible consequences of the actions or measures on all interests that may be harmed, including the public interest.

PRB always starts from the fact that every CA (at every level) enjoys complete independence in the exercise of powers and the determination of needs in harmony with budget capacity. Therefore, starting from the above and carefully managing all the evidence attached to the documents of this case, the Review Panel has decided as in the enacting clause of this decision, convinced that it has applied the appropriate solution in accordance with the legislation in force and the nature of the case in the case concrete, also considering it fair and reasonable to allow the funds deposited in the name of the appeal fee, including the economic operators who have been proven by access to the documents.

Based on the above, the Review Panel decided as in the provision of this decision, in accordance with Article 117 of the LPP.

President of the Review Panel

Mr. Vedat Poterqoi

Legal advice:

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

Decision to be submitted to:

1x1 CA – **MINISTRY OF INFRASTRUCTURE;**

1x1 EO – **N.P., Victoria Invest International Sh.p.k., "SALLAHU" SH.P.K., Granit SH.P.K., N.N.**

100 % Design Sh.p.k., NDËRTIMI ING SH.P.K., RSM Company SH.P.K.;

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.