



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

Psh. No.980/23

The Review Panel, appointed by the President of the Procurement Review Body (PRB), based on Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova (Law no. 04/L-042, supplemented and amended by Law 04/L-237, Law 05/L-068, supplemented and Law 05/L-092) in the composition of: Vedat Poterqoi -President, Isa Hasani -Member and Vjosa Gradinaj-Mexhuani- Member, deciding according to the complaint of the Economic Operator (OE) “Interlab SH.P.K., against the contract notice or tender documents, regarding with the procurement activity “Re-tender “Supply of medical equipment, medical instruments for the organizational units of the UCK” with procurement number 206-23-11488-1-1-1, initiated by the contracting authority (CA) - Ministry of Health, on the 15/02/2024 has issued this:

DECISION

1. Refused, as ungrounded the complaint of EO “Interlab” SH.P.K with no.2023/980 of the 04/12/2023, related to the procurement activity “Re-tender “Supply of medical equipment, medical instruments for the organizational units of the UCK” with procurement number 206-23-11488-1-1-1, initiated by the contracting authority (CA) - Ministry of Health.
2. Remains in force the decision of the CA on the contract related to the procurement activity cited as in point I of the provision.
3. In accordance with Article 31 point 5 of the Rules of Procedure of the PRB, the complaining economic operator is confiscated the complaint fee in the amount deposited when the complaint is submitted, while the funds go to the Budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances –

On the 24.10.2023, the Ministry of Health, in the capacity of the Contracting Authority, has published the Notice for Contract B05 related to the procurement activity "Re-tender "Supply of medical equipment, medical instruments for the organizational units of UCCK", with procurement number 206- 23-11488-1-1-1.

The contracting authority has implemented an open procedure, type of contract: supply, estimated value of the contract: LOT 1: 888, 201. 00 €.

On the 14.11.2023 "Interlab" SH.P.K submitted a request for reconsideration against the aforementioned decision of CA. On 22.11.2023, the Contracting Authority rejected the request for reconsideration as unfounded.

On the 04.12.2023, PRB received the complaint from EO "Interlab" SH.P.K with no. 980/23 related to the activity "Re-tender "Supply of medical equipment, medical instruments for the organizational units of the UCCK", with procurement number 206-23-11488-1-1-1.

-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.

CA's response to the request for reconsideration of the complaining EO "InterLab": Considering that your request for reconsideration attacked the Technical Specification of the Tender dossier, it was treated as such by the Requesting Unit, specifically by biomedical professionals and professionals health.

1. Answer to claim number 1 - it is standard for all types of microscopes and it is not only for the microscope that the EO (Economic Operator) refers to, therefore this is open that any EO can offer with their products. Note: The Laser system must be No Calibration and this is not offered by only one manufacturer!

2. Answer to claim number 2 - it is standard for all types of microscopes and it is not only for the microscope that the EO refers to, therefore this is open for any EO to bid with their products.

Regarding claims number 3 and 4 - these claims do not hold, each EO that offers state-of-the-art equipment in the field of Medical Assisted Infusion (MAM) is free to offer its own products that have Equivalent or even better performance advanced compared to the required technical

specifications. Based on what was said above, the Responsible Procurement Officer has decided as in the provision.

The claims of the Complaining Economic Operator EO "InterLab" SH.P.K are presented as follows:

The complainant claims that: "The request unit - Violates Article 7 and 28 of the LPP (Favorable technical specifications) Compilation of mandatory technical specifications by the request unit for lot 1 items: 1. Inverted Microscope for ICSI/IMSI with micromanipulator and laser 2. Inverted Microscope for ICSI with micromanipulator 3. Contrast binocular phase microscope with LWD 20x objective 4. Stereo Microscope which are adapted point by point only to the manufacturer Zeiss and the octax navilase laser, also mentioning the names of the objectives which are created and produced only from this manufacturer, for example for product number 1, in the technical specifications there are some points that belong only to Zeiss: Minimum objective lens focal length 190mm: 5X/0.12 is a technical specification that belongs only to Zeiss and AK has not returned us at all for this point answers have therefore been diverted as points.

- BNK module is a technical specification that belongs only to zeiss
- Condenser for micromanipulation, minimum working distance, minimum numerical aperture 0.50 is a technical specification that belongs only to zeiss. In the technical specification of the laser, the specifications are adapted for the OCTAX NaviLase product
- No calibration is a specification that only refers to this product (OCTAX NaviLase)
- Different dynamic laser modes available: zone drilling, zone thinning, trophectoderm biopsy is a specification that directs you only to this product (OCTAX NaviLase). For product number 2 in the technical specifications there are some points that belong only to Zeiss: Minimum objective lens focal length 190mm: 5X/0.12; is a technical specification that belongs only to zeiss
- BNK module is a technical specification that belongs only to zeiss Condenser for micromanipulation, minimum working distance 400mm, minimum numerical aperture 0.50 is a technical specification that belongs only to zeiss. For product number 3 in the technical specifications there are some points that belong only to Zeiss: Ergonomic adjustable focus knob is a technical specification that belongs only to Zeiss.
- X/Y stage control, rubber surface, removable rubber cover is a technical specification that belongs only to zeiss. Color coded capacitor 0.90 / 1.25 oil PH, DF is a technical specification that belongs only to zeiss. For product number 4 in the technical specifications there are some points that belong only to Zeiss:
- 16x/15B eyepiece. is a technical specification that belongs only to zeiss.
- 45 degree inclined binocular tube is a technical specification that belongs only to zeiss.
- BNK module is a technical specification that belongs only to zeiss Condenser for micromanipulation, minimum working distance 400mm, minimum numerical aperture 0.50 is a technical specification that belongs only to zeiss. For product number 3 in the technical

specifications there are some points that belong only to Zeiss: Ergonomic adjustable focus knob is a technical specification that belongs only to Zeiss.

- X/Y stage control, rubber surface, removable rubber cover is a technical specification that belongs only to Zeiss. Color coded capacitor 0.90 / 1.25 oil PH, DF is a technical specification that belongs only to Zeiss. For product number 4 in the technical specifications there are some points that belong only to Zeiss:

- 16x/15B eyepiece. is a technical specification that belongs only to Zeiss.

- 45 degree inclined binocular tube is a technical specification that belongs only to Zeiss.

BNK module is a technical specification that belongs only to zeiss Condenser for micromanipulation, minimum working distance 400mm, minimum numerical aperture 0.50 is a technical specification that belongs only to zeiss. For product number 3 in the technical specifications there are some points that belong only to Zeiss: Ergonomic adjustable focus knob is a technical specification that belongs only to Zeiss.

- • X/Y stage control, rubber surface, removable rubber cover is a technical specification that belongs only to zeiss. Color coded capacitor 0.90 / 1.25 oil PH, DF is a technical specification that belongs only to Zeiss. For product number 4 in the technical specifications there are some points that belong only to Zeiss:

- • 16x/15B eyepiece. is a technical specification that belongs only to Zeiss.

45 degree inclined binocular tube is a technical specification that belongs only to zeiss. Article 20 Paragraph 3" The technical specifications shall describe and define, in a non-discriminatory manner, the mandatory characteristics of the object of the contract, such as quality, performance, requirements of design, dimensions, safety, quality assurance, terminology, symbols, testing and testing methods, packaging, marking and labeling" and paragraph 4 of this Article "Specifications / TER shall be clear, accurate and precise and must not presents unnecessary restrictions, so as not to restrict competition. They must be defined so as not to create doubt about the nature of the goods, works or services requested. It also contradicts the principle of the European Union directive which is quoted in RrUOPP, Article 20. As a party with a material interest in submitting an offer for this procurement activity, we ask the request unit to modify the mandatory technical specifications for lot 1 for part of to the specifications that we emphasized, which are specifications that direct you only to zeiss products for items 1, 2, 3, 4, in order to enable competition between manufacturers for the products you are looking for/the minimum technical needs of the competition, since this is open procedure and the purpose of the Contracting Authority according to the LPP is the equal treatment of EO and participating producers to achieve the goal - the Principle of Economy. Therefore, this is achieved only when the technical terms are minimal and include several manufacturers in the market to enable maximum competition between economic operators and not when in advance, as in the case in question, it is known which manufacturer and product. With this type of restriction of participation in this public procurement activity, the winner is already predetermined who is enabled to misuse the budget of the Republic of Kosova for over 580,000.00 euros based on

market prices and top bands such as: Nikon and Olympus which are much more specialized in the field of IVF.

-Administration and evaluation of evidence-

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 07.12.2023 has authorized the review expert to conduct the initial review of the file and claims according to complaint no. 980/23, while on 22.12.2023 the report of the review expert was submitted with no. 2023/0980 with the following recommendations: "Based on the above-mentioned clarifications, the technical expert/reviewer proposes to the review panel that the complaint of the complaining EO be rejected as unfounded, while the decision of the CA remains in force".

Regarding the claims of "InterLab" SH.P.K, the review expert through report no. 2023/0980 has assessed as follows:

Introductory clarification: Procurement activity: "Re-tender "Supply of medical equipment, medical instruments for the organizational units of UCKK with no. of procurement: "206-23-11488-1-1-1", initiated by the Contracting Authority (CA) - Ministry of Health, started with the contract notice dated 24.10.2023, for which notice within the legal deadline the complainant EO submits a review request to the CA, but after the rejection of the request, then on 06.12.2023 the same submits a complaint to PRB, claiming that the CA criteria in the contract notice, namely LOT 1 technical specifications, are discriminatory and subjective. The complaining EO claims: The request unit - Violates Article 7 and 28 of the LPP (Favorable technical specifications) Compilation of mandatory technical specifications by the request unit for lot 1 items: 1. Inverted Microscope for ICSI/IMSI with micromanipulator and laser 2 Inverted Microscope for ICSI with micromanipulator 3. Contrast binocular phase microscope with LWD 20x objective 4. Stereo Microscope the same considers that AK has adapted the specifications for the manufacturer Zeiss and the Ocatax laser.

The technical expert after analyzing and reviewing the documents of the case explains that, for the Lot 1 products: 1. Inverted Microscope for ICSI/IMSI with micromanipulator and laser 2. Inverted Microscope for ICSI with micromanipulator In this two points, the CA has selected the equipment that uses the techniques with advanced which are among the newest methodologies for In Vitro Fertilization (IVF), Intracytoplasmic Sperm Injection (ICSI) and Intracytoplasmic Morphologically-Selected Sperm Injection (IMSI) and which are an essential part of each microscope. The BNK module integrates blastocyst culture and karyotyping capabilities into the IVF workflow. The combination of advanced technologies, including the BNK module, contributes to higher success rates in IVF procedures. The BNK module enhances the system capabilities of this microscope, providing a more complete and advanced approach to embryo selection and genetic screening in the context of IVF. (No Calibration) Reduced calibration needs contribute to more reliable and predictable performance, ensuring consistent and accurate results in IVF procedures, and minimizing time spent on calibration allows embryologists to focus on actual procedures leading to a streamlined workflow more efficient and potentially increasing the number of cycles that can be processed, and in these two points the complaining claims of the

complaining EO are unfounded. 3. Contrast binocular phase microscope with LWD 20x objective 4. Stereo Microscope Also, these two points do not hold these claims: The contrast binocular phase microscope provides enhanced visualization of transparent or low-contrast specimens, which is essential for observation of delicate structures in reproductive cells and tissues during IVF. The microscope is specifically designed to meet the unique requirements of IVF procedures, providing the tools necessary for the precise observation, manipulation and protection of delicate reproductive specimens. And also, CA has clarified that each EO that offers the latest technology equipment in the field of Medical Assisted Infusion (MAM) is free to offer products that have equivalent or even more sophisticated performance of world-renowned brands, and in these two points, the claims of the complaining EO are unfounded. Therefore, the reviewing/technical expert, based on the clarifications given above, assesses that the complaint of the complaining EO is unfounded and the decision of the CA remains in force.

The expertise's report has been duly accepted by all procedural parties. CA agreed with the recommendations of the review/technical expert's report, while EO did not agree with the review/technical expert's report.

The review panel has assessed that the conditions have been met to decide on this case without a hearing in the sense of Article 24 paragraph 1 of the Rules of Procedure of the PRB, taking into account that the claims of the parties and their submissions, the evidence as well as the expert's report reviewers provide sufficient data to decide on the merits of the case.

- Findings of the Review Panel -

- Procedural facts and circumstances –

On 11.07.2023, the Regional Water Company Hidromorava Sh.A. in the capacity of the Contracting Authority has published the Contract Notice B05 related to the procurement activity entitled "Supply of chemicals (gaseous and liquid chlorine) and Potassium Permanganate " with no. of procurement: "no-23-7113-1-2-1". While on 21.11.2023 CA has published B58 Notice on the decision of the Contracting Authority where it has awarded GOE "Infinit Sh.P.K" with a contract.

This procurement activity was carried out through an open procedure with the type of supply contract and with an estimated contract value of 93,960.00 €.

On the 27.11.2023, EO "Seykos Sh.P.K." submitted a request for reconsideration against the aforementioned decision of the CA. On 07.12.2023, the Contracting Authority rejected the request for reconsideration as unfounded.

On the 14.12.2023, PRB received the complaint from EO "Seykos Sh.P.K." with no. 1016/23 related to the activity "Supply of chemicals (gaseous and liquid chlorine) and Potassium Permanganate" with no. of procurement: "no-23-7113-1-2-1".

-On the preliminary review stage-

The Review Panel has found 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.

Response to the request for reconsideration: EO "Seykos" Sh.P.K. of dt. 04.12.2023 related to the procurement activity related to the procurement activity titled: "Supply of chemicals (gaseous and liquid chlorine) and Potassium Permanganate" with Proc. No.: nuk ka-23-7113-1-2-1 and internal number KRU 23 018 121. The Contracting Authority on the date 07.12.2023 has examined the requests in the following words: After examining and analyzing the request for reconsideration submitted by EO "SEYKOS" Sh.P.K., the Contracting Authority - KRU Hidromorava has ascertained that your claims are unfounded and the decision of the CA of 21.11.2023 remains in force based on the decision of the PRB No. 2023/0662 of 20.10.2023, where this decision states as follows below: The panel notes that the reasons given in the expertise report have been given detailed explanations about the content and evaluation of the claims by the review expert, without the need to describe them again. Therefore, the panel supports the explanations and justifications of the reviewing expert that the procurement activity should be re-evaluated and supports only the justification of the claim with No. ordinal I listed in the expertise report and it belongs to can be requested additional clarifications in accordance with article 72 of the LPP, while regarding the complaining statement that the EO recommended for the contract has not provided a technical specification for position no. 3 of the Pemanganat Kalium premeasure. In this regard, the reviewing expert has stated that additional information may be requested in accordance with the guidelines for public procurement. But the review panel in the EO offer recommended for contracts did not find that these technical specifications exist, therefore this claim was based because according to the aforementioned guide in article 10 it is said that when the technical specifications and catalogs for the offered products are missing then the tender must be rejected. : However, the review panel to be completely sure about this finding since the technical specifications are in English and the review panel may miss some information, then it obliges the CA to verify the other two catalogs offered for two positions, if eventually there is a technical specification for position no. 3 of the Pemanganat Kalium pre-measurement, if so, then additional information should be requested, if not, the tender should be rejected without requesting additional information".

The claims of the complaining economic operator "Seykos Sh.P.K", are presented as follows:
First claim (I): "1 1. The Contracting Authority, in this case Kompania Rajon Ujjejestis Hidromorava SH.A, dated 12.07.2023, has initiated the tender entitled: Supply of chemicals (gaseous and liquid chlorine) and Potassium Permanganate, in which case we as an interested EO participated and submitted our best offer within the time limits provided by the Contract Notice. 1 2. The Contracting Authority, dated 25.08.2023 15:15, had awarded our company Seykos Sh.p.k with the contract as the responsible EO with the cheapest price. 1 3. Meanwhile, after this date GOE Infinit Sh.P.K; Lighthouse; Elogistics L.L.C has submitted a request for reconsideration and then a complaint to the PRB, after which the decision had returned the case to Re-Evaluation. 1 4. The Contracting Authority, acting contrary to the LPP, RRPP 001.2022

and the PRB Decision dated 20.10.2023, has re-evaluated the offers and dated 21.11.2023, and has awarded a contract. In addition, during the Revaluation of the offers, the CA did not take as a basis the decision of the PSH PRBO no. 2023/0662, in accordance with Article 72 of the LPP and Article 38 of Regulation 01/2022 to request additional clarifications from us as EO. 1 5. He took this action on 04.12.2023, only after sending the Request for Reconsideration from our side to the CA, where the same sent the standard letter of request for clarification of the tender through email and the electronic system of tenders. 1 6. With the publication of the notice for awarding the contract dated 21.11.2023, the CA initially violated Article 60 Criteria for awarding the contract, as they recommended for contracts a GOE that did not have the cheapest competitive price, and that the second [The recommended GOE is not responsible according to the requirements of the tender dossier. 1 7. We, as an EO interested in this tender, have submitted a responsive offer to each request of the tender file in the first evaluation, the same should be treated in the re-evaluation by the CA, and in the event that the CA will there was a need for additional information to clarify any request or document which was not requested in TD, then according to LPP article 72 and according to the opinion of the Expert and the review panel, he would have to ask us for additional information, because we as EO have completed and submitted the Declaration of fulfillment of the technical specifications for the offered goods, which is part and request of the Tender dossier, respectively TDS.act to a GOE which is technically, administratively and professionally responsible.1 8. The Contracting Authority has eliminated EO Seykos Sh.p.k with the reasoning, we are quoting; Your tender has been rejected for the following reasons: In the tender file and in the contract notice, there was a request that the Economic Operator (Tender), with his tender, must submit scanned documentation of the manufacturer, through which the technical data can be verified of the required materials offered in this tender and to prove with catalogs, manuals or brochures of the materials prepared by the manufacturer, scanned. The Economic Operator Seykos Sh.P.K has not provided a technical specification for position no. 3 of the Pemanganat Kalium pre-measurement, in article 10 it is stated that when the technical specification and catalogs for the products offered are missing, the tender must be rejected without requesting additional information. Referring to all that was said above, the bid evaluation and examination commission considers you responsible. 1 8. The Contracting Authority has eliminated EO Seykos Sh.p.k with the reasoning, we are quoting; Your tender has been rejected for the following reasons: In the tender file and in the contract notice, there was a request that the Economic Operator (Tender), with his tender, must submit scanned documentation of the manufacturer, through which the technical data can be verified of the required materials offered in this tender and to prove with catalogs, manuals or brochures of the materials prepared by the manufacturer, scanned. The Economic Operator Seykos Sh.P.K has not provided a technical specification for position no. 3 of the Pemanganat Kalium pre-measurement, in article 10 it is stated that when the technical specification and catalogs for the products offered are missing, the tender must be rejected without requesting additional information. Referring to all that was said above, the bid evaluation and examination commission considers you responsible. This also applies when the contracting authorities re-evaluate the procurement procedure in order to correct erroneous decisions and when a re-evaluation is made as a result of a PRB decision, including a re-evaluation order. A decision to re-evaluate the selection of bidders or the award of the contract does not mean a change in the

initial result" and - Article 40.12 which clarifies "The tenderer will not be disqualified or excluded from the procurement procedure based on any requirement or criterion that is not specified in the contract notice / tender file. 2.3. Therefore, CA cannot eliminate our offer based on requirements not specified in the contract notice and the tender file. In addition, we as EO have submitted the "Declaration of fulfillment of technical specifications in accordance with the request of the CA" which means that the CA has sufficient basis for evaluating our offer, as well enough legal, if he had seen fit, to request additional information about product no. 3 whose existence is fixed, before the deadline for submitting tenders, and can be objectively verified. 2.4. We, as a participating and interested EO, dated 21.11.2023, after receiving the notification on the decision of the CA, in accordance with Article 10 of the LPP, have requested access to the documents of the GOE awarded with the contract, in which case the CA during the award of access has acted contrary to this Article, since it did not give us full access and did not provide us with the required documentation except for the one classified as Business Secret - Confidential. Proof of requests for access to documents and requested documents. In response to these requests, we have received an email which we have attached to the complaint. 2.5. As can be seen, apart from the notice on the decision of the CA, in the electronic system we cannot see any of the other documents requested by the CA, and seeing the negligence of the CA to provide these documents, we as EO are interested in this procurement activity, using our right to documents that are not considered business secrets, we sent the request through the electronic tender system, which the CA has opened and has not returned any response. 2.6. We, as EO, during the access to the Documents, with the USB, have only accepted a part of the documentation given by the CA, we have attached a screenshot to the complaint. 2.7. From the analysis of the documents, we noticed that the CA acted contrary to Article 69 of the LPP and Article 28. Request No. 5 of the TD. The Economic Operator (Tenderer), with his tender, must submit scanned documentation of the manufacturer, through which the technical data of the required materials offered in this tender can be verified; - Evidence for request No. 5. Catalogs, manuals or brochures of materials prepared by the manufacturer, scanned. 2.8. The documentation provided by the GOE recommended for contracts for this point are also in contradiction with the technical specification, since they do not meet the requirements of the CA. In TD, respectively the mandatory Technical Specification, CA has requested: (quote) Annex 1 - Mandatory Technical Specifications 1. Chlorine gas Cl₂ 99.8% CO₂ 0.1% x Humidity 367 ppm 2.9. As can be seen, the purity of chlorine or active chlorine is required to be 99.8% Cl₂. Meanwhile, the recommended GOE has offered the catalog with technical specifications for Chlorine Gas; Technical specifications stamped and signed by the manufacturer with active chlorine: Chlorine content: min 99.5% v/v, which is contrary to the request of DT and the technical specification. 2.10. Likewise, the SAFETY DATA SHEET offered by the recommended GOE is questionable in its content and the same does not match the SAFETY DATA SHEET, which can be downloaded from the manufacturer's website at the link: https://www.vinyl.hu/en/Chemical_products_and_solutions/Chlorine_gas.html

3. Sodium hypochlorite (liquid chlorine) CA for this product had requested: Available chlorine content. ...14% minimum by weight Specific gravity at 25°C 1.170 minimum Total alkali as NaOH...1.2% minimum by weight Bromate content maximum (BrO₃⁻)....0.035% by weight Chlorate content maximum (ClO₃⁻) 0.25% by weight 2.11.

So here too, as you can see, CA has requested that active chlorine be at least 14%. Meanwhile, the GOE recommended for contracts has provided the following documents; Safety Data Sheet Sodium Hypochlorite Solution 12.5% active chlorine 2.12. And the SPECIFICATION Sodium hypochlorite 150 g/l, which are contrary to the requirements of the CA, the tender dossier and the technical specification! Recalling that the products in question are used for the purification and preparation of drinking water for the Anamorava region, which includes at least 3 municipalities, this action is directly related to the health and safety of the residents of these areas, CA should to be very accurate and rigorous in terms of completing the technical specifications for the requested products.

Referring to the claims as above, the complaining economic operator considers that the Contracting Authority acted in violation of Article 7, 10, 59, 60, 69, 72 of the LPP and RRPP 001.2022. Proposing that the PRB Approve, as based, the complaint of EO "Seykos" Sh.P.K. and Cancel, the notice and decision of the CA dated 21.11.2023 and return the matter to Reassessment.

-Administration and evaluation of evidence –

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 18.12.2023 has authorized the review expert to do the initial review of the file and claims according to complaint no. 1016/23, while on 28.12.2023 the report of the review expert was submitted with no. 2023/1016 with the following recommendations: Based on the above-mentioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO be rejected as unfounded and that the CA's decision to award the contract of dt. 21.11.2023.

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 complainant's submissions and documents, the contracts 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.

Regarding the claims of EO "Seykos SH.P.K." review expert through report no. 2023/1016 has assessed as follows: First finding (I): "The structure of the complaint prepared by the complaining economic operator is not divided into complaint claims, but for practical purposes of the expert report we have listed the complaint claims as follows. Appeal claim no. 1, of the complaining economic operator concerns the elimination of the complaining economic operator during the re-evaluation process as an irresponsible operator on the grounds that he did not provide a catalog and technical specifications for product no. 3, of potassium permanganate premass. This appeal claim was also addressed in the Decision of the P.SH dated 06.09.2023 no. 2023/0662, where the review panel requests from the CA - Regional Water Company Hidromorava Sh.A to verify the other two catalogs offered for the two positions if eventually there is a technical specification for the pose, no. 3 of Paramase Permnagant Kaliumi, if additional information is requested, if not, reject the tender without requesting additional information. AK-Regional Water Company Hidromorav Sh.A during the re-evaluation phase and

through the standard letter for the eliminated tenderer dated 21.11.2023 has declared the complaining economic operator as irresponsible with the following reasoning: Economic Body Seykos Sh.P.K has not provided a technical specification for the position in the Pemanganat Kalium premass, in article 10 it is stated that when the technical specification and the catalogs for the products are missing offered then the tender must be rejected without requesting information. Based on the above clarifications of the Regional Water Company Hidromorava Sh.A., the re-evaluation report, the standard letter for the eliminated tenderer, during the re-evaluation phase, the CA did not encounter technical specifications in the catalogs provided by the complaining economic operator for the product in the position no. 3. In this way, the claim of the complaining economic operator that the CA violated Article 72 of the LPP and did not take as a basis the Decision of the PSH no. 2023/0662 regarding this appeal claim does not stand because the review panel through decision no. 2023/0662 clearly stated that "if there is a technical specification for position no. 3 of the Pemanganat Kalium pre-measurement, if so, then additional information should be requested, if not, the tender should be rejected without requesting additional information". CA in this case acted according to the decision of the review panel no. 2023/0662 regarding this appeal claim. Based on the above explanations, the documents of the case, the revaluation report, the decision of PSH no. 2023/0662 dated 06.09.2023, we find that this claim is unfounded." Second finding (II): "Complaining claim no. 2, has to do with the fact that the complaining Economic Operator was not allowed access to the tender documents according to Article 10 of the LPP. The complaining economic operator dated 21.11.2023 after receiving the Notice on the Decision of the CA requested access to the GOE tender documents awarded with the contract, but according to the Economic operator complainant has been granted limited and incomplete access by not providing you with all the required documentation. We emphasize that according to Article 10 of the LPP, exactly paragraph 3 of this article, article quote: "Upon written request from any interested party, the contracting authority provides reasonable access to the party that requests access to the data described in the paragraph 1 and 2 of this article, except for business secret information which is certified as such by a relevant authority that are 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 notice on the results of the design competition, (ii) on the date of contract award in case of tenders according to Article 37 of this law, or (iii) if the procurement activity has been formally canceled or otherwise ended before the advance payment 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". We note that some of the requests for access to documents are also published on the E-procurement website for this procurement activity. Based on the above paragraph, according to the LPP, we recommend to the CA - Regional Water Company Hidromorav Sh.A that access to the tender documents should be allowed in full harmony with paragraph 3 of article 10 of the LPP Means for the promotion of Transparency. From the documents of the case, it appears that some of the documents requested by the complaining economic operator via email dated 23.11.2023 are not in the list of documents included by GEO recommended for the contract according to Annex 3 Request for confidentiality dt. 24.07.2023. Based on the above

clarifications, the documents of the case, the revaluation report, Annex 3 to the Request for Confidentiality, we find that this complaining claim is partially grounded.

Third Committee (III): "According to the complaining economic operator, the offer recommended for the award of the contract after the re-evaluation of the offers does not meet some of the technical specifications required by the Regional Water Company Hidromorava Sh.A in the tender file such as Chlorine Gas, C12 99.8% and in Hypochlorite Sodium active chlorine 14% minimum by weight. On the basis of the manufacturer's catalog provided by the GOE recommended for the contract, it can be seen that Chlorine content: min 99.5% is mentioned and it does not mean that the 99.8% value cannot be reached as requested in the tender file by the contracting authority because the value was offered minimal. It is also seen from the manufacturer's catalog that it is written that the Product is according to the EN 937 standard - Chemicals used for the treatment of water intended for human consumption - Chlorine. Quotes from the manufacturer's catalog: "The product is according to the EN Standard 937- Chemicals used for treatment of water intended for human consumption-Chlorine" Regarding the available chlorine content, where a minimum of 14% by weight is required, it can be seen from the catalog of the manufacturer exactly on p. 6 in point 9.1 of the manufacturer's catalog results that the available chlorine content is offered with 12.5 +- 2.5, so in this way the value offered in +- turns out to be within the parameters required by the contracting authority in the tender dossier. We note that it remains the responsibility of the Contracting Authority during the execution of the contract to carry out continuous supervision of the supplies if the parameters required by the contracting authority are being met according to the technical specifications in the tender dossier and the supplies are made in harmony with the values requested in the tender dossier. Based on the above clarifications, the documents of the case, the re-evaluation report by the CA, the technical specifications of the tender dossier, the GOE's offer recommended for awarding the contract, we find that this complaining claim is unfounded. Based on the description made above according to the documents of the case, the new evaluation report, the tender dossier, the Decision of the review panel no. 2023/0662 dated 06.09.2023, the review expert recommends the review panel to remain in force the Notice on the Decision of the CA dated 21.11.2023 for contract award.

The expertise's report has been duly accepted by all procedural parties. The CA declares that it does not agree with the recommendations of the review expert's report, as well as the EO does not agree with the report of the review expert.

The review panel has assessed that the conditions have been met to decide on this case without a hearing in the sense of Article 24 paragraph 1 of the Rules of Procedure of the PRB, taking into account that the claims of the parties and their submissions, the evidence as well as the review expert's report provide sufficient data to decide on the merits of the case.

-Findings of the Review Panel –

The Review Panel, analyzing the documents of this case and the actions taken by the parties, their statements and the evidence administered during the course of this procurement activity,

considers that the findings of the review expert and his opinion are acceptable and that the Review Panel rightly considered his Report when making the decision.

In this particular case, from the review expert's report, the evidence presented by the complaining economic operator, the documents of the tender file as well as from other circumstantial evidence, it has been found that all the complaining claims are unfounded. Based on the factual situation established as above, the Review Panel has given full confidence to the findings and recommendations in the review expert's report. Consequently, the Review Panel has found that all the claims of the complaining economic operator are unfounded. The review panel, after reviewing the case documents, reviewing the complaining claims of the complaining EO, the findings, concrete analysis and recommendations of the experts reviewing the declaration of the parties in the procedure, discussions and sifting the evidence as a whole during the main review session, has asked the experts to for these findings, further elaborations and explanations should be offered for the purpose of meritorious decision-making because we are dealing with a sensitive nature and the public health of citizens. So, the experts have offered their explanations with dt. 29.12.2023 where they stood behind the reasoning that the complaining claims are unfounded and offered explanations for which the review panel trusted them.

Therefore, the Review Panel decides to give the right to the CA and to leave in force the decision of the CA, this decision which was issued by an evaluation commission which is supposed to be professional and also responsible according to article 59.1 cited all the members of the Commission Appraisers take full individual responsibility for the evaluation of the offer. 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 return of a procurement activity without a contested legal basis in re-evaluation, even more so in case the complainant turns out to be irresponsible, is not in harmony with Article 1, of the LPP, according to which, the purpose of this Law is among others , cited: "...to ensure the integrity and responsibility of public officials, civil servants and other persons who perform or are involved in a procurement activity by requiring that the decisions of such individuals and the legal and factual basis for the decisions of such, not to be influenced by personal interests, to be characterized by non-discrimination and a high degree of transparency, and to be in accordance with the procedural and essential requirements of this law".

Therefore, acting on the basis of the basic principles of the procurement review procedures, which, among other things, are specifically sanctioned by the provision of Article 104 of the LPP and at the same time analyzing the documents of this case in relation to the facts and circumstances of described as above, and especially paying due attention to the nature and purpose of the complaining claims, the Review Panel took into consideration all the statements of the complainant, the acts and actions taken by the CA, the review expert's report and analyzed

them with take care of all the papers of this matter and considers that the complaining assertion of the complaining EO is unfounded and rejected, as given in the findings of the panel.

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.

Therefore, acting in accordance with the powers cited above and article 104 paragraph 4 related to paragraph 1, according to which the procurement review procedure will be implemented and carried out in a fast, fair and non-discriminatory manner, which has aimed at the legal and effective resolution of the case, as well as referring to Article 117 of the LPP, and in the evidence presented above, the Review Panel decided as in the provision of this decision.

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 HEALTH;**

1x1 EO – **“Interlab” SH.P.K;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.