



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

Psh. No.0262/25

The Review Panel, appointed by the Acting President of the Procurement Review Body (PRB), pursuant to Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosovo (Law No. 04/L-042, supplemented and amended by Law 04/L-237, Law 05/L-068, supplemented and amended by Law 05/L-092) composed of Isa Hasani– Individual Panelist, deciding upon the complaint of the Economic Operator (EO) “Cactus Sh.a, against the Decision to award a contract or a design competition related to the procurement activity “Maintenance and advancement of Medlis and SMSN systems” with procurement number; 206-25-90-2-1-1, initiated by the contracting authority (CA) - MINISTRY OF HEALTH, on the 11.06.2025, has issued this:

DECISION

1. Refused, as ungrounded the complaint of EO “Cactus Sh.a, with no. 2025/0262, dated 11.04.2025, regarding the procurement activity “Maintenance and advancement of Medlis and SMSN systems” with procurement number; 206-25-90-2-1-1, initiated by the contracting authority (CA) - MINISTRY OF HEALTH.
2. Remains in force, B58 Notice on the Decision of the Contracting Authority - MINISTRY OF HEALTH, for the procurement activity "Maintenance and advancement of Medlis and SMSN systems", with procurement number; 206-25-90-2-1-1.
3. In accordance with Article 31, point 5, of the Rules of Procedure of the PRB, the complaining economic operator EO "Cactus" Sh.a. shall have the complaint fee confiscated in the amount deposited upon filing the complaint, while the funds shall be transferred to the Budget of the Republic of Kosovo.

REASONING

-Procedural facts and circumstances -

On the 15.01.2025, the MINISTRY OF HEALTH, acting in the capacity of the Contracting Authority, has submitted the Contract Notice B05, for the procurement activity “Maintenance and advancement of Medlis and SMSN systems” with procurement number 206-25-90-2-1-1.

On the 24.03.2025, the CA has published the Notice on the Decision of the Contracting Authority, by which it has awarded the contract to EO Data ProgNet Sh.P.K., for the procurement activity “Maintenance and advancement of Medlis and SMSN systems” with procurement number 206-25-90-2-1-1.

On the 27.03.2025, EO Cactus Sh.a. submitted a request for reconsideration, which was rejected as unfounded by the Decision of the CA dated 04.04.2025.

On the 11.04.2025, EO Cactus Sh.a. submitted a complaint to the PRB, which was recorded with protocol number 2025/0262, challenging the above-cited Decision of the CA, for the award of the contract..

-On the preliminary review phase -

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

The claims of the complaining economic operator Cactus Sh.a are presented as follows:

Dear members of the PRB, Through this statement, we would like to provide a summary of the violations committed by the Contracting Authority in this specific case. As you can also verify from the evidence attached to this file, on 24.03.2025 we received the notification of cancellation from this procurement procedure, expressing our dissatisfaction with this notification and our elimination from this procedure, on 27.03.2025 we filed a request for review with the Contracting Authority, in which we presented all the evidence and testimony that proves that the Contracting Authority acted in violation of the Law on Public Procurement and the relevant sub-legal acts. On the 04.04.2025, we received the decision from the Contracting Authority, where we were notified that our request for reconsideration was rejected in its entirety. What is most worrying in the reasoning behind this decision is that the Contracting Authority has made no attempt to provide convincing arguments for the claims we raised. For example, regarding the complaint claim that the staff should be separate for each lot, the Authority has not provided any justification for this, although, as we have also noted in the request for reconsideration, in the tender dossier and in the contract notice it is not specified at any point that the staff cannot be the same for both lots. Even if it were so, this would be an unprecedented request and contrary to

legal norms. In the other response to the claim of the economic operator regarding the project analyst, without justifying it at all, it is stated, among other things, that it is the unanimous opinion of the DSISH that the diploma of the project analyst, Ms. Valentina Haziri, does not meet the criteria set out in the tender dossier. This assessment is highly subjective. On the contrary, we as an economic operator have provided facts and evidence that prove that Ms. Haziri meets all the criteria required in the tender dossier and in the contract notice. In the following, we will present our detailed objections, which are based on the Procurement Law and the relevant sub-legal acts. We will also provide facts and arguments that prove that the decision of the Contracting Authority is in direct contradiction with the legislation in force and is unreasonable towards our company. First point of elimination and complaint claim

Technical and professional capacity; Clarification regarding the fulfillment of this point by the EO: Allow us to clarify that we have fully met the criteria that the Contracting Authority (CA) has considered as unmet. Specifically, we have offered the project analyst, Ms. Valentina Haziri, who fully meets the requirements set out in the tender dossier and the contract notice. As required in the tender dossier and the contract notice, for Lot 1, point b.1 (one), "Project Analyst - Graduate Engineer in Computer and Telecommunications or Master of Science or Computer Engineering, with a minimum of 5 years of post-graduation work experience as a software systems analyst (developed on the Microsoft.NET platform with SQL Server)," we have offered a candidacy that meets all the requirements for this position. Ms. Haziri is a graduate in the required field and also has a Master's degree, which is appropriate for the positions required in this project. We have provided full evidence, including her Bachelor and Master degrees, as well as numerous certifications (which are) in the field of Project Analysis and Management as well as many years of experience (more than the required (5 years)), not only local expertise, but also in the international sphere (Projects from the US, Switzerland, etc.) which meet the criteria required in the tender dossier and the contract notice. If we examine the tender dossier requirement, it specifies the possibility to offer a Master in Computer Science or Engineering. Our candidate is a Master in Science, with advanced studies in the field of Information Technology, which directly matches the requirements of the position. The differences that academic titles may have between institutions are natural, but the content and field of studies are almost the same, with some negligible differences that do not affect the fulfillment of the tender requirements. • Both titles represent fields of technological engineering, • Both titles include elements of information technology and its use for the development and management of systems and infrastructures, • Both titles include the development and management of technological systems and networks that include information and telecommunications, • Both titles relate to the study and application of technological systems, whether at the level of infrastructure, software or communication systems. In this case, we consider that the contracting authority had the opportunity to request additional or complementary information to clarify any uncertainty regarding the compatibility of the academic titles, in order to avoid misinterpretation of the documentation. Considering the fundamental principles of the Public Procurement Law, which include the PURPOSE of the effective and fair execution of the contract, we believe that

any minor deviation in this case would not affect the achievement of the purpose of the contract, the most efficient, transparent and fair way of using public funds for the contracting authority. This would enable a successful completion of the tender process without affecting the quality of the contract execution. Also, during the assessment by the CA, Article 59, Examination, Evaluation and Comparison of Tenders, specifically points 2 and 4, was completely disregarded, which states that: 2. The contracting authority may in writing request from a tenderer to provide a written clarification on any aspect of its tender, in order to carry out the examination, evaluation or comparison of tenders. No material changes to any aspect of the tender shall be requested or accepted by the contracting authority or offered by a tenderer. 4. The contracting authority shall consider a tender as responsive only if the tender in question complies with all the requirements set out in the contract notice and in the tender dossier. Notwithstanding the foregoing, the contracting authority may consider a tender as responsive if: (i) it contains only errors or inaccuracies which can be corrected without changing the material condition or aspect of the tender in question, or (ii) it contains only minor deviations which cannot cause material changes or deviations from the characteristics, conditions, and other requirements set out in the contract notice and in the tender dossier; provided that any such deviations are quantified, as far as possible, and are taken into account when evaluating and comparing tenders. Second point of elimination and complaint claim Justification of elimination on this point by the CA: You have offered the same staff for both lots even though in the DT the required criteria for the staff engaged in this project were separate, and as such it does not meet the required criteria in the TDS. Clarification from the EO: In this specific case, allow us to clarify that this represents an unfair assessment and contrary to the criteria set out in the tender dossier and the contract notice. We as an economic operator have provided the staff as requested for both lots, respecting the requirements of the tender documentation. However, nowhere in the tender dossier is it specified directly and categorically that the same staff cannot be provided for both lots. On the contrary, in the tender dossier there is no clear requirement that prohibits the engagement of the same staff for more than one lot, nor a separate definition of the criteria for the staff to be engaged in each lot. This assessment and reasoning made by the Contracting Authority is in direct contradiction with the Law on Public Procurement (LPP), especially with Article 59, which clearly defines the procedure for the "Examination, Evaluation and Comparison of Tenders". This article requires that the procedures be clear, predictable and straightforward at every stage of the procurement. The elimination of the economic operator at this point is unacceptable and unreasonable, because it is not based on any legal basis, and is the result of an inconsistent interpretation of the requirements of the tender documents. Furthermore, the Contracting Authority has not fully and accurately taken into account the criteria and requirements that it itself has set out in the tender documents and the contract notice. This action is a serious violation of the principles of the LPP and has created an unclear, unreasonable and tendentious assessment of our offer. In this way, the decision of the contracting authority is unfounded and does not reflect a fair and transparent assessment of our offer. Provisions violated by the contracting authority Article 1 - Purpose 1. The purpose of this law is to ensure the most efficient, transparent and fair use of public funds, public resources and all other funds and resources of contracting authorities in Kosovo by determining the conditions and rules to be applied, the procedures to be followed, the rights to be respected and the obligations to be fulfilled by persons, economic operators, undertakings,

contracting authorities, works concessionaires and public bodies that carry out, are involved in, participate in or have an interest in procurement activities or that are involved in or have to do with such funds and/or resources. 2. This law also aims to ensure the integrity and accountability of public officials, civil servants and other persons who carry out or are involved in a procurement activity by requiring that the decisions of such individuals and the legal and factual basis for such decisions are not influenced by personal interests, are characterized by non-discrimination and a high degree of transparency, and are in accordance with the procedural and substantive requirements of this law. 3. This law aims to promote the creation of a professionalized institutional culture, uninfluenced by material interests, impartial, ethical, among official persons who carry out or are involved in a procurement activity, by requiring such persons to behave in accordance with the principle of the most efficient, cost-effective, transparent and fair use of public funds and resources, while strictly adhering to the essential procedures and conditions of this law.

Article 6 - Economy and Efficiency In the specific case, the economic operator strongly believes that the contracting authority has not complied with this article, specifically point 1, which states that: 1. All contracting authorities are obliged to ensure that public funds and public resources are used in the most economical manner, taking into account the purpose and subject matter of the procurement.

Article 7 - Equal Treatment/Non-Discrimination In the specific case, the economic operator strongly believes that the contracting authority has not complied with this article, specifically points 1,2,4 which state that: 1. The contracting authority shall treat economic operators in an equal and non-discriminatory manner and shall act in a transparent manner. 2. The contracting authority shall not carry out any aspect of the procurement activity in a manner that reduces or eliminates competition between economic operators or that discriminates to the detriment or advantage of one or more economic operators. 4. The contracting authority shall not create or impose, and shall take all necessary measures to prevent the creation or imposition of, circumstances or conditions resulting in territorial, physical, material, personal or organisational discrimination between economic operators.

Article 59 - Examination, Evaluation and Comparison of Tenders, points 2 and 4 of this article In the specific case, the economic operator strongly believes that the contracting authority has not complied with this article, specifically points 2 and 4, which states that: 2. The contracting authority may request in writing from a tenderer to provide a written explanation on any aspect of its tender, in order to carry out the examination, evaluation or comparison of tenders. No material changes to any aspect of the tender shall be requested or accepted by the contracting authority or offered by a tenderer. 4. The contracting authority shall consider a tender as responsive only if the tender in question complies with all the requirements set out in the contract notice and in the tender dossier. Notwithstanding the foregoing, the contracting authority may consider a tender as responsive if: (i) it contains only errors or inaccuracies which can be corrected without changing the material condition or aspect of the tender in question, or (ii) it contains only minor deviations which are not liable to cause material changes or deviations from the characteristics, conditions and other requirements set out in the contract notice and in the tender dossier; provided that any such deviation is quantified, as far as possible, and taken into account in the evaluation and comparison of tenders.

Article 72 – Documentation and additional information The contracting authority may invite economic operators to complete or clarify the certificates and documents submitted in accordance with Articles 65-71 of this Law.

Response to the request for reconsideration:

We consider that your complaint claims are unfounded as such. The decision of the CA is rejected and remains in force. Regarding your claims, it is the unanimous opinion of the DSISH officials that the diploma offered for the project analyst Ms. Valentina Haziri - Master in Project Management, does not meet the criteria required in the DT. In the tender document, in the section "REQUIREMENTS for technical capacity", it is defined as a mandatory criterion: a. 1 (one) Project Analyst 4 Engineer graduated in the field of Computer Science with Telecommunications or with a Master's degree in Computer Science or Engineering, with a minimum of 5 years of work experience after graduation in the role of software systems analyst (developed on the Microsoft.NET platform with SQL Server). Required evidence: Copy of diploma CV signed by the engineer Declaration for the appointment of the Project Analyst Employment contract with the employer or agreement for engagement in this project The EO, in the submitted documentation, has offered as a project analyst a candidate with a "Bachelor of Information Technology and Systems" and "Master in Project Management" degree, which do not meet the required academic criteria set out above. It is also required that the candidate has at least 5 years of work experience after graduation in the capacity of an analyst of software systems developed on the Microsoft .NET platform with SQL Server. From the review of the submitted CV, it appears that the candidate does not possess the required experience in this specific field. (pages 31- 34) We reconfirm the assessment committee's finding that your offer is irresponsible for both Lots, since In Technical and Professional Capacity: Requirement for Lot 1 (one) Project Analyst Graduated Computer Engineer with Telecommunications or Master of Science or Computer Engineering, with a minimum of 5 years of work experience after graduation in the capacity of a software systems analyst (developed on the Microsoft platform (.NET with SQL Server). You have offered for Project Analyst Ms. Valentina Haziri who has offered a bachelor's degree in information technology as well as a master's degree in project management, a degree which does not meet the criteria required in the Tender Document. You have offered the same staff for both Lots even though in the Tender Document the criteria required for the staff engaged in this project were separate, and as such does not meet the criteria required in the Tender Document.

Based on Article 111 paragraph 5 in connection with Articles 113 and 114 of the LPP, the Procurement Review Body on 14.04.2025 authorized the review expert to conduct the initial review of the file and claims according to the complaint with no. 2025/0262, while on 24.04.2025 the review expert's report with no. 2025/0262 was submitted, 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 is rejected as unfounded and that the decision of the CA remains in force.

The expertise report has been duly accepted by all procedural parties. The CA agreed with the recommendations of the review expert's report, while the EO disagreed with the review expert's report.

- Administration and evaluation of evidence

In order to correctly establish the factual situation, the review panel has administered as evidence the Report of the Review Expert, the submissions and documents of the complaining economic operator, the submissions and documents of the Contracting Authority, the relevant documents related to the procurement activity as well as all evidence proposed by the procedural parties.

Regarding the claims of EO Cactus Sh.a., the review expert through report no. 2025/0262, has assessed as follows:

Additional clarification: The complaining EO has filed a complaint with the PRB as a party dissatisfied with the decision of the CA regarding this procurement activity. The claims raised in the complaint have been reviewed by the expert and the same has provided a response as follows.

Claim 1

The complaining EO claims that: "We have fully met the criteria that the Contracting Authority (CA) has considered as unmet. Specifically, we have offered the project analyst, Ms. V.H., who fully meets the requirements set out in the tender dossier and the contract notice. As required in the tender dossier and the contract notice, for Lot 1, point b.1 (one), "Project Analyst - Graduate Engineer in Computer and Telecommunications or Master of Science or Computer Engineering, with a minimum of 5 years of post-graduation work experience as a software systems analyst (developed on the Microsoft .NET 5/4 platform with SQL Server)," we have offered a candidacy that meets all the requirements for this position. The differences that academic titles may have between institutions are natural, but the content and field of studies are almost the same, with some differences "negligible that do not affect the fulfillment of the tender requirements."

The review expert explains that in the tender dossier, in the section on technical and professional capacity, point b.1, it is requested that participating operators have engaged a project analyst - a graduate computer engineer with telecommunications or a Master of Science or computer engineering with 5 years of work experience. The CA has eliminated the complaining EO in relation to this request, explaining that for the aforementioned request, a bachelor's degree in information technology and a master's degree in project management were offered, which do not meet the criteria of the dossier.

After the claim raised, the expert has analyzed the offer of the complaining EO regarding this requirement of the tender dossier and further clarifies that in the offer of the complaining operator (point 13. Proposed staff) for the position - Project Analyst, two diplomas were submitted for Ms. V.H., the first diploma of basic studies through which the Bachelor's degree in information technology and systems was obtained and the second is the Master's degree in project management. Regarding the diploma of basic studies, we clarify that this diploma is not in accordance with the requirements of the tender dossier because it cannot be considered the same direction as computer engineering, no matter how similar they may seem at first glance, these two directions have differences with each other and that the diploma submitted can be considered similar to a computer engineer but cannot be considered the same as a graduate

computer engineer, as was the requirement of the dossier. On the other hand, it is obvious that one cannot obtain a master's degree in a field completely different from the one sought. Therefore, at this point we consider that the claim raised is unfounded.

Claim 2

“The second reason for elimination has to do with the staff engaged. We as an economic operator have provided the staff as requested for both lots, respecting the requirements of the tender documentation. However, nowhere in the tender dossier is it specified in a direct and taxing manner that the same staff cannot be provided for both lots. On the contrary, there is no clear requirement in the tender dossier that prohibits the engagement of the same staff for more than one lot, nor a separate definition of the criteria for the staff to be engaged in each lot.”

With the claim raised, the review expert has analyzed the requirements of the tender dossier regarding technical and professional capacity, namely the requirements submitted by the CA regarding the staff to be engaged and explains that in the FDT requirements regarding the staff, special requirements have been submitted for the staff to be engaged in Lot 1 and Lot 2. Where for Lot-1 six employees have been requested while for Lot-2 four others. If we take into account Annex 1 - Mandatory technical specifications, we see that this annex summarizes the specific modules and general objectives for both lots, activities that must be carried out at the same time. While the requirements for the staff of both Lots have been separate and distinct, then the expert's opinion is that the participating operators should have provided the necessary documents for each lot separately regarding the professional staff according to the requirements of the dossier. At this point we consider that the claim raised by the complaining EO is unfounded.

Therefore, from the explanations given above, we clarify that the claims that certain provisions of the LPP have been violated do not stand.

- Findings of the Review Panel -

The Rules of Procedure of the Public Review Body, which is published on the PRB website, with Article 20, paragraph 2 of the Regulation, sets out the requirements for the Contracting Authority and the Economic Operator, that all information and notices must be submitted and communicated through the public communication platform, if this is possible.

Based on the documents of this case, the Panel considers that regarding the issue in the concrete case, there is no need to convene a hearing with the parties, within the meaning of Article 24 paragraph 1 of the PRB Rules of Procedure, taking into account the fact that the claims of the parties and their submissions, the evidence and the report of the review expert provide sufficient data to decide on the merits.

The Review Panel assesses that the Review Expert Report, drafted at the request of the Panel regarding the dispute in this case of public procurement activity, contains the essential elements of such a document as foreseen by the provision of Article 113 in conjunction with Article 114 of the LPP, according to which the expert is required to review all procurement documentation, including all complaining claims and to provide the Panel and all parties to the dispute with an

independent and professional assessment of the procurement activity and the validity of the complaining claims.

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

According to the above, the review expert has professionally and objectively treated the claims of the complaining economic operator EO "Cactus" Sh.a. The argumentation in the review expert's report is quite detailed, understandable and fully based on the relevant documents referring to the procurement activity. The findings in the review expert's report can be confirmed through the tender dossier as well as the documents with which the tenderers have bid. The review expert's report has assessed that the claims of the complaining economic operator EO "Cactus" Sh.a. are unfounded.

In the specific case, from the report of the review expert, the evidence presented by the complaining economic operator, the documents of the tender dossier and other evidence of the case, it was found that the complaining claims are unfounded, presented against the decision of the contracting authority for the procurement activity. Based on the factual situation established above, the Review Panel has given full confidence to the findings and recommendations in the report of the review expert. Consequently, the Review Panel has found that the claims of the complaining economic operator are unfounded. Therefore, the Review Panel after administration and evaluation of evidence, a full determination of the factual situation, relying on the LPP as the applicable material law, after reviewing the complaint claims, taking into account all the case files and the recommendations of the review expert, has found that the complaint of the economic operator should be rejected as unfounded and remains in force, the Decision of the contracting authority for awarding the contract to the economic operator EO "Data ProgNet" Sh.P.K, for the procurement activity. Consequently the Review Panel has decided to confirm, the Notification on the Decision of the Contracting Authority, Ministry of Health, regarding the procurement activity titled "Maintenance and advancement of Medlis and SMSN systems", with procurement number; 206-25-90-2-1-1.

Therefore, referring to Article 104.1 of the LPP, according to which it is required that the review procedure be implemented in a prompt, lawful and effective manner and by also analyzing in its entirety the documents of this case in the context of this procurement process, the Panel did not consider it necessary to elaborate again in detail and unnecessarily in this case each complaint claim, since the same have been specifically singled out especially in the challenged decision of the contracting authority and have been analyzed and argued without objection by this Panel. Among other things, in the challenged decision of the contracting authority and in the reports of the review expert, fair explanations have been given also in relation to the complaints. The Panel

notes that the reasons given in the challenged decision of the contracting authority are professional and argued without objection with material evidence, without the need to describe them again. Therefore, the Panel supports the assessments of the review expert with recommendation, who explained in his expertise report number; 2025/0262, that during the development of this procurement procedure, the contracting authority has implemented the legal provisions of the LPP.

The review panel finds that the complainant's claims are unfounded and that the decision of the contracting authority to award the contract was taken in accordance with Article 59 of the LPP, the assessment of the review expert, which is supported by the review panel, and it is found that the EO recommended for the contract, responsible, has fulfilled the criteria of the Tender Dossier.

The review panel emphasizes that in accordance with Articles 1 and 6 of the LPP, Contracting Authorities exercise their institutional independence in the public procurement process, however, it remains within the competences and responsibilities of this body to review complaints and legality in the procurement process according to Article 24, paragraph 2 of the LPP cited "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in full compliance with this law" in relation to Article 59,1 cited "The contracting authority shall establish an Evaluation Commission for the examination, evaluation and comparison of bids. All members of the Evaluation Commission take full individual responsibility for the evaluation of the bid"

The Review Panel, based on the fact of the rejection of the complaint of the EO "Cactus" Sh.a, decided to confiscate the complaint fee in the amount deposited by the complaining economic operator based on Article 31 par. 5 of the Rules of Procedure of the PRB, while the funds are transferred to the Budget of the Republic of Kosova. The Review Panel has decided in accordance with the legal competences in terms of Article 104 paragraph 1 in connection with Article 103, Article 105 and Article 117 of the LPP to implement the procurement review procedure in a prompt, fair, non-discriminatory manner, with the aim of resolving the case legally and effectively. Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations, which may arise during a procurement activity.

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

President of the Review Panel

Mr. Isa Hasani

Legal advice:

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

Decision to be submitted to:

1x1 CA – **Ministry of Health;**

1x1EO–“ Cactus Sh.a;

1x1 Archive of the PRB;