



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

Psh. No.1166/24
1167/24

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 amended by Law 05/L-092) composed of Vedat Poterqoi – President, Isa Hasani and Batisha Ibrahim - members, deciding upon the complaint of (EO) “TEHNOBURIMI” D.D., si dhe OE “NIKA PrO- Ing” SH.P.K., against, the decision to cancel the procurement procedure regarding the procurement activity “Construction work for the implementation of the detailed project [main implementer], of architecture and engineering, for the construction of the Semi-Olympic Swimming Pool, in Podujeva, in accordance with the regulations and technical instructions, approved by ‘World Aquatics FINA’ with procurement number 207-24-8717-5-1-1, initiated by the contracting authority (CA) - “MINISTRY OF CULTURE OF YS AND ÇJK”, on the 10/02/2025, has issued this:

DECISION

1. **Refused**, as ungrounded the complaint of EO “TEHNOBURIMI” D.D., with no. 2024/1166, dated 02/12/2024 and the complaining EO “NIKA PrO- Ing” SH.P.K. with no. 2024/1167 with no. 02/12/2024, regarding the procurement activity “Construction work for the implementation of the detailed project [main implementer], of architecture and engineering, for the construction of the Semi-Olympic Swimming Pool, in Podujeva, in accordance with the regulations and technical instructions, approved by ‘World Aquatics FINA’ with procurement number 207-24-8717-5-1-1, initiated by the contracting authority (CA) - “MINISTRY OF CULTURE OF YS AND ÇJK.
2. Remains in force CA’s decision regarding the procurement activity “Construction work for the implementation of the detailed project [main implementer], of architecture and engineering, for the construction of the Semi-Olympic Swimming Pool, in Podujeva, in accordance with the regulations and technical instructions, approved by ‘World Aquatics FINA’ with procurement number 207-24-8717-5-1-1, initiated by the contracting authority (CA) - “MINISTRY OF CULTURE OF YS AND ÇJK.

3. In accordance with Article 31, point 5, of the Rules of Procedure of the PRB, the complaining economic operators “TEHNOBURIMI” D.D. and “NIKA PrO- Ing” SH.P.K. shall have their 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 22.08.2024, the “MINISTRY OF CULTURE YS AND ÇJK” in the capacity of the Contracting Authority has published the Contract Notice B05 regarding the procurement activity entitled “Construction work for the implementation of the detailed project [main implementer], of architecture and engineering, for the construction of the Semi-Olympic Swimming Pool, in Podujeva, in accordance with the regulations and technical instructions, approved by ‘World Aquatics FINA’ with procurement number 207-24-8717-5-1-1. While on 11.11.2024, the CA has published the B58 Notice on the decision of the Contracting Authority to cancel the procurement activity.

This procurement activity was carried out through an open procedure with the type of work contract, the estimated contract value: 4,000,000.00 €.

On the 18.11.2024, EO “TEHNOBURIMI” D.D and EO “NIKA PrO- Ing” SH.P.K on 18.11.2024 submitted a request for reviewing against the above-mentioned decision of the CA. On the 20.11.2024, it rejected as unfounded the requests for reviewing of both EOs.

On the 02.12.2024, the PRB has received complaints from EO “TEHNOBURIMI” D.D with no. 2024/1166 and the complaint of EO “NIKA PrO- Ing” SH.P.K with no. 2024/1167 dated 02.12.2024 regarding the activity “Construction work for the implementation of the detailed project [main implementer], of architecture and engineering, for the construction of the Semi-Olympic Swimming Pool, in Podujeva, in accordance with the regulations and technical instructions, approved by ‘World Aquatics FINA’ with procurement number 207-24-8717-5-1-1.

-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 under 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 under Article 105 of the LPP and there is no procedural obstacle to continue with the review of the complaint on its merits.

Taking into account the fact that both complaints are related to the same procurement activity, namely to the notification of the same decision of the Contracting Authority regarding this

procurement activity, it has been decided that complaint no. 1166/24 and complaint no. 1167/24 shall be merged and treated as a unified case within the meaning of Article 16 paragraph 1 of Regulation no. 01/2020 on the Work of the Procurement Review Body.

The claims of the complaining economic operator "TEHNOBURIMI" D.D. for the complaint with no. 2024/1166 are presented as follows:

The notification on the decision to cancel the procurement activity, namely form B 58, was uploaded to the system on 11.11.2024.

The cancellation of this tender was made on 11.11.2024 with the following justification:

Result of the procurement activity: The Ministry of Culture, Youth and Sports, based on Article 43.5 of Regulation No. 001/2022 on Public Procurement, cancels the procurement activity with the title: Construction work for the implementation of the detailed project [main implementer], of architecture and engineering, for the construction of the Semi-Olympic Swimming Pool, in Podujeva, in accordance with the regulations and technical instructions approved by the 'World Aquatics FINA', since none of the accepted offers is liable to meet the conditions and criteria set out in the Contract Notice and the Tender Dossier.

Dissatisfied with the notification of the CA's decision dated 11.11.2024 regarding the procurement activity: Construction work for the implementation of the detailed project [main implementer], of architecture and engineering, for the construction of the Semi-Olympic Swimming Pool, in Podujeva, in accordance with the regulations and technical instructions, approved by 'World Aquatics FINA' with Procurement No.: 207-24-8717-5-1-1 within the legal deadline in accordance with Article 108/A Preliminary Resolution of Disputes, we had submitted a request for reconsideration, which request was rejected by the CA.

The contracting authority in its decision eliminated us with the following reasoning: The bid evaluation committee acted in accordance with Article 44.3 of Regulation No. 001/2022 on Public Procurement, where such a bid was considered an irresponsible bid since the EO "TEHNOBURIMI" D.D. presented the total price by removing the VAT portion that was presented by the AK-MCYS in the preliminary measure and as such, the AK-MCYS assessed it as an intervention in the preliminary measure, therefore the bid is an administratively irresponsible bid.

The contracting authority's justification for our elimination is untenable, because we meet all the requirements of the tender dossier, therefore we will explain below that the reason for our elimination is untenable.

To be clearer about our offer, we are explaining in detail the financial offer with which we have offered according to the pre-measure:

In fact, two columns were mistakenly removed from the bill of quantities at the end, which columns did not have either quantities or units, therefore this technical omission does not constitute an interference with the bill of quantities as called for by the contracting authority.

When filling out the estimate, we have given the prices with VAT in the unit price, and also in the recapitulation, we have set the prices for each position with VAT, and at the same time, the total set in the "Total" column, is the total of our offer with VAT 3,812,122.92 euros.

This fact is also confirmed by the minutes of the tender opening, where our price without VAT is 3,230,612.64 euros, while the price with VAT is 3,812,122.92 euros, so from this fact it is understood that we have filled in the bill of quantities regularly and each of the positions that were determined by the CA are set in it. So in a word, we have not made any changes to the bill of quantities, but due to a technical error, the VAT column and the total with VAT have been removed, but this fact does not make our bid irresponsible and does not create any dilemma regarding the price offered with VAT because this price can be very easily confirmed that it is a price with VAT.

"The Contracting Authority, in the contract notice and tender dossier, among the requirements and conditions for completion and compliance by the EO, has requested that the unit price offered and the total price of the positions be completed with or without VAT included since it has not specified whether the amount or total of the positions is with or without VAT. (proof table')

While in the total of the re-capitulation, the total is again stated without specifying whether with or without VAT, which should have been stated Total without VAT + VAT (18%) and the total with VAT as stated (proof Excel table re-capitulation)'.

From this situation created since the contracting authority has left all fields open in Excel, we have filled in all positions, the total of positions and the re-capitulation of the preliminary measure including VAT, this is also evidenced by the opening minutes, the tender form and the electronic E-procurement system in the total amount of 3,812,122.92 euros with VAT which matches the preliminary measure - the financial offer.

See below the minutes of the opening of the bids, where the price without VAT and the price with VAT are noted.

This action of ours should and should have been considered by the contracting authority as a minor deviation, in accordance with the provisions of Article 59.4 of the LPP, point (ii), which specifies as follows: 1. 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: (ii) it contains only minor deviations that 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 deviation is quantified, as far as possible, and taken into account during the evaluation and comparison of tenders.

So, as long as our bid is clear and understandable with the price including and excluding VAT, our bid is responsive, therefore the reason for the contracting authority's elimination is unfounded and unfounded, because the change made in the quantity does not affect this procurement activity at all, so it is not a material or substantial change that could cause any

deviation from the characteristics and requirements of the tender dossier, therefore it is considered a minor deviation according to the provision of Article 59.4 of the LPP, point (ii). In reality, the removal of two columns from the quantity cannot be called a change in the quantity, but is simply a technical error and a negligible omission.

The price in the pre-measurement also matches the price in the tender form (see below), therefore there is no dilemma in this case. 1Construction work for the implementation of the detailed project [main implementer], of architecture and engineering, for the construction of the Semi-Olympic Swimming Pool, in Podujeva, in accordance with the regulations and technical instructions, approved by 'VWorld Aquatics FINA'

3 .The total tender price is: 3,812,122.92 EUR And in words [insert the tender price in Euros]

4.This tender is extended for a period of either months: or days: 90 from the final date for submission of tenders.

Also, if the contracting authority had any uncertainty regarding our offer, then the same should have used the legal provisions of Article 59.2 and 72 of the LPP and requested additional clarifications from us, even though the prices were clear. Paragraph 2 of Article 59 of the LPP clearly states "2. The contracting authority may in writing request a tenderer to provide a written clarification on any aspect of its tender, in order to conduct the examination, evaluation or comparison of tenders. No material changes and any aspect of the tender should be requested or accepted by the contracting authority or offered by a tenderer. "

Therefore, clarifications can be requested on any aspect of the tender, and even in this case, additional clarifications could have easily been requested. The CA's reference to Article 44.3 of the RRPP No. 001/2022 is incorrect and in reality our case has nothing to do with this provision because this provision defines the purpose of standard documents to assist economic operators, while in this case there is no deletion of any condition specified in the tender dossier or in the tender document, therefore our action does not contradict this provision.

The essence is that the price in the offer is understandable and clear, therefore the reason for the elimination is unfounded.

In this procurement activity, only the group of EO "Olti Trasing SHPK&SINANI-ING SHPK, are with the cheapest price, but this group is irresponsible for the reasons as follows (reasons also given by the CA): REASONING Your tender has been rejected for these reasons:

After the evaluation of your bid by the evaluation committee, it was noticed that the GOE bid lacks the evidence of the Declaration of Participation of the Group of Economic Operators, specifically the GOE has not completed point b) of paragraph 11.1 of the Tender Dossier. Also, in the GOE bid, it has provided as evidence the bank support that is not according to the request of the CA. The CA's request was, quote: "Documentary evidence required - Request 2. - A certificate from a first-tier bank, which proves that the Economic Operator Group of Economic Operators, has cash in the bank account, in the amount of € 600,000.00 [Six hundred thousand

euros. [In the case of a Group of Economic Operators, the leader of the Group must meet at least 60.00% of this requirement - A [1 copy of the original. OR A [1J certificate from a first-tier Bank, which proves that the Economic Operator Group of Economic Operators has access to an unconditional bank loan on behalf of this project, in the amount of €600,000.00 [Six hundred thousand euros. JIn the case of a Group of Economic Operators, the leader of the Group must meet at least 60.00% of this requirement - A JIJ copy of the original.

Whereas, GOE has provided a Reference Letter from the banking institution which does not prove that GOE has a cash account or access to unconditional credit but the Reference Letter submitted is evidence that the banking institution will consider the possibility of financing the aforementioned project. Note: No additional information was requested, since you were not an administratively responsible bidder with the cheapest price! Considering that this group of EO is irresponsible, then we are the cheapest bidder compared to other bidders and we are also responsible by fulfilling all the requirements of the FDT and the contract notice.

The evaluation committee has also found that we meet all the eligibility requirements, but the only reason they gave was the issue of the pre-measure, which is actually a technical omission and a minor deviation that absolutely affects our accountability. Based on all the above-mentioned facts, it is clearly understood that we have been eliminated for an unfounded reason, since even though we have met all the requirements of the tender dossier, we are being eliminated in violation of the legal provisions in force. We received the decision to reject the request for reconsideration on 20.11.2024, where the contracting authority was unable to justify our elimination in any way.

The contracting authority in its decision has repeated the same reason as in the case of our elimination, but we are once again clarifying that the CA's decision to reject the request for reconsideration is unsustainable due to the fact that two columns at the end were mistakenly removed from the bill of quantities, which columns had neither quantity nor unit, therefore this technical omission does not constitute any interference in the bill of quantities as called by the contracting authority.

During the completion of the preliminary measure, we have given the prices with VAT in the unit price and also in the recapitulation, we have set the prices for each position with VAT and at the same time, the total set in the column "Total", is the total of our offer with VAT 3,812,122.92 euros. This fact is also confirmed by the minutes of the tender opening, where our price without VAT is 3,230,612.64 euros, while the price with VAT is 3,812,122.92 euros, therefore from this fact it is understood that we have completed the preliminary measure in a regular manner and each of the positions that have been determined by the CA are set in it. So in a word, we have not made any changes to the amount, but due to a technical error, the VAT column and the total with VAT have been removed, but this fact does not make our offer irresponsible and does not create any dilemma regarding the price offered with VAT because this price can be very easily verified as being a price with VAT.

Therefore, from all the above, it is clearly understood that the CA's reason for our elimination from this procurement activity and its decision to reject the request for reconsideration are

untenable. Based on the evidence and facts mentioned above, it results that the examination, evaluation and comparison of tenders was not carried out in accordance with Article 59 of the LPP. The cancellation of this procurement activity was carried out in violation of Article 62 of the LPP and Article 43 of the RRPP No. 001/2022, because we did not meet any of the conditions set out in these provisions, while we are a responsible bidder and should have been declared the winner of this tender.

Article 7 of the LPP has also not been respected, where even though we are a responsible EO because we have fulfilled all the requirements of the FTD and the contract notice, we have not been recommended for the contract. Paragraph 1 of Article 7 of the LPP clearly stipulates that “The contracting authority shall treat economic operators equally and non-discriminatory and shall act transparently”.

The contracting authority also did not take into consideration Article 1 of the LPP, since it is known that the purpose of this law is to ensure the most efficient, transparent and fair way of using public funds, public resources and all other funds and resources of contracting authorities in Kosovo. Referring to the claims above, EO "TEHNOBURIMI" D.D considers that the Contracting Authority has acted in violation of Articles 1, 7, 59, 60, 62, and 72 of the LPP and Regulation 001/2022 on Public Procurement, Articles 40 and 43. Taking into account all the legal reasons mentioned above, we ask you to take: DECISION To APPROVE, grounded the complaint of EO "TEHNOBURIMI DD" JSC And to CANCEL, the notification on the decision of the CA to cancel the procurement activity and the case is returned for RE-EXAMINATION and during the re-evaluation, the examination, evaluation and comparison of the offers shall be carried out in accordance with the requirements of the tender dossier, the contract notice and in accordance with the provisions of the LPP. If our facts are not taken into account, we are obliged to continue the legal procedure in other competent institutions.

CA's response to the request for reconsideration: “TEHNOBURIMI” D.D., Response to claim 1:

The claim is UNGRANTED

The Contracting Authority- MCYS has made the evaluation, examination and comparison of the tenders in full compliance with Article 59 of Law No. 04/ 1 -042 on Public Procurement, amended and supplemented by Law No. 04/ L- 237, Law No. 05/ L- 068 and Law No. 05/ L- 092.

Regarding claim no. 1 of the complaining GOE, the CA explains that it is completely unfounded because the CA has evaluated based on the facts and arguments presented in the complainant's bid. The complaining GOE was not eliminated from the procurement activity because it had incorrectly calculated the VAT value, but was considered an irresponsible bid because it had interfered in the estimate by completely removing the VAT position presented by the CA in the main estimate.

In the pre-measurement, the following form was presented by the CA: The Contracting Authority acted in accordance with Article 44.3 of Regulation No. 001/2022 on Public Procurement, where such a bid was considered an irresponsible bid since the EO "TEHNOBURIMI" D.D., presented

the total price by removing the VAT part that was presented by the CA-MCYS in the pre-measurement and as such, the CA-MCYS assessed the intervention in the pre-measurement, therefore the bid is an administratively irresponsible bid. Clarification/Considering that there are decisions of the PRB regarding the handling of this issue of intervention in the pre-measurement, such a thing based on the LPP is an irresponsible bid. Therefore, the claim is completely unfounded.

In conclusion, the Contracting Authority stands behind the reasons for the elimination of all members for elimination by leaving in force the Notice on the Decision for the cancellation of the procurement activity according to the provision "The procurement procedure is cancelled based on Article 43.5 of Regulation 001/2022, point b, specifying: 43.5 The procurement procedure after the opening of the bids must be cancelled for one of the following reasons: b. none of the tenders received is responsive". The claims of the complaining economic operator "NIKA PrO- Ing" SH.P.K for the complaint with no. 2024/1167 are presented as follows:

On 11.11.2024, through the electronic e-procurement platform, we were notified of the decision of the CA, where you canceled this AP, After a request for access to the documents of the participating EO, You as the CA, did not provide us with all the documents of one of the participating EOs with the justification that the same has a Business Secret Declaration, In the declaration of Annex 3 of the Tender Dossier, it is noted that this EO Group has not specified a business secret request, but has only stamped and signed a blank declaration from the Tender Dossier. - This is not a complaint claim, but only a clarification at the beginning of the request for reconsideration, The reason for our elimination does not lie with the claim that:

Our claims are as follows: I do not agree with your finding for our elimination and the cancellation of this procurement procedure.

I do not agree with the cancellation of this activity considering that our offer is a responsible offer.

We also do not agree with our elimination, since you have misinterpreted our documentation in the Evaluation of those by the Evaluation Commission, In your request in the Tender Dossier on the Professional Suitability Requirements, Professional Suitability: as they are I quote the request "Request number 1. Registration as an economic operator in the professional, commercial and or corporate register in the country of establishment of the economic operator. Request number 2. The Economic Operator must also submit the document for VAT registration. Specific conditions - Only the category of Economic Operators and Groups of Economic Operators with economic activities, according to the classification determined by the Kosovo Business Registration Agency [KBRA], focused on the field of architectural and engineering design and construction, are eligible for participation in this procedure; respectively, all other categories of Economic Operators and Groups of Economic Operators are not eligible for participation and any contribution to this procedure. - The execution of services is reserved for this category of Economic Operators and Groups of Economic Operators in accordance with Article 7- Equality

in Non-Discrimination Treatment of Law No. 04 L-042 on Public Procurement, amended and supplemented by Law No. 04 L-237, Law No. 05 L-068 and Law No. 05 L-092.” Close quote.

You have evaluated our offer in contradiction to this request. Elaboration: our offer for this procurement activity was from the Group of EO, where the composition of the group is a company registered outside the territory of the Republic of Kosovo, in their country of establishment the criteria for determining doing business, are not necessarily the same as our internal system, more precisely according to the rules of the ARBK, (Our partner is an internationally renowned company in the field of architectural and engineering design and construction. Specifically, you have attached the contracts and the bill, where it is seen that the same have built an entire tourist complex in the most famous resort on the Greek Riviera and which also includes outdoor and indoor pools, SPAs, etc., world-class hospitals, hotels with the highest standards of construction and functionality and a Metro. and it is unacceptable to state that the same do not have similar activities, going here because you have stated that these activities must be according to the classification determined by the Kosovo Business Registration Agency.). Therefore, you, the NLJK, have taken into account that an EO registered in their country of establishment, in case of receiving the tender and signing the contract, are obliged to open a speech in the Republic of Kosovo and be registered according to the requirements specified in Kosovo. Also, in the standard letter for the eliminated tenderer, you have emphasized that the bid evaluation commission has found that we have not provided the bank evidence, where it is emphasized that the EO group has available funds for this PA.

We clarify that attached to the offer presented in this AP is also the bank statement, where it can be seen that our Partner has sufficient funds in their presented Statement. Therefore, we consider that this claim is unsustainable in terms of financial means. We do not agree with your finding since the reasons for our elimination do not hold, the LPP has clearly specified that in the event of the absence of any certificate or more precisely documents that are not produced by the economic operators themselves, the CA is obliged to request additional clarification from the EO or group of EOs that it claims to award with a contract.

Based on all the evidence and facts mentioned above, we conclude that the examination, evaluation and comparison of tenders was not carried out in accordance with Article 59 of the LPP, because this procurement activity was cancelled, as there were responsive bids.

Also, the main criterion for awarding the contract, which was the responsive tender with the lowest price, as provided for in Article 60, paragraph 1.1 of the LPP, was not respected. Article 72 of the LPP was not respected, by not requesting written clarifications for the completion of the necessary documentation. Documentation and additional information

Where the information or documentation to be submitted by economic operators is or appears to be incomplete or incorrect, or where specific documents are missing, contracting authorities may require economic operators to submit, supplement, clarify or complete the relevant information or documentation within a specified time limit, provided that such requests are made in full compliance with the principles of equal treatment and transparency.

2. The contracting authority may invite economic operators to supplement or clarify the certificates and documents submitted in accordance with Articles 65-71 of this Law.

3. The provision of missing information or the provision of information shall apply only to documents whose existence is established, before the expiry of the deadline for the submission of tenders, and can be objectively verified.

You have also NOT respected Article 7 of the LPP, discriminating against us as an economic operator, even though we have met all the requirements of the FTD and the contract notice, we have not been declared the winner of this tender, but it seems that your intention is not to declare us the winner of this tender. Paragraph 1 of Article 7 of the LPP clearly provides that “The contracting authority shall treat economic operators equally and non-discriminatory and shall act in a transparent manner. Similarly, paragraph 6 of Article 7 of the LPP provides that “When conducting procurement activities, all contracting authorities shall ensure; (vi) that the selected tender complies with all substantive aspects of the relevant conditions, criteria and specifications, but you have not complied with this legal provision either.

You have also not respected Article 6 of the LPP, even though contracting authorities are obliged to ensure that public funds and public resources are used in the most economical manner, while taking into account the purpose and subject matter of the procurement as provided for in Article 6 of the LPP.

You have also violated Article 26.5 of Regulation 001/2022 on Public Procurement, in this article it is specifically stated that the EO in the case of a group of all members must submit Business Registration Certificates. Any requirement imposed by the CA under Article 66.2, Article 68 of the LPP, this requirement must be determined to apply only to the group as a whole and not to the individual members of the group. And Article 26.4 of Regulation 001/2022 on Public Procurement.

Also Article 71 of the PLL specifically point 4 4. If a tender is submitted by a group of economic operators, each member of the group is obliged to prove or confirm in accordance with Article 67 of this Law, that it is not excluded from participation in the procurement activity under Article 65 of this Law. Any requirement imposed by a contracting authority under Articles 66.2, 68 and 69 of this Law shall apply only to the group as a whole and not to individual members of the group.

You as a contracting authority should also take into consideration Article I of the LPP, since it is known that the purpose of this law is to ensure the most efficient, transparent and fair way of using public funds, public resources and all other funds and resources of contracting authorities in Kosovo.

Referring to the above allegations, “NIKA PrO- Ing” LLC considers that the Contracting Authority has acted in violation of Articles 1, 6, 7, 59, 60, 69, 71 and 72 of the LPP as well as Article 26.4 of Regulation No. 001/2022 on Public Procurement and Article 26.5 of Regulation No. 001/2022 on Public Procurement. Finally, we request you as the contracting authority to issue: DECISION APPROVED, based on the request for review of the Group of EO nika PrO-

Ing LLC; to be cancelled, the notification and decision of the CA for cancellation and the case shall be returned for RE-EXAMINATION and during the re-examination, the examination, evaluation and comparison of the offers shall be carried out in accordance with the requirements of the tender dossier, the contract notice and the provisions of the LPP. If our facts are not taken into account, we are obliged to continue the legal procedure in other competent institutions.

Response to the request for reconsideration: “NIKA PrO- Ing” SH.P.K The claim is UNBASED;

The contracting authority - MCYS has made the evaluation, examination and comparison of tenders in full harmony with Article 59 of the Law no. 04/ 1 -042 on Public Procurement, amended and supplemented by Law no. z. 04/ L- 237, Law no. 05/1 - 068 and Law no. 05/ L- 092.

The request of the CA - MCYS was: Request number 1. Registration as an economic operator in the professional, commercial and or corporate register in the country of establishment of the economic operator. Request number 2. The Economic Operator must also submit the document for VAT registration. Specific conditions - Only the category of Economic Operators Groups of economic operators with economic activities, according to the classification determined by the Kosovo Business Registration Agency [KBRA], focused on the field of architectural and engineering design and construction, are eligible for participation in this procedure; respectively, all other categories of Economic Operators Groups of Economic Operators are not eligible for participation and any contribution in this procedure. - The execution of services is reserved for this category of Economic Operators Groups of Economic Operators in accordance with Article 7- Equality in Non-Discrimination Treatment of Law No. 04 L-042 on Public Procurement, amended and supplemented by Law No. 04 L-237, Law No. 05 L-068 and Law No. 05 L-092.

Regarding claim no. 1 of the complaining GOE, the CA explains that it is completely unfounded because the CA has assessed based on the facts and arguments presented in the complainant's bid where the GOE Member/Leader has presented the business registration certificate which is not in accordance with the CA's request because their activity is not focused on the field of architectural and engineering design and construction. Also, they have not presented the VAT document at all - for which the CA could request additional information if it were an administratively responsible bid.

The complaining GOE did not contest the fact that for this procurement activity, the group included a member who is a company registered outside the territory of the Republic of Kosovo, elaborating on their performance and work as a company, citing that the CA did not take into account that an EO registered in their country of establishment, in the event of receiving and signing the contract, are obliged to open a subsidiary in the Republic of Kosova and register according to the requirements specified in Kosova.

However, such claims are unfounded and are in complete contradiction with paragraph 3 - Providing missing information or providing information shall apply only to documents whose existence is established, before the expiry of the deadline for submission of tenders, and can be

objectively verified, of Article 72 - Additional documentation and information of the LPP in force and in contradiction with paragraph 38.2 No change in price or other material condition or aspect of the tender may be requested, offered or permitted, of Article 38 - Clarification of Tenders of Regulation No. 001/2022 on Public Procurement because at this stage no change is allowed in the aspect of the tender that would affect in a non-transparent and discriminatory manner for the participants in this procurement activity, and also providing and completing information is allowed only for documents whose existence is established, before the expiry of the deadline for submission of tenders. Therefore, this claim of the complaining GOE is completely unfounded.

Claim 2: Also in the standard letter for the eliminated tenderer, you have stated that the bid evaluation committee has found that we have not provided the bank evidence, where it is emphasized that the OE group has available funds for the AP project.

We clarify that attached to the offer presented in this AP is also the bank statement, where it is seen that our partner has sufficient funds in their presented status. Therefore, we consider! That this claim is unsustainable in terms of financial means. We do not agree with your finding since the reasons for our elimination do not hold, the LPP has clearly specified that in the event of the absence of any certificate or more precisely documents that are not produced by the economic operators themselves, the CA is obliged to request additional clarifications from the EO or group c 012 which it claims to award with a contract.

Based on all the evidence and facts mentioned above, we conclude that the examination, evaluation and comparison of tenders was not carried out in accordance with Article 59 of the LPP, because this procurement activity was cancelled, having responsive bids. The main criterion for awarding the contract, which was the responsive tender with the lowest price, as provided for in Article 60, paragraph 1.1 of the LPP, was also not respected.

Article 72 of the LPP was not respected, by not requesting additional clarification for the completion of the necessary documentation.

Additional documentation and information

1. Where the information or documentation to be submitted by economic operators is or appears to be incomplete or incorrect, or where specific documents are missing, contracting authorities may require economic operators to submit, supplement, clarify or complete the relevant information or documentation within a specified time limit, provided that such requests are made in full compliance with the principles of equal treatment and transparency.
2. Contracting authorities may require economic operators to supplement or clarify the certificates and documents submitted in accordance with Articles 65-71 of this Law.
3. Provision of missing information or provision of information will only apply to documents whose existence is established, before the deadline for submission of tenders, and can be objectively verified.

You have also NOT respected Article 7 of the LPP, discriminating against us as an economic operator, even though we have met all the requirements of the FTD and the contract notice, we have not been declared the winner of this tender but it is clear that your intention is that we do not to be declared the winner of this tender. Paragraph 1 of Article 7 of the LPP clearly provides that “The contracting authority shall treat economic operators equally and non-discriminatory and shall act in a transparent manner. Similarly, paragraph 6 of Article 7 of the LPP provides that “In conducting procurement activities, all contracting authorities shall ensure; (vi) that the selected tender complies with all substantive aspects of the relevant conditions, criteria and specifications, but you have not complied with this legal provision either.

You have also not respected Article 6 of the LPP, although contracting authorities are obliged to ensure that public funds and public resources are used in the most economical manner, while taking into account the purpose and subject matter of the procurement as provided for in Article 6 of the LPP.

You have also violated Article 26.5 of Regulation 001/2022 on public procurement, in this article it is specifically stated that the EO in the case of a group, all members must submit a Business Registration Certificate. Any request made by the CA under Article 66.2, Article

Response to claim 2 The claim is unfounded

This claim is completely unfounded because the CA's request is a quote: Request 2. - The economic operator The group of economic operators must provide evidence of the economic situation and financial capacity to meet the requirements of the subject of this procedure; and for this purpose, must prove that it has sufficient capital for the implementation of the contract, either ready funds in the bank account OR access to a bank loan, unconditional in the name of this project, respectively in the name of this procurement activity, in the amount of € 600,000.00 [Six hundred thousand euros] and as evidence the CA has requested the following: Required documentary evidence - Request 2 A [1] certificate from a first-tier bank, which proves that the Economic Operator Group of Economic Operators has a cash balance in the bank account, in the amount of €600,000.00 [Six hundred thousand euros]. [In the case of a Group of Economic Operators, the Group leader must constitute at least 60.00% of this request] - A [1] copy of the original. OR - A [1] certificate from a first-tier bank, which fails that the Economic Operator Group of Economic Operators has access to an unconditional bank loan in the name of this project, in the amount of €600,000.00 [Six hundred thousand euros]. [In the case of a Group of economic operators, the Group leader must fill in at least 60.00% of this request] - One [1] copy of the original, while the complaining GOE has presented in their offer as evidence for this request the bank statement, as the complaining GOE itself has emphasized in the above claim mentioned in the complaint made, and in this way the CA's request presented in the Contract Notice and in the Tender Dossier has not been fulfilled.

In this case, the evidence presented by the Leader of the Complaining Operators Group does not meet the request of the CA-MCYS because the Reference Letter or bank support does not present the situation that the GOE has with cash in the bank account or access to an

unconditional bank loan on behalf of this project, but clearly shows that if the entity in question requests bank support in the amount specified, the bank will consider its financing, based on its internal procedures.

The CA has assessed that the request as such has not been fulfilled by the complaining GOE and in support of Article 59 of the LPP in force and Article 40 of Regulation No. 001 / 2022 on Public Procurement, the CA-MCYS has assessed, examined and concluded that the offer is not in compliance with the formal requirements of the tender dossier and as such the offer has been administratively assessed as an irresponsible offer and the second claim of the complaining GOE is entirely unfounded.

According to Article 72 of the LPP and Article 38 of Regulation No. 00.1 /2022 on Public Procurement, it is permitted for a contracting authority during the evaluation to request and obtain information or documents that are missing from the application/tender. These documents, however, must objectively present sufficient evidence that reasonably reflects the existing situation prior to the date of publication of the Contract Notice.

In the specific case, the evidence was presented by the complaining GOE according to the request submitted by the CA in the Tender Dossier and in the Contract Notice, but as such it does not meet the request and in this case it is not allowed to request additional information that would change the aspect of the tender when for the CA the evidence presented has not met the request as such.

Therefore, the Contracting Authority stands behind the reasons for the elimination of all members for elimination by leaving in force the Notice on the Decision to cancel the procurement activity in accordance with the provision "The procurement procedure is cancelled based on Article 43.5 of Regulation 001/2022, point b, specifying: 43.5 The procurement procedure after the opening of the bids must be cancelled for one of the following reasons: b. none of the tenders received is responsive".

Based on Article 111 paragraph 5 in connection with Articles 113 and 114 of the LPP, the Procurement Review Body on 03/12/2024 authorized the review expert to conduct the initial review of the file and claims according to the complaint with no. 1166/24 and on 03/12/2024 the complaint with no. 1167/24. On 13/12/2024, the review expert's report with no. 2024/1166 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 be rejected as unfounded and that the decision of the CA to cancel the procurement activity remain in force.

While for complaint 2024/1167 on 16/12/2024, the report with the following recommendations was submitted: 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 to cancel the procurement activity remains in force. The expertise report with no. 1166/24 has been duly accepted by all procedural parties. The CA agrees with the recommendations of the review expert report, while the EO has not provided a response to the review expert report.

The expertise report with no. 1167/24 has been duly accepted by all procedural parties.

The CA agrees with the recommendations of the review expert report, while the EO disagrees with the review expert report.

The review panel has assessed that the conditions have been met to decide on this case without a hearing session 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 and the review expert report provide sufficient data to decide on the merits of the case.

Administration and evaluation of evidence –

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

Regarding the claims of EO “TEHNOBURIMF” D.D., the review expert, through report no. 2024/1166, has assessed as follows:

The review expert explains that the complaining EO, dissatisfied with the decision (B58), has submitted a complaint to the PRB, claiming that the evaluation of the bids was not made in accordance with the legal provisions of the Law on Public Procurement (LPP). The review expert explains that the contracting authority/MINISTRY OF CULTURE OF RS AND KJK, after completing the evaluation of the bids, has notified the economic operators participating in this procurement activity, regarding the result of the evaluation of the bids. CA-MCYS, in the absence of responsive bids, has canceled the procurement activity in its entirety and at the same time notified the complaining economic operator (Tehno Burimi D.D.) as an eliminated tenderer with the justification that:

The review expert explains that in its complaint the complaining EO claims that a technical error has occurred, in this case it requests to be qualified as a minor deviation according to Article 59.4 of the LPP, on the grounds that VAT is calculated within the total bid price, therefore according to the complaining EO it is only a technical error. The review expert, regarding this issue, explains that the complaining operator, when applying for this procurement activity, has submitted its bid, and in the submitted financial bid it has intervened by removing a part of it, specifically the VAT section and the total with VAT, as presented above in the table.

The review expert explains that the value of VAT is calculated in the total price given, but such an action is sanctioned by Article 44.3 of the Public Procurement Regulation:

Article 44.3: “The purpose of standard documents is to assist economic operators in the preparation of bids. Declarations must contain the minimum requirements set out in the standard forms without changes in content, without introducing additional restrictions or conditions, or without deleting any condition set out by the contracting authority in the standard forms.

However, the company making the declaration has the right to place its logo, company name or graphics at the top of the “header” page or anywhere else in the standard documents”.

The review expert assesses that the complaining economic operator has acted in violation of Article 44.3 of the Public Procurement Regulation, cited above, therefore, according to the legal provision mentioned above. above, the claim of the complaining EO that we submitted a responsible offer does not stand, because the same has intervened in the pre-measure by removing/deleting columns of the pre-measure.

Regarding the claims of EO “NIKA PrO- Ing” SH.P.K, the review expert through report no. 2024/1167 has assessed as follows:

The review expert clarifies that the complaining EO, dissatisfied with decision B58, has submitted a complaint to the PRB, alleging that the evaluation of the bids was not carried out in accordance with the legal provisions of the LPP.

The review expert explains that the CA, after completing the evaluation of the bids, has notified the economic operators participating in this procurement activity, regarding the result of the evaluation of the bids. The CA-MCYS, in the absence of responsive bids, has canceled the procurement activity in its entirety and at the same time the complaining EO Nika Pro ing, has notified it as an eliminated tenderer, with the justification that: Regarding the first reason for elimination, the review expert, after examining the bid of the complaining EO, clarifies that the complaining EO has not submitted the evidence requested in the tender dossier regarding cash funds or access to unconditional credit.

Regarding the second reason for elimination, the review expert explains that the CA has requested that the business activity be in the field of architectural and engineering design and construction. While the complaining EO in its complaint has submitted as evidence contracts for the construction of hospitals, open and closed swimming pools, proving that it meets the requirements of the tender dossier. The review expert, after examining the business certificate of the economic operator Anion MEP - Qatar, assesses that the same does not meet the requirements of the tender dossier because it does not have the activities required by the CA in the tender dossier and in the contract notice. The activities of EO Anion MEP - Qatar described in the business certificate are mainly in the field of electricity.

-Findings of the Review Panel –

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 general context of the case files, the alleged facts and 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 terms of Article 98, 99 in conjunction with Article 105 of the Public Procurement Law. Based on the documents of this case and the primary purpose of the complaint, the Panel considered that regarding the issue in the concrete case, the submissions of the parties and their actions constitute a sufficient basis to decide on the merits. In this case, the Review Panel based its findings mainly on the relevant provisions of the LPP, which foresee and regulate such situations, which may arise during a procurement activity, as in this case.

The Review Panel, having analyzed 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 her opinion are acceptable and that the Panel rightly took into consideration his Report in the decision without the need for them to be repeated again.

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 has been found that all the complaining claims are unfounded. 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 all the claims of the complaining economic operators are unfounded. Therefore, the Review Panel, after administering and evaluating the evidence, fully ascertaining the factual situation, relying on the LPP as the applicable substantive law, after examining the complaint claims, taking into account all the case files and the recommendations of the review expert, has found that the complaints of the Economic Operator “TEHNOBURIMI” D.D. should be rejected as unfounded. Consequently, the Review Panel has decided to leave in force the Notice on the Decision of the Contracting Authority - “MINISTRY OF CULTURE RS AND ČK” regarding the procurement activity “Construction work for the implementation of the detailed project [main implementer], of architecture and engineering, for the construction of the Semi-Olympic Swimming Pool, in Podujeva, in accordance with the regulations and technical instructions, approved by ‘World Aquatics FINA’ with procurement no.: 207-24-8717-5-1-1.

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 has been found that all the complaining claims are unfounded. Based on the factual situation established as above, the Review Panel has given full credence to the findings and recommendations in the report of the review expert. Consequently, the Review Panel has found that all the claims of the complaining economic operators are unfounded. Therefore, the Review Panel, after administering and evaluating the evidence, fully ascertaining the factual situation, relying on the LPP as the applicable substantive law, after reviewing the complaint claims, taking into account all the case files and the recommendations of the review expert, has found that the complaints of the Economic Operator “NIKA Pro- Ing” SH.P.K. should be rejected as unfounded.

Consequently, the Review Panel has decided to leave in force the Notice of Decision of the Contracting Authority - "MINISTRY OF CULTURE RS AND ČK" regarding the procurement activity "Construction work for the implementation of the detailed project [main implementer], of architecture and engineering, for the construction of the Semi-Olympic Swimming Pool, in Podujeva, in accordance with the regulations and technical instructions, approved by 'World Aquatics FINA' with procurement no.: 207-24-8717-5-1-1.

The Review Panel has decided in accordance with the legal competences within the meaning of Article 104, paragraph 1, in conjunction 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.

For points I and II of the decision, it was decided based on article 117 of the LPP in connection with article 29 of the PRB Rules of Procedure.

For point III of the decision, it was decided based on article 31 paragraph 5 of the PRB Rules of Procedure in connection with article 118 of the LPP.

From what was said above, it was 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, to the Department for Administrative Affairs for annulment of the decision within 30 days from the date of acceptance of the decision.

Decision to be submitted to:

1x1 CA – **MINISTRY OF CULTURE OF YS AND ÇJK;**

1x1EO–“ **TEHNOBURIMI " D.D”;**

1x1 EO – “**NIKA PrO- Ing SH.P.K.;**

1x1 Archive of the PRB;