



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

Psh. No.979/23  
999/23

The Review Panel, appointed by the President of PRB, based on Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova (LPP) in the composition of; Isa Hasani- President, Vedat Poterqoi-Member and Vjosa Gradinaj-Mexhuani- Member, deciding according to the complaint of (EO) “HIDRO PROJECT” Sh.p.k. (registered with protocol number 979/23) and the appeal of EO "MENTI" Sh.p.k. & ENGINEERING GROUP sh.p.k. (registered with protocol number 999/23), submitted against the Decision on granting of the contract, for the procurement activity "Construction of KKMF in Istog" with procurement number 206-23-6380-5-1-2, initiated by the MINISTRY OF HEALTH, in the capacity of the contracting authority (CA, on the 13/02/2024 has issued this:

### **DECISION**

1. Approved as partly grounded the complaint of EO “HYDRO PROJECT” sh.p.k. dated 04.12.2023, (Protocol Number: 2023/0979), against the Decision of the CA/Ministry of Health, related to the procurement activity “Construction of KKMF in Istog ” with procurement number; 206-23- 6380-5-1-2.
2. Refused as ungrounded the complaint of EO MENTI Sh.p.k & ENGINEERING GROUP sh.p.k dated 11.12.2024, (Protocol Number: 2023/0999) against the Decision of the CA/Ministry of Health, related to the procurement activity " Construction of KKMF in Istog” with procurement number; 206-23- 6380-5-1-2.
3. Remains in force, "Notice on the Decision of the Contracting Authority" Ministry of Health dated 20.11.2023, for contract award related to the procurement activity " Construction of KKMF in Istog” with procurement number; 206-23- 6380-5-1-2.
4. The funds deposited in the name of the tariff tax for submitting the complaint to the account of the complaining economic operator "HIDRO PROJECT" Sh.p.k. are returned, while are confiscated the funds in the amount deposited in the name of the tariff tax to the complaining

economic operator "MENTI" Sh.p.k. & ENGINEERRING GROUP sh.p.k., and the same goes to the Budget of the Republic of Kosova.

## **REASONING**

### *- Procedural facts and circumstances –*

On the 26.06.2023, the Ministry of Health, acting in the capacity of the contracting authority, published the Contract Notice (Limited Procedure), related to the procurement activity "Construction of the Health Care Center in Istog" with procurement number 206-23-6380-5 -1-2.

On the 20.11.2023, CA (with data as above), through Notice - B58, has published Notice on the Decision of the Contracting Authority.

On the 24.11.2023, EO "HIDRO PROJECT" Sh.p.k submitted a request for reconsideration of the decision cited above, which was rejected as not based on the Decision of the CA, dated 30.11.2023.

As well as on the 27.11.2023, EO "MENTI" Sh.p.k. & ENGINEERRING GROUP sh.p.k. submitted a request for reconsideration of the decision cited above, which was rejected as not based on the decision of the CA, dated 30.11.2023.

On the 04.12.2023, the economic operator "HIDRO PROJECT" Sh.p.k. and on the date 11.12.2024 "MENTI" Sh.p.k. & ENGINEERRING GROUP sh.p.k. filed a complaint at the PRB, against the above-mentioned decision of CA, which are registered with protocol number 979/23 and 999/23.

### *-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.

*Claims of the complaining economic operator "HIDRO PROJECT" Sh.p.k. are presented as follows:*

The complainant claims that "we were eliminated from the further competition, that is, we were no longer qualified for the next stage. The reason for the elimination of our group is as follows: You did not present the engineer with the energy efficiency certificate according to requirement 3 of the technical and professional capacity in KJ and DT - you did not provide any document for evidence. As for this reason for elimination, we confirm that we fulfill this request completely and we argue this with concrete evidence. Documentary proof is required that one of the

engineers is certified for energy efficiency. We, as a group of economic operators "Hidro Project Shpk&Engroup Shpk" on the occasion of the bidding, namely with a file, have attached the list of the professional staff of the Hidro Project leader consisting of 8 engineers, where the engineer Mrs. Arberesha Kastrati. For the engineer Arberesha Kastrati, we have attached the notarized master's degree and the work contract for the project in question, but now we have noticed that due to a technical omission, we have not attached the certificate for energy audit in buildings. So it was a technical omission on our part when attaching the documentation. We have attached this certificate to the other project developed by you "Construction of KKMF in Drenas" and you can prove this if you analyze our documents in this tender (as proof that this certificate existed before the last date of submission of applications). As proof that engineer Arberesha Kastrati has the certificate for energy audit in buildings, we are attaching the training certificate to this request for reconsideration. The certificate in question bears the date before the date of the opening of offers, specifically the training by the engineer in question was held from September 28 to 09.12.2020. The contracting authority had to act in accordance with article 59.2 and 72 of the LPP and in accordance with article 8 of Regulation No. 001/2022 for public procurement and to request additional clarifications regarding the lack of the certificate of engineer Arberesha Kastrati, as well as you requested additional clarifications for ISO Standards 9001; according to the regulation, additional clarification should be requested for certificates and cv and then the evaluation should be done. Since the aforementioned provisions have not been implemented in the case of evaluating applications, then with understanding we request from your side to take into account the training certificate for energy audit in buildings of Mrs. Arberesha Kastrati. This certificate should be taken into account because it fulfills the conditions according to article 72.3 of the LPP, since its existence can be objectively proven. Taking as a basis all the clarifications and concrete evidence, it comes to the conclusion that the provision of Article 47 of Regulation No. 001/2022 on Public Procurement has not been respected because we have not qualified for the next stage even though I have fulfilled all the requirements of the paper of data for pre-qualification of the pre-qualification document. Article 56.2.2 clearly defines that the maximum number of first qualified candidates is 6, therefore in this case there is also an empty place to fill the maximum number of 6 candidates. Likewise, Article 47.17. of Regulation No. 001/2022 on Public Procurement determines that the maximum number of pre-qualified candidates is 6, while in the announcement on the decision it can be seen that five economic operators are pre-qualified, which means to reach the maximum number of pre-qualified tenderers a tenderer may also be involved, in which case we meet all eligibility requirements and minimum qualification requirements, therefore we must be the 6th qualified tenderer in this case. At the same time, article 7 of the LPP was not taken into consideration, since paragraph 1 of this article clearly provides that "The contracting authority will treat economic operators equally and non-discriminatory and will act in a transparent manner.

Referring to the claims as above, EO "HIDRO PROJECT" Sh.p.k., considers that the Contracting Authority acted in violation of Article 1, 7, 33, 56, 59, 60, 69 and 72 of the LPP as well as Article 8 of the Regulation No. 001/2022 For Public Procurement, requesting to approve the appeal as well-founded and return the case for re-evaluation.

*The claims of the complaining economic operator "MENTI" Sh.p.k. & ENGINEERING GROUP sh.p.k. are presented as follows:*

The complainant claims that regarding the elimination that the EO did not present the Efficiency Certificate for any of the engineers, the CA in DT requested the following: Evidence 3. List of professional staff signed and sealed - Certificate for energy efficiency, for one of the engineers requested. Notarized degrees (faculty according to the 5-year system or master), CVs signed by the engineers themselves, Employment contracts with the employer or agreements on engagement for this project, References for work experience upon request, also for the Project Manager as evidence is required - Decision on the appointment of the Project Manager.

Requirement 2. Technical staff - The economic operator must prove that he has technical staff min. 40 workers, of which at least 10 workers are certified for the exercise of professional work in safety and health at work according to the Law on Safety and Health at Work. Complaint claim: it is related to the violation of the evaluation deadlines, in the tender file it is stated that 6 economic operators will be qualified, 5 have been qualified and that the request for reconsideration for the economic operator Valmir Loshi B.I. should not have been handled at all.

Appeal claim: Selection in the next qualifying phase for Gr.i EOs, Thermomontimi N.N & Desing SHPK & Haxha Kom SHPK Regarding the appeal claim that the contract of the electrical engineer (Afrim Prokshi) is for a fixed term, the same has not to complete the Energy Audit Certification as requested by the CA. Regarding the complaining claim regarding the qualification of the economic operator, "AAG Projekt & Shkemi SHPK & Engroup SHPK & Alping", the engineering diplomas that have been completed abroad must be certified, the Gr.i economic operators has presented the diploma of Eng. Kushtrim Krasniqi Evidence 2. The list of technical staff who will be engaged to perform the work, with the following information: Name, surname, age of the worker, profession, experience (in years) and position in the company. Employment contract with the employer or agreement on the commitment to this contract for each worker. For workers certified to exercise professional work in occupational safety and health, a copy of the Occupational Safety and Health Training Certificate, issued by the licensed authority under the OSH Law, should be submitted. Regarding the complaint that the vibrator is missing according to the request that CA in the capacity of Gr. of economic operators has not presented the list of assets part of this. Complaint regarding the qualification of the economic operator, ALFA. "Engineering degrees abroad must be certified, the economic operator has presented the architectural engineering diploma completed by Florijana Jemini, also that EO only has the list of workers by contract, not verifiable. Evidence 2. The list of technical staff who will be engaged to perform the work, with the following information Name, surname, age of the worker, profession, experience (in years) and position in the company Employment contract with the employer or agreement on engagement for this contract for each worker. For workers certified for the exercise of professional work in safety and health at work, a copy of the Training Certificate for safety and health at work, issued by the licensed authority under the OSH Law, must be submitted.

The complaining claim regarding the qualification of the economic operator, Gr.i EOs - Construmax ShPK & TOP PROJEKT ShPK & Hars Group ShPK "Contract of construction-constructive engineer (Bekim Rexhepi) and engineer Shaban Krasniqi whose contracts are with a

fixed term. The complaining claim regarding the qualification of the economic operator Gr.i EOs Hidro Projekt SHPK & ENGGROUP Gr.i EOs does not meet the technical and professional capacities, the machines as well as does not meet the criterion for eng.Geodezis, it lacks the Vibrator according to the request of CA Evidence 5. List of equipment, unique customs declarations or purchase contract for non-registered vehicles and traffic books for registered vehicles. In cases where the EO has an agreement for the use, the EO must also submit the agreement for the use of the equipment together with the evidence for the equipment. Evidence 4. Notarized diploma, CV signed by the engineer himself, Employment contract with the employer or agreement on engagement for this project, References for work experience 5 years after graduation, limited license for geodetic services, OR, in case of EO there is a cooperation agreement with a licensed company for the provision of geodesy services, EO must provide a copy of the cooperation agreement for the realization of this project, a fixed-term license, references for work experience.

Referring to the claims as above, EO "MENTI" Sh.p.k. & ENGINEERRING GROUP sh.p.k., considers that the Contracting Authority acted in violation of Article 1, 4, 6, 7, 59, 64, 65, 69, 70 71 , 72, 108A of the LPP requesting to approve the complaint as well-founded and to return the case for reassessment.

*- Administration and evaluation of evidence -*

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, PRB dated 05/12/2023 and 13/12/2023 has authorized the review expert to do the initial review of the file and claims according to complaints no. 979/23 and 999/23, while on 06/12/2023 and 14/12/2023 the expert reports with no. 2023/0979 and 2023/0999 with the following recommendations:

For report No. 979/23 The expert recommends "During the review of the procedure and the review of the appeal claim, he finds that the CA had to request additional clarifications in terms of the meaning and application of Article 72 of the LPP, Article 38 of RrRoup No. 001/2022 and Article 10 of RrOUP No. 001 /2023 on the basis of this and in order to comply with the LPP, the complaint claim based, it is recommended to return the procedure for reassessment."

For report No. 999/23 The expert recommends "Taking into account the complaint claims and the development of the procurement procedure and the legislation in force in the capacity of the review expert, I recommend that the economic operator's complaint be rejected as unfounded.

The expertise's report has been duly accepted by all procedural parties. CA did not agree about the recommendation of the review expert's report, while EO "HIDRO PROJECT" Sh.p.k. did not declare about the recommendations of the review expert, while "MENTI" Sh.p.k. & ENGINEERRING GROUP sh.p.k. did not agree about the review expert's recommendations (submitting additional clarifications through the e-procurement system).

*Evaluation of the review expert through report no. 2023/0979, of the complaining claims of EO "HIDRO PROJECT" Sh.p.k., as follows;*

The Reviewing Expert clarifies that the economic operator in his offer has presented the signed and sealed list of professional staff, notarized diplomas (faculty according to the 5-year or

master's system), employment contracts with the employer or agreements on engagement for this project, related to ing. mrs. Arbëresha Kastrati, but he has not presented the documents, Certificate for energy efficiency, CVs signed by the engineers themselves, References for work experience as requested. List of Eng. submitted by the Economic Operator in their offer: List of professional staff, Employment contract presented for ing. mrs. Arbreshë Kastrati, University Diploma of Eng. mrs. Arbëresha Kastrati. During the submission of the request for reconsideration, the economic operator presented the documents required for ing. mrs. Arbëresha Kastrati and whose existing condition is before the publication of the Contract Notice. The certificate of Eng. mrs. Arbëresha Kastrati for energy efficiency sent as evidence with the request for reconsideration by the EO. CA on 10.10.2023 by means of the standard letter for clarification has requested additional information from the EO regarding the ISO Standard where it has requested clarification. But they did NOT ask for clarifications regarding the requirements Energy efficiency certificates, CVs signed by the engineers themselves, References for work experience as requested, as a result of which the economic operator was eliminated in the first phase in which case he was attacked Article 72 of the LPP. Based and supported by the legislation in force on public procurement in the capacity of the reviewing expert, I find that during the evaluation, comparison and examination of the offers, the CA in the case of the elimination of the complaining economic operator acted in violation of Article 72 of the LPP, Article 38 of the RrOUP No. 001/2022 and Article 10 of RrOUP No. 001/2023 since no clarifications have been requested in this regard and it has influenced the elimination of the EO's offer. Taking into account the facts and arguments presented and the legislation in force (Article 72 of the LPP, Article 38 of RrOUP No. 001/2022, item 10 of RrOUP No. 001/2023) in the capacity of the review expert the complaining claim of the EO received as grounded.

*Evaluation of the review expert through report no. 2023/0999, of the appeal claims of EO "MENTI" Sh.p.k & ENGINERRING Sh.p.k, appellant, as follows;*

The Reviewing Expert explains that considering the request of the CA during the review of the documentation of the EO's offer, I find that the EO has presented ing. according to the request of DT, but there is not even a document that proves that any of ing. is Certified for energy efficiency according to the request of the tender file, EO has not presented any evidence that any of Eng. is certified with this certificate. The complaining economic operator has not presented the list of workers with technical staff of 40 workers. From now on, every economic operator has the full legal right in accordance with the LPP to submit a request for reconsideration and the ZPP of the CA is obliged to handle any request for a reconsideration, therefore the ZPP of the CA has acted in full compliance with Article 108/A in the case when he handled the request for reconsideration of the economic operator Valmir Loshi B.I. Among other things, the CA has established the evaluation commission in accordance with the legal provisions of the LPP. The CA in these cases, even though it has announced that 6 operators can be qualified and has qualified only 5 for the next phase, it is not a legal violation in this case because the evaluation of the offers is made in accordance with the criteria determined by the CA, and in principle it can 2, 3 and 6 are qualified. It is the responsibility of the Contracting Authority, respectively the evaluation commission - ZPP, that the evaluation, examination and comparison process is done in full harmony with the legal provisions of the LPP, in this procurement activity, in in order to

respect the selection requirements, the technical specifications Annex 1 and Annex 7 in the tender file as well as to respect the qualifying criteria. After analyzing the complete documentation provided by Gr. of EOs, Termomontimi N.N & Desing LLC & Haxha Kom LLC and I noticed that Gr. of EO have presented the document proving that they possess the Vibrator according to the request of TD. Therefore, based on this claim that Gr. of the EO do not have evidence for the Vibrator based on the documents analyzed in the capacity of examining expert, I consider it to be unfounded.

Regarding the complaining claim that the Contract of ing. of Electrical Engineering (Afrim Prokshi) is with a fixed term, the reviewing expert explains that the contract of ing. Afrim Prokshi is signed on 01.4.2023 and the same is still valid, and the same meets the criteria required by the CA, therefore the appeal claim is unfounded. The same has completed the Energy Audit Certification as requested by the CA. the contracting authority in the tender file did not request that the degrees of Eng. Regarding the complaining claim that the Vibrator is missing according to the request of the CA, in the capacity of an expert, I find that Gr. of economic operators has presented the list of assets, part of this list is also the Vibrator, and the same CA also submitted the Invoice with no. requested by CA and that the appeal claim is unfounded.

As for the claim that Gr. of EOs only has the list of workers with contracts, not verifiable, the reviewing expert clarifies that the CA in the tender file requested the following: Evidence 2. List of technical staff that will be committed to performing the works, with the data following Name, surname, age of the worker, profession, experience (in years) and position in the company. The employment contract with the employer or the agreement on commitment to this contract for each employee. A copy of the Occupational Safety and Health Training Certificate, issued by the licensed authority under the OSH Law, must be submitted for workers certified to exercise professional work in occupational safety and health. So based on this Gr. of economic operators has presented the list of staff in accordance with the request of the CA, while the CA based on the LPP may, during the assessment, comparison and examination, wherever it deems reasonable or necessary to verify the complaining claim that the GR of the EOs has the list it does not stand only with a contract, as every other document required in the request of the CA has the same, the Certificates for safety and health at work and the employment contracts also have the same:

As evidence, I am presenting the list of workers and some Certificates for safety and health at work. The contracting authority in the tender file did not request that the diplomas of Eng. who have finished abroad must be nostrified, the economic operator has presented the diploma of ing. in architecture in the Master's degree completed by Florijana Jemini.

The same diploma conforms to the requirements of CA, no. degree series 000503 degree title Master of Science in Architecture completed at EPOKA University in Albania, the same also contains notarization by a notary, therefore based on the request of the CA in the capacity of an expert, I consider and find that the same meets the required criteria from CA and the appeal claim related to this point is unfounded.

As for the claim that the EO only has the list of workers by contract, not verifiable, the reviewing expert clarifies that the CA in the tender file has requested the following: Evidence 2. The list of technical staff that will be committed to performing the works, with the following data Name, surname, age of the worker, profession, experience (in years) and position in the company. The employment contract with the employer or the agreement on commitment to this contract for each employee. A copy of the Occupational Safety and Health Training Certificate, issued by the licensed authority under the OSH Law, must be submitted for workers certified to exercise professional work in occupational safety and health. Therefore, based on this, the EO has presented the list of staff in accordance with the request of the CA, while the CA, based on the LPP, Article 59, may, during the assessment, comparison and examination, wherever it deems reasonable or necessary to verify the complaining claim of Gr of the EOs the list is only with the contract, it does not stand because they have the same every other document required in the request of the CA, the same also have the Certificates for safety and health at work and the work contracts: As evidence, I am presenting the list of workers and several Certificates for safety and health at work. The economic operator in his offer and his documentation has presented more than 3 vibrators proven with Duda customs, invoices and sales contracts, and based on this, the complaining claim that he does not have a vibrator is unfounded.

Regarding the complaining claim that the Contract of ing. of construction-constructive (Bekim Rexhepi) and ing. Shaban Krasniqi, whose contracts are for a fixed term, the reviewing expert explains that the contract of Eng. Bekim Rexhepi is signed on 25.01.2023 and the same is still valid, and the same meets the criteria required by the CA, as well as the contract of ing. Shaban Krasniqi is signed on 03.01.2023 and is also still valid and active, therefore the appeal claim is unfounded. Also, taking into account that the CA has asked for Contracts or Pre-contracts, in the case where the activity may be extended related to these issues, the CA in accordance with Article 59 and 72 may request clarifications and additions related to these.

Complaint claim that Gr. of EOs does not meet the technical and professional capacities, machines (since there is an agreement for their use) as well as does not meet the criterion for ing. Geodesy does not stand because the CA in the tender file in Evidence no. 5 for machinery has requested as follows, and in Evidence no. 4 for staff it has requested as follows: Evidence 5. List of equipment, unique customs declarations or contract invoices of purchase for vehicles that are not registered and Traffic books for vehicles that are registered. In cases where the EO has an agreement for the use, the EO must also submit the agreement for the use of the equipment together with the evidence for the equipment. Evidence 4. Notarized diploma, CV signed by the engineer himself, Employment contract with the employer or agreement on engagement for this project, References for work experience 5 years after graduation, limited license for geodetic services, OR, in case of EO there is a cooperation agreement with a licensed company for the provision of geodesy services, EO must provide a copy of the cooperation agreement for the realization of this project, a fixed-term license, references for work experience.

Based on this, in the capacity of the reviewing expert, we clarify that the documentation provided by the EO is in accordance with the requirements of the tender file, since for the same EO has presented the evidence in the offer, the agreements for the use of the means in case the



contract is awarded. The contracting authority in the tender file did not request that the diplomas of Eng. who have finished abroad must be nostrified.

Regarding the complaining claim that the Vibrator is missing according to the request of the CA in the capacity of an expert, I find that Gr. of economic operators has presented the list of equipment, part of this list is also the vibrator, and the same has also submitted the contract of sale of the vibrator and the agreement for the use of the equipment, which proves that the group of EOs meets the criteria required by side of the CA and that the appeal claim is unfounded.

The panel considers that the expertise reports contain a priori the essential elements of such a document as provided by the provision of article 113 in relation to article 114 of the LPP, according to which the expert is required to review all the procurement documentation, including all complaints and provide the review panel and all parties with an independent and professional assessment of the procurement activity and the validity of the complaint claims. The argumentation in the expert's report is based entirely on the relevant documents that refer to the procurement activity. Consequently, the Review Panel regarding the claims of the complaining economic operators has given full confidence to the expert's report. In this way, it was found that the claims of the complaining economic operator "HIDRO PROJECT" SH.P.K are grounded, while the claims of the complaining economic operators MENTI Sh.p.k & ENGINEERING GROUP sh.p.k are unfounded.

*- Findings of the Review Panel -*

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

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

The review panel assesses that the reports of the review expert were drawn up at the request of the Panel regarding the dispute in this matter of the public procurement activity, and contain the essential elements of such a document as provided by the provision of article 113 in relation to article 114 of the LPP, according to which the expert is required to review all procurement documentation, including all appeal claims and to provide the Panel and all disputing parties with an independent and professional assessment of the procurement activity and the validity of the appeal claims.

However, it should be emphasized the legal fact that the expert's report is not binding on the Review Panel and that each such report is evaluated and/or analyzed in the general context of the case documents, asserted facts and other eventual evidence, taking into account the nature of eventual violations, the flow, nature and purpose of the procurement activity, therefore the fact

that in which cases and for what, the Panel relies or not, the expert's report and/or any of the recommendations, belongs to its independent and professional judgment/ thanks, just as these responsibilities are addressed in terms of article 98, 99 related to article 105 of the Public Procurement Law.

The review panel for the complaint submitted with protocol number: 2023/0979, has analyzed the report of the review expert, drawn up by the expert with the request of the panel to review the legal basis of the complaint claims, of the economic operator "HIDRO PROJECT" sh.p.k., regarding with the procurement activity "Construction of KKMf in Istog" with procurement number; 206- 23-6380-5-1-2, of the contracting authority, Ministry of Health.

The panel notes that the EO complaining against this activity has submitted only one (1) complaint claim according to which it claims that for Mrs. Arbëresha Kastrati, did not present the document, the Energy Efficiency Certificate in his offer, which was a request of the Tender File." Request 3.; Technical and professional capacity, Evidence 3. List of professional staff signed and sealed - Certificate for energy efficiency, for one of the required engineers". The reviewing expert assessed that even though the complainant did not submit the document in question in his offer on time, according to the request of the TD, the Contracting Authority in this case, the Ministry of Health, based on Article 72 of the LPP, can invite the economic operator to complete the submitted documents, which he did not submit by the time specified according to the deadline of the Tender Dossier.

The review panel based on the Tender Dossier (Limited Procedure) document dated 26.06.2023 and the Notice on the Decision of the Contracting Authority" Ministry of Health, related to the procurement activity "Construction of the HCMF in Istog" with procurement number 206-23 - 6380-5-1-2., note that 17 economic operators have expressed interest in this procurement activity, while the contracting authority, with its decision dated 20.11.2023, has selected/qualified 5 economic operators, while the others are eliminated due to non-fulfillment of the requirements of the Tender File (Limited Procedure) in this case both appellants were also eliminated. The review panel in this dispute gives credence to the document of the contracting authority, B54-Standard letter for the eliminated tenderer dated 20.11.2023, through which it notified the complainant "HIDRO PROJECT" sh.p.k., for the reason for the elimination of him as follows:

#### Reasoning

You have not presented the Engineer with the Energy Efficiency Certificate according to requirement 3 of Technical and Professional Capacity in CN and TD - you have not provided any document for evidence.

The contracting authority, the Ministry of Health, in this procurement activity based on the fact of the bidding of economic operators who have met the requirements of the Tender File (Limited Procedure), the CA according to its legal discretion "may" not have without the necessary article 72 of the LPP, to request completion of the bidding documents to the complainant, due to the fact that the operators have bid with completed documents according to the request of the DT. Therefore, the Review Panel, based on the facts presented above, finds that the legal provision

cited above is an opportunity of the contracting authority, but not a legal obligation, for this claim the appellant is partial, without influence on the result of this procurement activity and remaining in force of the decision of the CA.

The review panel related to complaint no. 0999/2024, has analyzed the report of the review expert, drawn up with the request to the panel to review the legal basis of the complaints of the economic operator "MENTI" Sh.p.k. & ENGINEERING GROUP sh.p.k., submitted regarding the procurement activity. Construction of the QKMF in Istog" with procurement number; 206-23- 6380-5-1-2, of the contracting authority, Ministry of Health.

The panel notes that the complaining EO against this activity has presented complaints which were evaluated by the review expert with his report dated 14/12/2023, which was submitted to the review panel, according to which all complaints are assessed as unfounded.

The review panel considers it unnecessary to once again elaborate the legal basis of the complaining claims of the complaining Economic Operator "MENTI" Sh.p.k. & ENGINEERING GROUP sh.p.k., therefore the Panel supports as legal, as its findings, all the findings of the Report of the review expert regarding the complaint claims of the complaining EO, with the recommendation for rejection of the complaint and the remaining in force of the decision of the CA.

The review panel also gives credence to the document of the Contracting Authority, through the B54-standard letter for the eliminated tenderer dated 20.11.2023, through which it notified the complainant "MENTI" Sh.p.k. & ENGINEERING GROUP sh.p.k. for the reasons of its elimination as follows:

#### Reasoning

You have not completed request no. 2 to Technical and professional capacity - You have not completed the technical staff min. 40 workers according to the required evidence. Consortium leader Menti Sh.p.k. completes with evidence 20 workers, the employment contracts for 7 workers are dated 31.03.2023, i.e. before the opening of the tender. The member of the consortium Engineering Group SH.P.K. completes with evidence 8 workers. However, with evidence, your offer completes the number of technical staff for only 28 workers.

You have not presented the Engineer with a Certificate of Energy Efficiency according to requirement 3 of Technical and Professional Capacity - you have not provided any document for evidence.

The review panel independently and objectively, conscientiously and professionally evaluated all the evidence of the case. The review panel, after the administration and evaluation of the evidence, the complete ascertainment of the factual situation, relying on the LPP as applicable material law, after examining the complaints, taking into account all the documents of the case, has found that the complaint EO "HIDRO PROJECT " Sh.p.k., is approved as partially based, while the complaint "MENTI" Sh.p.k. & ENGINEERING GROUP sh.p.k. is rejected as unfounded, since the complainants failed to prove with concrete evidence that there was a legal

violation by the Contracting Authority during development of the procurement activity in question.

The review panel concluded that the Contracting Authority acted in accordance with the legal provisions for public procurement and the requirements of the Tender Dossier/Limited Procedure, related to the procurement activity "Construction of KKMF in Istog" with procurement number; 206-23-6380 -5-1- 2, of the contracting authority, Ministry of Health.

Finally, the review panel has decided to confirm, "Notice on the Decision of the Contracting Authority" Ministry of Health, dt. 20.11.2023, regarding the procurement activity "Construction of the HCMF in Istog" with procurement number 206-23-6380-5 -1-2.

The review panel, based on the repeated approval of the complaint of the economic operator "HIDRO PROJECT" Sh.p.k., decided to return the complaint fee to the amount deposited by the complaining economic operator based on Article 31 par. 4 of the PRBO Work Regulations, while the economic operator "MENTI" Sh.p.k & ENGINEERING GROUP sh.p.k, based on the fact of the rejection of his complaint, decided to confiscate the complaint fee in the amount deposited by the complaining economic operator based on in article 31 par. 5 of the Rules of Procedure of the PRB, and the funds go to the budget of the Republic of Kosova.

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 cited "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in compliance in complete with this law".

The Review Panel has decided in accordance with the legal powers in the sense of Article 104 paragraph 1 in relation to Article 103 and Article 105 of the LPP for the implementation of the procurement review procedure in a fast, fair, non-discriminatory manner, with the aim of resolving legal and effective of the subject. Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations, which may appear during a procurement activity.

The review panel in accordance with Article 117 of the LPP, as well as based on the evidence presented above, decided as in the provision of this decision.

**President of the Review Panel**

Mr.Isa Hasani

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**Legal advice:**

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

Decision to be submitted to:

- 1x1 CA – **MINISTRY OF HEALTH;**
- 1x1 EO – **HIDRO PROJECT SH.P.K.,**
- 1x1 EO - **Menti Sh.p.k;**
- 1x1 Archive of the PRB;
- 1x1 For publication on the website of the PRB.