



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

Psh. No.753/23

Review Panel, appointed by the President of the PRB, Pursuant to the article 105 as well article 106, and 117 of the Law on Public Procurement of the Republic of Kosova no.04/L-042, amended and supplemented by Law No. 04/L-237, Law no.05/L-068, and Law no.05/L-092, composed of: Vedat Poterqoi -President, deciding according to the complaint of the EO “Med Plus”SH.P.K, regarding with the procurement activity “Supply of drugs and medical consumables for the needs of KPSH” with procurement number 616-23- 9366-1-1-1, initiated by the contracting authority (CA) – Municipality of Prishtina, on the 08.11.2023 has issued this:

DECISION

I. **Refused as ungrounded** the complaint to the “Med Plus”SH.P.K, filed at the Procurement Review Body on the 02.10.2023 (with protocol no.753/2023), regarding with the procurement activity: “Supply of drugs and medical consumables for the needs of KPSH” with procurement number 616-23- 9366-1-1-1, initiated by the contracting authority (CA) – Municipality of Prishtina.

II. CA is allowed to continue with the procurement activity.

III. Since the complaint of the complaining EO was rejected as ungrounded, the same fee that he paid when submitting the complaint is confiscated in accordance with Article 31 paragraph 5 of the Rules of Procedure of the PRB and these funds go to the Budget of the RKS.

REASONING

- Procedural facts and circumstances -

On the 01.09.2023, the Municipality of Prishtina, in the capacity of the Contracting Authority, has published the contract notice for the procurement activity entitled: "Supply of drugs and medical consumables for the needs of KPSH" with procurement number 616-23- 9366-1-1-1.

EO "Med Plus" Sh.P.K. on the 19.09.2023 submitted a request for reconsideration to the CA. On the 22.09.2023, the CA-Municipality of Prishtina by decision rejected the requests for reconsideration as ungrounded.

Dissatisfied with the CA's decision, the complaining EO "Med Plus" Sh.P.K. on the 02.10.2023 submitted a complaint to PRB, with protocol number 753/23, against the decision of the Contracting Authority regarding the procurement activity described above.

The contracting authority has implemented an open procedure, type of contract: Supply, estimated value of the contract: 200,000.00 €.

The EO's complaint was made in accordance with Article 109.1 of the LPP, according to which any interested party can submit a complaint to the PRB against any decision taken by the CA. Since the EO has also applied for reconsideration, it means that its actions also refer to Article 108/A of the cited Law. Therefore, the PRB considers that the Complaint fulfills the prerequisites in terms of the provisions now cited and the same falls under its competences in terms of Article 105 of the LPP.

- Evaluation and administration of evidence -

Based on the actions described above, the PRB has engaged the evaluation expert in accordance with Article 111, paragraph 5 of the LPP, with the duty that the same, in accordance with Article 113 of the cited Law, conducts the initial review of the dossier and complaining claims, in relation to the procurement activity described above. Regarding this, on 12.10.2023, the review expert submitted the evaluation report with the following recommendations:

Based on the aforementioned clarifications, the review expert proposes to the review panel that the complaint of EO "Med Plus" SH.P.K.

I. Is rejected, the complaint of the economic operator "Med Plus" SH.P.K, submitted to the Procurement Review Body on the 02.10.2023 (with protocol number 753/23) for the procurement activity entitled: "Supply of drugs and medical consumables". for the needs of KPSH "with no. of procurement: "616-23-9366-1-1-1", initiated by the Contracting Authority (CA) - Municipality of Prishtina.

II. CA is allowed to continue with the procurement activity.

RESPONSE TO THE COMPLAINING CLAIMS OF THE COMPLAINING EO

With dt. On 01.09.2023, the notice for the contract and the tender file entitled "Supply of drugs and medical consumables for the needs of KPSH" was published. As a party interested in bidding on this project, we have analyzed the tender file as a whole and the contract notice, while we have noticed that discriminatory/favoring requirements have been placed in the tender file, which we will clarify below: 4/ 6 Initially, in relation to the requests which are

discriminatory/favoring requests, we submitted a request for additional information where we contested some of the requests of the tender dossier and for some we asked for clarifications, but the contracting authority responded by not receiving them take into account our clarifications. Therefore, we are obliged to submit a request for reconsideration, since the requirements specified in the tender file limit competition and make it impossible for EOs interested in bidding in this procurement activity.

1. In the technical and professional capacity, article 9.1&9.2, you requested "2. The economic operator must engage professional personnel who must have the following school qualifications a) A project manager with a pharmacist profession with 5 years of work experience; b A pharmacy technician with 5 years of work experience", while as documentary evidence "a) For the manager CV, University Diploma (Faculty of Medicine-Pharmacy branch), Pharmacist's License, Contract and CV Signed by the manager himself is requested as documentary evidence. b) Pharmacy technician at least high school diploma, contract and license". In relation to this request, in the request for additional information, we requested that the requirement of 5 years of work experience for the pharmacy technician be removed, because the same requirement does not coincide with the nature and purpose of this procurement activity, or that the requirement for technician be removed in its entirety. of the pharmacy, since the pharmacist is being sought and in this case we are dealing with supplies and not services and there is no need to be this request of the tender file. In the response of the CA in relation to our question, it gave the following answer: "The requirement that the pharmacy technician have work experience is a legal requirement since every pharmaceutical warehouse must be licensed by KKPPM as a distributor, to have the Pharmacist and the Technician and for the work experience it is the right of the CA to ask since the technician deals with the preparation of the products and they are sensitive products and we must have the delivery according to the PSO from the pharmaceutical warehouse to the warehouse of the QKMF and QMU [1]so according to the rules provided" The contracting authority's response is not convincing and consistent and does not justify the request for a pharmacy technician and the required experience. The reasoning that the technician deals with the preparation of the products and the requirements for work experience are not in harmony with each other, and also the preparation of the products does not mean that it should be done by a pharmacy technician with such great work experience, even not the presence of the technician is absolutely necessary when we consider the fact that the request for the tender file is also the pharmacist. Therefore, we request that the requirement regarding the pharmacy technician or the experience required for the same be completely removed, since as we have mentioned in this procurement activity, the request for the tender file is also the pharmacist and when it is known that in this case we have to do with supplies and not services, the fact is clear that there is no need to define such a request in the tender dossier. The supplies that must be made are the responsibility of the economic operator, who has a pharmacist within the company, therefore the CA's reasoning that the possession of a technician creates a guarantee for supply is actually a paradox because the responsibilities of the contractual parties are a derivative of the conditions of general and special terms of the contract and if the contract is not implemented then legal measures are foreseen. So the possession of a pharmacy technician is not a guarantee that the supply will be done in a fair and correct way, but there are other elements that guarantee a correct and adequate supply, such as contracts, execution insurance, etc.

Answer to the complaining claim 1.

The reviewing expert clarifies that in relation to the request of the CA, for the engagement of professional personnel who must have school qualifications, as it has been requested that a project manager with a profession of pharmacist with 5 years of work experience, this is a legitimate request of the CA, for the reason that the nature of this field is sensitive and we are dealing with drugs and supplies of medical consumables, in relation to this request it is the responsibility of the CA to demand the quality and preparation of the staff. Therefore, the reviewing expert thinks that with him the CA has requested that they have sufficient experience and I find that this request is not favorable/discriminatory for any EO, but is in accordance with the LPP, namely Article 69 point 4.1. educational and professional qualifications of the leading personnel of the economic operator and, in particular, of the person or persons who are directly responsible for the provision of services; This is also foreseen in Guideline 001/2023, of Public Procurement, In the case of a contract for the provision of services: a) Minimum professional and educational qualifications of managerial staff a. The list of professional and educational qualifications and their CV, the minimum average of the workforce for each of the 3 years, so in the specific case the CA has requested the experience of a professional pharmacist manager with 5 years of work experience in accordance with PP rules, this claim of the complaining EO is rejected as unfounded.

2. In the tender dossier, the request is also specified as follows "7. The bidding Economic Operator, along with the offer, must bring one sample per type of product. (item 113,132,168,169,175)", while as documentary evidence "7. (Samples must be submitted before the opening of the tender)" is requested. As for the samples, in the request for additional information we have submitted the following question and clarification: Samples were requested for the products (item 113,132,168,169,175). to remove the request to provide samples only for these products because it sounds tendentious and does not coincide with the nature and purpose of this procurement activity. According to us as professionals in this field, these positions are not more important than other positions, therefore we consider that such a request is unnecessary. EOs also complete and sign the declaration for technical specifications. The contracting authority has provided the following clarification: "The request for providing samples is a request to verify the accuracy of the product and the quality for these positions and this request is the right of the CA to make the request for these samples because we do not we wanted to make bidding difficult, asking for samples only for these positions". The reasoning of the contracting authority is unstable, due to the fact that we, as experts in this field, know that other positions are much more important than the positions for which the samples were requested. The contracting authority has not given a concrete answer in relation to this question, while regarding the reasoning of the CA, where it has stated that "we did not want to complicate the bidding, by asking for the samples only for these positions". we explain to you that if eventually it was not necessary to complicate the bidding, then it was not necessary to request the samples at all, but only the declaration of the technical specifications. Therefore, we ask once again to remove the request regarding the samples requested only for the products (for item 113,132,168,169,175), since as we have mentioned, such a request is discriminatory and prevents you from bidding EO interested in bidding in this activity procurement and at the same time it is a request that favors a certain EO. Therefore, we ask that the request regarding the presentation of samples only for

certain products be completely removed, since such a request is tendentious and favoring certain EOs. But what do the positions that the samples were requested contain. 113 Rescue blankets- Thermal foil; Description: Disposable device, thin blanket, like aluminum foil. Protects against cold/heat Piece 1 132 Gauze compress 100cm x 80cm Piece 1 168 Paper for EKG Schiller AT-1 90x90 x400 Piece 1 169 Paper for EKG Schiller AT -2 210 x 280 x 216 Piece 1 175 Mouthpiece for single-use spirometer Piece 1 Product 113 is a blanket and it is for one use and a sample is required, but this sample has no importance because it is not a product that has any specifics and special importance. 6/6 Asking for a sample for a blanket that is only for one use cannot be understood except as a tendency and favoritism, and especially when I consider the fact that in this tender we also have supplies of surgical pads, pregnancy tests, urine bags , catheters, probes, thermometers, and no samples were requested. A sample is also required for gauze compresses in No. 132, while for gauze compresses Compress gaza (sterile gauze) 60x60cm for minor surgery in No. 131 is not required even though this compress is more specific and special. Open favoritism and the tendency is very clearly seen, when a sample is requested for products 168 and 169 paper for ECG, while it is not required for product 170 and 171, which are also these papers for ECG. The question arises as to why the ECG letters required in position 168 and 169 are more important and the ECG letters for product no. 170 and 171 are not important. This request is actually an absurdity of its own kind. Requests for samples are absolutely unnecessary, moreover, out of 189 items, samples are requested for five items, therefore we ask the PRB to professionally analyze these requests, and also for these products to remove the request for samples. The contracting authority itself, the Municipality of Pristina, in two past activities, similar to this activity, did not request samples. Below are the past activities: Procurement Activity No. 1 CA: PRISHTINA MUNICIPAL ASSEMBLY Procurement No.: 616-22-2096-1-1-1 Title: Supply of drugs and medical consumables for HCMF and QMU Estimated value : Total: 480,000.00 € This framework public contract has a duration of 36 months Date when the Tender File was prepared: 17.03.2022 Procurement activity no. 2 CA: MUNICIPAL ASSEMBLY OF PRISTINA Procurement no.: 616-23-3329- 1-1- 1 Title: Supply of drugs for the needs of Health Care and Nursing Home Estimated value: Total: €238,403.67 Lot 1: €200,000.00 (Supply of drugs for the needs of Health Care) Lot 2: €38,403.67 (Supply of drugs for the needs of Nursing Home) This public framework contract has a duration of 12 months Date when the Tender File was prepared: 06.04.2023 So even in 2022, but also in 2023 for the same and similar supplies, he did not ask for samples, while now he does only for five products and without being able to justify why samples are required only for these products.

Answer to the complaining claim 2.

The reviewing expert explains that the contracting authority has sufficiently clarified the reason for this request, so this is also allowed by Regulation No. 001/2022, for Public Procurement, Article 37.2 When samples are requested, they can be submitted in advance, or during the closing time of the tender. They must be submitted before the deadline for submission of tenders, as well as Article 32.5 Tenders can be accompanied by documents in physical form, such as: samples, catalogs and any other evidence that cannot be uploaded through the electronic procurement system, however, during the drafting of the electronic offer, economic operators must specify the documents that are sent in physical form. The CA also gave the reason for the requests to provide samples before the opening of the tender, that is, to verify the accuracy of the product and the quality for certain positions. In

some cases, the CA may specify desirable functions, performance, etc., and include such specifications in the criteria on which tenderers are evaluated (competition parameters). Therefore, in this case, the CA did not favor any party in the procedure, therefore all Economic Operators who express interest in this procurement activity have this obligation.

3. In the additional information, we have also clarified the issue regarding request 3. 7/6 6.

The economic operator must submit the ISO 13485 or 9001 Manufacturer's Certificates and CE Certificate for medicinal consumables. In relation to this request, we have stated that "We ask that the request for ISO and CE for consumables in point 6 be removed, because declarations of conformity are required for Class I consumables". The products that are expected to be supplied in this tender are known that without ISO and CE they cannot be imported and these requirements are really unnecessary". The contracting authority has given the following answer: "You must present ISO and CE in the offer (for products that do not have CE, you can present a certificate of conformity according to the rules of the KPAPM and the EU for the verification of the quality of products with Certificates) ". The CA's answer is inconsistent and not concrete in relation to our question, therefore we also ask the PRB to remove the requirement for ISO and CE for consumables in point 6, because class I consumables require declarations of conformity. The products that are expected to be supplied in this tender, it is clear that the same without ISO and CE cannot be imported and these requirements, provided by the CA, are really unnecessary, therefore we ask that they be removed from the tender file and the standard form be published for error correction.

4. Regarding the request of the tender dossier where it was requested "The economic operator must provide Certificates a) ISO 9001 2015 and b) ISO 13485 2016", we have requested that the ISO 13485 standard be removed from the tender dossier, since the same required standard does not coincide with the nature of this procurement activity. The contacting authority in its response stated as follows: ISO 9001 is for company management, while ISO 13485 is for the management of medical products by distributors or manufacturers. This reasoning of the contracting authority is unsustainable due to the fact that we have clarified in the request for additional information for what and in which cases this standard is required. The ISO 13485 standard serves as information in the following link: <https://www.rimsys.io/blog/iso-13485-overviewjavascriptnicTemp0> OR

<https://13485store.com/medical-device-standards/what-is-iso-13485/> or javascript:nicTemp()

Note: ISO 13485 is for Medical Device manufacturers and is not for EO and we require that CA to remove request 1 for ISO 13485 from the tender file because in this case we are dealing with the EO that has to supply and not with manufacturers of medical devices that require ISO 13485. For more, see the facts and evidence for ISO 13485 Also ISO 13485 should not be required for local EO because they are not manufacturers of medical devices because this certificate is only for manufacturers or English manufacture of medical devices, ie ISO 13485 Medical devices -- Quality management systems. The requirements for regulatory purposes are a standard, and contain a comprehensive quality management system for the design and manufacture of medical devices, so this ISO 13485 standard applies to MANUFACTURERS OF MEDICAL DEVICES. 8/6 So from all the above-mentioned clarifications, it is clearly understood that the request regarding ISO 13485 is not relevant to this procurement activity and the same request favors a certain EO, therefore we ask that it be removed from the tender dossier.

Answer to Complaining Claims 3 and 4.

The Review Expert in relation to the complaining claim for ISO 13485, has made an online verification where it is easily verifiable only with a search with the number of ISO 13485, which is seen to be of the nature of medical devices, attached below which I present to PSH. So this requirement of ISO standards 13485, is related to the procurement activity "Supply of drugs and medical consumables for the needs of the KPSH", it should be noted that the CA has set the word or 9001 2015, Quality Management Systems quality. CA acted according to Guideline No. 001/2023 for Public Procurement article, 5.5 The determination of technical specifications that refer to a specific product or source, or a specific process, or trademarks, patents, types or specific origins or products, as a general rule is prohibited. However, such a reference can be used in special cases, if such reference is followed by the words "or equivalent/equivalent" as in Article 5.3, an international standard and/or, Re(5): International standards are for example ISO, www.iso.org, ASTM, www.astm.org, etc., Guide No. 001/2023. Therefore, in this case I do not see that there is any favoritism or discrimination in relation to this point of complaint.

5. Regarding our clarification regarding the required equipment, a 7.5T truck with a ramp, the contracting authority has given the following answer: The transport equipment is necessary for the realization of the project. The truck is an essential tool for transporting especially infusions (nacl, glucose, ringer) and we have foreseen that they should be delivered in every center and it is very difficult for the technical staff of the CKMF to transport them by hand. This request is quite contemporary and necessary to be transported by transpallets from the truck that has the moving lift (ramp). This clarification of the contracting authority is unstable, due to the fact that we, in the clarification we have made, have clearly stated that the request is restrictive and discriminatory/respectively favoring, therefore we have asked to remove the request for the 7.5 ton truck, and to allow a real and reasonable minimum of truck or transport equipment. The contracting authority, apart from the fact that it has not removed the request regarding the same truck, has also not allowed the real and reasonable minimum of the truck/carrying equipment. The request of the contracting authority for a truck with a strict tonnage of 7.5 tons is a discriminatory request, and at the same time a request that favors a certain EO who possesses such equipment as requested by the contracting authority. This request also contradicts Article 28 of the LPP. In the two past activities that were mentioned in claim No. 2, the contracting authority itself had requested: a) At least two vehicles (Pickup-KOMBI) for transporting the goods. Now, for the same and similar supplies, it requires a truck, which is really unnecessary. the truck because the supply can also be carried out with smaller cars, but the CA is not only satisfied with the name and request for a truck, but also specifies 7.5 tons. Also in the other two activities initiated by CA-SHSKUK in terms of equipment, even though the value of the tender was much higher and such equipment was not requested as requested by CA in this procurement activity. Two other activities initiated by SHSKUK, the same as this procurement activity, where a truck with a tonnage of 7.5 tons was not requested: Procurement activity no. 1 CA: SHSKUK - UNIVERSITY CLINICAL HOSPITAL SERVICE OF KOSOVO Procurement No.: 00220-22-2010-1-1-1 Title: "Supply of Sodium Chloride product from the Essential List for the needs of SHSKUK" Estimated value: €609,592.00 (NaCl 0.9% 500ml with a quantity of 1,523,980 infusions) This public framework contract has a duration of 24 months Date when the Tender File was prepared: 16.03.2022 Procurement activity no. 2 CA: SHSKUK - UNIVERSITY

CLINICAL HOSPITAL SERVICE OF KOSOVO Procurement no.: 00220- 23-5371-1-1-1 9/6
Title: Supply of drugs from LE for SHSKUK-047 Estimated value: Total: 6 Lots-€1,388,726.07
(NaCl 0.9% 100ml with a quantity of 558,260 infusions) This public framework contract has a
duration of 12 months Date when the Tender dossier was prepared: 26.05.2023.

Answer to the complaining claim 5.

Regarding the complaining claim of the complaining EO, regarding the CA's request for a 7.5T truck, the reviewing expert thinks that this request is not discriminatory/favoring, since the CA did not ask for the name of any particular brand, but only the weight and the same one must have a moving lift (ramp), in this case, the request has given you the option of bidders, if they do not have such a truck, they can make an agreement for this service. Therefore, the reviewing expert thinks that this request of the CA remains in force as I find that this is not related to any favoritism, but all parties interested in this procurement activity can easily fulfill this request, to carry out they can make an agreement with any other party for this service, since the CA itself, in the tender file, has allowed you this opportunity.

6. Regarding the request for the tender dossier, the economic operator must provide evidence that he has successfully completed similar contracts for supplies of minimum value in the last 3 (three - 2020-2021-2022) years (starting from the date of publication to the Contract Notice) for €300,000.00, we have asked the CA for clarification on whether the goods receipt reports are accepted for ongoing contracts but which prove the supplies with goods receipts and bank transactions. The contracting authority did not allow such a thing, but only mentioned that we should refer to the request of the tender dossier. We also ask the PRB to compel the CA to change this request by allowing the presentation of the goods acceptance reports for the contracts in progress, which supplies are evidenced by goods acceptance slips and bank transactions, in order to competition is opened and certain EOs are not favored. If the request is not changed, then the competition is limited and apart from the fact that EOs with more experience in this field are discriminated against, at the same time newly established EOs are also prevented from bidding. In order to prove the experience of the supplies made, not only contracts should be valid because there are framework contracts that last from three years or there are international contracts that are really bound without a deadline but are proven only with receipts and bank transactions, therefore the importance should not be denied and the value of these supplies but must be accepted as such because they prove that the supplies were made properly. We with dt. 22.09.2023 we accepted the decision to reject the request for reconsideration on the grounds that it is unfounded. The contracting authority has not provided any clarification other than the response to the request for additional clarification, which response we disputed above in the appeal, therefore we consider that the CA in the absence of arguments to justify the requests of the tender file only has repeated the answers as in the additional clarifications. The contracting authority has been evasive during the responses to our complaints, since for the truck it does not answer about the strict tonnage required but talks about the importance of the truck needed for the transport, especially of the infusions. In this tender file, we have adapted the technical specifications and the requirements of the FDT, therefore we ask the PRB to force the contracting authority to remove all the above-mentioned requirements, which we contested, from the tender file in order to of the opening of the competition, since as the requirements are

specified, many EOs with experience in this field, who are interested in bidding in this procurement activity, are being discriminated against. These requirements are also in complete contradiction with Article 7 of the LPP, namely paragraphs 1, 2, 3 and 6. Paragraph 1 of Article 7 clearly provides that "The contracting authority will treat economic operators in an equal and non-discriminatory manner and will act transparently" With these requirements, it's not that there can't be equal treatment of economic operators, but 10/6 there will be open discrimination and determination of the winner from the start of this procurement activity, without open competition. Paragraph 6 of the provision of Article 7 clearly provides: During the conduct of procurement activities, all contracting authorities shall ensure; (i) the widest possible participation of interested economic operators regarding the price and subject matter of the procurement". With these requirements, it is not that broad participation of economic operators is not possible, but in this way competition is excessively limited and these requirements are directly not in harmony with the purpose and subject of the procurement because when competition is limited with unreasonable and necessary requirements then the bidding price of automatically favored economic operators is much higher, because they have no competition and the winner is actually determined by the contracting authority based on the requirements of the tender dossier. Based on all our testimonies and objections that were mentioned above, it turns out that the tender file was not compiled in accordance with Article 27 of the LPP and at the same time Article 17.17 of Regulation No. 001/2022 on Procurement was not taken into account. Public where it is clearly written that "The tender file will be prepared in such a way that it does not: Limit competition among EOs, or Discriminate against or act in favor of one or more EOs". So, based on all the facts mentioned above, it is understood that the tender file limits competition and favors one or more economic operators. Article 25.6 of the Regulation on public procurement no. 001/2022 clearly provides that "All minimum requirements for qualification will be directly relevant and proportional to the object of the contract in question. In this tender, the requirements defined in the tender file are not proportional to the scope of the contract and the nature of this procurement activity and are unnecessary requirements. The requirements that were objected to above are very favourable/discriminatory and at the same time they close the bidding doors to many companies with experience in this field and also these requirements are in contradiction with Article 25.4 of Regulation no. 001/2022 on Public Procurement, because it clearly states that "While determining the minimum requirements for qualification, the CA will pay special attention to the development of the EO and will formulate the minimum qualification requirements in such a way as not to exclude newly established EOs that possess reasonable and sufficient economic skills , financial and/or technical". With these requirements, not only has no importance been given to new economic operators, but the competition has also been limited to experienced economic operators with economic, financial stability and professional technical skills, therefore these requirements should be changed/removed to enable partly more wide range of economic operators in this procurement activity and to take into account the aforementioned provision (25.4 of Regulation no. 001/2022 on Public Procurement). The contracting authority, instead of taking into account the development of young economic operators, in addition to not taking this provision into account, openly discriminated against other economic operators with more experience in this field. The above-mentioned requirements contradict Article 7 paragraph 1, 3, 4 and 6 of the LPP, because in these paragraphs it is clearly provided that economic operators cannot be discriminated in any way and in any variant. Therefore, the requirements that we contested on 11/6 above should be removed/changed in order to have a normal procurement activity and not to discriminate/favor certain companies. Based on all those discriminatory-

favoritative requirements and those required evidence, it turns out that in this way the purpose of the LPP cannot be achieved, as provided for in Article 1 of this law, which clearly states: The purpose of this the law is to ensure the most efficient, transparent and fair way of using public funds, public resources as well as all other funds and resources of the contracting authorities in Kosova.

Answer to claim no. 6

As for complaining claim no. 6, regarding the banking circulation as well as the references for the last three years, the Reviewing Expert finds that the CA has acted in accordance with the LPP, as well as the rules of public procurement, specifically Guideline No. 001/2023 page 31, "In all the cases included in 2.1, 4.2 and 6.2 of Article 69 of the LPP, the following expression is mentioned: "realized (completed) in the past three years" or "in the period of past three years..."). In the sense of the Law, the expression "the past three years" means: "the time period defined in these articles which is related to the period that preceded the date of publication of the contract notice" As for the request of the CA, the Economic Operator must provide evidence that it has successfully completed similar contracts for supplies with a minimum value for (3) the last three years 300,000.00 euros. In determining the minimum turnover, the contracting authorities must not exceed twice the estimated value of the contract. The turnover request must be expressed in figures and must refer to the last three financial years at most. Such financial years must be clearly defined in the contract notice or invitation to tender or participation. When, in addition to the minimum turnover, a specified minimum turnover in the specific areas covered by the contract is necessary, such turnover must not exceed 1.5 times the estimated value of the contract. For this point the request is justified. Therefore, the examining expert thinks that the request of the tender file of the CA, related to this appeal claim, is a grounded request, while the EO's appeal claim is ungrounded.

- Findings of the review panel -

The panel further analyzed the documents of this case, including all acts and actions of the parties and their statements, considered that there is no need to convene a public session with the parties because there is sufficient evidence and there are conditions to decide meritoriously regarding the complaint in the case specifically, as provided by paragraph 1, of article 24 of the cited Regulation.

Referring to article 104.1, of the LPP, according to which it is required that the review procedure be implemented in a fast, legal and effective manner and also analyzing in their entirety the documents of this subject in the context of this procurement process, The panel did not consider it necessary to elaborate again in detail and without need in this case each complaint claim, as long as they are specifically singled out especially in the contested decision of the contracting authority and have been analyzed and argued by this panel.

Among other things, in the challenged decision of the contracting authority and in the report of the reviewing experts (professional and technical), explanations were given regarding the complaining assertions. The review panel, after reviewing the case documents, reviewing the

complaint claims of the complaining EO, findings, concrete analysis and recommendations of the reviewing expert, the statement of the parties in the procedure, discussions and sifting of the evidence as a whole during the main review session, clarifies:

RP considers that all CAs should be extra careful so that the selection criteria will not be unfairly strict leading to discrimination and limiting competition, as well as to ensure as much competition as possible. without risking the contracting of unprofessional companies as well as with the understandable purpose of filtering and excluding unstable companies that cannot implement the specific contract, so the selection criteria must fulfill its objective and practically filter out unstable companies, in relative to the volume and complexity of the work foreseen in the activity, but not to the extent that the established criteria lead to discrimination. Therefore, the RP has finally decided that, regarding the complaining claims of the complaining EO that the Contracting Authority has discriminatory criteria in the Tender dossier, the RP relies on the report compiled by the review expert appointed by the PRB, whose duty was to review all the complaint claims and his professional opinion is that the request mentioned in the complaint claims of the complaining EO, as such, represent discrimination, therefore the RP obliges the CA to make the improvements in accordance with the review expert's assessment, made in the expertise report. Therefore, the recommendation of the reviewing expert, whom in this case the PSH forgives his trust, is to classify the complaint as unfounded and the CA to continue with the procurement activity.

- conclusion -

The review panel considers that some of the complaining statements are unfounded, as explained above, while the CA acted in accordance with the provisions of articles 7, 27 and 28 of the LPP. The return of a procurement activity for the improvement of the Tender Dossier, without facts and evidence and/or without a legal basis, is not in harmony with Article 1 of the LPP, according to which, the purpose of this Law is, among other things, cited: " ...to ensure the integrity and responsibility of public officials, civil servants and other persons who carry out or are involved in a procurement activity, requiring that the decisions of such individuals and the legal and factual basis for such decisions, do not influenced by personal interests, to be characterized by non-discrimination and a high degree of transparency and to be in accordance with the procedural and essential requirements of this law". In any case, for each request placed by the CA in the Tender Dossier based on article 24, paragraph 2 of the LPP, the contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in full compliance with this law. Likewise, according to article 51, paragraph 3 of the LPP, CA, all selection criteria as well as the required documents and information that have been established and described in this article, must be directly relevant and proportional in relation to the subject of the respective contract.

Regarding Article 105, taking into account the requirement of Article 104, paragraph 1, of the cited Law according to which, quoted: "The procurement review procedure will be implemented and carried out in a fast, fair and non-discriminatory manner, which aims at the fair, legal and effective resolution of the matter..." 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.

Therefore, from the above, the review panel in accordance with article 117 of the LPP decided as in the provision of this decision.

President of the Review Panel

Mr. Vedat Poterqoi

Legal advice:

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

Decision to be submitted to:

1x1 CA - **ASSEMBLY OF THE MUNICIPALITY OF PRISHTINA;**

1x1 EO – **MEDPLUS SH.P.K;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.