



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

Psh. No.0237/25, 0238/2025

The Review Panel, appointed by the Acting President of the Procurement Review Body (PRB), pursuant to Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosovo (Law No. 04/L-042, supplemented and amended by Law 04/L-237, Law 05/L-068, supplemented and amended by Law 05/L-092) composed of Batisha Ibrahim –President, Isa Hasani –member and Kimete Gashi Brajshori – member, deciding upon the complaint of the Economic Operator (EO) “SEMAKS” SH.P.K, as well EO “Pro & Co Group” SH.P.K, against the Contract Notice or the tender documents, related to the procurement activity “Construction of the integrated project of the Gjilan City Boulevard” with procurement number 651-25-644-5-1-1, initiated by the contracting authority (CA) - “MUNICIPAL ASSEMBLY- GJILAN, on the 22/05/2025, has issued this:

DECISION

1. Approved, as partly grounded the complaint of EO “SEMAKS” SH.P.K., with no. 2025/0237, dated 04/04/2025 and the complaint of EO “Pro & Co Group” SH.P.K., with no. 2025/0238, dated 04/04/2025, regarding the procurement activity “Construction of the integrated project of the Gjilan City Boulevard”, with procurement number 651-25-644-5-1-1, initiated by the contracting authority (CA) - “MUNICIPAL ASSEMBLY-GJILAN”.
2. Remains in force, Contract notice regarding the procurement activity "Construction of the integrated project of the Gjilan City Boulevard", with procurement number 651-25-644-5-1-1, initiated by the contracting authority (CA) - "MUNICIPAL ASSEMBLY- GJILAN"..
3. Within 10 days, the CA must inform the PRB of all actions taken in relation to this procurement activity, otherwise, for non-compliance with the decision, the PRB may take measures against the CA as provided for in the provisions of Article 131 of the Law on Public Procurement of Kosovo.
4. The complaining EO is obliged, in accordance with Article 31, point 6 of the Rules of Procedure of the PRB, to make a request for the return of the complaint security within a period

of sixty (60) days, otherwise the deposit will be confiscated, and these funds will go to the Budget of the Republic of Kosova.

REASONING

-Procedural facts and circumstances -

On the 17.03.2025, “MUNICIPAL ASSEMBLY-GJILAN”, in the capacity of the Contracting Authority, has sent the invitation for bidding regarding the procurement activity “Construction of the integrated project of the Gjilan City Boulevard” with procurement no.: 651-25-644-5-1-1.

The contracting authority has implemented an open procedure, type of contract: work, estimated value of the contract: 18,000,000.00. €.

On the 29.03.2025, EO “SEMAKS” SH.P.K., as well as on 29.03.2025 EO “Pro & Co Group” SH.P.K., has submitted a request for review against the above-mentioned decision of the CA. On 04.04.2025, the Contracting Authority has rejected as unfounded both requests for review.

On the 04.04.2025, the PRB has accepted the complaint from EO “SEMAKS” SH.P.K., with no. 2025/0237 and EO “Pro & Co Group” SH.P.K., dated 04.04.2025 with no. 2025/0238 regarding the activity “Construction of the integrated project of the Gjilan city Boulevard” with procurement number 651-25-644-5-1-1.

-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 according to Article 4 paragraph 1 sub-paragraph 26 of the LPP. In this way, the Review Panel has found that it is competent to review this complaint according to Article 105 of the LPP and there is no procedural obstacle to continue with the review of the complaint on its merits.

The claims of the complaining economic operator “SEMAKS” SH.P.K” are presented as follows:

On 18.03.2025, the contract notice was published where we as EO have expressed interest in participation, we have analyzed this project in detail and we have noticed that there is a violation of the provisions of the LPP and discrimination in the requirements of the tender dossier, specifically Technical and professional capacity:

REQUIREMENT 1: Requirement 1. The operator or group of EO must provide evidence that it has successfully completed contracts for construction projects of a similar nature in the amount of 15,000,000.00 euros, while 6,000,000.00 euros of them must be work on underpass

construction projects. In the case of the group, the leader must have at least 2 references in the construction of underpass projects.

This request should be corrected because the request for underpass work of 6 million is discriminatory because, like underpass work, road work and construction work on various buildings or parking lots are similar, so we request that the criterion for underpasses be removed because the work is similar to other work. So, underpass work also falls within the scope of construction work, therefore this request is very restrictive and should be changed in order to open up competition.

REQUEST 2: Request 5. The EO must be certified with the following certificates:

a) The EO must provide a certificate of performance stability and conformity (EN 40-5 2002-1608-CPR-P033 valid) by attaching the Certificate of Product Characteristics 6.8m, 12.8m for conical lighting poles.

This requirement is discriminatory because these characteristics are offered by companies that are manufacturers of poles, therefore the manufacturers are certified with these standards and there is no reason for the economic operator to be certified as well, but it is important that all materials to be used will be provided according to the project requirements and approved by the project manager.

On this basis, we assess that this requirement should be removed since it is very favorable and at the same time restrictive for many EOs.

The certificate must be in the name of the EO who applies or must have authorization for the certificate in question.

These certificates are completely unnecessary for the EO to possess, and these certificates do not even need to be provided by an authorizing agent or distributor, since with the standards in force, each manufacturer that produces the relevant poles is subject to legal regulations and compliance with the relevant standards.

b) The EO must provide a certificate for contactors with the IEC 60947-4 2009 standard and circuit breakers with the IEC 60947-3 2020 standard.

Also, this request is discriminatory because these certificates are provided by the companies that produce these materials and all materials used will be in accordance with the project requirements and approved by the project manager. Standards should not be requested from the bidder, since this tender is about construction and not about poles or electrical materials, therefore, in this case, cooperation always occurs with companies specialized in the relevant fields, which are responsible for the supplies or services they provide.

We request that this request be removed from the tender dossier.

REQUEST 3: Request 4. List of equipment

The Economic Operator must possess the tools, plants and technical equipment that are necessary for the implementation of the project. Equipment and mandatory mechanization according to the table in Annex 7 of the DT.

Evidence 4. List of equipment

The EO must complete and submit the list of equipment by completing Annex 7 of the Tender Dossier signed and stamped by the EO.

For vehicles not registered under points (1-21) Single customs declarations or purchase invoices, all vehicles presented with purchase invoices must also have the bank transaction attached.

For vehicles registered under points (22-35) Valid circulation books.

In case the EO does not own the equipment, the EO must provide the equipment rental agreement with the evidence required above. The agreement must be in the name of this project, valid for the duration of this project, signed and sealed by both parties.

ANNEX 7. List - NECESSARY EQUIPMENT AND MECHANISM

Note: It remains the Contractor's obligation to, in addition to the equipment and machinery listed below, also provide other equipment and machinery that is disputed (by the Contracting Authority or the Contractor himself) as being necessary for the execution of the works according to the contracted quantity, quality and dynamics.

MANDATORY EQUIPMENT AND MECHANISM FOR THE PROJECT TITLE:

This list of required equipment and machinery is discriminatory for many EOs interested in participating in this procurement activity, because the required equipment and machinery have no connection with the nature and purpose of the project and the positions in the tender, therefore we request from the CA that these requirements be corrected and some be removed altogether because they are unnecessary and lead to favoring a certain company and the possibility of misuse of the budget.

Some equipment has been requested as if it were a tender for an electrical project, and some equipment has been requested that has nothing to do with any position, therefore these should be changed in order to have open competition.

REQUEST 4: MUNICIPAL ASSEMBLY- GJILAN has published the tender in question on 18/03/2025, where according to the tender dossier the deadline for submission of tenders is 07/04/2025. In setting the deadline for submission of tenders, the CA acted in violation of Article 44 and Article 45 of the LPP. According to the provisions of Article 44 of the LPP, in cases of high-value contracts, the CA must keep the tender open for a period of no less than 40 days. Whereas in cases where there is prior notice, then the tender must be open for a period of no less than 24 days. The deadline set by the Contracting Authority is shorter than 40 days, and even shorter than 24 days.

The contracting authority did not take into account the fact that the deadlines for bidding are in harmony with the nature and purpose of the project, always taking into account the numerous requirements that must be met to prepare a serious bid.

We request the PRB to force the CA to correct the tender dossier and remove some requirements, otherwise we will act according to the laws in force and will follow our legal path even in higher instances.

Based on all the evidence and our objections mentioned above, it results that the tender dossier has not been prepared in accordance with Article 27 of the LPP and at the same time Article 17.17 of Regulation No. 001/2022 on Public Procurement has not been taken into account either, which clearly states that “The tender dossier shall be prepared in a manner that does not: Limit competition among EOs, or Discriminate against or act in favor of one or more EOs”.

With these requirements, not only can there be no equal treatment of economic operators, but 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 stipulates: During the conduct of procurement activities, all contracting authorities shall ensure;

(i) the widest possible participation of interested economic operators regarding the price and the subject matter of the procurement”. These requirements do not enable broad participation of economic operators, but in this way competition is excessively limited and these requirements are directly incompatible with the subject matter of the procurement, because when competition is limited by unnecessary requirements, then the bidding price of the favored economic operators is automatically much higher because they have no competition and the price is in fact determined by the contracting authority on the basis of the requirements of the tender dossier.

The requirements that were objected to above are very favorable/discriminatory and at the same time close the doors of bidding to many companies with experience in this field and these requirements also contradict Article 25.4 of Regulation No. 001/2022 on Public Procurement, which clearly states that "When determining the minimum qualification requirements, the CA will pay special attention to the development of EOs and will formulate the minimum qualification requirements in a way that does not exclude newly established EOs that possess reasonable and sufficient economic, financial and/or technical capabilities".

With these requirements, not only has no importance been paid to new economic operators, but the competition has also been limited to economic operators with experience and economic and financial stability and technical and professional skills, therefore these requirements should be changed/removed to enable wider participation 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).

So, instead of taking into account the development of new economic operators, other economic operators with more experience in this field, such as this procurement activity, have been openly discriminated against.

Based on all those discriminatory-favoring requests and on those requested evidence, it turns out that these requests also contradict Article 1 of the LPP - the purpose of the LPP, which clearly states: The purpose of this law is to ensure the most efficient, most 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, “SEMAKS” SH.P.K, considers that the Contracting Authority has violated Article 1 Purpose, Article 7 Equality of Treatment/Non-Discrimination and Transparency, Article 44 - General Rules for Setting Time Limits for the Receipt of Tenders or Requests to Participate, Article 45 - Special Rules for Setting the Time Limit for the Receipt of Tenders for a Public Contract Covered by a Prior Notice, Article 69 Technical and Professional Capacity. Taking into account all the facts and arguments mentioned above, we request the PRB to take: DECISION to APPROVE, as grounded, the complaint of EO: SEMAKS SH.P.K with NUI:.812150332 with registered office in Prizren. The CA: MUNICIPAL ASSEMBLY-GJILAN is obliged to correct the file in accordance with the provisions of the LPP.

The claims of the complaining economic operator “Pro & Co Group” SH.P.K. are presented as follows:

Criteria 9.1 and 9.2 - The operator or group of EOs must provide evidence that it has successfully completed contracts for construction projects of a similar nature in the value of 15,000,000.00 euros, of which 6,000,000.00 euros must be work on underpass construction projects. In the case of a group, the leader must have at least 2 references in the construction of underpass projects.

This criterion is discriminatory and unnecessary in relation to this tender, since based on the pre-measure and the title of the tender itself, “Integrated project of the square, underground parking and administration building”. So, while the vast majority of the works are related to the construction of the square, parking and administration building, it is incomprehensible how the value of 6 million euros in the construction of the underpasses was also set as a criterion.

Also, the criterion that the leader must have at least two (2) references in the construction of underpass projects should be removed, since consortia are created for the purpose of fulfilling the criteria in the best possible way by the consortium members, and this criterion removes the very essence of the definition of a consortium.

Therefore, we request that the criterion be changed and formulated in this form The Operator or group of EOs must provide evidence that it has successfully completed contracts for construction projects of a similar nature in the amount of 15,000,000.00 euros. Or the Operator or group of EOs must provide evidence that it has successfully completed contracts for construction projects of a similar nature in the amount of 15,000,000.00 euros, while 6,000,000.00 euros of them must be work on underpass construction projects. In the case of a group, one of the group members must have at least 2 references in the construction of underpass projects.

1. Kriteri 9.1 dhe 9.2. Kërkesa 2. OE duhet te ofroj dëshmi për stafin profesional dhe atë si vijon: Nje bachelor i diplomuar i hidroteknikes i certifikuar ne AME per mbrojtje nga zjarri (min 5 vite pervojë pune nga data e certifikimit).

Kjo kërkesë është tërësisht e kundërligjshme dhe favorizuese oër OE të caktuar (kryesisht të huaj), pasi që këto certifikata në Kosovë, kanë filluar të lëshohen vetëm në dy vitet e fundit, dhe nuk janë lëshuar më herët, andaj është edhe e pamundur që të posedohen me këtë validitet.

Poashtu, edhe nëse një bachelor I diplomuar I hidroteknikës, nuk e ka këtë certifikatë, OE është I detyruar që sipas Nenit 13 të Kontratës, të ofrojë siguri në vendpunishte. Për më tepër, këto detyrime caktohen edhe nga Ligji për Siguri dhe Shëndet në Punë. Andaj, kjo kërkesë duhet të ndryshohet dhe të hiqet nga kriteret e DT.

Criteria Criteria 9.1 and 9.2: Requirement 5. The EO must be certified with the following certificates:

a) The EO must provide the certificate of stability of performance and conformity (EN 40-5 2002-1608-CPR-P033 valid) by attaching the Certificate of product characteristics 6.8m, 12.8m for conical lighting poles. The certificate must be in the name of the EO who applies or must have authorization for the certificate in question;

b) The EO must provide the certificate for contactors with the IEC 60947-4 2009 standard and switches for cabinets with the IEC 60947-3 2020 standard,

These certificates do not serve the object of the contract at all, since they are used only in cases where tenders include mostly electrical elements, such as in KEK, KEDS, or other energy institutions. In the specific case, they are completely unnecessary, since they all include elements of work in electrical energy and not in construction work. Referring to the claims as above, “Pro & Co Group” Sh.P.K. considers that the Contracting Authority has violated Article 1 - Purpose Article 7 - Equality in treatment/Non-discrimination Article 10 - Means for promoting performance Article 28 - Technical specifications Article 51 - Notification of selection criteria Article 69 - Technical and/or professional ability. And we request that the complaint of the economic operator Pro & Co Group Sh.P.K. be APPROVED as grounded. OBLIGATED

CA to make the necessary improvements to the tender dossier according to the justifications provided by the EO.

Response of the Contracting Authority to the request for review: “Pro & Co Group” SH.P.K., and EO SEMAKS SH.P.K,

Economic operators dissatisfied with the conditions of the Tender Dossier, have submitted a Request for Reconsideration to the CA- Municipality of Gjilan, as it considered that the tender dossier regarding the requirements of professional capacity represents a limitation of competition according to the LPP, therefore they have proposed their removal. Referring to the allegations highlighted in their requests, the complaining EOs consider that the Contracting Authority has acted in violation of Article 1, 7, 44, 45, 69, 51. 52, 56, 27 of the LPP by requesting the correction of the tender dossier in these points.

The complaining EOs, although according to the DT and the NJK, had a deadline set for additional clarifications of D1, but none of the complaining EOs has exercised their legal right, but after the expiration of the deadline for additional clarifications of the DT, they have

submitted requests for reconsideration, and none of the complaining EOs have submitted a request to withdraw the project from the CA, even though such information is included in the Tender Dossier, this means that the complaining claims are unfounded and do not present facts but are in a suggestive and not principled form. CA - Municipality of Gjilan finds that the Request for Reconsideration of the complaining EOs was filed within the legal deadline in accordance with Article 108/A paragraph 3.1 of the LPP according to the preliminary procedure for resolving disputes and as such contains the elements specified in Article 60 paragraph 3 of Regulation No. 002/2024 on Public Procurement. In this way, the Procurement Officer of CA - Municipality of Gjilan has found that it is competent to review this request according to Article 108/A of the LPP and that there is no procedural obstacle to continue with the review of the complaint on its merits.

- Findings of the CA based on the facts and circumstances of the case –

In order to fully establish the factual situation in an objective and legal manner, the Responsible Procurement Officer of the Contracting Authority - Municipality of Gjilan, has reviewed the complaining claims based on the arguments presented in the requests for review submitted by the complaining EOs in the general context of the facts and documents of the case, and taking into account that the aforementioned claims of the complaining EOs are interconnected with each other's object, it has been decided to treat and review them as a whole, together, taking into account the nature, specifications/requirements foreseen in this activity.

Therefore, the CA finds that the complaint claims submitted by you as an EO regarding the requirements of the tender dossier for which you allude that the requirements are discriminatory or restrictive requirements are unfounded, and consequently are not supported by any fact or substantiated evidence, that these requirements limit free competition in the market and discriminate against the complaining EOs or potential EOs that may apply in this procurement activity. This is due to the fact that all the requirements and conditions of the tender dossier according to the corrected version dated 26.03.2025, are relevant and proportionate requirements to the object of the project, which guarantee compliance with the principles of transparency, non-discrimination and equal treatment by not allowing any advantage for a particular competitor. But as such they ensure a free and appropriate level of equal competition for all potential EOs that wish to apply in this procurement activity.

This situation is also confirmed by the fact that all the conditions and material requirements of the tender dossier, including those raised as claims by you, are in accordance with the project and the positions foreseen for the execution of the works. Therefore, the CA, analyzing the complaining claims of each complaining EO, and seeing that the claims are the same, will be treated jointly. Regarding the complaining claims by the EOs for the shortening of the time limit. Response from the CA: The Contracting Authority has decided to continue this procurement activity with a shortened deadline based on and supported by the situation it finds itself in for these reasons: This procurement activity is based on the Agreement on Cooperation between the Ministry of Environment, Spatial Planning and Infrastructure and the Municipality of Gjilan, No. protocol

02-8090, dated 23.12.2024, This project is one of the main initiatives for the urban regeneration of the city center and the construction of the new administration building.

Considering the importance of the project and the fact that it is a long-term project. the shortening of the deadline was made for objective and reasonable reasons, as follows

1.Delay in budget approval

The budget of the Municipality of Gjilan was approved by the Municipal Assembly only in March, which has affected that as the Contracting Authority (CA) we cannot initiate procurement activities in a timely manner.

As a result, the delays created have imposed the need to use the legal possibility of shortening the deadline for submitting bids in order not to jeopardize the implementation of the project within optimal climatic conditions.

2. Climatic conditions

This project includes significant interventions in the city center, its entrances and exits, in the recreational area such as the City Park, and has a direct impact on the infrastructure and safety of citizens.

Due to the difficult climatic conditions during the winter. it is essential that the procurement procedures be concluded as soon as possible. so that the works can be carried out in a favorable period for their implementation with high quality.

3. Impact on citizens and urban development

Unnecessary prolongation of procedures may delay a key project for improving the city's urban infrastructure and aesthetics.

Given its importance for citizens and its impact on public convenience and safety, it is necessary to ensure the earliest possible start of works

Also, for the same claim, you as the complaining EO, the CA has also notified the PPRC, regarding the shortening of the deadline and we have clarified the reasons and arguments for this activity.

Regarding the complaining claims from the complaining EOs, for technical/professional capacity and the required equipment which are placed in the DT.

Responses from the CA:

Request I. I) Regarding the technical and professional capacity, it is requested “Request 1. The operator or group of EOs must provide evidence that it has successfully completed contracts for construction projects of a similar nature in the value of 15,000,000.00 euros, while of them 6,000,000.00 euros must be work on underpass construction projects. In the case of a group, the leader must have at least 2 references in the construction of underpass projects”, while as documentary evidence it is requested

“Evidence 1. A list of contracts signed and stamped by the EO where the description will be made with this information the title of the contract, the client, the date of commencement of the contract, the date of completion of the contract, the value of the contract, References or technical acceptance copies for the contracts presented,

If the contract with reference is with a private company, it should be proven by a Bank transaction (evidence that the payment has been completed). The references or technical acceptances must be in the last 3 (three) years, starting from the date of publication of the Contract Notice”.

Claim 1: The above-mentioned requirement is a discriminatory requirement where it is requested that almost half of the completed contracts be work on underpass construction projects. When analyzing the tender dossier of this procurement activity, it is clearly seen that in this procurement activity the main work is related to the construction of the boulevard and not only to the construction of underpasses. Moreover, since in our country the construction of underpasses is relatively rare, this requirement seems to favor certain companies that have already completed such contracts, leaving other qualified operators out of the competition. This requirement contradicts the principles of public procurement for transparency, competition and equality of treatment, respectively with Article 7 of the LPP. It should be noted that the Law on Public Procurement, namely Article 7 of this Law, requires that the requirements imposed by the contracting authority should enable the widest possible participation of economic operators and avoid unnecessary restrictions. Such a requirement should be more comprehensive and reflect more accurately the reality of the market, allowing for wider competition among operators with relevant experience in construction, not only in a specific segment such as underpasses. For this reason, a change to the above requirement by completely removing the requirement for the presentation of completed contracts for the construction of underpasses is necessary to guarantee a fair and open process for all potential participants.

1) CA's response: Based on the integrated project of the boulevard, if you analyze the preliminary measure or the project that you were given the opportunity to withdraw in the procurement office, you can accept that this project is related to the construction of three different objects such as the square, the underground parking lot and the administration building. Considering that the underpass and garage project within this underpass captures the main value of the project and the largest volume of works compared to the other two projects that are the boulevard and the administration, then the CA. has deemed it necessary that the EOs that submit their bids be companies that have experience in the implementation of projects of the same nature, therefore it has requested that a part of them worth 6,000,000.00 euros be underpass projects. So, taking into account that the majority of the project concerns the construction of the underpass and garages, the CA sees this claim as unfounded and non-discriminatory.

Claim 2.

2) A bachelor's degree in hydrotechnics certified in the AME for fire protection (min 5

years of work experience from the date of certification) Where in the first file published by the CA this criterion was with min 8 years, now changed to 5 years! We encounter an irregularity of suspicion that this tender could be prepared for an EO who has this bachelor on staff, who surprisingly has a certificate obtained for 5 years, therefore the request is adapted to the same, the AE can request a bachelor or engineer in hydrotechnics but cannot determine that the same is based on the date of certification! Even less so since at the point that only one Hydro has been requested and we do not foresee the necessary request for 2 Hydro, persons with training or licensing in the field of occupational safety or fire protection may be requested.

2. CA's response: Regarding the work experience from 8 to 5 years, the CA has changed this requirement, making it easier in order to enable the widest possible participation of economic operators. As for the claim that we do not foresee the requirement being necessary since point e has already been requested for a Hydro, we would like to inform you that point c refers to a 5-year system engineer or master's degree, while this point is also fulfilled with a bachelor's degree. The CA will require work experience for professional staff when it deems it necessary, just as it usually happens with the project manager or other staff, while 5 years is the minimum experience that can be requested, therefore this claim is unfounded and non-discriminatory.

Claim 3.

The EO must present in the list of employees a minimum of 60 technical staff (in the case of the leader group there must be a minimum of 50 employees) proven with the list of the Tax Administration of the Republic of Kosovo, at least in the last two months of 2024, among whom the Economic Operator must have technicians who can be called upon for the implementation of this project: Unacceptable request, and at the same time the CA can request staff (workforce) with an unspecified number, but cannot specify that these employees have been declared in the last two months of 2024, as we are facing a serious violation, thus narrowing free competition, which is not the purpose of the procurement law itself!

3. CA's response: Considering that this project is among the largest projects in the city of Gjilan in terms of both the value and importance of the project, the CA considers it necessary that EOs that express interest in implementing this contract be EOs equipped with a large number of technical staff so that the project is implemented according to the dynamic plan. Given that EOs often conclude agreements or pre-contracts with staff just to meet the criteria of the dossier and then when the implementation of the projects begins, we encounter a lack of staff, the CA has considered it necessary to prove it with a list of TAK to be convinced that the EO has the same staff within its company.

While in order not to require evidence for long-term periods and to make it easier, we have only requested the last two months of 2024.

Claim 4.

Min. 1 high-level construction technician of the IVth level. who must be trained in the field of occupational safety and health as well as fire protection. What does the 4th level include? I mean vocational school. since this criterion is confusing.

4. CA's response: It is understood that a vocational secondary school for which it must be proven with a diploma that it has completed the technical educational profile of higher construction.

Claim 5.

A bachelor certified as an advanced specialist for occupational safety and health in the construction industry. Why should a bachelor be placed here? Or does it mean the professional degree of the person, which may not be related to the certification as a specialist? Please clarify

5. CA's response: It is understood that in addition to the certificate as an advanced specialist for occupational safety and health in the construction industry, there is also the level of bachelor studies of any profile proven with a diploma.

Regarding the 1st list of equipment according to Annex 7, where the complaining EOs have attacked the equipment placed in the DT.

Response from CA:

Claim: Crane-elevator mc metal construction for carrying and lifting materials

electromotor, with elevator bodies up to 40m Claim The requested equipment is unnecessary for this procurement activity and the same should be completely removed from the tender dossier due to the fact that the boulevard is a horizontal project, not vertical, therefore there is no need for transportation at high altitudes.

Response from CA: In addition to the boulevard and the underpass which are projects as you call horizontal, an integral part of this project is also the construction of the administration building, and if you analyze the project, this building has n=7 floors, therefore the CA considers this request necessary.

Claim: Self-loading auto mixer for concrete production Claim This type of mixer presents some significant weaknesses compared to the use of standard mixers, which are supplied directly by specialized companies for the production of ready-mixed concrete. The self-loading auto mixer cannot offer the same level of quality and control of the composition of concrete as specialized companies. The production of concrete in non-industrial conditions can result in variations in the mix and quality because with a self-loading auto mixer the concrete is mixed on the spot.

CA's response: Of course, the concreting of the structural elements will be done through supply from specialized companies. But in this project, small elements will also be executed in unsuitable terrain such as manholes, manhole bottoms, concrete edges, etc., therefore the CA considers it necessary to have such equipment.

Claim: A hydraulic vehicle loading/unloading crane is usually used for repairing damaged vehicles or for transport logistics, not for construction work. In a boulevard construction project, there is no need for such a vehicle, because construction materials such as concrete, steel and modular elements can be loaded/unloaded by other construction cranes (e.g., tower crane or truck crane). The vehicles that will move on the boulevard are part of public traffic and not construction, therefore there is no reason to require a crane for them. This equipment increases

the costs of the project by forcing the economic operator to provide a vehicle that may not be used at all during the works. Investing in this vehicle is inefficient, since conventional construction cranes or other machinery (e.g., long-arm excavators) can cover all the needs for loading and unloading construction materials. This machinery is not practical for construction work on a boulevard.

CA's response: The request essentially concerns a hydraulic crane by the nature of the work which will be used for loading and unloading all necessary materials such as: template elements, various machinery for executing the work, including work vehicles. So it is enough for it to be hydraulic and serve for loading and unloading, the CA will accept this request.

Claim: Instrument for certification and testing of cables (Multimates TESTPRO CV100-

K50 COPPER CERTIFICATION KIT) Claim from EO When analyzing the parameter set on the platform, named MEASUREMENT AND PRE-CALCULATION-ELECTRICITY (EXTERNAL LIGHTING), the same is the pre-calculation for external lighting. Therefore, in this case, the device Multimates TESTPRO CV100-K50 Copper Certification Kit is not necessary and adequate for this project. The main reason is that this instrument is used for certification and testing of data cables (e.g. Ethernet, telecommunications, computer networks), while this project focuses on public lighting and power cables. The project is for outdoor lighting. The scope includes supply and installation of power cables for the supply of LED luminaires and public lighting equipment, not data cables that require advanced certification. The cables included in this procurement activity are mainly power cables - The specifications indicate the use of cables such as NAYY-J and NYY-J, which are for electricity and not for communication or data networks. This procurement activity does not include the installation of LAN network infrastructure or telecommunications systems that require such certification. The contracting authority, with the above-mentioned request, is preventing interested companies with extensive experience in the field of construction from bidding, while favoring EOs that possess this equipment, which, as we mentioned, is unnecessary when analyzing the scope of this procurement activity.

The scope of this procurement activity includes the supply and connection of high and low voltage electrical cables (copper and aluminum cables). Also included is OM3 single mode 6-core optical cable, which requires specific testing. Connection and welding of LC heads for optical fibers. Multimates TESTPRO CV100-K50 This instrument is specialized for the certification and testing of copper cables for Ethernet networks (CAT5e, CAT6, CAT6A, etc.). It is not suitable for testing optical cables, for which an OTDR (Optical Time Domain Reflectometer) is usually used. If the purpose is to test electrical cables or optical cables.

For electrical cables, megohmmeters (for insulation) or current and voltage testers are usually used. For optical cables, an OTDR is required. We request that the above request be amended by completely removing the above contested request due to the fact that the same is unnecessary for this procurement activity

CA's response: During the execution of the works, it is known that the location of the work site is precisely the city center. In order to open the construction pit necessary for the execution of the

underpass and garages, it will be necessary to make many relocations or relocations of various installations (not all of which were foreseen or implemented based on any implementation project), which are currently located below the surface of the ground, including data cables.

On the other hand, if you carefully analyze the bill, you can notice that the project is not only about public lighting. The bill of quantities for electrical installations is divided into several parts such as electrical in the administration building, electrical and underpass and electrical related to external lighting. As you claim, Mullimates TESTPRO CV100-K50 This instrument is specialized in the certification and testing of copper cables for Ethernet networks (CAT5e, CAT6, CAT6A. etc.), a quick review is enough to understand that part of the electrical installations are also weak currents such as the information technology system, the telephone system, CCTV, access control system, etc., where in all of these we are dealing with copper cables for vehicles. See the positions at Electricity Administration: pos 4.6.1, pos 4.7.1, pos 4.9.4, pos 4.10.9, See Electricity and underpass positions: XI - video surveillance system POS 10, XII - information technology system POS 1.

Claim: Tractor with sweeper for cleaning. Max 1.5T according to the EO in their claims that this equipment is more suitable for the maintenance of public spaces and local roads, than for a large infrastructure project such as the construction of the Gjilan Boulevard. The request for this vehicle does not match the real needs of the project. Such a vehicle is usually used for cleaning and maintaining public spaces after the completion of construction. Its inclusion as a construction criterion is not necessary and represents a definition of competition, since it is illogical to request this vehicle when the project will be executed and the cleaning part will be done entirely at the end of the project and when it is completed it will be cleaned by the cleaning company contracted by the municipality of Gjilan.

CA's response: Based on the fact that the works will take place in the city center, during the summer season when the works are expected to be underway and the dust level will be very high, the EO may be required to maintain the area around the workshop from time to time. Claim: for a special semi-trailer with 2 pumps for unblocking the sewer and emptying the manholes with a pressure of min. 200 bar with a capacity of 5000 liters.

Claim For us as an operator, this request is meaningless, when we consider the fact that there are much more advanced trucks on the market that perform this work more efficiently. So, there is no need to require a special semi-trailer for unblocking the sewer and emptying the manholes, because the truck with a vacuum tank and a pressure pump has a much greater advantage compared to a special semi-trailer.

CA's response: Considering that during the connection of the new sewerage to the current one, in most cases the sewerage needs cleaning, therefore the EO is obliged to unblock the pipe before testing and functionalizing it. Claim: Horizontal hydraulic band saw machine for cutting steel in angular shapes The claim that the request for the above-mentioned machinery is unnecessary since in no position of the bill of quantities is material from Steel in angular shape requested.

Claim: Horizontal hydraulic band saw machine for cutting steel in angular shapes

The claim that the request for the above-mentioned machinery is unnecessary since in no position of the bill of quantities is material from Steel in angular shape requested.

The CA's response: Based on the administration's project, specifically in the roof works in the hall part, you can see that it is planned to be executed from metal materials, as well as the position of the structural facade where the supporting construction of the facade consists of steel. The CA considers it necessary to have such equipment so that the cutting of the structural elements of the facade is done as precisely as possible.

Claim: 2-door mc korpe transport jeep with 4x4 all-wheel drive. The vehicle must possess certificates. Their claim that After reviewing the technical specifications of the supply requests and work tools within the project "Construction of the integrated project of the Gjilan City Boulevard", we have noticed a technical criterion that is not relevant and inadequate for this project. In particular, the request for a "2-door, four-wheel drive (4x4) jeep and possession of the relevant certificates" is not necessary for this project at all, considering the fact that the Gjilan City Boulevard project is being developed in an urban area and not in difficult terrain (off-road). Such vehicles are usually required for infrastructure projects in remote areas, mountains or unadapted roads, while for this project, which is about the construction of a boulevard within the city, such a request is unreasonable. In this case, it is clearly seen that this request is ridiculous, since the requested car is a GFF ROAD sports car which has nothing to do with this procurement activity which is located in the city center. Since the requested equipment is not in harmony with the nature of the requested activity, we request that this requirement be removed entirely from the tender dossier, in order to ensure that the criteria set are based on the real needs of the project and do not create unnecessary restrictions on the competition of economic operators. This requirement, like the above-mentioned requirements, favors certain EOs and as such should be removed entirely from the tender dossier.

CA's response: The pits will be developed in the center, but the construction pit that will be created for the construction of the underpass and garages will be at a considerable depth, creating difficult terrain and difficulties for movement and maneuvering, especially during the deployment of cables such as those of Keds and other installations.

Claim for machinery with valid registration from the complaining EO:

Semi-trailer compressor min 1.5T;

Dumper with self-unloading tires min 5T;

Loading bucket with brooms;

Loading bucket with fork and brooms

Claim: We also wish to express our concern regarding the CA's continuous request for the registration of work tools, which are used within the workshop premises and which, under normal circumstances, are not necessary to have a valid registration. In this case, I am referring to the following requests.

As for clarifying our request for the above-mentioned vehicles not to be registered, we inform you that the above-mentioned vehicles are used exclusively within the workshop and do not pose a risk to traffic participants, as the area is restricted and prohibited for the circulation of other vehicles. CA's response: Since the works are not executed in the city center, from time to time they must move near the workshop outside it, where the movements of citizens and other vehicles take place. Their movement without registration will be in violation of the traffic law, therefore the CA finds it reasonable to require them.

Based on Article 111 paragraph 5 in connection with Articles 113 and 114 of the LPP, the Procurement Review Body on 08.04.2025 authorized the expert to conduct the initial review of the file and claims according to the complaint with no. 2025/0237, and the complaint with no. 2025/0238, while on 08.04.2025 the expert report with no. 2025/0237 was submitted on 30.04.2025 with the following recommendations: Based on the above-mentioned clarifications, the review and technical expert proposes to the review panel that the complaint of the complaining EO be approved as partially grounded, the CA make improvements to the tender dossier and extend the deadline for bidding.

As well as on 30.04.2025 the expert submitted the expertise report with no. 2025/0238 with the following recommendation: Based on the above-mentioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO be approved as partially grounded, the CA make the improvements in the tender dossier and extend the deadline for bidding.

The expertise report with no. 2025/0237 has been duly accepted by all procedural parties, "The contracting authority does not agree with the report of the reviewing expert. While the EO agrees with the report of the review expert.

The expertise report with no. 2025/0238 has been duly accepted by all procedural parties, "The contracting authority agrees. Regarding the complaint points 2 and 3, we as the CA - Contracting Authority do not agree with the report of the review expert. While the EO does not agree with the report of the review expert.

The review panel has assessed that the conditions have been met to decide on this case without a hearing 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 report of the review expert 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 expert report, the opinions of the parties regarding the expert report, the complainant's submissions and documents, the contracting authority's letters and documents, the relevant documents related to the procurement activity, as well as all evidence proposed by the procedural parties.

Regarding the claims of EO "SEMAKS" SH.P.K., the review expert through report no. 2025/0237 has assessed as follows: Procurement activity entitled: "Construction of the integrated project of the Gjilan City Boulevard" with procurement no.: "651-25-644-5-1-1", initiated by the Contracting Authority (CA) - MUNICIPAL ASSEMBLY- GJILAN, open procedure, type of contract work, criterion lowest responsive price.

The complaint was submitted at the stage of the tender dossier requirements.

Consequently, since the complaining Economic Operator is dissatisfied with the rejection of the request, it files a complaint with the Procurement Review Body, claiming that the Contracting Authority, during the compilation of the requests in the tender dossier, has violated the Public Procurement Law, namely articles: 1,7,44,45,69. The complaint of the complaining EO:

The complaining EO claims that the requirements on technical and professional skills and the list of completed projects are discriminatory, therefore I request that the part of the underpass works be removed.

Response to the first claim of the complaining EO:

The review expert, after analyzing and reviewing the case files, clarifies that, the CA in the corrected tender dossier dated 26/03/2025 has determined as follows:

Requirement 1. The operator or group of EOs must provide evidence that it has successfully completed contracts for construction projects of a similar nature in the amount of 15,000,000.00 euros, while 6,000,000.00 euros of them must be work on underpass construction projects. In the case of a group, the leader must have at least 2 references in the construction of underpass projects.

Evidence 1. A list of contracts signed and stamped by the EO where the description will be made with this information: the title of the contract, the client, the date of commencement of the contract, the date of completion of the contract, the value of the contract, References or technical acceptance copies for the contracts presented, If the contract with reference is with a private company, it must be proven by a bank transaction (evidence that the payment has been completed). References or technical acceptances must be within the last 3 (three) years, starting from the date of publication of the Contract Notice.

Consequently, based on the Public Procurement Regulation no. 001/2022 article 26.10 defines that the CA 26.10 When necessary, contracting authorities may determine in the tender dossier and in the contract notice how groups of Economic Operators must meet the requirements for economic and financial standing or technical and professional capacity referred to in articles 68 and 69 of the LPP, where the CA may determine a minimum percentage in terms of fulfillment of the requirements by the leader of the EO group.

Also, based on article 69 par.1 of the Law on Public Procurement also the Public Procurement Regulation no. 001/2022 article 25 par. 13:

Quote: "The Contracting Authority may require the Economic Operator to prove that in accordance with Article 69 of the LPP, it has concluded contracts of a similar nature in the past

with a value specified in the tender dossier and in the contract notice, which cannot be set at more than 1.5 times the estimated value of the contract. This means that the Economic Operator must PUBLIC PROCUREMENT REGULATION - Consolidated Version 52 meet the requirement for specific turnover if it has concluded one or more contracts of a similar nature that alone or together reach the total value specified by the Contracting Authority in the tender dossier and in the contract notice and it is not required that this requirement at the value specified of 1.5 times the estimated value of the contract be met only with a single contract of that value.

The review expert explains that, the CA regarding the minimum value of 15,000,000.00 euros compared to the estimated value, does not exceed it 1.5 times, and in the specific case, taking into account the nature of the project and the works that will be carried out also for the underpass section, then in order for the contract and the project to be successfully implemented, the experience of the economic operator, namely the Leader, who represents the group and also ensures that the Leader fulfills part of the requirements in order to fulfill the implementation of the contract. Therefore, the CA has compiled the request in accordance with Article 25.13 and 26.10 of the Public Procurement Regulation no. 001/2022. The claim of the complaining EO is not found to be grounded.

Second claim of the complaining EO:

Criteria 9.1 and 9.2 request no. 5 a) The EO must provide a certificate of stability of performance and conformity (EN 40-5 2002-1608-CPR-P033 valid) by attaching the

Certificate of product characteristics 6.8m, 12.8m for conical lighting poles

b) The EO must provide a certificate for contractor with the IEC 60947-4 2009 standard and switch for cabinet with the IEC 60947-3 2020 standard.

Evidence 5. a) The certificate must be in the name of the EO, authorization or agreement with any company that possesses the authorization for this certificate. The certificate must be valid.

b) The certificate must be in the name of the EO or must have authorization from any company that is a distributor for the sale of these products. The certificate must be valid.

This request is discriminatory because these certificates are provided by the companies that produce these materials and all materials used will be in accordance with the project requirements and approved by the project manager. Standards should not be requested from bidders, since this tender is about construction and not about electrical poles, therefore in this case, cooperation always takes place with companies specialized in the relevant fields, which bear the responsibility for the supplies or services they provide. We request that this request be removed from the tender dossier.

Response to Complaining claim 2

The technical expert assesses that the required certificates are specific to manufacturers of lighting poles and electrical materials as specified in the request. It is worth noting that in electrical construction works, all materials must contain certifications in accordance with the legislation in force, norms and standards relevant to the nature and scope of the works and

certain materials. The requirements described belong to the technical specifications for the materials as requested, during the implementation of electrical construction works there must be quality control of the materials supported by the relevant certificates and must be continuously verified during the project management process. Considering the fact that the required certifications/standards are for construction products, these must be verified during the implementation phase in accordance with the description and the main project, such requirements at this stage are not relevant, only limiting competition by directly affecting the procurement procedure. The CA should correct the request as the requested certificates are unnecessary at this stage.

The technical expert considers that the complaint claim 2 is grounded.

The third claim of the complaining EO:

The complaining EO claims that the request for equipment is discriminatory by contesting the equipment of Annex 7 with numbers: 8;16;17;18;19;26;27;28;30;31;32;33;34;35, because, these requested equipment/machinery have no connection with the nature and purpose of the project and positions in the pre-measure, therefore we request from the CA that these requests be corrected and a part be removed completely because they are unnecessary and lead to the favoring of a certain company and the possibility of misuse of the budget. Some equipment has been requested as if it were a tender for electricians, and some equipment has been requested that has nothing to do with any position, therefore these should be changed in order to have open competition.

Response to Complaint 3

The technical expert has analyzed the entire list of equipment and ascertains that in the tender dossier, a total of 35 types of equipment and machinery with which the project will be implemented have been requested.

The expert explains that each project that is drafted for execution contains the work methodology, where, among other things, the project deadlines and resources are determined. In accordance with the organization and construction technology, the work methodology and deadlines, the necessary staff commitments and the necessary machinery for the implementation of the construction work and project activities are also determined. Based on these analyses, the minimum equipment and machinery necessary for the implementation of the project are also assessed. Based on the responses of the CA to the request for reconsideration, it cannot be stated that these plans and project documents exist, therefore the technical expert will assess based on the scope of the project and the description of the required equipment.

Some of the requested equipment is subject to a complaint by the EO and their evaluation will be described below according to the serial number of the equipment in the list attached by the CA - Annex 7

Equipment no. 8

Special semi-trailer with 2 pumps for unblocking the sewerage and emptying the manholes with a pressure of min. 200 bar with a capacity of 5000 liters.

The complaining EO requests that this equipment be removed from the DT since no position of the project includes the equipment in question

Response from the technical expert

The expert assesses that based on the description of the works, this type of equipment is not used in the project in question and is unnecessary. If the CA has assessed that this equipment is necessary, it should also have the construction work positions that are related to the use of the equipment. In the response given by the CA, it is assessed that the equipment in question serves for unblocking the pipes connecting to the new sewerage network, which this position is missing in the budget and there is no way to implement it. The CA should correct the tender dossier since the equipment is unnecessary

The claim for equipment no. 8 is considered to be grounded.

Equipment no. 16 Hydraulic crane intended for loading and unloading of vehicles

The EO has requested that this equipment be removed from the request since there are other ways of loading and unloading of vehicles.

The CA in the response provided has stated that it is intended for loading and unloading of construction materials. And it is enough that it is a hydraulic crane for loading and unloading, the CA will accept this request. Response from the technical expert. The technical expert assesses that the request for the equipment in question is discriminatory since there are different methods and ways for loading and unloading of vehicles. This equipment is quite rare in application and such a request only limits competition and orients to a certain EO. Based on the response provided by the CA, the technical expert considers that the description of the equipment should be modified in the request of the tender dossier and adapted to the nature of the work for which the CA has deemed it necessary.

CA to modify the request according to the description provided in response to the request for reconsideration, or

to remove the equipment in question from the DT.

The claim for equipment no. 16 is considered grounded.

Equipment no. 17

Crane-elevator with metal construction for carrying and lifting electromechanical materials, with the elevator bodies up to 40m

The EO has requested that the equipment be removed from the DT as unnecessary since there is no

position for this height of 40m at the squares and it is not accessible from the buildings to be built.

Response from the technical expert

The technical expert assesses that the description for equipment no. 17 is restrictive and also the height of up to 40 meters defines a very specific equipment. Since these are quite rare equipment, such a description is restrictive, therefore the CA should provide the possibility for other equipment that performs the same services and not be limited to this type of equipment. The technical expert assesses that there are different machines that perform the same function for lifting materials to the levels of the facility during construction, such as tower cranes, therefore the request should be corrected, modified and opportunities should be created for the use of other standard machines for this type of work. The claim of the complaining EO that the equipment cannot be used does not stand since within the project it is foreseen to build an administration building that has a certain height, therefore the height description for the equipment up to 40 m is set as the maximum threshold and allows tolerance to offer equipment that operates at a height lower than the maximum threshold.

The CA shall correct the request, evaluate it based on the project analysis and create the possibility of using other devices without limiting competition.

The claim for device no. 17 is considered partially grounded.

Device no. 18

Instrument for certification and testing of cables (Multimates TESTPRO CV100-K50 COPPER CERTIFICATION KIT)

The EO has requested that the equipment be removed as unnecessary since these are instruments of companies specialized in this field and that the EO can contract these companies for these services. The EO has explained that here we are dealing with construction and normally construction companies offer here and they cannot also possess the instruments for certification and testing of cables. Response from the technical expert The technical expert assesses that within the project there are electrical construction works for which, during their implementation, rapid tests may be required that are carried out by professional equipment for testing and certifying network cables. The instrument serves to carry out the necessary tests of cables and to ensure better performance and quality during the implementation of the project.

The claim for equipment no. 18 is considered unfounded.

Equipment no. 19

Horizontal hydraulic band saw machine for cutting steel into angular shapes

EO has considered this type of equipment unnecessary since there are no positions in the pre-measure where

the equipment finds its use.

Response from the technical expert

The CA in the description of the equipment has provided very detailed specifications for the equipment, most of the descriptions determine the work process with which the EOs can also perform with other equipment that has the same function. The overestimation of the requirements and the large number of equipment that the CA has described limits competition. The technical expert estimates that this equipment, depending on the work process that the EO develops, may be unnecessary, since this type of work is performed in other forms, where with the development of technology there are also more advanced forms.

The CA should correct the DT's request and remove the equipment from the DT's requirements.

The claim for equipment no. 19 is considered grounded.

Equipment no. 26. Self-loading auto mixer for concrete production

The complaining EO has requested that the request for a circulation booklet for the equipment in question be removed, since this machinery may be unregistered because it is used only inside the workshop.

Response from the technical expert

The technical expert assesses that according to the law on vehicles, it is specified that road motor vehicles dedicated to use on construction sites are exempted from homologation and do not need to be registered for road traffic. Since this equipment does not participate in road traffic and its operation is on the construction site, it can be transported with machinery transport equipment and does not need a circulation booklet.

The request to have a circulation booklet for this equipment should be removed.

The claim for equipment no. 26 is considered grounded.

Equipment no. 27. Tipper truck with crane, crane length min 20m, the vehicle must possess approval

or certificate

EO did not agree with the request that CA requested approval or certificate, considering it as favoring for a certain EO.

Response from the technical expert

The technical expert assesses that the description of the request that the device must possess a consent or certificate

is unclear since it is not known what type of consent or certificate is in question, this description is

restrictive, discriminatory and unnecessary and should be removed from the DT request. The expert explains that machinery that is subject to regular technical control does not need a consent or certificate.

A consent or certificate through which the proper functioning of the device is confirmed, can be requested for devices that are not subject to regular control and registration.

The CA should correct the DT request, modify and remove the description “consent or certificate” from the request.

The claim for device no. 27 is considered grounded.

Device no. 28 Semi-trailer compressor min 1.5T

The EO did not agree with the request that the device have a valid registration since this device is used only inside the workshop and does not need registration.

Response from the technical expert. The technical expert considers that the requirement for vehicles to have a valid registration certificate should be in accordance with specific legislation. Equipment that is operated only on site does not need to be registered.

The CA should correct the request and remove the criterion for the registration certificate for the relevant equipment.

The claim for equipment no. 28 is considered grounded. Equipment no. 30 Tractor with broom for cleaning.

Max 1.5T. The EO has considered the equipment unnecessary, since this is more related to maintenance and cleaning.

Response from the technical expert. The expert assesses that the EO has provided arguments that this equipment is unnecessary, since these are construction works and not maintenance of public spaces. The equipment is not relevant to the nature of the construction works and should not be a criterion for the request in question, as such it should be removed from the DT.

The claim for equipment no. 30 is considered to be well-founded. Equipment no. 31. 2-door body transport jeep with 4x4 all-wheel drive transmission system. The vehicle must have certificates. The EO has stated that the requested equipment is not related to any position in the tender and has requested that this request be removed. Response from the technical expert. The expert assesses that the equipment in question is not related to any work activity, is an excessive, discriminatory request and provides the possibility of limiting competition by directing competition to a specific economic operator. The requested vehicle is not related to the construction works of the nature of the project.

CA to correct the DT and remove the equipment in question from the tender dossier. The claim for equipment

nr.31 is considered grounded. Equipment no. 32 Special van for electrical works with 2 doors

EO requests that the request be changed since there are other ways of working for electrical works and it does not mean that it is necessary to possess special machinery. Response from the technical expert The expert assesses that electrical works can be carried out in other methods without having the need for the vehicle in question, so the required equipment is unnecessary and should not be a criterion of DT. CA to correct the DT request since the equipment is unnecessary.

The claim for equipment no. 32 is considered grounded.

Equipment no. 33 Dumper with self-unloading tires min 5T. The complaining EO has requested that this machinery since it is used only on the construction site, it can be unregistered and can have a capacity of less than 5T. Response from the technical expert. The expert assesses that according to the law on vehicles, machinery operating on the construction site does not need to be registered, it can be transported to the work site with transport machinery.

Regarding the tonnage capacity, the expert considers that the CA has set the minimum limit of the equipment capacity which is min. 5t, with this threshold the CA has given room for tolerance with which bidders can bid with capacities greater than 5t, it is also the responsibility of the CA to assess the capacity needed in accordance with the project requirements.

CA to correct the request in DT to remove the request for the circulation booklet for the relevant machinery. The claim for equipment no. 33 is considered partially grounded. Equipment no.

34 and 35. Loading bucket with brooms. Loading bucket with fork and broom

The complaining EO has requested that these equipment be removed since they are unnecessary for the nature of the work.

Response from the technical expert

The technical expert assesses that based on the scope of the project, these equipment are not related at all to the nature of the construction works and as such should be removed from the tender dossier. The CA should establish the requirements related to the construction works and the implementation of the project. The CA's reasoning in the response does not stand since according to the legislation in force, the construction site must be limited and maintained in such a way that the spaces outside the construction site are not affected by the implementation of the project in question. The claim for equipment no. 34 and 35 is considered grounded. The fourth claim of the complaining EO: The Municipal Assembly of Gjilan has published the tender in question on 18/03/2025, where according to the tender dossier the deadline for submitting tenders is 07/04/2025. When setting the deadline for submitting tenders, the CA acted in violation of Articles 44 and 45 of the LPP. According to the provisions of Article 44 of the LPP, in the case of large-value contracts, the CA must keep the tender open for a period of no less than 40 days. While in cases where there is prior notice, the tender must be open for no less than 24 days. Therefore, the CA did not take into account the fact that the deadlines for bidding are in harmony with the nature and purpose of the project, always taking into account the numerous requirements that must be met to prepare a serious bid.

Response to the complaining claim of the complaining EO:

The review expert based on the case documents explains that, regarding the legal deadline for submission of tenders, the CA in the Tender Dossier has also specified the reason for the acceleration and shortening of the deadline for submission of tenders, which based on E-procurement falls on 22 days from the date of the contract notice to the day of submission of tenders, and as such based on Article 46 of the Law on Public Procurement - 46-Special rules for enabling the shortening of time limits, paragraph 2 quote:

2. During a procurement activity that uses open procurement procedures, the contracting authority may determine a specific time limit for the receipt of tenders which is:

2.1. if the relevant contract is a public contract with a large value, not less than fifteen (15) days; or

2.2. if the relevant contract is not a public contract with a large value, not less than Ten (10) days.

And consequently the CA has acted according to Article 46 of the LPP by shortening the deadline from 40 days to 22 days, and in the specific case this complaint claim is irrelevant due to the extension of the deadline for the complaint procedures.

In conclusion, based on the explanations provided, it is recommended that the CA make the changes to the tender dossier and extend the deadline for submission.

Note: For this procurement activity, there is also a complaint with no. 238/25 and the submitted report.

Regarding the claims of EO "Pro & Co Group" SH.P.K., the review expert through report no. 2025/0238 has assessed as follows:

The procurement activity entitled: "Construction of the integrated project of the Gjilan City Boulevard" with procurement no.: "651-25-644-5-1-1", initiated by the Contracting Authority (CA) - MUNICIPAL ASSEMBLY- GJILAN, open procedure, type of contract work, criterion lowest responsive price

The complaint was submitted at the stage of the tender dossier requirements.

Consequently, since the complaining Economic Operator is dissatisfied with the rejection of the request, the same submits a complaint to the Procurement Review Body, claiming that the Contracting Authority, during the compilation of the requests in the tender dossier, has violated the Public Procurement Law, namely articles: 1,7,10,28,51,69. The complaining EO's claim: The complaining EO claims that the request in the tender dossier 9.1&9.2 regarding the completed projects is discriminatory and requests that changes be made in the following form: The Economic Operator or group of EOs must provide evidence that it has successfully completed contracts for construction projects of a similar nature in the amount of 15,000,000.00 euros. Or

The Economic Operator or group of EOs must provide evidence that it has successfully completed contracts for construction projects of a similar nature in the amount of 15,000,000.00 euros, of which 6,000,000.00 euros must be work on underpass construction projects. In the case of a group, one of the group members must have at least 2 references in the construction of underpass projects. Response to the complaining claim of the complaining EO

The review expert after analyzing and reviewing the case documents clarifies that, the CA in the corrected tender dossier dated 26/03/2025 has determined as follows:

Requirement 1. The operator or group of EO must provide evidence that it has successfully completed contracts for construction projects of a similar nature in the amount of 15,000,000.00 euros, while of them

6,000,000.00 euros must be work on underpass construction projects. In the case of the group, the leader must have at least 2 references in the construction of underpass projects.

Evidence 1. A list of contracts signed and stamped by the EO where the description will be made with this information: the title of the contract, the client, the date of commencement of the contract, the date of completion of the contract, the value of the contract, References or technical acceptance copies for the contracts presented,

If the contract with reference is with a private company, it must be proven by a bank transaction (evidence that the payment has been completed). References or technical acceptances must be in the last 3 (three) years, starting from the date of publication of the Contract Notice.

Consequently, based on the Public Procurement Regulation no. 001/2022 article 26.10 defines that CA 26.10 When necessary, contracting authorities may determine in the tender dossier

and in the contract notice how groups of Economic Operators must meet the requirements for economic and financial standing or technical and professional capacity referred to in articles

68 and 69 of the LPP, where CAs may determine a minimum percentage in terms of meeting the requirements by the leader of the EO group

Also, based on Article 69, paragraph 1 of the Law on Public Procurement, as well as the Public Procurement Regulation No. 001/2022, Article 25, paragraph 13:Quotes: “The Contracting Authority may require that the Economic Operator prove that in accordance with Article 69 of the LPP, it has in the past concluded contracts of a similar nature with a value specified in the tender dossier and in the contract notice, which may not be set at more than 1.5 times the estimated value of the contract. This means that the Economic Operator must PUBLIC PROCUREMENT REGULATION - Consolidated Version 52 meet the requirement for specific turnover if it has concluded one or several contracts of a similar nature that alone or together reach the total value specified by the Contracting Authority in the tender dossier and in the contract notice and it is not required that this requirement at the value specified of 1.5 times the estimated value of the contract be met only with a single contract of that value”

The expert explains that, the CA, regarding the minimum value of 15,000,000.00 euros compared to the anticipated value, does not exceed 1.5 times, and in the specific case, taking into account the nature of the project and the works that will be carried out for the underpass section, where the contract and the project are successfully implemented, the experience of the economic operator, namely the Leader, who represents the group, is required and also ensures that the Leader fulfills part of the requirements in order to fulfill the implementation of the contract. Therefore, the CA has compiled the request in accordance with Article 25.13 and 26.10 of the Public Procurement Regulation no. 001/2022. The claim of the complaining EO is not found to be grounded. The second claim of the complaining EO:

The complaining EO claims that requirement no. 2 in 9.1&9.2 is discriminatory: Criteria 9.1 and 9.2

Requirement 2. The EO must provide evidence of professional staff as follows: A bachelor's degree in hydrotechnics certified by the AME for fire protection (min 5 years of work experience from the date of certification). This requirement is completely illegal and favorable to certain EOs (mainly foreign), since these certificates in Kosovo have only started to be issued in the last two years, and have not been issued earlier, therefore it is impossible to possess them with this validity. Also, if a bachelor's degree in hydrotechnics does not have this certificate, the EO is obliged, according to Article 13 of the contract, to provide safety at the workplace.

Furthermore, these obligations are also set by the Law on Safety and Health at Work. Therefore, this request should be changed and removed from the DT criteria. Response to the complaining claim:

The review expert regarding the second claim of the complaining EO explains that, the CA in the DT in request no. 2 point f. has requested:

f) A bachelor's degree in hydrotechnics certified by the AME for fire protection (min 5 years of work experience from the date of certification) Required evidence: For professional staff, evidence should be provided with relevant diplomas and certificates, as required, employment contracts or agreements on engagement on behalf of the project and validity with validity and duration for this project. Diplomas obtained outside the Republic of Kosovo are required to be Nostrified by the Ministry of Education, Republic of Kosovo. Therefore, the CA has requested a bachelor's degree in hydrotechnics with a minimum of 5 years of experience after graduation, while regarding the required certificate for fire protection, it is recommended that the CA open the competition without specifying, but allow it to be offered by any engineer without specifying the experience after certification. The claim of the complaining EO is found to be partially grounded.

Third claim of the complaining EO: Criteria 9.1 and 9.2 request no. 5 a) EO must provide a certificate of stability of performance and conformity (EN 40-5 2002-1608-CPR-

P033 valid) by attaching the Certificate of product characteristics 6.8m, 12.8m for conical lighting poles. b) EO must provide a certificate for contactors with the IEC 60947-4 2009 standard and cabinet switches with the IEC 60947-3 2020 standard. Evidence 5. a) The

certificate must be in the name of the EO, authorization or agreement with any company that possesses the authorization for this certificate. The certificate must be valid. b) The certificate must be in the name of the EO or must have authorization from a company that is a distributor for the sale of these products. The certificate must be valid. These certificates do not serve at all for the object of the contract, since they are used only in cases where the tenders include the vast majority of electrical elements, such as KKEK, KEDS, or other energy institutions. In the specific case, they are completely unnecessary, since they all include elements of work in electrical energy and not in construction work. Response to the complaining claim of the complaining EO:

The review expert explains that this complaint claim has also been addressed in complaint 237/25 for which, based on the response provided by the technical expert, this request should be removed from the tender dossier. Finally, according to the explanations provided, it is recommended that the CA make changes to the tender dossier and extend the deadline for submission.

Note: For this procurement activity, there is also complaint no. 237/25 and the submitted report.

-Findings of the Review Panel -

Based on the documents of this case, the Panel considers that regarding the issue in the concrete case, there is no need to convene a hearing with the parties, within the meaning of Article 24 paragraph 1 of the PRB's Rules of Procedure, taking into account the fact that the claims of the parties and their submissions, the evidence as well as the report of the review expert on the complaint of EO "SEMAKS" SH.P.K., with no. 2025/0237 and the complaint of EO "Pro & Co Group" SH.P.K., with no. 2025/0238 provide sufficient data to decide on the merits.

The review panel, after evaluating and administering the evidence according to the submitted complaint, clarifies that regarding the claims of the complaining economic operator, it has not fully trusted the review expert regarding the responses to these claims of the complaining economic operator.

It should also be noted that the legal fact that the expert report is not binding on the Review Panel and that each 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 that in which cases and for what, the Panel relies or not, on the expert report and/or any of the recommendations, is a matter of his/her independent and professional judgment, as these responsibilities are addressed in the sense of Article 98, 99 in conjunction with Article 105 of the Public Procurement Law. The Review Panel has independently and objectively, with due diligence and professional care, evaluated all the evidence of the case.

Therefore, the Supreme Court, without the need to repeat the same, will focus on the review only on the defining claims regarding the decision-making in these cases and on the responses to the review expert's appeal claims to which the review panel did not give credence:

Regarding the complaining claims of EO SEMAKS SHPK 2025/0237

The complainant has attacked the CA's request regarding the certificates; a) The EO must provide the certificate of stability of performance and conformity (EN 40-5 2002-1608-CPR-P033 valid) by attaching the Certificate of product characteristics 6.8m, 12.8m for conical lighting poles. b) The EO must provide the certificate for contactors with the IEC 60947-4 2009 standard and cabinet switches with the IEC 60947-3 2020 standard. Because according to the complainant, these certificates are discriminatory. The expert supports this claim of the complainant, without any argument or evidence, but only on the basis of assumptions, calling them irrelevant requests. The Review Panel, regarding these dry and unargued and contradictory responses, cannot support the review expert, because on the one hand it says they are not relevant, while on the other hand it says that these are related to technical specifications and should be verified during the project management process.

The complainant also attacked the list of equipment requested by the CA, where the review/technical expert gave a very simple and without any basic element why the equipment requested by the CA should be removed, stating only that this equipment is very rare and narrows the competition, this response from an expert is quite unprofessional and unargued, because, one cannot remove a piece of equipment from such a large project and jeopardize its implementation just because some equipment is rare and force the CA to take actions for which it will cost later and may jeopardize the implementation of the contract. Therefore, the Review Panel qualifies this claim as partially grounded due to the fact that the CA as the initiator of this procurement activity, in accordance with Article 27 and 69 of the LPP, must determine and request the work equipment in accordance with the needs it foresees for that activity, and it is the responsibility of the CA itself, as long as the Tender Dossier has left the possibility, with a rental agreement. Despite the fact that this claim is partially grounded, it is insufficient to cancel the contract notice.

Also, in this regard, the Panel also explains that the Contracting Authority (CA), in the sense of Articles 1, 6 and 7 and in accordance with Article 115 of the Law on Public Procurement, in its capacity as the initiator of this procurement activity, had the opportunity to review the DT's requests again, based on the findings of the review expert. Where, the Law specifies that if the CA confirms that the claim or all claims are valid and have not been rejected by the complainant, they may undertake the corrective actions recommended by the expert. However, even in this case, the CA continued to reject the expert's report.

As a result, the Review Panel, independently and objectively, with due diligence and professional care, has assessed all the evidence of the case, has decided to qualify the complainant's complaint as partially grounded but insufficient to cancel the contract notice, therefore the PS decides to leave in force the contract notice regarding the procurement activity "Construction of the integrated project of the Gjilan City Boulevard" with procurement no.: 651-25-644-5-1-1, and the CA to continue with the procurement activity.

Regarding the complaining claims of EO “Pro & Co Group” SH.P. K 2025/0238

The complainant in this case has attacked the request set regarding contracts and projects of a similar nature in the amount of 15,000,000.00 euros, of which 6,000,000.00 euros for work on underpass construction projects, the Public Prosecutor's Office considers that this request was handled professionally by the review expert in his report, arguing precisely that the request set by the CA regarding the minimum value of 15,000,000.00 euros compared to the estimated value does not exceed 1.5 times, and in the specific case, taking into account the nature of the project and the works that will be carried out for the underpass section, where the contract and the project are successfully implemented, the experience of the economic operator, namely the Leader, who represents the group and also ensures that the Leader fulfills part of the requirements in order to fulfill the implementation of the contract. Therefore, the PSH that the CA has compiled the request in accordance with Article 25.13 and 26.10 of the Public Procurement Regulation no. 001/2022.

The complainant in this case has challenged the requirement set by the CA regarding f) A bachelor's degree in hydrotechnics certified by the AME for fire protection (min 5 years of work experience from the date of certification). The Review Panel considers that this requirement is not discriminatory, since as such and in consistency with the previous decisions of the PRB it is relevant to the nature of this project in accordance with Article 51 of the LPP, because according to the nature of this project the CA has deemed it necessary that this requirement is necessary as such and the PS cannot force the CA to vary the requirement only because an engineer of an EO cannot have this certificate, because the CA in this case has allowed tolerance that this engineer can also be offered with a pre-contract, without the need for the engineer to necessarily be employed by a specific EO in this case of the complainant.

The RP considers that all CAs should exercise increased care so that the selection criteria do not have to be unduly strict leading to discrimination and restriction of competition, as well as to ensure the greatest possible competition, without jeopardizing the contracting of products that meet their adequate needs, as well as without jeopardizing the contracting of unprofessional companies and with the understandable aim of filtering and excluding unstable companies that cannot implement the specific contract, so that the selection criteria should fulfill its objective and practically filter out unstable companies, in relation to the volume and complexity of the works foreseen in this activity.

Regarding the claim regarding certificates, the PSH has provided a response and reviewed it in complaint no. 2025/0237.

As a result, the Review Panel, independently and objectively, with due diligence and professional care, has assessed all the evidence of the case, has decided to qualify the complainant's complaint as partially grounded but insufficient to cancel the contract notice, therefore the PS decides to leave in force the contract notice regarding the procurement activity "Construction of the integrated project of the Gjilan City Boulevard" with procurement no.: 651-25-644-5-1-1, and the CA to continue with the procurement activity.

Conclusion

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, where in this procedure it is noted that the CA has also made the correction of the procedure (26.03.2025). Also according to Article 51, paragraph 3 of the LPP, the CA must ensure that all selection criteria as well as the required documents and information that are set out and described in this Article, must be directly relevant and proportionate in relation to the subject matter of the respective contract.

It is also worth repeating the fact that in cases where a certain economic operator does not fulfill the requirements of the tender dossier, the same can join in the form of a group of economic operators, whether local or international EO. Otherwise, the fact that one or several economic operators do not fulfill the requirements of the DT does not mean that the requirements were drafted incorrectly. However, without the need to repeat the requirements of the DT for which the complaint claims were submitted, in the specific case and according to the conviction of this Review Panel, all the requirements of the tender dossier were carefully drafted by the CA. Absolutely any requirement may be necessary for the successful implementation of the project and the failure to fulfill any requirement may significantly jeopardize the efficient and effective implementation of the project, especially a project of great importance and value. From what was said above, it was found that the complainants have not presented any solid arguments to cancel the contract notice of the CA.

Therefore, the CA is also responsible for drafting the DT, according to Article 27 and 28 of the LPP. 18 The Review Panel, based on the fact of partial approval of the EO's complaints, decided to return the appeal fee in the amount deposited by the complaining economic operator based on Article 31 par. 4 of the PRB's Rules of Procedure. The Review Panel has decided in accordance with the legal competences in the sense of Article 104 paragraph 1 in connection with Article 103, Article 105 and Article 117 of the LPP to implement the procurement review procedure in a prompt, fair, non-discriminatory manner, with the aim of resolving the case legally and effectively. Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations that may arise during a procurement activity.

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

President of the Review Panel

Mrs. Batisha Ibrahimi

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 – **MUNICIPAL ASSEMBLY- GJILAN;**

1x1 EO – “**Pro & Co Group**” SH.P.K;

1x1 EO – “SEMAKS” SH.P.K;

1x1 Archive of the PRB.