



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

Psh. No.997/23

The Review Panel, appointed by the President of PRB, based on Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova (LPP) as well as articles 29 and 31 of the PRB Work Regulations 01/2020 amended on 09.08. 2023 composed by Vjosa Gradinaj Mexhuani, deciding according to the complaint of the Economic Operator (EO) “ROA Consulting” SH.P.K, against the Decision on contract award or a design competition of Trepça SH.A. in the capacity of the Contracting Authority (CA) related to the procurement activity “Supply of Denver pumps and flotation pump parts” with procurement number 12997 12998-23-11501-1-2-1, on the 23/02/2024 has issued this:

DECISION

1. Approved, as grounded the complaint of “ROA Consulting” SH.P.K, with no. 2023/0997, dated 11/12/2023, related to the procurement activity “Supply of Denver pumps and flotation pump parts” with procurement number 12997 12998-23-11501-1-2-1 is cancelled, Notification on the Decision of the Contracting Authority, while the activity is returned to re-evaluation.
2. Within 10 days, the CA must inform the PRB about all the actions taken regarding this procurement activity, otherwise, the PRB has the right to take measures against the CA for non-compliance with the decision as provided by the provisions of Article 131 of LPP.
4. It is allowed to return the assets deposited in the name of the complaint’s fee, in the name and on behalf of the complainant, who must submit a request for the return of the assets, within 60/sixty days, from the day of acceptance of this decision, in otherwise, the funds are confiscated and transferred to the Budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances -

On the 20.10.2023, Trepça S.A. in the capacity of the Contracting Authority has published the Contract Notice B05 related to the procurement activity entitled: "Supply of Denver pumps and pump parts in Flotation" with procurement no: 12997 12998-23-11501-1-2-1. The Contracting Authority - Trepça S.A. during this procurement activity has implemented an open procedure, type of supply contract. Estimated value 90,000.00 €. Criteria for contract award Responsible tender with the lowest price.

On the 22.11.2023, the CA has published the Notice on Decision B58 for contract award for the procurement activity where they have recommended for the contract the economic operator "Te Samia" Sh.P.K.

On the 27.11.2023, EO "ROA Consulting" Sh.P.K submitted a request for reconsideration against the Notice on contract award.

Dissatisfied with the decision of the CA, the complaining EO "ROA Consulting" Sh.P.K has submitted a complaint to the PRB with no. 2023/0997 dated 11.12.2023, for the above-mentioned activity.

-On the stage of preliminary examination-

During the preliminary review of the complaint, the Review Panel found that both complaints contain all the elements defined through Article 111 of the LPP and as such were submitted within the legal term in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for resolution of disputes in the sense of Article 108/A of the LPP, from economic operators who are interested parties according to Article 4 paragraph 1 sub-paragraph 26 of the LPP. In this way, the Review Panel has concluded that it is competent to review these complaints according to Article 105 of the LPP and there is no procedural obstacle to proceed with reviewing the complaints in a meritorious manner.

The panel concluded that there are no elements to prevent the conflict of interest, as required in the sense of Article 11 of the Regulation on the Work of PRB, related to paragraph 1.75, Article 4 of the LPP and at the same time analyzed all the documents of this subject, including all the acts and actions of the parties and considered that there is no need to convene a hearing with the parties, as long as the submissions of the parties and their actions constitute a sufficient basis to decide on the merits as provided by paragraph 1, of article 24 of the Rules of Procedure of PRB, and that there is no need to request the contracting authority and/or the complainant to provide additional information and/or explanations, in the sense of paragraph 3, article 116 of the LPP.

- Evalaution and administration of evidence-

Briefly, the claims of the complaining economic operator "Roa Consulting" are presented as follows:

The first claim (I): The Contracting Authority (CA), through the Bid Evaluation Commission, has been accused of violating Article 7 of the Law on Public Procurement (LPP), by rewarding an Economic Operator (EO) with a contract, even though this EO has many shortcomings in its offer, describing this behavior as inappropriate favoritism and a serious violation of the law. This action also violates Article 1 and 6 of the LPP, making inefficient use of public funds and illegal discrimination of others involved in the tender. CA has been accused of not respecting the requirements of the tender file and evaluation criteria. The second claim (II): CA is accused of violating Article 11 of the LPP due to non-compliance with EO's request to keep the tender documents as a business secret and giving access to them without having their cleaned version. The third claim (III): CA is accused of violating Article 59 of the LPP due to non-compliance with the requirements of the tender file and the benefit of a certain EO even though it has not fulfilled the requirements specified in the tender. Its shortcomings include the lack of documentation required to explain its compliance with the requirements of the Law on Public Procurement. The fourth claim (IV): CA is accused of violating Article 60 of the LPP due to non-respect of the tender evaluation criteria, giving unfair benefits and not respecting the criteria defined in the tender dossier. Fifth claim (V): CA is accused of violating Article 65 of the LPP due to the selection of a certain EO without proving its compliance with the requirements of the Law on Public Procurement, by not submitting the necessary documentation to prove the criminal history of the company. The sixth claim (VI): CA is accused of violating Article 69 of the LPP for non-compliance with the criteria and requirements set for the technical specifications in the tender dossier, by declaring the winner an EO that has not met these requirements. Seventh claim (VII): CA is accused of violating Article 72 of the LPP for not respecting the evidence provided by the EOs, not taking them into account for consideration and discounting them without sufficient grounds.

The responses of the Contracting Authority regarding the request for reconsideration of the Complainant "Roa Consulting"

- Eligibility documents point 2 and 3 have been received before B58 is loaded as stated in the contract notice and tender file. Has submitted an administratively and technically responsible tender, according to annex 1 of the tender file and because you were not responsible from a technical and professional point of view, the conditions for participation; it was mentioned that 1 EO must prepare a written and stamped statement, and clearly state that the goods offered are in full compliance with the technical specification of annex no. 1 of the tender dossier. Also, the Catalog provided should be underlined for each position in order. You have not provided detailed explanations even after the tender clarification request for any of the three positions required in annex 1 of the tender file, while the descriptions you have provided are not in compliance with the requirements of the CA stated in annex 1 of the tender file. The professional commission appointed for the re-evaluation of the offers has assessed that you were at the lowest price, but unfortunately they have concluded that your technical descriptions are not suitable from a technical and professional point of view, which would not be suitable with the nature of the work that takes place. Regarding these product descriptions, you have been unclear at best, while at worst you are trying to mislead us by making guesses, in the product description, by interfering with the specifications in the manufacturers' catalogs from those found on their website and by

taking photos from different ones on the site and not from the manufacturer that you have declared with the ISO 9001 certificate of the manufacturer, so they are not the same and you have interfered with the ISO 9001 certificate date, so if this is proven in higher instances like in PRB, we will certainly make the request to be blacklisted in PRB for the falsification of the documents you made. CA's goal is to win as many responsible EO bidders and competition as possible. I believe that these clarifications are sufficient to see what actions and documents EO ROA Consulting shpk has brought.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 26.12.2023 has authorized the review expert to conduct the initial review of the dossier and claims according to complaint no. 997/23, while on 09.01.2024 the expertise reports of the review expert were submitted with the following recommendations: "Based on the aforementioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO be approved as grounded, the contract award notice is canceled and it is recommended that the matter be reassessed.

Findings of the review expert regarding complaint No. 997/23 of the economic operator "Roa Consulting"

- Clarifications for the first claim (I): Circumstances of the case related to the complaining claim 1- The reviewing expert has verified that the complaining EO in its tender has submitted the request for a signed and sealed trade secret, requesting that the evidence submitted by the complaining EO in regarding the fulfillment of the technical and professional capacity requirements with ordinal number 1 and 2 to be treated as a business secret. In relation to this request, the following reasoning was given: The disclosure of data from our offer negatively affects the damage to our business by misusing business data and information for their own purposes. This harms us in the business of the company and our relations with different producers. EO "Te Samia" dated 09.11.2023 has requested through e-procurement, has requested from CA the access to the offer of EO "Roa Consulting" with the following text: "Hello! We request access to the documents of the EO proposed for the contract for the procurement procedure no. ST 23 220 121 Please send us in electronic form (email) the offer of the proposed EO for the contract." In the request for reconsideration submitted by EO "Te Samia" dated 12.11.2023, the following complaints were presented: "The evaluation commission apparently did not evaluate the offers at all, the descriptions provided by the EO awarded with the contract do not resemble neither the catalog nor any catalog sheet. Just camouflage and attempted deception. With this, we consider that it is to the detriment of the CA, because at this stage we do not know what is being evaluated, let alone what the EO will deliver, so these practices should not be implemented. In this case CA has failed to investigate that EO, ROA Consulting shpk has falsified the catalog required for position 1, 2 and 3. Below we present the facts: We have managed to contact the company Hebei Huitong Pump Industry Co.,LTD and we browse through all their catalogs and we have not found the pump offered by the EO in question. In the impossibility of uploading the material on this platform due to the size, we have attached the link to the drive where they are located: Photo 1. The photo presented in the catalog does not belong to the manufacturer Hebei Huitong Pump Industry Co.,LTD located at China. But of the

company FLSmidth from Denmark. Photo 2. The photo shown in the catalog does not belong to the manufacturer Hebei Huitong Pump Industry Co.,LTD. It belongs to AmosTECH or Shijiazhuang Gravel Slurry Pump Industry Co.,Ltd. Photo 3. The photo shown in the catalog does not belong to the manufacturer Hebei Huitong Pump Industry Co.,LTD. But the photo is taken from a brochure from the SMUKH ENGINEER company. Photo 4. EO has modified the photo by adding the Denver model which Hebei Huitong company. F02 The Standard Form for reconsideration of the decision in AK Pump Industry Co., LTD is not contained in the catalog. Photo 5. The circuits in the EO catalog in question do not match those in the technical specifications in TD. Also, no description has been provided, only photos, from which there are no models or data on what pumps they can be used for. Districts 1 & 2. Below are the links for the district with position 2 and position 3, which fully comply with the specifications in DT

"Regarding secret business information and the obligations of CA, article 11 of the LPP defines: "1. Without prejudice to the obligation to provide interested parties and the public with access to the records of its procurement activities, the contracting authority must respect and keep as secret the information classified as confidential business information in accordance with this article. 3. The contracting authority may classify other information as business secret information only if the relevant information meets these three criteria: 3.1 that it has been sent by an economic operator in accordance with the request determined by such contracting authority under Article 68 or 69 of this law; 3.2 that the relevant economic operator has sent the contracting authority a written request expressing his wish that the contracting authority keep such articles as secret; and 3.3 such written request contains a written statement (i) certifying that such element is not public property, and that the data is protected by the economic operator from intentional or negligent disclosure, and (ii) with which the reasons are presented, which convincingly demonstrate, according to the reasonable judgment of the contracting authority, that public access to such element would result in material damage to the legitimate commercial interests of such economic operator. 5. If the document contains only information that the contracting authority has classified as confidential business information according to paragraph 3. of this article, and therefore this contracting authority decides to remove this document from the material in which interested parties and members of the public have towards access according to paragraph 3. of article 10 of this law, the contracting authority must prepare and include in the documentation to which the public has access, a summary of the general content of the secret document. The contracting authority shall attach to the front of such summary a notice stating that (i) the contracting authority has classified all the information contained in the original document as business secret information, at the request of the relevant economic operator, and (ii) that the document attached was prepared by the contracting authority and that it is a general non-confidential summary of the original".

- The expert's finding for the first claim (I): The expert first clarifies that EO "Roa Consulting" submitted the request to the CA in accordance with Article 11 of the LPP for the classification of information as a business secret by completing the statement and signing it. Further, based on the written evidence, it appears that EO "Te Samia" had full access to the catalog submitted by EO "Roa Consulting". Therefore, the CA acted in violation of Article 11 of the LPP, paragraph 1, 3 and 5. Consequently, the appeal claim is grounded.

• Clarifications for the second claim (II): CA submitted the following request in the tender file, under eligibility requirements: "1. The Economic Operator must fulfill the requirements specified in Article 65 of the Public Procurement Law (LPP), of Law No. 04 L-042 on Public Procurement of the Republic of Kosova, amended and supplemented by Law No. 04 L237, Law No. 05 L-068 and Law No. 05 L-092. The LPP can be downloaded from <http://krpp.rksgov.net>. 2. The economic operator must submit evidence related to Article 65, paragraph 3, sub-paragraph 3.1, 3.3, 3.4, 3.5 and 3.6 and paragraph 4, sub-paragraph 4.1, 4.2, and 4.4]. 3. The economic operator must prove that he is not delinquent (violate) in the payment of taxes at least until the last quarter of the year before the date of publication of the Contract Notice. [Article 65 paragraph 4, subsection 4.8]." The required documentary evidence for this request is: "1. A written statement under oath, signed and sealed by the tenderer using the form set out in the tender dossier Annex 2 - is required to be submitted by each tenderer upon submission of their tender offer. 2. Certification issued by the competent court or administrative authorities of the country of establishment of the tenderer-must be submitted by the winning tenderer before the Notice to Tenderers, respectively the submission of standard letters. [In case of failure of delivery, the said tender will be rejected]. 3. The certificate issued by the Tax Administration - must be submitted by the winning tenderer before the Notice of Tenderers, respectively the submission of standard letters. [In case of failure of delivery, the said tender will be rejected]." The EO in its tender submitted: 1. The affidavit according to the standard form signed by Mr. Sami Lahu (Director and Agent registered according to data in the Business Registry Agency) and sealed with the seal of the EO. 2. The tax certificate issued by the Tax Administration of Kosova with serial number 1001087112, in which it is noted that the Person is registered in TAK and has no current unpaid tax debts or other tax obligations. 3. Certificate on criminal convictions issued on 27/10/2023 by the Judicial Council of Kosova, in which it is noted: Sami, Lahu Shtetas i Kosova, is not convicted by final judgment. On 22.11.2023, the CA has published the notice on the decision on contract award EO "Te Samia", respectively notifying the two EOs with standard letters. The complaining EO, dissatisfied with the decision of the CA dated 27.11.2023, submitted the request for reconsideration. In the request, the EO presented the complaint claim that the CA acted in violation of Article 59 and 65 of the LPP by awarding the contract to the EO who did not submit the required evidence regarding the eligibility requirements. The CA in the decision to reject the request for reconsideration dated 30.11.2023 has presented the reasoning in relation to this claim: "The eligibility documents point 2 and 3 were received before loading B58 as stated in the contract notice and tender dossier". Regarding eligibility requirements, in Article 45.31 of the Public Procurement Regulation it is stated: "[..] Before the evaluation report is approved, the ZPP requests from the EO recommended for awarding the contract evidence of compliance with the eligibility requirements specified in Tender dossier and Contract Notice. After receiving the evidence of eligibility, the ZPP signs the Evaluation report and uploads it to the platform." The CA in the tender evaluation report, in the final part, did not provide information on whether the eligibility requirements were met before the evaluation report was approved. Also, the expert has analyzed the documents in the system related to this activity and it turns out that apart from the evidence submitted with the offer from the recommended EO, there are no other evidence of suitability uploaded to the system.

- The second finding (II) of the review expert: The expert clarifies that based on the available written evidence, the recommended EO has not submitted all the evidence required in the notice of contract and tender file, which prove the admissibility according to Article 65 of the LPP- of. Accordingly, only sworn statements, TAK certification and certificates on criminal convictions for the company's owner were submitted, but the evidence related to Article 65, paragraph 4, sub-paragraph 4.1, 4.2, and 4.4 was not submitted. In such a circumstance, the CA has recommended for a contract, i.e. approved the evaluation report of the tenders and published the announcement on the decision and the standard letters without ensuring that all the requirements defined in the tender file related to the participation of the tenderers have been met. according to article 65 of the LPP, as required by article 45.31 of the Regulation on public procurement. Therefore, according to the above clarifications, the complaining claim of the complaining EO on this point is grounded.

- Clarifications for the third claim (III): CA in the notice for the contract and the tender dossier has defined the requirement related to technical and professional capacity: "1. The EO must specify the goods offered in compliance with the technical specifications of the tender file, as and offer the catalog of products offered in accordance with the relevant specifications." The requested documentary evidence in relation to this request is: "1. The EO must prepare written and sealed statements, and clearly state that the goods offered are in full compliance with the technical specification of annex no. 1 of the tender dossier. Also, the Catalog provided should be underlined for each position in order." CA in annex 1 of the tender file for position 1 has specified, among other things, "Outer diameter of the cylinder st. Dc.j.=254mm; The inner diameter of the cylinder st. Db.c.=190mm, "Diameter of the pin shaft of PP:Db=85mm". EO "Te Samia" has submitted the document "Part of the catalog for pumps" in which the specifications of the offered product are presented. In the catalog, the model offered with the number 10/8ST-AM is underlined. In the submitted catalog, on page 3, the specifications of the offered model are presented as follows: Inlet 254, Outlet 203. While on page 6 of the catalog it is underlined by EO and the note "Dimensions from the Manufacturer for pumps with parameters 10/8 ". In the dimensions presented at point U, the value 80 is presented, where in connection with the drawing it results that the diameter of the shaft is 80mm. On 09.11.2023 EO "Te Samia" has uploaded additional documents to the platform in the folder named "Additional documents requested by AK.zip". A total of 3 additional documents have been submitted, including "Parts of the catalog for pumps.pdf", "Parts of the catalog for circuits.pdf" and "Parts required by CA.jpg". The expert has analyzed the catalog submitted with the additional clarifications, which is identical to the catalog submitted with the offer. While the document "Parts required by CA." presents the technical drawing of the product offered with the model number 10/8 ST-AM where some dimensions are presented as follows: U-Dp=85mm, Diameter of the pin shaft of PP, F-Dë.c=537mm, Diameter of the working circuit of PP, M-Dc.o=254mm, The outer diameter of the cylinder, K-Dc.i =190mm, The inner diameter of the cylinder. • The third finding (III) of the reviewing expert: The expert clarifies that in accordance with the request of the tender file, the recommended EO has submitted the catalog of the manufacturer "An Pump" in which the model that is offered 10/8ST-AM is underlined. As explained above, the technical specifications of the offered model differ in the 3 claimed points. Accordingly, the dimensions presented in the catalog submitted with the offer are different from those specified in annex 1 of the tender

dossier. Further, in the additional clarifications, the EO has submitted a drawing of the offered product accompanied by the values for the disputed dimensions which differ from the values of the dimensions presented in the catalog submitted by the EO with the offer. The expert clarifies that the CA acted in violation of Article 59, paragraph 2 of the LPP, which states "2. The CA may, in writing, request a tenderer to provide a written clarification on any aspect of his tender, in order to examine, evaluate or compare the tenders. No material change in any aspect of the tender shall be required or accepted by the contracting authority or offered by a tenderer." This is due to the fact that the dimensions in the accepted technical document with clarifications differ from those presented in the manufacturer's catalog submitted with the offer, and this change constitutes a material change of the tender documents, which cannot be accepted and taken for granted by CA. Therefore, the complaining claim on this point is grounded.

- Clarifications for the fourth claim (IV): CA in the contract notice and the tender file has defined the requirement related to technical and professional capacity: "1. The EO must specify the goods offered in compliance with the technical specifications of the tender file, as well as offer the catalog of products offered in accordance with the relevant specifications." The requested documentary evidence in relation to this request is: "1. The EO must prepare written and sealed statements, and clearly state that the goods offered are in full compliance with the technical specification of annex no. 1 of the tender dossier. Also, the Catalog provided should be underlined for each position in order". In its tender, the complaining EO submitted the statement on the technical specifications, where it states that the offered equipment conforms to the specifications of the tender dossier. Also, the document "Pump Catalog.pdf" was submitted, in which Hebei Huitong Pump is marked, the image of the pump is presented and Denver Model is marked in the corner. In the lower part of the table are the detailed data where the 10/8E-AH (R)-Slurry Pump model is also marked. Next, the image of the pump is shown, as well as other characteristics and dimensions. On 06.11.2023, the CA, through a standard letter, requested clarifications from the complaining EO with the following text: In order to evaluate your tender properly, we request that you provide the clarification of your tender as follows: Question no.1 Based on Article 59 of Public Procurement No. 04/L-042, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092, as well as Article 69, on Technical and/or Professional Ability, as well as Guideline No. 001/2023 for Public Procurement. Since you have provided the technical description and a part of the catalog where the required technical sizes match those of annex no. 1 of the tender file, but we are not able to clearly know that the offered pumps fit the arrangement and the placement line, please refer to the form that the pulley (1 + 1), the backs and their protectors (gauge), as well as the required parts are the same as those in the required technical specification, we request an additional catalog from you? Where to underline the type of pumps provided with all the technical data, the diagram of the pumps where the semicolon is shown, as well as the parts of the pumps underlined in the catalog? Your clarifying answer or answers must be received by us in writing at the above mentioned address of the contracting authority or at the fax number [insert_fax number-:jt] or at the e-mail: trepcaprokurimi@yalzoo.com, by date: 09.11.2023 time: 10:00h. The complaining EO dated 07.11.2023 has uploaded two documents. The document with the name "catalogue" in which photographs and technical drawings of the pump, working circuits, the diagram showing the cutting point, as well as pump parts are presented. The complaining EO in the document

presented the description of the pump, the parts and the diagram. Also, the document named "clarifications for the dimensions of the pump parts 07.11.2023" was submitted, in which the pump model and other characteristics are presented, the same as those presented in the document "Pump Catalog.pdf" submitted by EO with offer, as well as the note Diameter of the working circuit at PP:Db=537mm is presented. CA in the standard letter for the eliminated tenderer dated 22.11.2023, gave the justification for the elimination of the complaining EO as follows: "Your tender was rejected for the following reasons: In your offer, you did not send any catalog or catalog sheets with technical descriptions detailed. Even after sending the standard letter of request for tender clarification, you have brought only a few descriptions modified by you and none of them are in full compliance with annex 1 of the tender dossier and the requirements set forth in the contract notice, the conditions for participation: article III.2.4. Technical and professional capacity and in the tender file" The complaining EO, dissatisfied with the decision of the CA dated 27.11.2023, submitted a request for reconsideration to the CA, contesting the justification for elimination as follows: "The CA committed a violation even when has described us as irresponsible on the grounds that we touched - changed the catalog. This does not hold at all because we have only underlined and written in Albanian their meaning or the ambiguities that the CA has about our pumps. This does not imply intervention because we have not deleted or changed a single data of the manufacturer's catalog. Based on this, we are a completely responsible tenderer and CA has completely violated Article 59 when it eliminated us with such ungrounded reasoning. According to this, it can be seen that the CA has completely violated Article 59 of the LPP". On 30.11.2023, the CA made a decision to reject the request for reconsideration with the following reasoning: "You have not provided detailed explanations even after the tender clarification request for any of the three positions requested in Annex I to the tender file, while the descriptions you have brought are not in compliance with the requirements of the CA mentioned in Annex I of the tender file. The professional commission appointed for the re-evaluation of the offers has assessed that you have been at the lowest price, but unfortunately they have concluded that your technical descriptions are not suitable from a technical and professional point of view, which would not be suitable with the nature of the work that takes place. Regarding these product descriptions, you have been unclear at best, while at worst (bad) you are trying to deceive us by making guesses with, in the product description, interfering with the specifications in the manufacturers' catalogs from those found on their website and by taking photos from different ones on the site and not from the manufacturer that you have declared with the ISO 9001 certificate of the manufacturer, pm are not the same and you have interfered with the ISO 9001 certificate on the date, pm if this is proven in higher instances such as in the PRB, we will certainly make the request for inclusion in the black list in the PRB for the falsification of the documents you made" In the complaint submitted to the PRB, the complaining EO attached the letter HEBEI HUITONG PUMP CO., LTD which states: We, Hebei Huitong Pump Company mainly manufacture Slurry pumps,

There are two main types of Slurry Pumps that we manufacture. 1.The pump we produce has internal rubber parts (impeller, frame plate), which is improved based on the Denver pump, improves the pump performance and can replace the Denver model pump in use. 2.The pump we

produce has internal alloy parts (propeller, frame plate), which is improved based on Warman pump, improves the pump performance and can replace Warman model pump in use.

- The fourth finding (IV) of the reviewing expert: The expert first clarifies that in the standard letter for the eliminated tenderer, the CA specified as a reason for elimination only the item related to the catalog, while in the decision to reject the request for reconsideration, the CA adds the reasons elimination despite the fact that the same are not mentioned in the decision of the CA and the standard letter for the eliminated tenderer as required by article 54 of the LPP, paragraph 1, subsection 1.2 which states: "in case of elimination of a tenderer who is eliminated due to irregularities or otherwise unsuitable tender, the notification will specify the deficiencies". In such a situation, the CA has committed a procedural violation because the complaining EO's right to submit a request for reconsideration to the CA and then appeal to the PRB as specified in Article 108/A is violated. CA in the decision dated 30.11.2023 for the rejection of the request for reconsideration, finds that in the ISO 9001 certificate of the manufacturer Hebei Huitong Pump CO.,LTD, The complaining EO interfered with the dates. However, in the further decision, the CA states that "if this is proven in higher instances such as in the PRB, we will certainly make the request to be blacklisted in the PRB for the falsification of the documents you made". So the CA has not made an effective control of the information to arrive at such a finding. The expert has verified on the website of the manufacturer Hebei Huitong Pump (<http://en.huitong-pump.com/about.html#qualificationPage>) where the ISO 9001 certificate of the manufacturer is published and based on the certificate number which is the same as the number of the certificate submitted by the complaining EO, the verification was done on the website of the certification body that issued the certificate. According to the verification, it turns out that the ISO 9001 certificate of the manufacturer Hebei Huitong Pump CO., LTD has a deadline until 14.04.2025, which is the same deadline as the expiration date in the certificate submitted by the complaining EO. Consequently, the CA made a wrong assessment and finding without making the necessary verifications regarding the term of the certificate.

- As for the justification for the elimination, the expert clarifies that in the document submitted with the offer by the complaining EO, under the name "catalogue", not all the specifications were presented as requested in the notification request for the contract and tender dossier. For this reason, CA has rightly requested additional clarifications. In the additional clarifications submitted, it is noted that the complaining EO has attached parts of the manufacturer's documents and has also presented clarifications in the Albanian language regarding the completion of the technical specifications of the tender file. The reasoning of the CA in the standard letter for the elimination of the complaining EO initially states "you have not sent any catalog or catalog sheet with detailed technical descriptions. Even after sending the standard letter of request for tender clarification, you have brought only a few descriptions modified by you and none of them are in full compliance with annex 1 of the tender file and the requirements set forth in the contract notice, the conditions for participation: article III.2.4. Technical and professional capacity and in the tender dossier". The assessment of the CA does not represent the real situation since the EO has submitted the document with the serial model of the pump and the accompanying information, as confirmed in the standard letter for the clarification of the tender dated 06.11.2023 in which it is emphasized "Since you have provided the technical description

and a part of the catalog where the required technical sizes match those of annex no. 1 of the tender file, but we are not able to clearly know that the offered pumps fit the arrangement and the installation line, refer to the shape of the pulley (l + l) and their protectors (gauge), as well as the required parts are the same as those in the required technical specification, we request an additional catalog from you". So, in the standard letter, the CA assesses that the technical description submitted with the offer complies with the requirements of the tender file, on the other hand, in the standard letter for the eliminated tenderer, it states that the descriptions modified by the complaining EO are not in full compliance with Annex 1 of the file that the tender. Also in the reasoning where the CA states "you have brought only some descriptions modified by you", the expert clarifies that the CA, in the request for notification of the contract and tender files, requested" EO must offer the catalog of products offered in accordance with the relevant specifications" which means that CA has not expressly requested a manufacturer's catalog or has not defined the characteristics of how the catalog should be. Based on the above clarifications, the expert assesses that the appeal claim is well-founded and that the Review Panel is recommended to oblige the CA to re-evaluate in accordance with Article 59 of the LPP. In case the CA considers it necessary to request additional information from the complaining EO, or in accordance with Article 52, paragraph 7 of the LPP, to carry out an effective control of the information and documentation of the tender, including communication with the manufacturer in order to verify the accuracy of the information and assess whether or not the technical specifications are met.

The expert's report has been accepted by both parties in the procedure, where the Contracting Authority has stated that it does not agree with the opinion given by the reviewing expert, while the Economic Operator has stated that it agrees

- Findings of the Review Panel -

The review panel independently and objectively, conscientiously and professionally evaluated all the evidence of the case. From the clarifications given above, it is estimated that the expert handled the claims of the complaining economic operator in a professional and objective manner. The argumentation in the expertise reports is quite detailed, understandable and fully based on the relevant documents that refer to the procurement activity. The given findings can be confirmed through the tender file and other documents, so without the need for additional declarations, the panel supports the findings of the review expert so that the complaint is approved as well-founded, while the procurement activity cited in the provision of this decision is returned to re-evaluation because according to the judgment of this panel, based on all the relevant evidence, the examination, comparison and evaluation of the offers was not done in accordance with Article 59 of the LPP,

In addition, the panel clarifies that the CA as the initiator of this activity has the right to request additional information from the complainant regarding the catalog, ISO-certificate and any other disputed document according to him/her and in accordance with article 52 paragraph 7 of the LPP to carry out effective control of information and documentation of the tender in order to verify the accuracy of the information, including the "communication with the manufacturer" of the complainant, comparing at the same time the completion or not of the technical specifications

set in the TD by the evaluation commission, who also hold and are responsible based on Article 59.1 quoted "All members of the Evaluation Committee take full individual responsibility for the evaluation of the bid". The review panel also approved as grounded the complainant's claim against the recommended EO regarding the catalog, because according to the expert, the recommended EO submitted the manufacturer's catalog "An Pump" in which the model offered 10/8ST-AM is underlined. As explained above, the technical specifications of the offered model differ in the 3 claimed points.

Accordingly, the dimensions presented in the catalog submitted with the offer are different from those specified in annex 1 of the tender dossier.

At the end of all this, the Panel decided as in the dispositive of this, based on its conviction and independent judgment that it has applied the right solution in this case. The review expert's report (internal or external), although it is not binding for the Review Panels, which in the decision-making processes exercise full independence in the implementation of powers according to Article 105 of the LPP, the same is analyzed in any case and its probative value is recognized in the general context of the documents of a subject. In any case, according to paragraph 4 of Article 59, the CA will consider a tender as responsible only if the tender in question is in compliance with all the requirements set forth in the contract notice and in the tender dossier. However, in order to validate the bids accurately and fairly, the panel has judged that in the re-evaluation procedure I should request additional clarifications from the bidder in terms of Article 52.7 and Article 72 of the LPP in relation to Article 38 paragraph 38.1 of the RRPP.

Without the need for further analysis of complaint claims and other evidence, PRB always starts from the fact that each CA (at any level) enjoys complete independence in the exercise of powers and the assignment of needs in harmony with budgetary capacity, but the CA must take care ex-officio also for the basic principles of the LPP and during the drafting of tender file criteria not to draft technical specifications that conflict with the provisions of the LPP.

In order to increase compliance with the LPP and to avoid violating public procurement rules in the future, the panel asks the Contracting Authority to be careful in its activities, respecting the law and following the instructions given in this decision while if eventually the recommendations of the expert to whom the panel in this particular case gave its trust are not respected by the CA, they are informed that the PRB has the right to take disciplinary measures against the officials responsible for the procurement. The review panel acted in accordance with the legal powers and aimed to ensure the implementation of the fair, quick and non-discriminatory procedure for the legal and effective resolution of the case in question.

For point I and II of the decision, it was decided based on article 117 of the LPP in relation to article 29 and paragraph 31 of the PRB Work Regulations.

For point III and IV of the decision, it was decided based on article 31 paragraph 6 of the PRB Work Regulations in relation to article 118 of the LPP.

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

President of the Review Panel

Mrs. Vjosa Gradinaj

Legal advice:

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

Decision to be submitted to:

1x1 CA – **Trepça SH.A.;**

1x1 EO – **ROA Consulting SH.P.K.;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.