



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

Psh. No.567/23

The Review Panel, appointed by the President of the Procurement Review Body (PRB), based on Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova (LPP), composed of Vedat Poterqoi, deciding according to the complaint of the Economic operator (EO) N.N.SH. "Vizion Project" Lot 4, against the Decision on contract award or a design competition of the "Kosova Fund for Energy Efficiency" in the capacity of the Contracting Authority (CA) related to the procurement activity "Consulting company for the drafting of detailed energy audit reports, detailed designs and technical specifications, supervision of construction works, commissioning including supervision in the addressing of defects during the warranty period of the works, for the implementation of measures EE in multi-residential (social) municipal buildings" Lot 4, with procurement number VET- FKEE2020-23-3696-2-1-1, on the 15/12/2023 has issued this:

DECISION

1. Approved as partly grounded the complaint of the EO "N.N.SH. "Vizion Project" Lot 4, with no. 567/23 dated 11/08/2023, whereas the Decision of the CA "Kosova Fund for Energy Efficiency" related to the procurement activity "Consulting company for the drafting of detailed energy audit reports, detailed designs and technical specifications, supervision of construction works, commissioning including supervision in the addressing of defects during the warranty period of the works, for the implementation of measures EE in multi-residential (social) municipal buildings" Lot 4, with procurement number VET- FKEE2020-23-3696-2-1-1, is cancelled, while the procurement activity returns 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.
3. Are returned the funds deposited in the name of the tariff tax for submitting the complaint to the account of the Economic Operator N.N.SH are returned. "Vision Project".

REASONING

- Procedural facts and circumstances -

On the 18.04.2023, the “Kosova Fund for Energy Efficiency” in the capacity of the Contracting Authority has published the Contract Notice B05 related to the procurement activity with title: “Consulting company for the drafting of detailed energy audit reports, detailed designs and technical specifications, supervision of construction works, commissioning including supervision in the addressing of defects during the warranty period of the works, for the implementation of measures EE in multi-residential (social) municipal buildings” Lot 4. While on the 27.07.2023 B58 published the Notice on the decision of the Contracting Authority where it awarded with a contract to EO "Construction AK SHPK"- Kamenica.

This procurement activity was developed through an open procedure with the service contract type and with an estimated contract value of 112,500 €.

On the 01.08.2023, EO N.N.SH. "Vizion Project" has submitted a request for reconsideration against the aforementioned decision of the CA. On the 03.08.2023, the Contracting Authority rejected the request for reconsideration as unfounded.

On the 11.08.2023, PRB received the complaint from EO N.N.SH. "Vision Project", with no. 567/23 related to the activity “Consulting company for the drafting of detailed energy audit reports, detailed designs and technical specifications, supervision of construction works, commissioning including supervision in the addressing of defects during the warranty period of the works, for the implementation of measures EE in multi-residential (social) municipal buildings” Lot 4, with procurement number VET- FKEE2020-23-3696-2-1-1.

-On the stage of preliminary review-

During the preliminary review of the complaints, 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 resolving 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.

Claims of the complaining economic operator N.N.SH. "Vizion Project", are presented as follows:

Claim: *"The first notice on the decision of the CA was published on 19.05.2023, where the Group of Economic Operators Construction Ak Sh.P.K. was recommended for contract; Saeptum D.O.O, Koretin, 62000, Kamenica, Kosovo with a price of 107,200 Euros, while we were eliminated on the grounds that: "The company has not sent sufficient references for experience in energy audits of projects in the field of Energy Efficiency for at least three years past. After this announcement, we initiated the legal appeal procedure, where we submitted a request for*

reconsideration on 24.05.2023, while the rejection of the request for reconsideration was made on 30.05.2023. After this rejection, we submitted a complaint to PRB on the 08.06.2023, while the expertise was issued with (It. 14.06.2023 with No. 2023/0365 where the complaint was approved and the case was recommended to be returned for reassessment. After the expertise was issued, we agreed with the expertise, but the contracting authority also agreed with the violations that on this basis, the decision of the review panel No. 2023/0365 dt.05.07.2023 was issued for the agreement of the parties and the case was returned for re-evaluation.

After the case was returned for re-evaluation, the Notice on the decision of the CA was issued on 27.07.2023, where it was decided as in the first evaluation. Therefore, it was recommended for the contract "NDERTIMI AK SH.P.K.; SAEPTUM D.O.O, Koretin, 62000, Kamenica, Kosovo and we were eliminated again with the same reasons. From this action of the CA it is understood that it was acted illegally and the expertise of the review expert and the decision of the review panel No. 2023/0365 dt.05.07.2023 and now this case is Res Judicata according to article 105 paragraph 2.16 of the LPP. We have again requested access to the documentation of this tender and we noticed that CA has asked for clarifications from the EO recommended for the contract. With clarifications, the same economic operator has tried to cover the shortcomings of the evidence submitted during the bidding. The same EO has provided the translated evidence for the architectural engineer Toni Borkovic in the Albanian language, but these translations do not bear the date of when they were translated. , therefore these evidences should not be taken into account because article 72.3 of the LPP clearly provides that: Providing missing information or providing information will only be applied to documents whose existence is fixed, before the deadline for delivery of tenders, and can be objectively verified. In this case, the existence of these translations cannot be objectively verified as having existed before the opening of bids, therefore these evidences cannot be taken into account. Clarifications have also been requested for the mechanical engineer Ismar Jamakovic, who had offered his diploma in the Bosnian language of the Faculty of Sarajevo. Also for this engineer, the documents translated into the Albanian language were provided with clarifications, but the translations were made into the Albanian language. were made by a Serbian-Albanian translator and vice versa, not translations from the Croatian or Bosnian language into the Albanian language, therefore this is an additional and crucial argument that these translations were made now during the request for clarification. So this is evidence that these evidences translated into Albanian did not exist before the bid opening date, therefore these evidences should not be taken into account and the EO recommended for the contract should be eliminated. Also regarding the contracts, the EO recommended for the contract presented the documents translated into the Albanian language, but the translations that were made into the Albanian language were made by a Serbian-Albanian translator and vice versa, not translations from the Croatian or Bosnian languages into the Albanian language. Therefore, even in this case, it is clearly understood that the translations presented by the EO recommended for the contract were made during the clarification request phase, since the presented documents do not contain the date when they were translated. The EO recommended for the contract presented documents translated into Albanian for banking transactions, but even in this case the translations into Albanian were made by a Serbian-Albanian translator and vice versa, not translations from Croatian or Bosnian into Albanian language.

The EO recommended for the contract has presented in the offer after additional clarifications a reference for the architectural engineer Toni Borkovic, whose document shows the date 21.07.2023, that is, this date which is after the opening of the offers. Such a document cannot and should not have been taken into account by the CA as it is a document that was presented after the opening of bids. Regarding the reason for our elimination, as we mentioned in the previous request for reconsideration, we clarify that the CA has discriminated against us by eliminating us without any concrete argument and without legal basis, not taking into account our testimonies that we have attached them with tender dossier. We clarify that we have attached the list of completed projects where 17 contracts are spoiled, where the largest number of contracts are of the nature as requested in the tender file, therefore for us the reason for the elimination is surprising when we consider the evidence that we have attached to the tender dossier proving adequate experience as requested in the TDS and in the contract notice. In article 9.1&9.2 of the TDS it is requested as follows: Requirement 1 The economic operator must provide proof that he has successfully completed contracts of a similar nature carried out in the past three years starting from the Contract Notice for the period of past three years. And the requested documentary evidence was as follows: The list of contracts of a similar nature carried out in the past three years starting from the Contract Notice, must be submitted in original, signed and sealed by the Economic Operator, as well as attached as evidence and references Or final acceptance, the Company has experience in audits, designs and supervision, references must be in Energy audits, designs and supervision of Energy Efficiency projects for at least the past 3 years (proof of at least 3 projects — with references from the beneficiaries). So the request has been to evidence of similar contracts is provided, and the list of similar contracts is decisively requested in the requested documentary evidence, , while we have offered many contracts of a similar nature. Then it was mentioned that the company has experience in audits, design and supervision, and we have provided contract evidence and references for experience in audits, design and supervision. Given the evidence we have provided, we ask you to compel the CA to analyze once again our evidence and documents and then issue a meritorious decision based on concrete facts and evidence, because we fulfill the requirement of article 9.1&9.2 of the TDS regarding contracts and references of the nature of the contract. If the CA had any dilemma regarding these testimonies, then it should have used article 59.2 and 72 of the LPP. The fact that the CA's reason for our elimination is unsustainable has been confirmed by the examining expert in the expertise of dl. 14.06.2023 with no. 2023/0365, where the same concluded as follows "From the evidence presented, it is proven that EO has provided evidence for 14 projects implemented within the contract with FKEE as well as other projects implemented. EO's complaint for the opinion of the reviewing expert is based, in this case the CA did not take into account article 59 of the LPP, namely paragraph 2 quote: The contracting authority may, in writing, require a tenderer to provide a written clarification on any aspect of its tender in order to examine, evaluate or compare the tenders. No material change in any aspect of the tender shall be requested or accepted by the contracting authority or offered by a tenderer. And Article 72 of the LPP Documentation and additional information The contracting authority also agreed with this finding of the review expert, but surprisingly now with the publication of the announcement on the decision, the CA did not act in accordance with the review expert's finding, which has approved our complaining claim. the same did not act according to the

aforementioned decision of the PRB. With this action of the CA, once again the discrimination that is being done to our company as a responsible EO and with a cheaper price in this procurement activity is being openly shown. From this action of the CA, it is understood that even in this case it was acted illegally and the expertise of the reviewing expert and the decision of the reviewing panel No. 2023/0365 & 05.07.2023 and now this case is Res Judicata according to article 105 paragraph 2.16 of the LPP. As we mentioned above, the explanations of the EO should not be taken into account, since the reviewing expert and the reviewing panel of PRB have approved our complaint as well-founded, so once again we are submitting our claims against the EO recommended for the contract, which, as we mentioned above, is irresponsible for the following reasons: We, after the access we have had to the documentation of the EO group recommended for the Construction contract AK Sh.P.K.; Saeptum D.O.O, Koretin, 62000, Kamenica, Kosovo, we noticed that the offer of this group has many shortcomings and irregular documents, which make it completely irresponsible. The EO group recommended for the contract is irresponsible because the member of the consortium SAEPTUM D.O.O. has provided evidence and documents in the Croatian language, which is not an official language in Kosovo, and this act contradicts article 13.4 of the LPP, which clearly states that "An economic operator may submit a tender, a request for participation or any other document required or allowed to be completed during the procurement activity, in Albanian, Serbian or English". The member of the consortium "Saeptum D.O.O" has offered the diploma of architectural engineer Toni Borkovic in the Croatian language. He has also provided references in the Croatian language and a document with the title of "certification". For the mechanical engineer Ismar Jamakovic, he has provided the diploma in the Bosnian language of the Faculty of Sarajevo, not translated into any official language of the Republic of Kosovo. For this engineer, there are provided two documents entitled Uvjerenje and apparently translated into English, but they are not translated by an official judicial translator, but apparently they have an unofficial translation, and even if these documents were translated, they should not be taken into account because are not officially translated. The member of the EO group recommended for the contract SAEPTUM D.O.O has also attached some documents with data on the financial circulation from Croatian institutions in the Croatian language, which should not be taken into account, and also in the tender file it was requested to provide the Declarations as evidence Annual Taxes submitted to the Tax Administration of Kosovo. So there is no possibility of providing tax declarations from any other country, therefore this consortium is irresponsible. The same EO has also provided the references in the Croatian language and has not provided an official translation. The EO group recommended for the contract is irresponsible because it has not fulfilled the requirement of Article 9.1&9.2 of the FDT where it is requested: Requirement 1 The economic operator must provide evidence that he has successfully completed contracts of a similar nature in the past three years starting from the Contract Notice for the past three-year period. Whereas the required documentary evidence was as follows: the evidence - the list of contracts of a similar nature carried out in the past three years starting from the Contract Notice, must be submitted in the original signed and sealed by the Economic Operator as well as to attached as evidence and references Or final acceptance, The company has experience in audits, designs and supervision, references must be in Energy Audits, designs and supervision of Energy Efficiency projects for at least the past 3 years (proof of at least 3 projects — with references from beneficiaries). The

group of EO recommended for the contract has not fulfilled this requirement because it has not provided evidence for contracts of a similar nature and that has experience in audits, design and supervision, references should be in Energy audits, designs and supervision of projects in Energy efficiency for at least the last 3 years. Also, the same has presented several contracts which are outside of the last three years, and which should not be taken into account. Therefore, based on the facts mentioned above, it is clearly understood that the EO recommended for the contract is irresponsible, while this fact as well the above has been confirmed by the review expert and the decision of the review panel of PRB and the decision of the review panel No. 2023/0365 dt. 05.07.2023 and now this case is Res Judicata according to article 105 paragraph 2.16 of the LPP. In this tender, but in addition to being a responsible bidder, we also offered at a cheaper price than the group of EOs recommended for the contract, so we offered a value of 104,800.00 EUR, while the group of EOs recommended for the contract offered at a price of 107,200 euros. On 03.08.2023, we have accepted the decision to reject the request for reconsideration, on the grounds that it is unfounded, but that the CA has not given any concrete justification based on concrete legal provisions, for such a rejection in relation to our first claim, the CA stated as follows: Answer about claim 1: The EO's claim is not valid because the documentation sent is in Croatian, but CA has made a request to the EO for the translation of this documentation, which was done by the respective EO and the entire documentation was translated into the Albanian language, which has fulfilled the linguistic condition, but also the meaning condition for the CA to evaluate the offers in an objective and non-discriminatory manner. The aforementioned reasoning of the CA is unsustainable due to the fact that, as we mentioned in the request for reconsideration, the requested clarifications were not needed and cannot be taken into account due to the fact that the same translations do not bear the date of when they were translated, therefore, these evidences should not be taken into account because Article 72.3 of the LPP clearly provides that: Providing missing information or providing information will only be applied to documents whose existence is fixed, before the deadline for submitting tenders, and can be objectively verified. In this case, the existence of these translations cannot be objectively verified as having existed before the opening of bids, therefore they cannot be taken into account. In addition, the translations that were made into the Albanian language were made by a Serbian-Albanian translator and vice versa, not translations from the Croatian or Bosnian languages into the Albanian language, therefore, as we mentioned above, this is an additional and crucial argument that the translations presented from the EO recommended for the contract are now made during the request for clarifications. So this is evidence that these documents translated into Albanian did not exist before the date of the opening of bids, therefore these documents should not be taken into account and the EO recommended for the contract should be eliminated, but the CA did not act in this way but recommended the same EO for the contract, not respecting the decision of the review panel. In relation to our complaint, regarding the reason for the elimination of our company, the CA has given the following reasoning: "Even after the criterion that the company must have experience in audit, design and supervision, you as an EO have not achieved to testify with references in what you claim as you mentioned and you only have one reference for Auditm, and as a result we have evaluated according to the documents you have provided and based on article 10.1 Guideline No. 001/2023 for Public Procurement - if the list of completed contracts submitted

does not meet the minimum value requirements determined by the tender dossier: Reject the tender without requesting further information based on article 69 LPP. In relation to this point, your company has submitted to CA several contracts in which it has carried out projects and contracts in which EE measures have been implemented, but the only contract presented by you as EO and where you performed audit, design and supervision is the contract with FKEE and as such and alone has not fulfilled the condition of 3 references. The only contract that fulfills the requirements and criteria established in DT, including the Audit of your company, is: I. Drafting of Detailed Projects, Technical Specifications including Design, Supervision, Commissioning and Management Oversight during the Defects Liability Period, for the Renovation of Buildings to ensure Efficient Energy Utilization - Lot 3 (A contract with 14 sub-projects) ". As for the review expert's request, the CA has respected the expert's opinion and we have returned the case to re-examination, the CA has again discriminated against us as a responsible company in this procurement activity with unsustainable reasons and the same has tried to deviate from the facts that we presented and also deviated from the expertise of the reviewing expert, where he stated that he acted in accordance with the expertise of the expert since the matter has been reassessed. The reasoning of the CA does not stand as the contracts others presented by us, apart from the contract mentioned by the CA, are related to the required nature such as audit, design and supervision. It is worth noting the fact that the same has repeated the reasoning as in the decision to reject the first time when we had submitted a request for reconsideration, so this fact clearly shows that the CA without any argument that proves the opposite of our appeal claims has rejected the request for re-examination. We are also clarifying once again that the examining expert in the expertise of cit. 14.06.2023 with no. 2023/0365, concluded as follows "From the evidence presented, it is proven that EO has provided evidence for 14 projects carried out within the contract with FKEE as well as other carried out projects. The complaint of the EO regarding the review expert's opinion is well-founded, in this case the CA did not take into account article 59 of the LPP, namely paragraph 2 quote: The contracting authority may request in writing from a tenderer to provide a written clarification on any aspect of its tender, in order to examine, evaluate or compare tenders, No material change in any aspect of the tender shall be requested or accepted by the contracting authority or offered by a tenderer. And article 72 of LPP Documentation and additional information". You agree with this finding of the reviewing expert, the contracting authority also agreed, but now it is acting contrary to the expert's report with which the CA itself has agreed and at the same time it is not respects the decision of the review panel of PRB, but with unfounded reasons, it is trying to deviate from our claim. Therefore, as explained above, it is clearly understood that we fulfill all the requirements of the tender dossier. As for our claim against the EO recommended for the contract in relation to the request regarding the contracts, the CA has given the following reasoning: "The criterion for awarding the contract was the most economically responsible tender, which first deals with the issue of to be responsible, and then economically more favorable. You have not met the minimum criteria defined in the FDT, as you yourself have claimed, you have not provided references for energy audits, this criterion decisively and through the function "and not" or " that references must be in Energy Audits, designs and supervision of Energy Efficiency projects for at least the past 3 years (evidence of at least 3 projects — with references from the beneficiaries) Based on Article 10.1 Guide No. 001/2023 For Procurement Public — if the List of completed contracts

submitted does not meet the minimum value requirements determined by the tender dossier: Reject the tender without asking for further information based on Article 69 LPP. AK has made a request to the EO for the translation of this documentation, which was done by the respective EO and the entire documentation was translated into the Albanian language, which fulfilled the language requirement, but also the meaningful one for the CA and the evaluation of the offers in an objective and non-discriminatory manner. that he did not provide evidence for contracts of a similar nature and that he proved in audits, design and supervision, references must be in Energy Audit, design and supervision of Energy Efficiency projects for at least the past 3 years. Also, the same has presented several contracts which are outside of the last three years, and which should not be taken into account, however, despite this fact, the CA has taken into account the same contracts. It should be noted that the EO recommended for the contract regarding the contracts, he presented the documents translated into the Albanian language, but the translations that were made into the Albanian language were made by a Serbian-Albanian translator and vice versa, not translations from the Croatian or Bosnian languages into the Albanian language. Therefore, even in this case, it is clearly understood that the translations presented by the EO recommended for the contract were made during the clarification request phase, since the presented documents do not contain the date when they were translated, but the CA did not receive it considering this fact. Also the same in the above-mentioned reasoning, emphasized that why we have claimed that we have not provided references for energy audits, but this reasoning of the CA does not hold since in our claim we have clearly stated that we meet the request of the tender file, but moreover such a fact has been confirmed by the review expert of the PRB. The CA has tried with unstable justifications to mislead the PRB as well, since we have never claimed that we do not have references for energy audits. Furthermore, in the rejection decision, the CA has described the provisions for which we have stated that they have not been respected, but the same has not given any concrete reasoning that shows that our claims are unsustainable, but it has only stated that the legal provisions have been respected. Based on the above-mentioned facts, it is clearly understood that the decision of the CA to reject the request for reconsideration is unfounded and unstable due to the fact that from the above-mentioned arguments it is clearly understood that we are the responsible EO and at the same time we have been eliminated contrary to the expertise of the reviewing expert and the PRB review panel. Taking into account the above facts, it results that the examination, evaluation and comparison of tenders was not done in accordance with Article 59 of the LPP, being discriminated against as a responsible company with the lowest price. Also, in this procurement activity, the main criterion for awarding the contract was not respected, which was the responsible tender with the lowest price, in accordance with article 60 paragraph 1.1 of the LPP. Also, the CA did not respect the article 7 of the LPP, discriminating against us as an economic operator, even though we have fulfilled all the requirements of the TDS and the contract notice, we were not declared the winner of this tender, while paragraph 1 of article 7 of the LPP clearly provides that "the Authority the contractor will treat economic operators in an equal and non-discriminatory manner and will act transparently. The EO recommended for the contract has also been favored by being declared the winner even though it is irresponsible, while in this case the CA's actions have also conflicted with paragraph 6 of article 7 point (vi) where it is written that "The contracting authority it must be ensured that the selected tender

complies with all the substantive aspects of the relevant conditions, criteria and specifications. Also, the contracting authority did not consider Article I and Article 6 of the LPP, as it is known that the purpose of this law is to ensure the most efficient, transparent and fair way of using public funds, public resources as well as all other funds and resources of the contracting authorities in Kosova, while in this case you have acted contrary to these provisions and risking damage to the budget without any concrete reason, eliminating us as a responsible bidder with a lower price. We inform you that this matter is and should be treated as adjudicated case (Res Judicata) according to the decision of the review panel no. 2023/0365 dt.05.07.2023 and according to article 105 paragraph 2.16 of the LPP”.

Referring to the claims as above, EO N.N.SH. "Vizion Project" - Prishtina, considers that the Contracting Authority has acted in violation of Article 1, 6, 7, 13, 56, 59, 60, 69, as well as the decision of PRB no. 2023/0365 dt. 05.07. 2023 requesting the Review Panel in the PRB to approve our complaint as based, to cancel the notification on decision B58 and to return the matter to Reevaluation, and to compel the CA to comply with the requirements during the reevaluation, examination, evaluation and comparison of offers of the tender file, contract notice and in accordance with the provisions of the LPP.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 15/08/2023 has authorized the expert to conduct the initial review of the dossier and claims according to complaint no. 567/23, while on 28/08/2023 the expert's report with no. 2023/0567 with the following recommendations: “Based on the above-mentioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO be approved as partially founded, the contract award notice be canceled and recommends that the matter be returned to reassessment”.

The expertise’s report has been duly accepted by all procedural parties. The Contracting Authority in its response regarding the expert's recommendation declares that it does not agree. While I agree with the expert's recommendation that the matter be returned to re-evaluation, I do not agree with the examining expert that the complaint is partially approved as grounded. The complaint should have been considered fully founded....

- Administration and evaluation of evidence -

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

Regarding the claims of EO N.N.SH. "Vizion Project" - Prishtina review expert through report no. 2023/0567 assessed as follows:

In response to the complaint, the expert explains that "On the date: 11.08.2023, EO "N.N.SH. "Vizion Project" - Prishtina, filed a complaint with no: 2023/0567, against the contract award notice where EO "Construction AK SHPK" - Kamenica was recommended for the contract,

related to the procurement activity: "Consulting company for the design of detailed energy audit reports, detailed designs and technical specifications, supervision of construction works, commissioning, including supervision in the addressing of defects during the warranty period of the works, for the implementation of EE measures in multi-residential (social) municipal buildings" with no. of procurement: "VET-FKEE2020-23-3696-2-1-1", initiated by the Contracting Authority (CA) - Kosova Fund for Energy Efficiency. The review expert expressed his opinion based on the claims raised. Based on the claim raised by the complaining EO - Vizioni Project, through the request for additional clarifications, the reviewing expert has asked the Contracting Authority - Kosova Energy Efficiency Fund to send all the translated documents that were submitted by the recommended EO after the request for clarification made by CA, since the matter has been returned to re-evaluation. After analyzing the documents sent by the recommended EO after the request for clarification, the reviewing expert clarifies that these submitted materials are documents that were part of the offer of the recommended EO in the original language. The translated materials, each of them has a seal of the translator which shows that the same existing document has been translated from another language (Croatian, Bosnian) into the Albanian language, therefore they have no material difference from the documents submitted with the offer. The opinion of the reviewing expert is that as long as the diplomas, references and other relevant documents that have been requested to be translated, have a seal of the translator and also each of them in the original has also existed in the offer of the recommended EO and also each of them has the date when it was issued in the original, we consider that these submitted materials are in order. Regarding the claim that with the requested information a reference of the architectural engineer Toni Borkovic was sent, which is dated 21.07.2023, the expert clarifies that with the documents received by the CA through e-mail after the expert's request, in the file and Mr. Borkovic does not provide any reference which postdates the opening of bids as claimed. Considering that the existence of each document requested to be translated is fixed in the original and is before the expiry date for sending the tenders which have been submitted by the recommended EO and the same are also found in the offer, with this what was said above, we estimate that this claim raised by the complaining EO is unfounded. As for the rest of the claims raised, the examining expert clarifies that for the same claims an expert report was issued by the preliminary expert, with which both parties, CA-FKEE and the complaining EO-Vizioni Project, agreed and the matter is returned to re-evaluation and as a result of this reconciliation the decision was issued by the review panel. Based on what was said above, according to the LPP, this case has already been judged earlier and for the same there is a decision issued by the Review Panel - PRB, Decision number 2023/0365 dated 05/ 07/2023".

According to the above, the review expert handled the claims of the complaining economic operator N.N.SH in a professional and objective manner. "Vizion Project" - Pristina. The argumentation in the expert's report is quite detailed, comprehensible and fully based on the relevant documents that refer to the procurement activity. The findings in the experts' report can be confirmed through the tender file as well as the documents with which the tenderers have bid. Consequently, the Review Panel regarding the claims of the complaining economic operator has given full confidence to the expert's report. In this way, it was found that the claims of the complaining economic operator "N.N.SH. "Vizion Project" - Prishtina, are partially grounded.

- Findings of the Review Panel -

The review panel independently and objectively, conscientiously and professionally evaluated all the evidence of the case. In this way, it was found that the Contracting Authority did not act in accordance with the legal provisions for public procurement and the requirements of the Tender Dossier regarding the activity of the "Consulting Company for the drafting of detailed energy audit reports, detailed designs and technical specifications, supervision of construction works, commissioning including supervision in the addressing of defects during the warranty period of the works, for the implementation of EE measures in multi-residential (social) municipal buildings" Lot 4 with no. of procurement: "VET-FKEE2020-23-3696-2-1-1".

In fact (of course, regardless of the recommendations) the Panel notes that the procurement procedure that was applied in this case is presented in detail in the review expert's expertise report, explaining all the stages of the process and the actions taken by the parties in the comparative context with the acts in force, especially with the Public Procurement Rules.

Therefore, referring to article 104.1, of the LPP, according to which it is required that the review procedure be implemented in a fast, legal and effective manner and also analyzing in their entirety the documents of this subject in the context of this procurement process, the panel did not consider it necessary to elaborate again in detail and unnecessarily in this case each appeal claim, as long as they are specifically singled out especially in the contested decision of the contracting authority. Among other things, in the contested decision of the contracting authority and in the review expert's report, explanations were given regarding the complaining statements. The panel notes that the reasons given in the expert's report are professional and well argued with material evidence, without the need to describe them again.

Therefore, the Panel supports the explanations of the reviewing expert that the matter should be returned to the re-evaluation and that the CA should act in accordance with the legal requirements and the requirements of the Tender Dossier. In the reassessment procedure, it is also required to take into account the findings of the review expert given in the preliminary decision of PRB no. 365/23, for which it is an expertise report, CA has agreed, therefore, to act in harmony with the legislation in force, specifically article 115 of the LPP. The panel clarifies for the CA that all PRB decisions have a mandatory and enforceable character for the parties in the procedure and as such must be implemented precisely, where according to the above it is noted that the CA did not act in full harmony with the instructions/recommendations of the panel, therefore, if the panel notices that the CA still does not implement such a decision, it has the right to request measures from the PPRC to revoke the certificate in accordance with paragraph 8 and 9 of article 25 of the LPP.

- Conclusion -

Based on the above, the Review Panel considers that the CA has acted contrary to the provisions of Article 59, 60 and 72 of the LPP, cited in the Complaint. The Review Panel considers that the actions and acts of the CA, and the evaluations of the review expert regarding the fulfillment or not of the conditions described above and the complaint statements in this case constitute a sufficient basis for the procurement activity to be re-evaluated again because in the opposite will

contradict the scope of the LPP and the argumentative basis of the appeal claims, which the Panel evaluates according to its independent assessment in the sense of Article 104 in relation to Article 105 of the LPP. The return of a procurement activity based on a contested legal re-evaluation is in harmony with Article 1 of the LPP, according to which, the purpose of this Law is, among others, quoted: "...to ensure the integrity and responsibility of public officials , civil servants and other persons who perform or are involved in a procurement activity, requesting that the decisions of such individuals and the legal and factual basis for such decisions, are not influenced by personal interests, are characterized by non-discrimination and with a high degree of transparency and, to be in accordance with the procedural and essential requirements of this law".

Regarding Article 105, taking into account the requirement of Article 104, paragraph 1, of the cited Law according to which, quoted: "The procurement review procedure will be implemented and carried out in a fast, fair and non-discriminatory manner, which aims at the fair, legal and effective resolution of the matter..." Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations, which may arise during a procurement activity.

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

President of the Review Panel

Mr.Vedat Poterqoi

Legal advice:

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

Decision to be submitted to:

1x1 CA – **KOSOVO ENERGY EFFICIENCY FUND;**

1x1 EO – **N.N.SH. " Vizion Project ";**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.