

**PROCUREMENT REVIEW PANEL**, appointed by the President Pursuant to the article 105 as well article 106 of the Law on Public Procurement of the Republic of Kosova no.04/L-042, amended and supplemented by Law No. 04/L-237, amended and supplemented Law no.05/L-068, amended and supplemented Law no.05/L-092, composed of: Mr. Nuhi Paçarizi – President, Mr. Blerim Dina – referent, Mr. Goran Milenković - member, deciding on the complaint lodged by the Economic operator: “NTP “Vlora” – Prishtinë, against the contract award notice where is recommended for contract EO: “Trio Tek sh.p.k & Trio Tech” sh.p.k – Prishtinë, regarding with the procurement activity with title: “Supply with consumables for offices, toners and hygiene products-Lot 2”, with procurement no: 711-20-1421-1-2-1, initiated by the Contracting authority/ Kosova National Institute of Public Health (KNIPH), on the 27.07.2020 has issued this:

## **DECISION**

**I. APPROVED**, as partly grounded the complaint of the Economic operator: “NTP “Vlora” – Prishtinë, regarding with the procurement activity with title: “Supply with consumables for offices, toners and hygiene products-Lot 2”, with procurement no: 711-20-1421-1-2-1, initiated by the Contracting authority/ Kosova National Institute of Public Health (KNIPH).

**II. CERTIFIED** the contract award notice regarding with the procurement activity with title: “Supply with consumables for offices, toners and hygiene products-Lot 2”, with procurement no: 711-20-1421-1-2-1, initiated by the Contracting authority/ Kosova National Institute of Public Health (KNIPH).

**III.** Contracting authority within 10 days must inform in written the Review panel for all actions taken regarding with this procurement activity and other parties in the procedure.

**IV.** Non-compliance with this decision obliges the Review Panel conform with the legal provisions of article 131 of the Law for Public Procurement of Kosova No.04 / L-042, amended and supplemented by Law No. 04/L-237, Law no.05/L-068, Law no.05/L-092, to take action against the Contracting Authority.

**V.** Since the complaint of the group of complaining economic operators “NTP “Vlora” – Prishtinë, is approved as partly grounded, it is returned the insurance fee of the complaint in the amount deposited when filing a complaint.

**VI.** Obligated complaining economic operator that conform article 31 point 6 of the Rules of Procedure of the PRB, within sixty (60) days is obliged to request to take back the funds, otherwise these funds will be confiscated and will pass to the budget of the Republic of Kosova.

## REASONING

Economic operator NTP “Vlora” - Prishtina, as a dissatisfied party has filed a complaint in the PRB, on the 03.07.2020 with no. 439/20, against the notification for contract award regarding the procurement activity with title: “Supply with consumables for office, toners and hygiene products-Lot 2”, with procurement no. 711-20-1421-1-2-1, initiated by the contracting authority (CA) - Kosova National Institute of Public Health (KNIPH) claiming that:

- The contracting authority has acted in contradiction with article: 1,7,59.4, 60 and 69 of the Law on Public Procurement of the Republic of Kosova, as well as article 26.3 and article 41 of OGPP.

Procurement Review Body, conform article 113 and 114 of the LPP on the 08.07.2020, has authorized the procurement review expert to review the validity of all claims of the complaining party.

Procurement review expert in the report dated: 14.07.2020, regarding the complaining claims of the complaining EO explains as follows:

Clarification: The Kosova National Institute of Public Health (KNIPH), during this procurement activity has implemented open procedure, type of supply contract, medium value. The appellate claims relate to the contract award notice. Against the same notification, the complainant has submitted a request for reconsideration to the CA- (NIPHK), with the same complaining claims as in the PRB, while CA on the 18.06.2020 through decision has rejected the request of the complaining EO.

1. Regarding the claim of the complaining EO N.T.P “VLORA” - Prishtina that CA the evaluation commission during the evaluation of the bids for the project in question has not acted in harmony with the law of public procurement and the operational guide for public procurement. We file a complaint for lot 2 - toner supply. Further, complaining EO adds: CA the evaluation commission has not evaluated the bids for lot 2 in accordance with the requirements set out in the contract notice and in the tender dossier. CA procurement office has recommended for contract EO consortium Triotech sh.p.k & Trio Tek sh.p.k which is not responsible as it does not meet the technical and professional capacity, respectively request no. 2 of the CA in article 9.1 & 9.2 of the TDS, quote: Only for Lot 2

Evidence 2 - Valid certificate of ISO 9001 and ISO 14001 for each manufacturer. EO consortium recommended for contract has provided expired evidence-certificates. Most of the certificates submitted by the EO recommended for contract have expired or will expire within the next 2-3 months. Considering that the contract for this project is a framework contract with a duration of 36 months, cannot be accepted as valid certificate which expires in June, July, August 2020. EO consortium recommended for contract has submitted invalid certificates or expiration date very close to canon, konica minolta, lexmark, panasonic, xerox. Attached to the complaint, find the scanned certificates. In addition to the above errors mentioned EO recommended for contract can not be accepted as valid nor the agreement-document by which the leader is authorized as in this document it is stated that TRITEK authorizes TRIOTEK company as leader sh.pk, as a conclusion we find that EO the consortium recommended for contract is irresponsible as it has not met criterion no.2 regarding technical and professional capacity, respectively,

has not provided sufficient evidence that the products to be supplied are of quality within ISO 9001 and ISO 14001 standards.

CA, in response to the request for reconsideration has tried to justify these ISO certificates submitted by EO consortium recommended for contract with the explanation that the equipment of a company with ISO standard is not related to the time of publication of the contract notice. Further, complaining EO adds that this finding of the CA does not stand as the procurement office conflicts with the request submitted to the TDS, citation: it is required to submit evidence: Valid certificate of ISO 9001 and ISO 14001 for each manufacturer. EO can apply with equivalent toner products which meet the above ISO standards and as evidence to provide ISO certificates with validity.

Response to the first claim of the complaining EO N.T.P “VLORA” -Prishtina

Regarding the claim of the complaining EO NTP “VLORA” -Prishtina that has to do with the certificates ISO 9001 and ISO 14001, the review expert explains that based on the documents which are found in the e-procurement platform, specifically in the bid of the EO recommended for The following certificates are attached to the contract:

1. ISO 14001: 2015 Canon Group, with certificate number JP96 / 008114.04 valid from 31.07.2019 until 30.07.2020;
2. Certificate ISO 9001: 2015 Canon (Schëeiz) AG, with certificate number CH05 / 0522.00 valid from 16.06.2017 until 15.06.2020;
3. Certificate ISO 14001: 2015 Konica Minolta, with certificate number 01 104 1600198, valid from 23.08.2017 until 22.08.2020;
4. ISO 9001: 2015 certificate Lexmark International INC, with certificate number 2017 / 78156.1 valid from 05.02.2018 until 04.02.2021;
5. ISO 14001: 2015 Lexmark International Technology certificate with certificate number 1995 / 14003.12 valid from 09.07.2017 until 08.07.2020;
6. Certificate ISO 9001: 2015 and ISO 14001: 2015 Panasonic Industry Europe GmbH with certificate number 12 100/104 3110 TMS, valid from 23.03.2018 until 14.07.2020.
7. ISO 9001: 2008 and ISO 14001: 2004 Certificate, OSHSAS 18001: 2007 Xerox Manufacturing (Nederland) B.V. with certificate number 2026416, with date of issue for the first time 01.05.2003 and with date of validity from 01.05.2020 until expiration date 01.05.2023.

Review expert considers that this complaining claim is ungrounded for the fact that the contract notice was announced on 20.04.2020, while the deadline for submission of bids was on 15.05.2020. Considering that the last day for submission of bids was 15.05.2020, it results that EO recommended for contract during the bidding had all valid certificates, moreover even during the time of bid evaluation were valid or validity of these certificates. Therefore, this complaint is unfounded.

Regarding the second claim of the complaining EO NTP “VLORA” -Prishtina that has to do with the authorization of the consortium, the review expert based on the documents which are found in the e-procurement platform, explains that in the bid of the EO recommended for contract is the document entitled “Joint Project - Agreement” concluded between “TRIO TECH” Sh.pk with unique number 811289626 and the other party “TRIO TEK” Sh.p.k. with unique number 810814914. In paragraph 2.4 of article 2 of this agreement are defined the positions of these two parties, where "TRIO TECH" Sh.p.k. Prishtina is appointed as a leader, while "TRIO TEK" Sh.p.k. Prishtina is assigned as a partner 1. Also, paragraph 3.1 of article 3 of this agreement (joint project management) has determined that the leader will be "TRIO TCH" Sh.p.k. Also, in the e-procurement platform there is a document entitled "Joint Statement", where the parties

agree that "TRIO TECH" Sh.p.k. authorized to act on behalf of the group. However, in the rest of the same document (page 2), the document is marked with the name "Authorization" where in the first paragraph of this document it is noted that the company "TRIO TEK" Sh.p.k. authorizes the company "TRIO TEK" Sh.p.k. However, in the second paragraph of the same document, it is noted: "Also the company TRIO TEK Sh.p.k. is authorized to take on behalf of the group all the necessary actions for the eventual realization of the project, signing the contract and collection of payments from the CA on behalf of this contract". Review expert considers that the claim of the complaining EO is partially grounded, but the expert considers that this is a technical error as documents such as "Joint Project - Agreement", "Joint Statement", and the second paragraph of the document "Authorization" have determined that the leader of this group is "TRIO TECH" Sh.pk

Review expert based on the documents which are found in the e-procurement platform, evaluates that contracting authority during this procurement activity has generally acted conform article 1, 7, 59.4, 60, and 69 of the LPP and article 26.3. and Article 41 of the OGPP.

#### Opinion of the review expert

Based on the above clarifications, the review expert proposes the review panel that the complaint of the complaining EO to be partially approved as grounded, while to confirm the notification of the CA for contract award.

Contracting authority on the 16.07.2020 through memo, has notified the PRB that agrees with the opinion of the review expert.

Economic Operator, on the 17.07.2020 through memo, has notified the PRB that does not agree with the opinion of the review expert.

The hearing session was held on: 27.07.2020, without the presence of the parties conform article 24.1 of the Regulation of the PRB, where the case files were reviewed by checking and analyzing the documentation for the procurement procedure which consists of: authorization of initiating the procurement activity, contract notice, minutes on the opening of bids, decision on the establishment of the bid evaluation commission, bid evaluation report, contract award notice, complaint of the economic operator, report of the review expert and all submissions of the parties to the proceedings.

Regarding the claim of the complaining economic operator NTP "VLORA" -Prishtina that has to do with the certificates ISO 9001 and ISO 14001. Review panel conform expert review clarifies that based on the documents which are in the e-procurement platform, specifically in the bid of EO recommended for contract are attached the following certificates:

1. ISO 14001: 2015 Canon Group, with certificate number JP96 / 008114.04 valid from 31.07.2019 until 30.07.2020;
2. Certificate ISO 9001: 2015 Canon (Schëeiz) AG, with certificate number CH05 / 0522.00 valid from 16.06.2017 until 15.06.2020;
3. Certificate ISO 14001: 2015 Konica Minolta, with certificate number 01 104 1600198, valid from 23.08.2017 until 22.08.2020;
4. ISO 9001: 2015 Lexmark International INC certificate, with certificate number 2017 / 78156.1 valid from 05.02.2018 until 04.02.2021;

5. ISO 14001: 2015 Lexmark International Technology certificate with certificate number 1995 / 14003.12 valid from 09.07.2017 until 08.07.2020;
6. Certificate ISO 9001: 2015 and ISO 14001: 2015 Panasonic Industry Europe GmbH with certificate number 12 100/104 3110 TMS, valid from 23.03.2018 until 14.07.2020.
7. ISO 9001: 2008 and ISO 14001: 2004 Certificate, OSHSAS 18001: 2007 Xerox Manufacturing (Nederland) B.V. with certificate number 2026416, with date of issue for the first time 01.05.2003 and with date of validity from 01.05.2020 until expiration date 01.05.2023.

Review panel conform review expert considers that this complaining claim is ungrounded for the fact that the contract notice was announced on the 20.04.2020, while the deadline for submission of bids was on 15.05.2020. Considering that the last day for submission of bids was 15.05.2020, it results that EO recommended for contract during the bidding had all valid certificates, moreover even during the time of bid evaluation were valid or validity of these certificates. Therefore, this complaining claim is unfounded.

Regarding the claim of the complaining economic operator N.T.P “VLORA” -Prishtina that has to do with the authorization of the consortium. Review panel conform review expert clarifies that based on the documents which are found in the e-procurement platform, where in the bid of the EO recommended for contract is the document named "Joint Project - Agreement" concluded between "TRIO TECH" Sh.pk with unique number 811289626 and the other party “TRIO TEK” Sh.p.k. with unique number 810814914. In paragraph 2.4 of article 2 of this agreement are defined the positions of these two parties, where "TRIO TECH" Sh.p.k. Prishtina is appointed as a leader, while "TRIO TEK" Sh.p.k. Prishtina is assigned as a partner 1. Also, paragraph 3.1 of article 3 of this agreement (joint project management) has determined that the leader will be "TRIO TCH" Sh.p.k. Also, in the e-procurement platform there is a document entitled "Joint Statement", where the parties agree that "TRIO TECH" Sh.p.k. authorized to act on behalf of the group. However, in the rest of the same document (page 2), the document is marked with the name "Authorization" where in the first paragraph of this document it is noted that the company "TRIO TEK" Sh.p.k. authorizes the company "TRIO TEK" Sh.p.k. However, in the second paragraph of the same document, it is noted: “Also the company TRIO TEK Sh.p.k. is authorized to take on behalf of the group all the necessary actions for the eventual realization of the project, signing the contract and collection of payments from the CA on behalf of this contract ”. Review panel conform review expert considers that the claim of the complaining EO is partially grounded, but it is a technical error as documents such as "Joint Project - Agreement", "Joint Statement", and the second paragraph of the document "Authorization" have determined that the leader of this group is "TRIO TECH" Sh.pk

Review panel conform review expert evaluates that based on the documents which are found in the e-procurement platform, contracting authority during this procurement activity has generally acted conform article 1, 7, 59.4, 60, and 69 of the LPP as and article 26.3 and section 41 of the OGPP.

Review panel after reviewing the case file and clarifications of the review expert, concludes that contracting authority has examined the evaluation and comparison of tenders conform article 59 of the LPP, and according to the requirements set out in the contract notice. Also the review panel clarifies that contracting authority in this procurement activity has taken into account article 1 of the LPP, as it is known that the purpose of this law is to provide the most efficient, transparent and fairer way of using

public funds, public resources as well as all funds and other resources of contracting authorities in Kosova.

Review panel conform article 117 of the LPP, and based on the evidence presented above decided as in the provision of this decision.

**Legal advice:**

Aggrieved party can not appeal against this decision,  
but it can file charges for damage compensation  
within 30 days, after the receipt of this decision  
with the lawsuit In the Basic Court In Prishtina  
at the Department for Administrative Affairs.

President of the Review Panel

---

Mr. Nuhi PAÇARIZI

Decision to be submitted to:

1x1 CA – Kosova National Institute of Public Health (KNIPH),

1x1 EO – NTP “Vlora” – Prishtinë

1x1 Archive of the PRB

1x1 For publication on the website of the PRB.