



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

Psh. No.1017/23
1019/23

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) in the composition of Vedat Poterqoi - President, Isa Hasani and Vjosa Gradinaj Mexhuani - Member, deciding according to the complaint of the Economic Operator (EO) “Schafberger Jr. GmbH” - Kosova Branch as well as EO “Efa Dienstleistung GmbH” - Kosova Branch against the cancellation of the procurement activity, "MA of PRISHTINA" in the capacity of the Contracting Authority (CA) regarding the procurement activity “Cleaning of health facilities of KPSH” with procurement number “616-23-4576-2-1-1, on the 12.03.2024 has issued this:

DECISION

1. **Refused**, as ungrounded the complaints of the EO “Schafberger Jr. GmbH” - Kosova branch with no. 2023/1017, dated 14/12/2023 and the complaint of "Efa Dienstleistung GmbH" - Branch in Kosova with no. 2023/1019, dated 15/12/2023, whereas the decision of CA "MA of PRISHTINA", related to the procurement activity "Cleaning of health facilities of KPSH" with procurement number "616-23-4576-2-1 -1", remains in force.
2. In accordance with Article 31 point 5, of the Rules of Procedure of the PRB, the complaint's fees are confiscated in the amount deposited when the complaint is submitted, while the funds go to the Budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances –

On the 22.05.2023, "MA of PRISHTINA" in the capacity of the Contracting Authority has published the Contract Notice B05 related to the procurement activity entitled "Cleaning of the health facilities of the KPSH" with procurement number "616-23-4576-2- 1-1".

This procurement activity was developed through an open procedure with the type of service contract and with an estimated contract value of 1,250,000.00 €

On the 23.11.2023 CA published the Notice on Decision B58 through which it canceled the procurement activity.

On the 27.11.2023, EO "Schafberger Jr. GmbH" - Kosova Branch has submitted a request for reconsideration against the Notice on Decision B58 of the Contracting Authority. Whereas on the 08.12.2023 CA rejected the request for reconsideration as unfounded.

On the 28.11.2023, EO "Efa Dienstleistung GmbH" - Branch in Kosova submitted a request for reconsideration against the Notice on Decision B58 of the Contracting Authority. Whereas on the 08.12.2023 CA rejected the request for reconsideration as unfounded.

On the 14/12/2023, EO "Schafberger Jr. GmbH" - The Kosova Branch has submitted to the PRB the complaint no. 1017/23, while on 15/12/2023 EO "Efa Dienstleistung GmbH" - Branch in Kosova submitted to the PRB the complaint no. 1019/23.

-On the stage of preliminary review-

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.

Taking into account the fact that both complaints are related to the same procurement activity, respectively with the notification on the same decision of the Contracting Authority related to this procurement activity, it has been decided that complaint no. 1017/23 and complaint no. 1019/23 to be joined and treated as a unified case in the sense of Article 16 paragraph 1 of Regulation no. 01/2020 of the Work of the Procurement Review Body.

The claims of the complaining economic operator "Schafberger Jr. GmbH" - Kosova Branch are presented as follows:

- Claims of the complaining EO: "After the cancellation of the procurement activity, we have followed all the procedures as provided by the Law on Public Procurement in the previous legal terms, as we have, exercising our right due to us by law, as I think that the CA Municipality of Pristina has made a legal violation in the decision to cancel this activity. We have exercised our legal right by making a request for reconsideration within the deadline provided by law, where it was rejected on 08.12.2023. All our complaints have been illustrated in the Request for Reconsideration, but the CA apparently did not take them as a basis. In the notification for the cancellation of the activity dated 23.11.2023 where we also received the standard letter of elimination, we have based all the claims of the CA that we have exercised our right of

disagreement because there is a legal violation. We have mentioned all the legal acts under which the CA has committed violations and we have not stopped to argue each article separately since there were enough arguments to prove these violations. Starting from Article 1 of the LPP, its paragraphs emphasize the purpose of this law to efficiently, transparently and fairly use public funds and to create an institutional culture, which the CA with its decision of 23.11.2023 has committed this violation by canceling the activity. As mentioned in the Request for reconsideration in this activity, there was another decision before the cancellation decision where the CA proposed our Offer as the most economically favorable and responsible offer. Looking at the progress of the activity, we have seen a violation of the legal procedures of this Authority, which is why we use this right to complain. Based on the tender file and the technical specifications, we bid based on the most favorable price criterion, bidding with an offer of €34,399.06 monthly price and €1,238,366.06 for 36 months. The Contracting Authority "KK.Prishtina" namely the procurement office has sent an email to our official address on 14.10.2023 requesting the documents before the announcement: tax certificate, Economic Court Certificate and Original Tender Insurance. On 16.10.2023, we sent the required documents, therefore, on 17.10.2023, the CA's decision on the contract proposal was uploaded to the e-procurement system, where our offer was the most favorable and responsible offer. Due to the acceptance of two requests for Re-examination by two participating EOs, the matter has been returned to re-evaluation. It is worth noting that the two requests for reconsideration had claims that they were unfairly treated in the evaluation of their offers. CA "KK.Prishtina" by reassessing this activity in further procedures has committed a legal violation of the LPP and other regulations of legal legislation in the field of public procurement. In the re-evaluation phase, our offer was re-evaluated once again by an evaluation committee that found violations that cannot be repaired, such as technical errors in the tender file, which led to the cancellation of the tender. The CA has acted in complete violation of the Law on Procurement, violating Article 7 Equality in treatment and non-discrimination, as it has given the right to the EOs, which have requested a reconsideration, while acting in violation of our offer. After receiving the CA's request for clarification, we quickly returned the following response: Response to the Contracting Authority - Municipal Assembly of Pristina Subject of the activity: Cleaning of the Health facilities of the KPSH and procurement no.: 616-23-4576-2- 1-1 Dear Sirs, First of all, as a company proposed for a contract by the preliminary bid evaluation commission, we express our displeasure as the matter has been re-evaluated, dragging out the process. In these additional clarifications, it can be seen that there are many tendentious questions, which makes us suspect that there are tendencies to harm us as a company, but also the whole process. We will answer you and provide all the necessary clarifications: Request for clarification in CA:

1. The evaluation committee requests clarification on the method of calculating weekends, in the calculation of the company's expenses, in the financial analysis, it can be seen that when the company calculates the night shift with the expenses of additional hours only for 3 points, while according to the tender dossier - Annex 1 to the shift schedules shows that there are a total of 4 points with a night shift. Can you explain to us why you calculated yourself 3 points in the night shift and not 4?

Answer: Annex 1, the table with the schedules of the KPSH centers - it can be seen that there are errors in the schedules of the centers, therefore we have calculated only 3 centers because of the cost, because in practice there are only 3 centers which apply night shifts: 1. QKMF-Main 2. QMF-4, and 3. QMF 5 While the QMU in the tender file has a night shift but it has never been implemented, the same mistake is also for the Dental Center which works only from 07.00 to 15.00. We declare that we stand behind any schedule changes in the implementation of the contract and declare that our financial analysis fulfills all costs arising from this contract. Considering that some workers say that most of them want a break after the night shift, we think that our cost calculated in the financial analysis is a cost that includes all the workers who are in the night shift and in the centers where it is applied . Our analysis included all night shifts and the cost was in accordance with the tender criteria. As far as we understand, you mean in this question only the night shift, we emphasize that our calculations were made based on the requirements of the Tender dossier and we think we are in order because there is no center 4 in the data table in this tender dossier.

2. Likewise, the calculation of weekend hours expenses did not include all the points of the centers that work on weekends, but you calculated yourself 3 points per weekend. Can you explain to us why you calculated yourself 3 points per weekend? Answer: As for weekends, the calculation is made in this form because the centers work in shifts from 6h and 30 min. This caused a worker not to complete 8 hours a day. Therefore, in practice, in order to reach the full rate of a shift, work is also done on weekends. By applying this method, we have made the workers reach the full weekly rate of 40 hours. This kind of calculation means that there is a lower cost of expenses and it is also in favor of the workers because since we are implementing it in practice it is more favorable for the worker. The calculation with only 3 workers for 1 weekend where there are a total of 27 weekends within the month which cover all the centers as well as the workers reaching the weekly rate and also being compensated for the weekend days based on the law.

3. You as EO before the decision of the CA in the first assessment by the first commission have brought evidence, the Certification of TAK, which is in agreement with installments for the repayment of the debt. Currently, the commission does not have convincing evidence that your offer was responsible at the time it was submitted because the agreement was submitted after the opening of the offers. Can you give us proof of the date of reaching the agreement with TAK for debt settlement and TAK's preliminary confirmation of the opening time of the offers that you did not have debts at that time. This point was precisely the reasoning of the CA for the cancellation of the tender, which made the CA to act contrary to the technical specifications, since our offer covered all the points and centers of the KPSH, which were not specified in the tender file because they work everything. For us as well as for the participating EOs, this has not presented a problem since there were no forests to clarify. Our offer includes all of them, regardless of the rate that we have given. 27 weekends are calculated per month and are sufficient for all points, since there are a total of 17 centers which are covered by 1 worker, while the centers with larger flows cover more workers.

4. The representative authorized by the company for occupational safety and health training is Valmira Bujupaj, who has been in the same role as staff at EO Erik, also the same staff has been an authorized person in several agreements or contracts with which was presented by the company Erik, while for this activity she was a physical participant for the delivery of insurance for the company Schafberger, having this fact the commission raises doubts about cooperation between the two companies, and application in the same procedure, which according to the law public procurement does not allow hidden collaborations Can you let us know what role the Valmire Bujupi staff has, do you know that the same one also works for another company. In addition to the clarifications, we also request the employment contract and proof of the list of workers declared in TAK. Answer: Ms. Valmira Bujupi is a lawyer by profession and is engaged in our company as a project manager and in this case also authorized for occupational health and safety training. We are among the companies with a long experience in institutions, which is proven by our experience in the field of cleaning, and our work in your institution is one of them. This has made us cooperate with more other companies in our field and not only. Regarding your specific question about our employee, we have been aware that from time to time the lady in question has been authorized for our consortiums between the company Erik Shpk and our company, as well as authorized and participating in the holding of the Safety and Health Training at work giving her several years of experience in this field. Regarding the Activity for Cleaning the health facilities of the KPSH, we guarantee you in full responsibility that Mrs. Valmira Bujupi has not been a participant in any form engaged in any other company. As evidence, you have the list of Atk 2023 as well as the employment contract. Another issue raised by the evaluation commission is the completely unfounded claims made by the CA for our offer that we allegedly have a hidden agreement with another company in this activity. We have provided our testimonies, which have been proven with TAK lists and work contracts for our staff, which include the year 2023, the year in which this procedure was also developed. Our worker is a lawyer by profession and trained in occupational health and safety, who has also provided services to other companies within certain deadlines in previous years, but in this procedure she has nothing to do with any other company, let alone for this activity. The submission of insurance and other documents to the offices of CA leaves no doubt that this has to do with any other company in this procedure. We did not understand the CA's claim because the procedure took place in 2023 and we submitted the TAK lists for 2023. We are only responsible for the documents submitted for our company. This claim does not hold since the standard letter does not specify which years the TAK lists must be submitted.

5. Request Answer: We have analyzed the entire tender file carefully as well as the list of items and their quantity. An approximate monthly list of 32 items has been placed in the tender file, which also includes work tools. In the tender file, it was not requested to set a price for each item, which made it clear to us that we only have an approximate amount of hygienic material and work tools that are spent in this contract. Since we are implementing the preliminary contract, we have a clear overview of the material spent in all Centers. Adding the order of the material in bulk and the cooperation of more than 10 years with our suppliers and the provision of the material at the most favorable prices based on our calculations, we have come to the conclusion that the material for this activity is €2,084.93 without VAT. Articles: 13-15 and 20-

32 are all work tools that we as a company possess and have a minimal cost for them because for us it will only be the continuation of the work that we are doing in KPSH. Submitting an analysis other than what is requested in the tender dossier will present another reason for us to think you are applying double standards in relation to the evaluation of bids even though we think we stand very well with each position of the analysis. financial submitted with the offer and also based on the tender file and on the practice in the field. The presentation of purchase invoices is not allowed to us due to the privacy of the suppliers for the reason that it harms the competition, which is also not allowed to us and is not part of our agreements with suppliers. As for the price of the amount: €381.77, we do not know what it was decided for in your question, so please clarify if it has to do with us because we do not understand it. We will provide you with the evidence for the answers you have given to your questions and we very much hope that they will be enough to decide once again in favor of our company as a preliminary commission has found because our offer is one of the most favorable offers which is based on the tender dossier and the practical situation on the ground since for many years we have an excellent cooperation with all the centers of KPSH, offering excellent services in the maintenance of these centers.

Regardless of this, we asked you to be professional, impartial and non-discriminatory in this entire process of re-evaluation, respecting the LPP. The CA has contradicted itself after we were announced as the winning company with the most economically favorable price, it has canceled this activity in violation of the mentioned legal provisions, therefore we do not agree with the decision of the CA. For all the arguments we have presented in the request for reconsideration by uploading all the answers in the request for reconsideration and also in this complaint to convince that our answers were correct and argued to be accepted by a CA which with a preliminary assessment has assessed that our Offer is responsible and in accordance with the technical specifications required in the TD. After the evaluation committee of the request for reconsideration has determined that our request has no legal and logical basis, in this complaint we are reflecting in detail those legal arguments and claims which the CA violated. Article 7 Equality in Treatment/Non-discrimination. The CA has committed a legal violation of this article by giving you the right to EOs which have made a request for reconsideration of the decision which finds our offer as the most favorable and responsible offer, this decision was taken by this institution itself, while now when we have exercised our right against the decision on annulment confirms the decision and rejects our Claim as unfounded. Here it is clearly seen that CA did not provide equal and non-discriminatory treatment, but acted contrary to this article. Article 28 Technical specifications CA has violated this article as it claims in the cancellation decision that the tender dossier did not mention the number of points of health facilities that work on weekends, also the EO did not ask questions during the tender clarification deadline. as a result, EO has made different calculations in the financial analysis.

The technical specifications have been clear since the EOs have not asked questions, this means that all participating EOs based on the technical specifications of the DT have planned in their analyzes how they will cover the holidays. CA has violated this article and the ISO standard certificate where it was replaced with another one where an error occurred because the OHSAS Certificate 45001 2018 international standard for occupational health and safety does not exist. There is only OHSAS certificate 18001;20017 which is no longer valid. The certificate for

occupational health and safety management is ISO 45001; 2018 which is submitted with our offer. This certificate has been evaluated by the CA and has been accepted, while the weekends have not been accepted even though we have provided an explanation and an accurate calculation in our offer. Article 59 Examination, evaluation and comparison of tenders This article has been violated by the CA in all points of evaluation of our offer. Any claim by the CA to be declared as an irresponsible EO constitutes a violation of this article since regulation no. 011/2022 for public procurement in article 40 for Examination, Evaluation and comparison of tenders in paragraph 10.12 states that the tenderer will not be disqualified or is excluded from the procurement procedure based on the request or criterion that is not specified in the contract notice/tender file. Article 62 Completion of the activity CA has violated this article by completing the activity in an illegal manner as the violation it claims does not exist as this was repairable on weekends as all points work even on weekends and our offer has covered them all objects and until after clarifying questions from EO before the opening of the tenders, this means that it has been understandable for all EO. The claims that our request for reconsideration was not based on legal, substantive and logical aspects, dismissing it as unfounded makes it clear that the CA had the intention of harming us as a company by not treating us equally in this activity and harming us and throwing baseless facts about our offer.

Referring to the claims as above, EO "Schafberger Jr. GmbH" - Kosovo Branch considers that the Contracting Authority has acted in violation of Article 1, 6, 7, 28, 59, 62, 72 of the LPP.

CA's response to the request for reconsideration for EO "Schafberger Jr. GmbH" - Kosova Branch "Regarding the appeal claims, it must first be clarified that the applicant has not managed to present any concrete claim against the announcement on the decision or decisions of the procurement activity. The applicant simply says that he does not agree with the reasons for his elimination since, according to him, these reasons are unfounded. In other words, the report of the request for reconsideration is very generalized, where many logical, legal and linguistic errors are manifested, which make it very difficult to identify the complaint claims that the applicant intended to present through his request. So the fact that he does not agree with the reasons for elimination does not constitute a claim in itself. The claim must be formulated correctly and concretely in accordance with the article with contract notices, tender documents, or other notices and decisions, length! performance of the applicants are correct, confirmed and evidenced as in the evaluation report by the objective and professional commission as well as in the standard letter for the eliminated tenderer, in full compliance with the LPP and RRPP in force. On the side of

Through his request for reconsideration, the applicant has failed to formulate concrete complaints as defined by article 59 paragraph 59.1 of the RRPP. In this direction, through article 62 paragraph 62.1 under paragraph b) of the RRPP, it is determined that "The Contracting Authority, respectively the Responsible Procurement Officer, will reject a request for reconsideration when the request is not presented against a notification or decision as, it is rejected in the same way to be rejected as unfounded in its entirety based on Article 62 par. 62.1 under paragraph b) related to Article 59 par. 59.1 of the RRPP. Beyond what was said above, it

should be noted that the applicant, through his request for reconsideration, nowhere has disputed the reasons for the cancellation of the procurement activity, it has been canceled

in accordance with article 62 of the LPP related to article 43 of the RRPP.

due to the evidenced reasons: decision B58. As long as the applicant has not addressed any complaints regarding the reasons for the cancellation of the procurement activity, this means that these reasons constitute indisputable facts for the applicant himself. On the other hand, the applicant does not dispute all the reasons for his elimination as irresponsible, but only some of these reasons. Therefore, it should be noted that the reasons for his elimination are evidenced through the standard letter for the eliminated tenderer as follows: presents the standard letter for the eliminated tenderer. Taking into account the above, the way of formulating the appeal claims in the request for reconsideration, but also the findings of the commission according to the evaluation report, it was found that the offer of the complainant is irresponsible and he was eliminated as a tenderer. In this way, it was found that the applicant did not present solid arguments to support his claim. At the same time, from the administered material evidence, it was found that the complainant's claim is completely unfounded. Therefore, the request for reconsideration is rejected as completely unfounded.

The claims of the complaining economic operator "Efa Dienstleistung GmbH" - Branch in Kosovo are presented as follows:

- Claims of the complaining EO: "According to the minutes of the opening of bids, there was also an EO in participation, which, according to the notice of the CA, is irresponsible even though it had a cheaper financial offer, the same one had only submitted the business certificate and the price advance, so it was not do not appreciate that we write more about this offer since it is a non-serious offer and as such it has been evaluated according to the notification, the decision of the contracting authority is an irresponsible and non-serious offer.

The contracting authority during the evaluation of the offers in accordance with paragraphs 1, 2 and 3 of article 72 had to request additional information where it is stated. if an operator submits wrong documents or not to the Complete Authority, the authorities can ask the operators to submit, clarify, fill in or complete the information in the documentation within a certain period.

Likewise, the CA during the evaluation of the offers has violated Article 7 Equality in treatment/Non-discrimination, which is clearly seen that the CA has done to the offer by not asking for any clarification, Where it shares with all the participating EOs, it has asked you for additional information which were also contrary to the legal provisions.

All these requests that the CA has made to evaluate other offers are arguable in the decisions of the CA' Evidence: Decisions of the CA underlined

Our offer was the second cheapest responsive price in a row. Attached is the minutes of the opening of bids. Evidence: Minutes of the opening of bids.

During the bid evaluation phase, the contracting authority does not treat our offer as fair and in accordance with the principles of the provisions of the Lpp and the legal acts of guide no.

001/2023, the reasons given in the notice of the CA regarding our offer cannot be considered as elements to declare our offer as irresponsible.

- The reasons given in the notification of the Contracting Authority

The requirements in the tender file were: "CA has requested that the economic operator during the 3 financial years 2021/22,23 must have at least 900,000.00 euros of Financial Turnover, with statements from TAK or from an independent Licensed Auditor.

Reasoning in the notification of the decision of the CA regarding our offer, saying that: You have not fulfilled the file requirement 1. The Economic Operator must provide satisfactory evidence to the Contracting Authority that the annual turnover of the Economic Operator during the last three fiscal years has been no less than 900,000.00 euros.

Together with our offer, we had presented the turnover from the bank that exceeds the value you requested in the tender file, o Evidence: Bank reports submitted together with our offer.

Based on the provisions of the article: Article 68 Economic and Financial Situation

18 The contracting authority may request economic operators to submit data to show that they meet the minimum economic and financial conditions specified in the tender file and in the contract notice. When required, the minimum annual turnover that the economic operators must have will not exceed the estimated value of the contract. Requests on the economic situation must be expressed in figures and will refer to a maximum of the last three financial years. When it turns out that in addition to the minimum turnover, a certain minimum turnover is necessary in the specific area covered by the contract, such turnover must not exceed one point five (1.5) times the estimated value of the contract. In general, economic operators are allowed to meet this requirement by submitting, if relevant and necessary, one or more of the following references:

1.1. the relevant report or reports from one or more banks; arranged as in the table.

1.2. certified copies of one or more balance sheets or extracts from balance sheets if the publication of such balance sheets is required under the law in the place of establishment of the economic operator; OR

1.3. copies of financial reports and management reports certified by a recognized licensed auditing firm or an independent licensed auditor; OR

1.4. Annual Tax Declarations submitted to the Tax Administration of Kosova.

Based on what was said in the provisions of article 68, we had submitted the circulation from the bank reports which exceeds this value. But, the contracting authority not treating our offer according to Article 72 paragraphs 1,2,3, which could have requested additional information from us, which it did not, in fact violated Article 7 of equality in treatment and discrimination because: LPP article 68 paragraph 1 as well as INSTRUCTION No. 001/2023 FOR PUBLIC PROCUREMENT

1.5. Clarification of tenders during the tender evaluation process 10.1 The following examples are not the only cases. Evidence on the economic and financial situation is missing, information can be requested, Article 68.

In the possibility of implementing Article 68, which states that "The evidence on the economic and financial situation is missing, information can be requested. We had submitted bank transactions that exceeded such a value by so much that, in fact, the request to us to clarify this point was more than right for our offer Reasons given in the notice of the Contracting Authority regarding the standardizations.

In the announcement of the CA, it is said that you have presented ISO in the German language, which in fact is that: The ISO standards submitted with our offer were notarized in Kosovo in the Albanian standard language, which are audited and issued by TUV with headquarters in Germany. Iso 14001-2018 and Iso 9001-2015.

Iso 45001-2018 was presented in the Albanian language and notarized, while ISO 14001-2018, Iso 9001-2015 were presented in the German language and the same were notarized in the Albanian language. The back part of the sheet is a detailed description by the notary in the Albanian language.

- Proof: ISO standards translated and notarized.

The contracting authority had requested in the tender dossier that:

Copy 5. For point (a), (b), (c); To be proven with the relevant certificates for each (copy).
IMPORTANT NOTE - Certificates must have a link to the page for online verification of the validity of the certificates!

Which we had sent together with the offer and the links for verification. However, the CA, acting contrary to the primary and secondary legal acts, has declared our offer as irresponsible even for this point, which in fact is contrary to the provisions of the Lpp and other acts because: Article 69 Technical and/or Professional Skills certificates drawn up by official quality control institutes or recognized competent agencies certifying the conformity of products, which can be clearly identified based on the relevant specifications and standards

Based on the provisions of the LPP and GUIDELINES No. 001/2023 FOR PUBLIC PROCUREMENT ISO certificate is missing, information clarifying article 69 may be requested

We had submitted documents such as Iso 45001-2018 was presented in the Albanian language and notarized, while for Iso 14001-2018, Iso 9001-2015 were presented in the German language, the same were notarized in the Albanian language. As well as the back part of the sheet is the detailed description by the notary in the Albanian language, after the notification to your authority on 17.10.2023 we requested an interpretation of the criteria that were in the tender file, the documents that we had presented and the reasons in the notification of the Contracting Authority Municipality of Pristina.

Provo: The Regulatory Commission for Public Procurement has responded to our request on 27.10.2023.

As soon as we have accepted the legal interpretation of the Regulatory and Public Procurement Commission, we have addressed them with an explanatory letter explaining in detail the reasons that you have given in the announcement of the CA for our offer to declare it as irresponsible.

Evidence: official emails sent to CA as well as uploading of documents to the Eprocurement system.

On the 30.10.2023, the Contracting Authority, after several requests have been submitted to the CA's decision by many EOs, has yet to be re-evaluated, on the same day we presented through the e-procurement system documents and legal interpretations that the CA had the opportunity to re-evaluate the offers.

- Evidence of the documents submitted to the CA, when Enda was under re-evaluation. After the notification of your authority, dated 17.10.2023, we requested an interpretation of the criteria that were in the tender file, the documents that we had presented and the reasons in the notification of To the Contracting Authority Municipality of Pristina. The Regulatory Commission for Public Procurement has responded to our request on 27.10.2023. As soon as we have received the legal interpretation of the Regulatory Commission for Public Procurement, we have addressed them with an explanatory letter explaining in detail the reasons that they have given you in the notification for our offer to announce as irresponsible.

- Written evidence for clarification and argumentation of our offer Interpretation of the krpp;

- Financial turnover, translated and notarized in the Albanian language by the company Arni Germany;

- ISO standards according to the requirements of the tender file translated and notarized by TUV.

- PROCEEDING OF THE PROCEDURE AFTER THE SUBJECT IS RETURNED FOR RE-ASSESSMENT

During the re-evaluation, the contracting authority violated our right as the cheapest responsible offer by violating Article 7, Equality in Treatment/Non-Discrimination paragraphs 1, 2, 3, 4, 6.

As if all these documents and clarifications were not enough for you, not addressing the legal provisions of the Lpp and the acts related to public procurement.

On 23.11.2023 we were notified of the cancellation of the activity as a whole, seeing that even in the re-evaluation process you did not treat our offer according to the primary and secondary legal criteria and provisions of the LPP,

CA'S REASONS IN THE NOTICE FOR THE ELIMINATION OF THE ACTIVITY

Statements in reasoning by CA. Point 1 "Citation", EO after the CA's decision has brought into the system some evidence of financial circulation statements from the parent company in Germany. But according to the commission, the company offered as the only one and the other documents are not relevant in the offer presented at the beginning,

Based on the legal right and the interpretation of the Regulatory Commission for Public Procurement that companies that are foreign branches in our country do not need to conclude consortium agreements and as such they can use the documents of the Arna company, we have not submitted an agreement consortium in our offer.

Legal interpretation of the PPRC

In accordance with the aforementioned provisions, in case an economic operator which operates with its branches in some other countries (states), can rely on the capacities of its branches to fulfill the requirements related to the economic and financial situation or related with technical and/or professional skills by tendering the relevant evidence and for this purpose the same cannot be disqualified because he did not participate as a group of economic operators.

Statements in reasoning by CA. Point 2 "Citing", EO has brought evidence of references in the Albanian language only 709,610 euros, the others are in the non-official language in the German language, violating Lpp article 13 paragraph 4.

Based on this principle, the CA has not accepted our documents, the list of contracts that we had presented together with the offer from the beginning and with additional completion after the re-evaluation of the offers. Having said that they were in the German language, we are surprised by the fact how such a case can be said where we had submitted the list of references translated and notarized in the Albanian language. This strengthens our conviction that the claim related to the legal principles of Article 7 equality in treatment and discrimination is very real and powerful.

Legal interpretation of the pprc

In accordance with the aforementioned provisions, in the event that an economic operator which operates with its branches in several other countries (states), can rely on the capacities of its branches to fulfill the requirements related to the economic and financial situation or related with technical and/or professional skills by tendering the relevant evidence and for this purpose the same cannot be disqualified because he did not participate as a group of economic operators.

Statements in reasoning by CA. Point 3 "Quotation", the Operator must be certified according to international standards of environmental management, in the field of cleaning facilities ISO Certificate 14001-2018 valid. Iso standard for the management of safety and health at work - has not brought at all.

This statement by the CA is not true at all, together with our offer dated 23.06.2023, we submitted this standard together with the verification link from Rig Cert standard 45001-2018 in the Albanian language.

Evidence: Interpretation of the pprc

Statements in reasoning by CA. Point 3

"Quote", Under the criteria for the frequency of cleaning, the EO had to determine how many times it would intervene in a shift from 1 to a maximum of 3, while the EO gave a note 7 times a

day and 17 times a week, that is, the EO did not contained in the CA data, even more so when we are dealing with the completion of the FTD, which is an administrative condition.

Starting from the request in the tender file: 8. The economic operator must present 8. The plan must be signed and a plan for the frequency of cleaning. stamped by the Economic Operator. We had submitted a detailed plan regarding this point. For us, such a request does not mean a limitation "because then it would not be logical to score" the number of times that such health facilities should be cleaned or intervened in. The plan that we have presented includes the schedule of 8 hours of work with a 1 hour break, arranging the work schedule as it is also arranged from 07:30 to 15:30. Detailed even in occasional early pauses. Therefore, as you have presented the service work plan, the number of 7 times a day has been reached is very normal action according to the plan in the Declarations of Frequency which in fact had to be evaluated according to the formulation that was in the tender file on pg. 39, giving our offer the maximum points of scoring 0.30 and that together with the price of our offer we would be able to be the winner of this contract.

- Proof: Cleaning frequency plan submitted with quote.

Statements in reasoning by CA. Point 4

9. List of equipment a) The Economic Operator must have all types of floor cleaning and polishing machines 18, b) Tile washing machine 1 (one). c) Machine for absorbing water 4 (four), d) Machine for washing and mopping floors (with accumulator or with electricity) 15 (fifteen) e) Bucket for cleaning 36 (thirty-six) f) Vacuum cleaner 18 (eighteen)) g) Machine for washing carpets and absorbing water. h) 1 (one) Pickup. i) Machine (mower) with engine for mowing the grass 6 pieces, j) (trimmer) 8 pieces. k) Machine for removing snow (blower) 3 pieces • l) Large cart for cleaning offices, operating rooms and similar premises 18 pieces m) auto crane with a height of 25m 1 piece n) Trucks or tractors for transportation 1 piece.

Even this reasoning is incorrect because attached to the offer you have presented all the evidence starting from the Booklet for vehicles and machinery, customs dummies, company agreements, supply contracts, purchase invoices, etc.

In order to clarify our statements from the e-procurement system as you submitted them, we will highlight each of the points in the request for the tender dossier.

And regarding the statement of the CA in the notification of your decision that the Tractor is expired "The Tractor" is not expired, in this order of documents you had presented "AGREEMENTS" which would cover each point of requested.

Even the point of the expired tractor As the CA has said, you have presented the agreement with the truck for various transports, which is actually more convenient and practical than the TRACTOR, its testing contrary to the functioning of services and transports nowadays.

What was said in the justification by the CA point 5 "Quotation", In the financial analysis, the EO did not complete the financial analysis properly because it did not calculate the holidays in

accordance with the law and the tender file, it also calculated the employer's contributions twice in calculation of expenses.

Request in the tender dossier regarding salary calculation.

Based on the part copied from the file, regarding the salaries and other rights of the employees, it was NOT requested that the workers be paid or perform services even on holidays, therefore we have not calculated the services on holidays. The financial analysis of our offer is based on the requirements of the tender dossier.

You said that in the financial analysis we have calculated twice the pension trust of the employees and indeed that one designation in the financial analysis has remained as the designation pension trusts. But, such a value cannot be considered a mistake since the totality of our offer given at the end of the financial analysis and in the amount of prices does not differ by even a single 0.01 cent,

Therefore, such value with the name pension trusts will be able to be included in the implementation, supply and various payments to provide the highest quality services for the project in question or it could also be considered an increase in the wages of the employees, a possible profit of the company, supplies and management. Its presence would not be a violation since the values given do not constitute an arithmetic error.

Regarding this point, we have asked for the opinion of Krpp on the legal interpretation of the injustice in our offer, which is in deep contradiction with the deposits of Lpp, article 7, equality in treatment and discrimination.

In the interpretation citing the interrelation of the articles of the provisions of the Lpp of article 72 paragraphs 1, related to articles 65-71 where the issue is regulated as to how the CA would have to request additional clarifications that would be necessary to argue in complete or clarify any ambiguity.

- Proof: interpretation of the pprc dated 122023

All the points in which the CA was called to declare our offer irresponsible, the documents for which it gave its reasons. Their existence was submitted together with our offer, therefore the contracting authority violated the provisions of article 72 paragraph 3.

Referring to the claims as above, the Complainant "Efa Dienstleistung GmbH" - Branch in Kosovo considers that the Contracting Authority has acted in violation of article 1, 4 parag 1.26, 6, 7, 53, 59, 60, 68, 69, and 72 of the LPP. Proposing that the Complaint of the Economic Operator "efa diensleistunf GmbH" Branch in Kosovo be approved based on the activity with the title: Cleaning of health facilities of the KPSH, procurement number 616-23,,4576-2-1-1, and the matter is returned for re-evaluation.

CA response to the request for reconsideration for EO "Efa Dienstleistung GmbH" - Branch in Kosova.

Economic operator "Efa Dienstleistung GmbH - Branch in Kosovo" Sh.P.K. (hereinafter "the applicant") dated 28.11.2023 submitted a request for reconsideration against the notification on the decision dated 23.11.2023 for the cancellation of the procurement activity entitled "Cleaning of the health facilities of KPSH" with no. of procurement 616-234576-2-1-1.

During the preliminary review of the applicant's request for reconsideration, it was found that the request is allowed and submitted within the deadline by the authorized person, and there are no other obstacles to review the applicant's request. In this way, the conditions have been met to proceed with the meritorious review of the request.

The main claims of the complainant are related to the fact that the applicant disputes all the reasons for the elimination of his bid as an irresponsible tenderer as defined by the standard letter for the eliminated tenderer as well as by the report of the evaluation committee.

It should be noted that the complainant, through his request for reconsideration, has nowhere contested the reasons for the cancellation of the procurement activity. We remind you that this procurement activity through the notification on the decision dated 23.11.2023 has been canceled in accordance with Article 62 of the LPP in relation to Article 43 of the RRPP, for the following reasons:

As long as the applicant has not addressed any complaints regarding the reasons for the cancellation of the procurement activity, this means that these reasons constitute indisputable facts even for the applicant himself.

In principle, the applicant does not dispute the reasons for his elimination as irresponsible, since he agrees with most of them (he does not dispute them) as a factual situation, but only adds that they do not constitute sufficient reasons for elimination. As an example, regarding the fact that the applicant has submitted CDs for the years 2020, 2021 and 2023 that total 821,000 euros and not 900,000 euros, the applicant does not contest the fact that 900,000 euros were requested with the tender file, nor does he contest the fact that according to the evidence he brought, he proved the turnover for only 821,000 euros. Specifically, the reason for the elimination of the applicant is formulated as follows: You have not fulfilled the file requirement 1. The Economic Operator must provide satisfactory evidence to the Contracting Authority that the annual turnover of the Economic Operator during the last three fiscal years has been less than 10 900,000.00 euros EO has brought QB for the years 2020.2021. and 2023 which in total make 821.000 and 10 900,000.00.

However, the applicant adds that the contracting authority had the opportunity to request additional clarifications, giving the applicant the opportunity to send other additional documents to fulfill this request of the tender file. First of all, it should be emphasized that the contracting authority is not at all obliged to cover or fill in the mistakes made by the tenderers when submitting their tender offers through additional clarifications. Therefore, the completion and submission of completed offers is the interest of economic operators exclusively. In the cases provided for under the LPP, the contracting authority evaluates and has the discretion to decide or not to request additional clarifications. In this particular case, these conditions were not met because the submitted documents were sufficient for the evaluation commission to decide in the

way it decided. This also applies to the other reason for the elimination, respectively, of the appeal claim that has to do with ISO certificates (see the request for reconsideration). But even if the factual situation was as the applicant claims (which is not the case at all), such an action would still be illogical because the applicant submitted an irresponsible offer for many other reasons. So this is not the only requirement of the tender file that the submitter has not fulfilled, but there are many other requirements documented with the evaluation report and the standard letter for the eliminated tenderer.

So, from the way the appeal claim cited above is formulated, it can easily be confirmed that for the applicant it is not disputed that he has not fulfilled the request of the tender file in question (which is an administrative condition). The applicant only alludes that he was not convinced by this argumentation of the evaluation commission, saying that "for us, such a request does not mean a limitation". In this case, it should be clarified that the requirements of the tender file must be fully respected when evaluating tenders in a procurement activity. So the purpose of the tender file is not to convince one tenderer or the other, but on the contrary, the purpose is for the tenderer to convince the contracting authority that he fulfills the criteria for awarding the tender. So it cannot be said that "this is not a limitation for us" because the limitations defined by the tender file are valid and binding for all tenderers without exception and in full compliance with the principles of the LPP for non-discrimination. However, it is not disputed that the applicant has not completed the cleaning frequency plan as requested in the tender dossier, therefore this claim is completely unfounded.

Another reason for which the applicant was eliminated as an irresponsible tenderer is the following: In the financial analysis, the EO did not complete the financial analysis properly because it did not calculate the holidays in accordance with the law and the tender file, as well as the contributions of the employer has calculated it twice in the calculation of expenses.

The request of the tender file that is in question in this case is formulated as follows: EO must declare that it will pay all workers the same wages as the workers of this sector in GROSS amounting to 300.00 euros with all legal obligations according to the Work No. 03 L-212 where at least annual leave and weekends must be calculated as well as other laws that regulate the labor relationship as well as TAK2. a), b) To be proven with an original statement signed and sealed by the EO as well as the detailed financial analysis (original).

On the other hand, the complaint regarding this reason for elimination is as follows: Based on the part copied from the file, regarding the salaries and other rights of the employees, it was not requested that the workers be paid or perform services even on days holidays, so we have not calculated the services on holidays. The financial analysis of our offer is based on the requirements of the tender dossier. You said that in the financial analysis you calculated twice the pension trust of the employees, and that one designation in the financial analysis remained as the designation pension trusts. But such a value cannot be considered a mistake since the entirety of the offer.

So from the way the appeal claim cited above was formulated, the applicant claims that no calculation was requested for weekends, annual leave, holidays and other days according to the

labor law in force. On the other hand, in the request for the tender file, this fact is explicitly stated as mentioned above. As for the fact that the pension fund was calculated twice, the applicant does not even dispute this fact, but only qualifies it as an action that is not a mistake, alluding that it is a misnomer. So there is no dilemma that the appeal claim is completely unfounded since the de facto reason for elimination is not contested by the applicant himself.

The applicant's complaints have been handled and examined carefully by the responsible procurement official. In this case, it has been indisputably confirmed that the applicant's offer is irresponsible and he has rightly been eliminated as a tenderer from this procurement activity. Moreover, it has been confirmed that the reasons for which the procurement activity was canceled are reasons based on the whole and in full compliance with Article 62 of the LPP as well as Article 43 of the RRPP (otherwise this fact has not been contested in any part of the request for reconsideration by the complainant himself).

Taking into account the above, the way of formulating the complaining claims in the request for reconsideration, but also the findings of the commission according to the evaluation report, it was found that the offer of the complainant is irresponsible and the same has been eliminated as a tenderer.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 22.12.2023 has authorized the review expert to conduct the initial review of the file and claims according to complaints no. 1017/23 and 1019/23.

Regarding complaint no. 1017/23 dated 01.01.2024, the review expert's report with No. 2023/1017 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 to be approved as grounded, the notification for cancellation of the procurement activity be canceled and recommends that the matter be returned to reassessment.

Regarding complaint no. 1019/23 dated 01.01.2024, the review expert's report with no. 2023/1019 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 rejected as unfounded.

The expertise's report No. 1017 has been duly accepted by all procedural parties. CA and EO have not given answers regarding the review expert's recommendation.

The expertise's report with no. 1019/23 has been duly accepted by all procedural parties. CA declares that it agrees with the recommendations of the review expert's report, while EO does not agree with the review expert's report.

The review panel has assessed that the conditions have been met to decide on this case without a hearing in the sense of Article 24 paragraph 1 of the Rules of Procedure of the PRB, taking into account that the claims of the parties and their submissions, the evidence as well as the review expert's report provide sufficient data to decide on the merits of the case.

- Administration and evaluation of evidence -

In order to fully verify the factual situation, the review panel administered as evidence the report of the review expert, the submissions and documents of the complainants, the letters and documents of the contracting authority, the relevant documents related to the procurement activity as well as all the evidence that was proposed by procedural parties.

Regarding the claims of EO "Schafberger Jr. GmbH" - Kosovo branch, expert review through report no. 2023/1017 assessed as follows:

On the 23.11.2023, the Contracting Authority issued the Notice for the cancellation of the activity. where in the same decision he notified the other tenderers with a standard letter through the E-Procurement system about the decision taken. EO "Schafberger Jr. GmbH - Kosovo Branch Branch in Kosovo"- Prishtina filed a complaint on 28.11.2023, against the cancellation of the procurement activity, related to the procurement activity: "Cleaning of the health facilities of KPSH" with no. of procurement: "616-23-4576-2-1-1", initiated by the Contracting Authority (CA) - Assembly of the Municipality of Pristina. WHEREAS, the decision of the CA in the request for reconsideration dated 28.11.2023 EO "Schafberger Jr. GmbH - Kosove branch Kosova branch" - Prishtina dated 23.11.2023. Then the dissatisfied EO filed a complaint at the PRB on 15.12.2023. As a party with an interest in this procurement procedure, we do NOT agree with the evaluation received by the CA through the standard letter of the eliminated tenderer and the decision to reject the request for reconsideration because, in addition to having met the selection requirements, we have also met the mandatory technical ones such as were specified in Annex 1 of the TD. COMPLAINT TO CA - Contracting Authority (CA) - Assembly of the Municipality of Prishtina was as follows: Request for Reconsideration.

The procurement review expert, according to authorization no: 2023/1017, and in accordance with article 114 of the LPP, has reviewed the claims of EO "Schafberger Jr. GmbH - Kosovo branch" - Pristina, sent to the PRB where it claims that the LPP has been violated in several articles underlined Article 1 Purpose. Article 6 Equality and efficiency. Article 7 Equality in treatment/Non-discrimination, Article 28 Technical specifications. Article 59 Examination, evaluation and comparison of the tender Article 62 Completion of the activity. Article 72 Documentation and additional information Contracting Authority CA MA of Prishtina in its decision states that EO "Schafberger Jr. GmbH - Dega Kosova Branch in Kosova" - in the reasoning of the Decision contradicts the words mentioned in it when it states that it quoted

During the preliminary review of the applicant's request for reconsideration, it was found that the request was allowed and submitted within the deadline by the authorized person, and there are no other obstacles to review the submitted request. In this way, the conditions for continuing the meritorious review of the Request have been met.

Immediately, in the same decision, he emphasizes that the EO has made logical, legal, linguistic errors, etc. in the wording of the reports, violating Article 59.

The general provisions of paragraph 59.1 of the regulation on Public Procurement has violated the regulation, among other things, the regulation states that 59.1 According to Article 108/A of Law No. 04/L-042 on Public Procurement of the Republic of Kosovo, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092, the request for

reconsideration may be submitted, free of charge, by any interested party at any stage of the procurement activity and in relation to any activity or omission of the contracting authority that is alleged to have violated the current law, or to the acts issued in its implementation by the Contracting Authority which leads the procurement activity. Requests for reconsideration may be related to contract notices, tender documents, or other notices and decisions, during the performance of the relevant procurement activity.

59.2 The standard forms can be downloaded from the websites of PPRC and PRB

- a. Form F01 Standard form for submitting a complaint to the PRB
- b. Form F02 Standard form for submitting a request for reconsideration to the Contracting Authority.

The Review Expert points out that if the EO has really violated this article of the CA, it is not necessary to deal with his complaint in the omissions "in linguistic writings because we are not dealing with spellings of the EO but with the Law on Public Procurement, which we do not even one point hers does not say that you need CA for EO, they must have logical reports without language errors except Arithmetic or other ones.

The Reviewing Expert emphasizes that it is necessary to eliminate without going into the other Complaint claims.

CA Prishtina Municipality should be careful when in the same decision it states that the EO has met the conditions for a meritorious review of the complaint and a few lines below it states that it has violated the regulation of article 59 and article 62 paragraph 62.1.

The review expert according to the Document Offered by the electronic platform and received in the tender file and the Economic Operators documentation in the electronic platform and based on the claims given by the Contracting Authority for the elimination of the EO where he has requested, which he claims are not fulfilled to Technical and professional capacity: And since none of these requirements from the tender file are administrative conditions, the Municipality of Pristina has used Law No. 04/L-042 FOR PUBLIC PROCUREMENT OF THE REPUBLIC OF KOSOVA, Amended and supplemented with District No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092 Article 72 Documentation and additional information attached by EO and the articles noted below. Law No. 04/L-042 ON PUBLIC PROCUREMENT OF THE REPUBLIC OF KOSOVA, Amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092 Article 72 Documentation and additional information

1. When the information or documentation to be submitted by the economic operators is or appears to be incomplete or incorrect, or when specific documents are missing, the contracting authorities may request the economic operators to submit, complete, clarify or complete the information or appropriate documentation within a certain time limit, provided that such requests are made in full accordance with the principles of equal treatment and transparency.
2. The contracting authority may invite economic operators to complete or clarify the certificates and documents presented in accordance with articles 65-71 of this law.

3. The provision of missing information or the provision of information will be applied only to documents whose existence is fixed, before the deadline for the submission of tenders, and can be objectively verified.

The regulation also emphasizes 10. Clarification of tenders during the tender evaluation process

10.1 The following examples are not the only cases. Depending on the case presented to the CA

I must act in accordance with Article 72 and Article 59 of the LPP. Tender file request

2. The EO must declare that it will pay all workers the same salaries as the workers in this sector in GROSS of 300.00 euros with all legal obligations according to Labor Law No. 03 L-212 where at least annual leave must be calculated and weekend as well as other laws that regulate the labor relationship as well as TAK evidence 2. a), b) To be proven with an original statement signed and sealed by the EO as well as the detailed financial analysis (original).

3. The EO must declare that it agrees to hire 36 workers from the CA list and for the performance of services I will add another 40 workers from its personnel, also declare for the payment of work experience for 36 workers, the value of which is 850 (without VAT) evidence 3. a) original declaration signed and sealed by EO.

4. The Economic Operator must have a minimum of (5) workers (staff) certified for safety and health at work in compliance with Law No. 04 L-161 according to the company's organizational chart. Evidence 4. To be evidenced by copies of valid certificates and the organization chart of the company (copy).

No. Technical description of objects QKMF/Quantity of objects QMU/Quantity Total nf Unit

1 Cleaning of internal surfaces 18280 1100 19380 ML

2 Cleaning of external surfaces 23653 500 24153 Vf

EO "Schafberger Jr. GmbH - Kosove Branch Branch in Kosovo"- Prishtina in the request "EO must declare that it will pay all workers the same wages as the workers of this sector in GROSS of 300.00 euros with all legal obligations according to Labor Law No. 03 L -212 where at least the annual leave and weekends must be calculated, as well as other laws that regulate the labor relationship as well as TAK "has declared with a signed and original statement that it will adhere to this criterion, which is evaluative and this is what the Authority MA of Prishtina in the evaluation form has marked that he completed it by marking it as Compliant (see the evaluation report page 9) O.E in the detailed financial analysis has formulated it based on the requirements of the Contracting Authority when he requested that the GROSS salary of 300.00 euro with all legal obligations according to the Labor Law and there must be 40 workers from its personnel and 36 employees whose value is 850 and based on the request m2 are 43534 m2 and on the request of the expendable material for cleaning the object of mentioned in the EO tender file "Schafberger Jr. GmbH - Kosova Branch Branch in Kosova"- the entire financial analysis has been covered with signed and original statements from the declaration under oath, the declaration of fulfillment of the technical specification, the declaration on income, the declaration of acceptance of 36 employees and the declaration on the ECO standard materials. The claim of KK

Prishtina that EO "Schafberger Jr. GmbH - Kosovo Branch Branch in Kosovo" - did not perform the analysis in accordance with the requirements of the Tender File, it does not stand because all the points are from the Tender File and involved in the Financial Analysis and the Economic Operator cannot interfere with the specifics of the Contracting Authority only must bid on what has been offered and make a Financial Analysis which is an overview of the arrival of the price, so it is not an evaluative criterion, so the EO based on the requirements of the Tender File where it has requested 76 workers and above this number must be done analysis CA The municipality of Prishtina has asked for the amount of the approximate spending material for a month where it has not asked for their price and in the description of the price there is a total of 43534 m2.!

If there were any errors during the formulation of the specifications in the tender file of the Framework Contract from the CA, these issues are regulated by article 54 paragraph 54.10 of REGULATION No. 001/2022 ON PUBLIC PROCUREMENT 54.10 The estimated quantity specified in the tender documents is only an indicative quantity. Whenever the Contracting Authority specifies the indicative quantity, the Contracting Authority shall specify in the tender dossier the value or quantity of the contract as a threshold or a ceiling and shall allow deviation from it, also stating the percentage of discrepancy allowed. The permitted discrepancy cannot be higher than plus/minus thirty percent (30%). If the CA does not declare the percentage of non-compliance in the tender file, then the contract ends with the value or quantity of the contract as a threshold or a set ceiling. If the CA declares the percentage of discrepancy in the tender file and if the purchase order exceeds the total indicative quantity or the total indicative value of the public framework contract (including + thirty percent (30%), without taking into account the original expiration date of the Public Framework Contract, the contract will be automatically terminated. The allowed discrepancy of plus/minus thirty percent (30%) also applies to Lot and position/item, and in case of reaching the allowed threshold, the CA cannot make other orders for that Lot or position/item .

So the claim of MA of Prishtina that EO "Schafberger Jr. GmbH - Kosove branch Kosove branch" - did not perform the analysis in accordance with the requirements of the Tender Dossier, it does not hold and is unfounded

The claim of MA of Prishtina that there is secret cooperation between two competing companies

The representative authorized by the company for occupational health and safety training is Valmira Bujupaj, who has been in the same role as staff at EO Erik, also the same staff has been an authorized person in several agreements or contracts with which Erik presented the company, while for this activity she was a physical participant for the delivery of insurance for the Schafberger company, having this fact the commission raises doubts about cooperation between the two companies, and application in the same procedure, according to the public procurement law hidden collaborations are not allowed.

The Review Expert points out that Contract no. 2331 dated 02.05.2020 which ended on 01.05.2023 with reference no. 1653 dated 15.03.2023, which is public between these two companies, does not indicate that these two companies are in secret cooperation even when it comes to Mrs. Valmire Bujupai, not even a single law prohibits an employee from working in

two jobs where one is primary and the other is secondary, and it is even more strongly argued that there is no secret cooperation than in the list of TAK together with the contract signed for 2023 is EO "Schafberger Jr." workers. GmbH - Kosove Branch Kosove Branch" - Pristina. And if we still have doubts about TAK issuing such documents, there are other bodies that should be addressed.

So the CA Municipality of Pristina for suspicions of cooperation between the two companies, and application in the same procedure, which according to the public procurement law, hidden cooperation is not allowed. And EO "Schafberger Jr. GmbH - Kosovo Branch Branch in Kosovo" has responded with signed contracts and lists of staff submitted to the Tax Administration of Kosovo, where it is clear that Valmire Bujupi "Employment Contract"

So EO "Schafberger Jr. GmbH - Kosove branch Kosove branch" - Prishtina has also provided the list of TAK for 2023 where it is clarified that Valmire Bujupi is engaged as a regular employee. And as for him, the CA raises doubts about cooperation between the two companies, and application in the same procedure, which according to the public procurement law, hidden collaborations are not allowed there are other bodies that have the competence to prevent these phenomena, all that EO "Schafberger Jr. GmbH - Kosovo Branch"- Prishtina is that with sufficient arguments it proved that Valmire Bujupi is Engaged in Primary work in the Company by fulfilling the requirements of AC for clarification dated 21.11.2023.

So the claims Contracting Authority: Prishtina Municipal Assembly of EO "Schafberger Jr. GmbH - Kosove branch" - Prishtina, has hidden cooperation with other companies, They are unfounded and the review expert proposes to the review panel that the complaint of the complaining EO be approved as well-founded, the notice of cancellation of the procurement activity be canceled and recommends that the matter should be returned for reassessment.

Regarding the claims of the complaining economic operator "Efa Dienstleistung GmbH" - Branch in Kosovo, the review expert through report no. 2023/1019 estimated that:

Findings of the review expert: "On 23.11.2023, the Contracting Authority issued the Notice for the cancellation of the activity. where in the same decision he notified the other tenderers with a standard letter through the E-Procurement system about the decision taken. EO "Efa Dienstleistung GmbH - Branch in Kosovo" - Prishtina, filed a complaint on 28.11.2023, against the cancellation of the procurement activity, related to the procurement activity: "Cleaning of health facilities of KPSH" with no. of procurement: "616-23-4576-2-1-1", initiated by the Contracting Authority (CA) - Assembly of the Municipality of Pristina. WHEREAS, the decision of the CA in the request for reconsideration dated 28.11.2023 EO EO "Efa Dienstleistung GmbH - Branch in Kosovo" - Pristina dated 23.11.2023. then the dissatisfied EO submitted a complaint to the PRB dated 15.12.2023. As a party with an interest in this procurement procedure, we do NOT agree with the evaluation received by the CA through the standard letter of the eliminated tenderer and the decision to reject the request for reconsideration because, in addition to having met the selection requirements, we have also met the mandatory technical ones such as were specified in Annex 1 of TD COMPLAINT TO CA - Contracting Authority (CA) - ASSEMBLY OF THE MUNICIPALITY OF PRISHTINA was as follows:

The procurement review expert, according to authorization no: 2023/1019, , and in accordance with article 114 of the LPP, has examined the claims of EO "Efa Dienstleistung GmbH - Branch in Kosovo" - Prishtina, where he claims that the LPP has been violated IN SOME ARTICLES AS BELOW Article 1, Purpose, Article 4, Paragraph. 1.26. Stakeholder Article 6, Economy and Efficiency Article 7, Equality in Treatment/Non-Discrimination Article 53 Provision of additional information for candidates and tenderers Article 59 Examination, Evaluation and Comparison of Tenders paragraph 3 Article 60 Criteria for Awarding the Contract paragraph 1. Article 68 Economic and Financial Status Article 69 Technical and/or Professional Ability Article 72 Documentation and additional information,

The review expert according to the Document Offered by the electronic platform and received in the tender dossier and the Economic Operators documentation in the electronic platform and based on the claims given by the Contracting Authority for the elimination of the EO where he has requested, which he claims are not fulfilled to Economic and financial capacity:

And since none of these requests from the tender file are Administrative Conditions of the Prishtina Municipality, Law No. 04/L-042 FOR THE PUBLIC PROCUREMENT OF THE REPUBLIC OF KOSOVO, Amended and supplemented by Legislative Decree No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092 Article 72 Documentation and additional information and Interpretation of the Commission dt 27.10.2023 Interpretation of the Krpp 11.05.2023 attached by EO and the articles noted below Article 68 Economic and Financial Situation

1. The contracting authority may ask the economic operators to submit data to show that they meet the minimum economic and financial conditions specified in the tender file and in the contract notice. When required, the minimum annual turnover that economic operators must have will not exceed twice the estimated value of the contract. Requests on the economic situation must be expressed in figures and will refer to a maximum of the last three financial years. Where, in addition to the minimum turnover, a specified minimum turnover is required in the specific area covered by the contract, such turnover shall not exceed one point five (1.5) times the estimated value of the contract. In general, economic operators are allowed to fulfill this requirement by submitting, if relevant and necessary, one or more of the following references: Law No. 04/L-042 FOR PUBLIC PROCUREMENT OF THE REPUBLIC OF KOSOVA, Amended and supplemented by Legislative Decree No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092 Article 72 Documentation and additional information.
2. When the information or documentation to be submitted by the economic operators is or appears to be incomplete or incorrect, or when specific documents are missing, the contracting authorities may request the economic operators to submit, complete, clarify or complete the information or appropriate documentation within a certain time limit, provided that such requests are made in full accordance with the principles of equal treatment and transparency.
3. The contracting authority may invite economic operators to complete or clarify the certificates and documents presented in accordance with articles 65-71 of this law.

4. The provision of missing information or the provision of information will be applied only to documents whose existence is fixed, before the deadline for the submission of tenders, and can be objectively verified.

The regulation also emphasizes 10. Clarification of tenders during the tender evaluation process

4.1 1 The following examples are not the only cases. Depending on the case presented, the CA must act in accordance with Article 72 and Article 59 of the LPP: Evidence on the economic and financial situation is missing, Clarifying information may be requested 68.

So the claims of EO "Efa Dienstleistung GmbH - Kosove branch" - Prishtina_ where it claims that LPP Economic and Financial Condition Article 69 Technical and/or Professional Ability Article 72 Documentation and additional information, are based.

Review expert for the CA's claim regarding the tender form which was completed by EO "Efa Dienstleistung GmbH - Branch in Kosovo" - Pristina on the E-procurement platform of Annex 1 Tender form which was also a sub-criteria for the tender in question made the tender not with the lowest price, but with the most economically favorable Criterion. The Prishtina Municipal Assembly in the tender file had prepared the sub-criteria below in relation to this Procurement activity FORM FOR SUBMISSION OF TENDER Part I. Tender Form Procurement Number: 616-23-4576-2-1-1 Title of the contract: Cleaning of the health facilities of KPSH The most economically favorable tender in the direction of EO "Efa Dienstleistung GmbH - Branch in Kosova" - Pristina in the manner indicated below.

5. This tender is valid for a period of either month: or day: 120 from the final date for submission of tenders. For me, as an expert reviewer, I did not fill out the form correctly and clearly in column 2. Operation (frequency of surface cleaning according to the measure) min. 1 time max 3 times 0.30

If it had been marked 7 times a day and 49 times a week, perhaps the contacting authority had given the maximum score a coefficient of 30, or if it had been marked 2.42 times a day and 17 times a week, it would have had a coefficient of 24. According to the standard scoring formula

Therefore GUIDELINE No. 001/2023 FOR PUBLIC PROCUREMENT makes it very clear that in these cases the tender must be rejected without asking for additional clarifications.

The review expert states that the claim of the CA is well-founded and the finding of the EO that says that restrictions cannot be made would be in order if something had washed 7 times a day and 49 times a week or the opposite 2.4 times a day or 17 times a week, therefore this means that the Tender Form has not been filled in properly and the Guide defines it as Administrative conditions by Rejecting the tender without requesting further information Claim of EO "Efa Dienstleistung GmbH - Branch in Kosovo" - Pristina." for the Tender Form It is unfounded.

-Findings of the Review Panel -

Based on the documents of this case and the primary purpose of the complaint, the Review Panel (in collegial composition) considered that in relation to the case in the present case, there is no need to convene a hearing with the parties, as long as the submissions of the parties and their

actions form the basis of enough to decide on the merits. In this case, the Review Panel based its findings mainly on the relevant provisions of the LPP, which foresee and regulate such situations, which may arise during a procurement activity, such as the Complaints in this case.

The review panel independently and objectively, conscientiously and professionally evaluated all the evidence of the case. The review panel after the administration and evaluation of the evidence, the complete ascertainment of the factual situation, relying on the LPP as applicable material law, after examining the appeal claims, taking into account all the documents of the case, has found that the appeals should be rejected as unfounded and the decision of the CA remains in force. Consequently, the Review Panel has decided to confirm the Notice on the Decision of the Contracting Authority initiated by the Contracting Authority (CA) - Municipality of Pristina regarding the procurement activity entitled "Cleaning of the health facilities of the KPSH" with no. of procurement: "616-23-4576-2-1-1". The Review Panel has assessed that the Contracting Authority has acted in accordance with the legal provisions of the LPP, as the CA has treated the participating EO equally and non-discriminatoryly, based on the presented documentation and the subsequent testimonials, it was found that none of the offers participating in this procurement activity is responsible. The Review Panel assesses that the evaluation of the tender was carried out according to the requirements specified in the notice of the contract and the tender dossier. Therefore, the Review Panel assesses that CA has rightly canceled this procurement activity.

Therefore, the review panel after reviewing the case documents, reviewing the complaint claims of the complaining EO, the findings, concrete analysis and recommendations of the review expert, the declaration of the parties in the procedure, the discussions and the administration of the evidence as a whole, and the entire activity of the procurement of noted above, considers that in examining this case, it will stop only at the appeal claims that are decisive in terms of merit decision-making. Therefore, RP will elaborate only the points of complaint which are decisive in this assessment of this subject.

Complaining claims of EO ""Schafberger Jr. GmbH- DegaKosove Branch in Kosova"

The complainant (with data as above) has attacked the above-mentioned decision of the CA from the aspect of his/her elimination, where (according to) the CA in the calculation of the company's expenses in the financial analysis sees that the company when it calculates night shift with the costs of additional hours only for 3 points, while according to the tender file - Annex 1 to the shift schedules, it can be seen that there are a total of 4 points with night shifts, as well as the reason for the elimination other than the calculation of the costs of weekend hours is not it included all the points of the centers that also work on weekends, but you calculated yourself 3 points per weekend. Regarding this, the reviewing expert estimates that O.E in the detailed financial analysis has formulated it based on the requirements of the Contracting Authority when it requested that the GROSS salary of 300.00 euros with all legal obligations according to the Labor Law and there should be 40 workers from the staff of his and 36 employees, the value of which is 850 and based on the request m2 are 43534 m2 and in the request for the consumables for cleaning the facility mentioned in the tender file EO "Schafberger Jr. GmbH - Kosove Branch Kosove Branch"- the entire financial analysis has been covered with signed and original

statements, from the Declaration under oath, the Declaration of compliance with the technical specification, the Declaration on income, the declaration of acceptance of 36 employees up to the declaration on ECO standard materials. The claim of KK Prishtina that EO "Schafberger Jr. GmbH - Kosove Branch Branch in Kosovo" - did not perform the analysis according to the requirements of the Tender Dossier, it does not stand because all the points are from the Tender Dossier and involved in the financial analysis. And the economic operator cannot interfere with the specifications of the Contracting Authority. you just have to bid on what has been offered and do a Financial Analysis.

The review panel does not support the reasonableness of the review expert who does not evaluate and argue such a finding and does not take as a basis Annex 1 of the Tender Dossier, the CA's request for additional information to the complainant about the e-procurement platform dated 17.11.2023, as well as the complainant's response regarding this that "1, the table with the schedules of the KPSH centers - it can be seen that there are errors in the schedules of the centers, therefore we have calculated only 3 centers due to the cost, because in practice there are only 3 centers that implement night shifts: LQKMF-Main 2. QMF-4, and 3. QMF 5. While QMU in the tender file has a night shift but it has never been implemented, the same error is also in the Center Dentistry which works only from 07.00 to 15.00. We declare that we stand behind any schedule changes in the implementation of the contract and declare that our financial analysis fulfills all costs arising from this contract. Considering that some workers say that most of them want a break after the night shift, we think that our cost calculated in the financial analysis is a cost that includes all the workers who are in the night shift and in the centers where it is applied . Our analysis included all night shifts and the cost was in accordance with the tender criteria, 2. Regarding the weekends, the calculation was made in this form because the centers work in shifts from 6h and 30 min. This caused a worker not to complete 8 hours a day. Therefore, in practice, in order to reach the full rate of a shift, work is also done on weekends. By applying this method, we have made the workers reach the full weekly rate of 40 hours. This kind of calculation means that there is a lower cost of expenses and it is also in favor of the workers because since we are implementing it in practice it is more favorable for the worker. The calculation with only 3 workers for 1 weekend where there are a total of 27 weekends within the month which cover all the centers and the workers reach the weekly rate and are also compensated for the weekend days based on the law." Therefore, the assessment, the examination and the comparison of the tenders must be done in accordance with the requirements of the Tender Dossier, since the CA has requested the financial analysis in the selection criteria. Evidence No. 2 2. a), b) To be proven with an original statement signed and sealed by the EO as well as the detailed financial analysis (original). This analysis, which must be compiled in accordance with the technical specification, including no. of workers, their wages, calculation of hours, etc. Based on the response of the complaining EO to the CA's request, the Review Panel assesses that this response is rightly not accepted by the CA. Each complaining EO in order to be responsible must bid in accordance with the requirements of the Tender Dossier, if eventually the Tender File contains errors, then the EO must not accept them as such and attack the same with a Request for Re-examination and Complaint to the PRB. At the moment of bidding, the EO undertakes to accept all the conditions and requirements of the

TD without any restrictions, this action is carried out through the Bid Submission Form, which is the main part of the Bid (this form is attached to the complainant's bid). Consequently, the EO complaining about this procurement activity is irresponsible.

b. Complaining claims of EO "Efa Dienstleistung GmbH - Branch in Kosova".

The review panel independently and objectively, conscientiously and professionally evaluated all the evidence of the case. The argumentation in the expert's report is quite detailed, comprehensible and completely based on the relevant documents that refer to the procurement activity, including all the documents of the case from all parties in the procedure and supports the reasonableness and recommendation of the Reviewing Expert, without the need to the same to be repeated once more. The Review Panel also took as a basis the reasons for the elimination of the complaining EO in the notification on the CA's decision as well as the CA's response. After examining and analyzing the case documents, the review panel clarified that the procurement activity was canceled due to the absence of irresponsible offers and that in this case the complaining EO failed to argue with convincing evidence that it is responsible for this procurement activity.

Conclusion

Therefore, the Review Panel decides to give the right to the CA and to leave in force the decision of the CA, this decision which was issued by an evaluation commission which is supposed to be professional and also responsible according to article 59.1 cited all the members of the Commission Appraisers take full individual responsibility for the evaluation of the offer. The Review Panel emphasizes that each contracting authority (at the central and local level) enjoys autonomy in procurement planning (Article 8) and in determining the needs that must be met (Article 9), of course in accordance with the budget capacity and that the CA in the specific case has have the right to also decide on the cancellation of the procurement activity based on article 24 paragraph 2 of the LPP cited "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in full compliance with this law".

The return of a procurement activity without a contested legal basis in the re-evaluation is not in harmony with Article 1 of the LPP, according to which, the purpose of this Law is, among others, cited: "...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, characterized by no -discrimination and with a high degree of transparency and to be in accordance with the procedural and essential requirements of this law".

Therefore, acting on the basis of the basic principles of the procurement review procedures, which, among other things, are specifically sanctioned by the provision of Article 104 of the LPP and at the same time analyzing the documents of this case in relation to the facts and circumstances of described as above, and especially paying due attention to the nature and purpose of the complaining claims, the Review Panel took into consideration all the statements of the complainant, the acts and actions taken by the CA, the review expert's report and analyzed

them with take care of all the papers of this matter and considers that the complaining assertion of the complaining EO is unfounded and rejected, as given in the findings of the panel.

In making this decision, the review panel also took into consideration the requirements of Article 104, paragraph 4 of the LPP, according to the PRB, it must act as quickly as possible, act proportionally to the alleged violation or the matter for which the complaint is filed, and take as a basis the possible consequences of the actions or measures on all interests that may be harmed, including the public interest.

Therefore, acting in accordance with the powers cited above and Article 104 paragraph 4 in relation to paragraph 1, according to which the procurement review procedure will be implemented and carried out in a fast, fair and non-discriminatory manner, which has aimed at the legal and effective resolution of the case, as well as referring to article 117 of the LPP, and in the evidence presented above, the Review Panel 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 – **MUNICIPAL ASSEMBLY OF PRISHTINA;**

1x1 EO – **Schafberger Jr. GmbH – branch in Kosova;**

1x1 EO - **Efa Dienstleistung GmbH - branch in Kosova;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.