



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

Psh. No.553/24
563/24

The Review Panel, appointed by the President of the Procurement Review Body (PRB), based on Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova (Law No. 04/L-042, supplemented and amended by Law 04/L-237, Law 05/L-068, supplemented and amended by Law 05/L-092) composed of Batisha Ibrahim–President, Vedat Poterqoi and Kimete Gashi Brajshori–members of the Panel, deciding upon the complaint of EO “Sabit Makiqi” B.I, as well as the complaint of the (EO) “Albkos Safety” SH.P.K, against the Decision to contract award or a design competition related to the procurement activity "Supply of various firefighting and rescue equipment" with procurement number 21432700-23-14366-1-1-1, initiated by the contracting authority (CA) - Emergency Management Agency, on the 04/09/2024, has issued this:

DECISION

1. Approved, as partly grounded the complaint of EO “Sabit Makiqi” B.I with no 2024/0553 of the 26/06/2024, as well the complaint of EO “Albkos Safety” SH.P.K with no 2024/0563 of the 27/06/2024, regarding the procurement activity “Supply of various firefighting and rescue equipment" with procurement number 21432700-23-14366-1-1-1, initiated by the contracting authority (CA) - Emergency Management Agency, while the procurement activity is canceled in its entirety.
2. Within 10 days, the CA must inform the PRB of all actions taken regarding this procurement activity, otherwise, the PRB has the right to take measures against the CA for non-compliance with the decision as provided for in the provisions of Article 131 of the LPP.
3. The funds deposited in the name of the tariff fee for filing the complaint are returned to the account of EO “Sabit Makiqi” B.I. with no. 2024/0553, dated 26/06/2024, as well as the complaint of EO “Albkos Safety” SH.P. K with no. 2024/0563.

REASONING

-Procedural facts and circumstances –

The Emergency Management Agency in the capacity of the Contracting Authority on 16.02.2024 has published the Contract Notice B05 regarding the procurement activity entitled “Supply of various firefighting and rescue equipment” with procurement number 21432700-23-14366-1-1-1.

The contracting authority has implemented an open procedure, contract type: Supply, medium value, total estimated contract value: 3,793,547.00 euro.

On the 07.06.2024, the contract award notice was published, where the CA awarded the contract to the Group of Economic Operators “A and E Sh.P.K.; N.T.Sh. M.S. Medicom; “Tekniku Sh.P.K”.

Unsatisfied with the decision of the CA on the 12.06.2024, the economic operator “Albkos Safety Sh.P.K. has submitted a request for reconsideration against the award decision. Also, the economic operator “Sabit Makiqi” B.I on 12.06.2024 has submitted a request for reconsideration to the CA. On the 18.06.2024, the CA has rejected the requests for reconsideration of the above-mentioned EOs.

Against the decision cited above on the 26.06.2024 the economic operator “Sabit Makiqi” B.I SH.P.K has filed at the PRB complaint no. 2024/0553 (Protocol No.).

Against the decision cited above on the 27.06.2024 the economic operator “Albkos Safety” SH.P.K has filed at the PRB complaint no. 2024/0563 (Protocol No.).

For this procurement activity, the PRB has also issued the decision with numbers PSH 0222/2024 and 0224/2024.

On the stage of preliminary review

(a) The PRB has found that the complaint in the present case was filed in accordance with Article 109.1 of the LPP, according to which any interested party may file a complaint against any decision taken by the CA after the implementation of the preliminary procedure for the resolution of disputes, as provided for in Article 108/A of this Law. Since the complainant has the status of an interested party as defined in Article 105, paragraph 1, in conjunction with Article 4, paragraph 1.26 of the LPP, and the complaint contains the essential elements provided for in Article 111 of the cited Law, which means that the same meets the conditions in terms of the cited provisions and falls under the competences of this body in terms of Article 105 of the LPP, in conjunction with Article 9 of the Rules of Procedure of the PRB. The Review Panel analyzed all the documents of this case, including all the acts and/or actions of the parties, as described above (facts and procedural circumstances), there are no elements for preventing a conflict of interest, as required in terms of Article 11 of the Rules of Procedure of the PRB, in conjunction with paragraph 1.75 of Article 4 of the LPP and at the same time analyzed all the documents of this case, including all the acts and actions of the parties and considered that there is no need to convene a hearing with the parties as provided for in paragraph 1 of Article 24 of the Rules of Procedure of the PRB.

(b) Based on the actions described above, the PRB has appointed the Review Panel pursuant to Article 111, paragraph 5 (ii) of the LPP and has engaged the review expert in accordance with Article 111, paragraph 5 (i) of the LPP, with the task of conducting the initial review of the file and the complaint claims, regarding this procurement activity, within the meaning of Article 113 and 114 of the LPP in connection with Article 17 and 19 of the cited Regulation. In this regard, on 12.07.2024 the review expert has submitted the Evaluation Report with No. 2024/0553 recommendations which are described as follows:

The complaint of the complaining EO is rejected as unfounded.

The decision of the CA shall remain in force.

In this regard, on 12.07.2024 the review expert submitted the Evaluation Report with no. 2024/0563 recommendations which are described as follows:

The complaint of the complaining EO is rejected as unfounded

The decision of the CA shall remain in force.

Response of the Contracting Authority to the complaining claims of the EO “Sabit Makiqi” B.I

The CA in response stated: The economic operator does not have references according to the request of the CA requested in the DT as well as the clarifications published in the e-procurement. The same has provided references to the supply of textiles and not equipment. Regarding the claim that uniforms are part of equipment, this does not hold true since uniforms are classified with AI no. 26_2012- for the uniform and symbols of professional firefighting and rescue units, while similar references are stated to be in accordance with AI 08-2019 where Annex 3 of this instruction states very clearly which equipment is similar. This AI norm also mentions fire uniforms that are part of the equipment since Firefighters during normal interventions wear the intervention uniform along with equipment but the uniform is not classified as equipment. It is very clearly observed that the complaining economic operator during the request for review has not managed to object and prove in a proper, accurate and legal manner even one of its elimination points by approving and confirming all the points detailed by the CA in the standard elimination letter.

We also emphasize that the catalog offered by the economic operator is a made-up catalog and is not a catalog offered by the manufacturer since the same does not appear on the manufacturer's website according to the authorization. This is also confirmed by the fact that for the purpose of evaluating the bid in accordance with Article 59 and the conditions and criteria set out in the tender dossier, the CA has requested clarification as follows from the EO. Therefore, based on the request of the CA for clarification where we have requested the catalog of the manufacturers Makita and Bosh as well as their links for the purpose of verification, the EO has not provided us with these catalogs or the requested links and this proves that the EO has not provided the original catalog of the manufacturer and the same is irresponsible. Regarding the Complaint allegation that the recommended GOE does not meet the criteria of the references, it is not valid and is not based. Regarding the Complaint no. 7 Pos.3. Portable Fire Engine Pump, and pos.67, Combined Battery Hydraulic Equipment. The contracting authority has published additional

clarifications in the procurement system where for these two items it has emphasized, EOs may bid with equivalent products that meet the minimum technical criteria or better than those specified in Annex no.1 of the TD, Therefore, the recommended GOE meet the requirements specified for these two items and the Complaininf claim is unfounded.

Response to the complaining claim no. 8 portable blower for extinguishing field - mountain fires and no. 107 Starter & Battery Charger The item with serial number 85, is Portable Blower for Extinguishing Field - Mountain Fires the group of economic operators has not bid with the manufacturer MSA for this item as it has claimed but has bid with the manufacturer Duges for which it has offered Authorization and catalog according to the request of the tender dossier the same authorization and catalog has been confirmed by clarifications also by the CA and we conclude that your claim is unfounded. Also the same have presented the authorization and catalog in accordance with the requirements of the TD also for the item no. 107 Starter & Battery Charger and that the complaint claim is unfounded.

The claims of the complaining economic operator "Sabit Makiqi" B.I. in complaint No. 553/24 are presented as follows:

First claim (I): The complainant claims that: "According to the standard letter dated 07.06.2024, you as the CA, as a justification for the elimination, emphasize that our company is irresponsible since we do not meet the requirements of the economic and financial situation as well as the technical and professional capacity, on the other hand, as a justification for the elimination of our offer, you describe that position 13, respectively the applied product - "continuous ladder", position 14 "Grepore ladder" and 15 "Three-part continuous ladder with rope" are not presented according to the EN 1147 standard". In the catalog presented in the offer, we as the EO have presented ladders with adequate certification, respectively GA 137 - 2007 fire ladder standard, for all positions that you as the CA, attempt to eliminate our offer as illegal. The GA 137 - 2007 certification is an adequate certification with your request and with the mandatory technical specifications, namely, it is a relevant certification of ladders dedicated to fire extinguishing and as such they should necessarily be treated as such, consequently they cover and exceed the EN 1147 standard, namely the same standard has been applied many years ago and that about 25 years ago, where you as the CA in case of lack of clarity should initially address the manufacturer or even us as the bidder to treat this issue as defined in Article 59 and 72 of the LPP. So the GA - 137-2007 standard is a qualifying standard, in relation to the EN 1147 standard, namely, it specifies the terms and definitions, classification, type, parameters, technical requirements, test methods, inspection rules, packaging and their storage. So this standard applies to firefighters in fire extinguishing, rescue and their use, a standard which meets the qualification requirement and is also dedicated to the European Community, consequently we as EO have selected the product certification in the catalog and the same certification is now applied.

Second claim (II): The complainant claims that: "Regarding other justifications for elimination, regarding position no. 36 "Set for pipe repair 52 - 110 MM set of straps or bandages", in the offer we have presented the catalog and the product as requested by you as the CA, respectively you as the CA, have referred to the photo of the equipment and have justified the attempt to

eliminate our offer. For product no. 36 the equipment as a whole has the description of the product containing all the parts, applied, and the set presented by us, in addition to the nails and rivet pliers, also contains the rest of the internal part with all the products specified as you have requested in Annex 1 of the Tender Dossier from the English language. We, as EO, possess this set as a sample in our stock and we have facts and evidence through which you, as the CA, respectively the bid evaluation commission, should be confronted with such unfounded and illegal reasoning."

Third claim (III): The complainant claims that: "You have acted similarly with the justification for the elimination of our bid regarding products no. 38 "Bridge for Pipe Protection", position 43 "Push-on Connector with Long Neck A", 44 "Push-on Connector with Flat Neck B", 45 "Push-on Connector with Long Neck C", and 46 "Push-on Connector with Long Neck D". For all these products, you as the Contracting Authority, namely the members of the bid evaluation committee, have emphasized that they were not presented according to the EN 1706 and EN 586 standards, namely the product and the "pipe bridge" has no folds, which is completely unfounded in relation to the factual situation and our bid, namely the products presented in our catalogs! All of these contested products meet all mandatory technical specifications as defined in Annex 1 of the TD, consequently they contain all the applied standards and certifications, therefore the abuse of public money and the conclusion of an illegal contract, possibly with a price more than half a million higher, should remain only in the trial, specifically the members of the commission.

Fourth claim (IV): The complainant claims that: "Similarly, illegal actions were taken in relation to position 66 "Multifunctional Fan", position no. 70 "Glass management equipment", 76 "Circular saw for cutting metal with battery", 80 "Set of lights for hazard warning", 82 "Common lamp", 87 "Metal broom for extinguishing field fires", 88 "Kamez - Sopate", 90 - Sepate - Mali", 100m "Set of electrical tools", 103 "5.0 KVA generator" and 107 "Starter & battery charger". All products offered by us as the complaining EO meet all mandatory technical specifications in relation to your requirements specified in the tender dossier, respectively in Annex 1 of the tender dossier. We, as an EO, have bid for this procurement procedure based on the technical specifications created and published in English. The translation published in Albanian does not correspond to the requirements and products, consequently, as the dominant language legally prevails, English language, regardless of the fact that you, as the CA, have specified the Albanian language as dominant in the dossier, respectively we, as an EO, have bid for each product according to the mandatory technical specifications.

Fifth claim (V): The complainant claims that: "Regarding the last justification for the elimination of our bid, you as the CA - namely the bid evaluation commission - have revealed and openly shown the remaining favoritism only in attempts, since we as the EO will report all legal violations to other law enforcement instances and each member must individually bear responsibility for open favoritism and attempts to abuse public finances. You as CA through the clarification published on the procurement platform dated 17.05.2024, have defined and allowed references of a similar nature related to the field of firefighting according to Administrative Instruction No. 08/2019 of the Ministry of Internal Affairs. We possess references for the implementation of projects issued by your own contracting authority, namely we have

implemented contracts for the supply of protective clothing for firefighting, helmets, boots, gloves, etc., so all these products refer to the administrative instruction described by you as CA.

Sixth claim (VI): The complainant claims that: "Based on the access to the documentation of the agreement submitted by GO "A and E Shpk MS Medicom, Tekniku shpk, it is seen that the leader of the Group has been assigned to "A and E shpk" that this EO has not fulfilled the required condition of the tender dossier that must have 60% references that fall to € 420,000.00. Also, the company MS Medicom does not fulfill the required condition of references since the same was issued on 05.03.2023 while the contract that was presented with CA "Trepça sha" with the same title was signed on 30.11.2023, where such a contract is still under implementation (framework contract) respectively not yet implemented, while through the qualifying request, you as the CA have requested completed - completed projects. The other reference presented on behalf of "Medicom", contracted with the CA AME for the supply of breathing apparatus and air cylinders for members of the Emergency Response Unit with no. Proc. 21432700-22-3555-111, is a three-year contract and was signed on 07.02.2023 and this contract is not yet completed and based on the LPP and the Public Procurement Regulation, as such cannot be accepted with only one completed situation".

Seventh claim (VII): The complainant claims that: "Abuse of the factual situation, legal provisions and public money is manifested by you as the CA - EMA, respectively the bid evaluation commission, in the case when an attempt is made to conclude a contract with an irresponsible EO where the same for each mandatory technical specification has offered and presented products in contradiction to those requested; Product example no. 3 - Portable fire engine pump, you as the CA have requested - Ratio with a value of "2.08:1", the same has offered with no ratio according to the values 2.17:1 Position 23 Evacuation Chair (for stairs) for the same equipment you have requested that the same must have a minimum of 3 safety belts, the same has only 2 belts. Equipment no. 67 - Hydraulic equipment combined with batteries, you as CA, in Annex 1 have requested that it have a weight of less than 19.5 KG, while the EO has offered the same equipment with a weight of 20.4 kg and many other parameters that are missing.

Eighth claim (VIII): The complainant claims that: "In the catalogs presented in the bid of the group of EOs that you, the CA, have recommended for contract award, there are multiple interferences and you, as the CA, have allowed and have further procedures, and you have even recommended for contract award an offer that has physical interferences, respectively, may have and you have not confirmed such a thing. In the offer of the same EO, they presented catalogs of different manufacturers, on one side the catalog of the manufacturer "MSA" the Safety Company was presented, where in the same catalog there seems to be interference in physical form and in the same catalogs the specifications of certain manufacturers were taken and each product was modified.

Ninth claim (IX): The complainant claims that: "So as in the qualifying request, the mandatory technical specifications and in the response to the questions it is emphasized that equivalent standards must be presented and our company Sabit Makiqi B.I has submitted equivalent standards as per the requirements of Annex 1. The CA in the reasons for the elimination that it

sent us do not stand since we have sent the specifications in English to the manufacturer and we have bid according to the technical specifications in English. The CA has manipulated the technical specifications, which we have been misled by and we have not noticed that the technical specifications have changed. We also did not have the right to translate the technical specifications, but just as the technical specifications were in the English tender dossier, we have taken them and sent them to our manufacturers/partners”.

Tenth claim (X): The complainant claims that: Also the reasons for the elimination for the technical specifications of items 89 have changed the technical specifications from Albanian to English and we as EO do not have the right to translate the technical specifications, we as EO have sent the manufacturers the technical specifications in English and we have not seen the specification in Albanian. The duty under the law of the CA is to ensure that the technical specifications have been prepared in accordance with Article 29 of the LPP and in accordance with Article 19 of the LPP. The Procurement Official in cooperation with the Requesting Unit must ensure that the technical specifications are the same in both languages and are clear so as not to limit competition. The tender dossier will be well prepared, as the tender dossier is the basic material on the basis of which the economic operators will submit the tender. The tender dossier will be prepared in such a way that, as a rule of thumb - there are no major changes/differences in the technical specifications, such as in this case, gross errors. Also, the CA should keep in mind, when preparing the tender dossier, that there should be no communications, discussions or negotiations between the contracting authority and the EO, as we have serious doubts here, as how to write technical specifications on Google sends a link to Amazon and all the photos and technical specifications match the technical specifications of the EO recommended for the Medicom contract. <https://lincos.shop/en/product/21143363-829343>”.

Eleventh claim (XI): The complainant claims that: “Regarding the elimination for the catalog here, the CA shows a tendency of intentional elimination where as a justification in rejecting the request for reconsideration it says that the catalog is fabricated and does not belong to the manufacturer since it is not found on the manufacturer's website, while as a criterion it leaves the authorization as requested and does not meet the catalog criteria. As can be seen, a catalog with sufficient details for evaluation was requested. Based on the 120 items that the CA requested, there is no catalog with so many items and with these items, no manufacturer, nor the recommended company, has a catalog with items and as such it has eliminated our company. Also, regarding the reason for the elimination for authorization, this does not hold because the CA itself in the clarifying questions has stated that if a manufacturer has an agreement with other manufacturers, then we as the CA will accept it. So we have submitted the agreements and the CA has also requested clarification from us whether the manufacturers have agreements and we have sent you the agreements.

Response of the Contracting Authority to the complaining claims of the EO "Albkos Safety SH.P.K"

Response to claim (I): “You have failed to offer the requested product according to the tender dossier no. 38, Pipe Protection Bridge in accordance with the technical specifications and also in your complaint claim you have tried to cover this with a reference to the English translation of

the tender dossier, even though your offer was in Albanian. The tender dossier required “Non-Foldable”. This complaining claim of yours is totally wrong for the following reasons: 1. You do not mention that the English version of the technical specifications states “Stackable to Save Space”, but you stop only at the word “Stackable”, thus losing the meaning of the word with the tendency The bridge you have offered does not fold one on top of the other 3. The word “Stackable” that you refer to in the English translation of the tender dossier, based on the Britannica English Dictionary has this explanation: Britannica Dictionary definition of STACKABLE: able to be arranged in a stack. 4. So in the Albanian translation the word Stackable is translated as being able to be folded on a shelf. 5. In the case of the Pipe Protection Bridge and in the clarification of the technical specifications where it is said to be foldable one on top of the other, it is thought as in the following photo: So it should be foldable and one on top of the other when opened for work and done as follows: The reason for folding is to place it on a shelf so as not to take up space in the Fire Truck, as in the photo shown - so Stackable: You have not offered the requested product in your bid, you have not offered a foldable product that can be folded on a shelf but you have offered a one-piece product that cannot be put on a shelf or folded, so which is not “Stackable to Save Space”. Also for this device of the manufacturer Donges GmbH Co KG you do not have the support of the manufacturer according to the declaration and authorization. It is also very clearly stated in the tender dossier that in case of any discrepancy between the language versions, the [Albanian] language version will prevail.

Response to claim (II): During the evaluation, comparison and examination phase of the offers, it was seen that for 6 items you submitted offers with the Authorization of the manufacturer Donges GmbH Co. KG from Germany, also with the same authorization from the manufacturer, Donges GmbH Co. KG., the economic operator Tekniku SHPK (in consortium with A and E SHPK and NTSH.Medicom) has also offered.

Response to claim (III): Regarding the complaint claim no. 7 Pos.3. Portable fire engine pump, and pos.67, Combined battery hydraulic equipment, the contracting authority has published additional clarifications in the procurement system where for these two items it has emphasized, "EOs may bid with equivalent products that meet the minimum technical criteria or better than those specified in Annex no. 1 of the DT", Therefore, the recommended EO's Gr meet the requirements specified for these two items and the complaint claim is unfounded. Response to the complaint claim no. 8 Portable blower for extinguishing field and mountain fires and no. 107 Starter & Battery Charger The item with serial number 85 is a portable blower for extinguishing field and mountain fires. The group of economic operators did not bid with the manufacturer MSA for this item as you claimed, but did bid with the manufacturer Donges for which it offered an Authorization and catalog according to the request of the tender dossier. The same authorization and catalog were confirmed by the CA through clarifications and we conclude that your claim is unfounded. The same have also presented the authorization and catalog in accordance with the requirements of the TD for item no. 107 Starter & battery charger and that the complaining claim is unfounded.

The claims of the complaining economic operator “Albkos Safety SH.P.K. in complaint No. 563/24 are presented as follows:

First claim (I): The complainant claims that: “The CA has stated that in position 38. Bridge for pipe protection, we have not met the technical criteria set out in the tender dossier. The CA’s finding is incorrect because it is completely the opposite. We have met all those technical requirements, unlike the group of EOs proposed to be awarded the contract. As can be seen from the technical specification, the CA has requested a “foldable one on top of the other” bridge, which in English it has translated as “stackable”. That is, we have offered exactly the product that meets the required specifications, which the CA itself emphasizes but not coincidentally interprets incorrectly, while the product in the illustrative photo that it has presented as accurate, is not in accordance with the technical specifications required by the tender dossier. Our product has reflective stripes, even one more than the one in the illustrative photo of the CA, which can also be seen in the catalog that we submitted with the bid, where it says in English “With reflective stripes”. The bridge has two openings, for pipes B, C or D, while the symbols B, C and D represent the dimensions of the pipes: B=75mm (3”), C=52 mm (2”) and D=25 mm (1”)”.

Second claim (II): The complainant claims that: “The contracting authority further justified our cancellation from the procurement activity as follows: “Although you did not offer this equipment in accordance with the technical specification based on the notification of the manufacturer of this equipment Donges, you do not have the support and authorization of this manufacturer of this equipment”, while as evidence you have sent the email communications that you made with the distributors in question Albaelettrica and Donges GmbH & Co. KG. The contracting authority, by this action, i.e. when it requested the distributors in question to declare who they support for this procurement activity, has committed serious violations of the LPP. We can take into account what the CA's intention was with this illegal action, but it is known that the participation of one or more economic operators with products and authorizations of a certain manufacturer has never been prohibited by the LPP and is not yet, while Articles 99, 1, 7, 59 of the LPP, which it mentioned as the legal basis for this action, are incorrect, because none of these articles regulate this issue. In fact, the CA is the one who has acted in violation of all these articles, with the exception of article 99 which defines the functions and powers of the PRB”.

“The CA, instead of requesting from the distributors in question the verification of the catalogs offered in this tender by the consortium member Tekniku Sh.p.k, for whom there is a well-founded suspicion of having falsified them, has chosen to take an illegal step, setting a new standard of blackmail and raising it from the local to the international level. Despite the fact that in the request for reconsideration we raised this complaint claim, which we have well documented, in which case the application of paragraph 2 of Article 99 cited above would come into play, the CA has not addressed it at all. By acting in this way, the contracting authority, the Emergency Management Agency, has given another clear indication that it is determined to award the contract to the group of economic operators, who, in addition to being irresponsible and having forged documents, have submitted a bid that is around EUR 480,000.00 more expensive than our bid. We possess valid authorizations from both Alba Electtrica SH.P.K. and DONGES GmbH Co KG, which we have regularly obtained from the distributors in question, who have not officially notified us that they have withdrawn them, and for this we have notified the CA on the occasion of the request for reconsideration. We have requested from DONGES GmbH Co KG to declare whether the authorization issued by this company is still valid and if not to notify us of the reasons for the withdrawal.

Third claim (III): The complainant claims that: “The CA, in addition to the fact that in violation of the LPP, has requested from the distributors to determine which economic operator they support in this procurement activity, has provided the distributor DONGES GmbH Co KG with information regarding the number of products with which each economic operator has bid. The CA has specified that Tekniku Sh.p.k. has bid with 30 plus products, while Albkos Safety Sh.p.k. has bid with 6 products. With this action, the contracting authority has given clear indications as to which economic operator it intends to declare the winner and in this way it intended to influence the distributor DONGES GmbH Co KG to be determined as the EO Tekniku Sh.p.k., which it has achieved. Both we and the group of EO proposed to be declared the winner have bid with several products from the same manufacturers. For example, in position 20 - open cushion for rescue from heights, both parties have bid with a product from the manufacturer losberger (<https://www.losbergerdeboer.com/global/products-services/rapid-deploymentspace/rescue-cushions/>). In position 80 - Sequential hazard warning light set (<https://nightsearcher.co.uk/en/products/road-hazard-warning-lights/NSPULSARNAVSTAR.htm>) and in position 82 - Common lamp/Spotlight (<https://nightsearcher.com/en/products/full-range/solaris-pro.html>), we have bid with products from the manufacturer nightsearcher. However, the contracting authority did not act the same as it did in the case of DONGES GmbH Co KG and Albaelettrica Kosova

SH.P.K.. The CA, initially, should have established whether the EO Tekniku Sh.p.k. as part of the consortium, has a valid authorization from the manufacturer Losberger and NightSeracher, taking into account the manipulations with catalogs that it presented as if they were from DONGES GmbH Co KG or to establish whether the distributor has authorizations from the manufacturers in question. If it were established that the manufacturers in question possess authorizations, then the CA should have acted the same as in the two previous cases, and asked who they support in this procurement activity, otherwise, if they do not possess authorizations, then they should have been eliminated from the further procurement activity for lack of authorization.

Claim four (IV): The complainant claims that: According to the CA, for the item under pos. 82. Common Lamp / Floodlight, it has found these deficiencies. The contracting authority, in order to be more convincing in its irresponsible actions, has also published an “illustrative” photograph of the product with which EO Tekniku Sh.p.k. has bid (as part of the winning EO group). However, this finding of the contracting authority is incorrect, and through a comparison of the technical specifications requested by the CA and those of the products with which EO Tekniku and Albkos Safety have offered, the opposite will be proven. In the table below, in column (1) are presented the technical specifications required by the CA, in column (2) the technical specifications of the product with which EO Tekniku Sh.p.k. has bid, while in column (3) the technical specifications of the product with which EO Albkos Safety has bid. The economic EO has submitted a catalog with the bid, the first page of which it has designed itself, based on the product description published on the website of DONGES GmbH Co KG: <https://shop.doengesrs.de/en/201372/nightsearcher-rechargeable-lighting-system-solarix-pro-x-36-ah> The rest of the catalog is a combination of catalogs of the manufacturer NightSearcher. Exhibit 14: Catalog submitted by EO Tekniku Sh.p.k

Document:14_Poz_82_katalogu_i_Teknikut.pdf Exhibit 15: Catalog submitted by EO Albkos Safety Sh.p.k. Document:15_Poz_82_katalogu_i_Albkos.pdf According to the article number 201372 of the supplier DONGES GmbH Co KG, it concerns the product Solaris Pro-X with no. NSSOLARISPRO-X of the manufacturer NightSearcher, whose original data can be found at linkuneprodhesit NightSearcher:

https://api.nightsearcher.com/uploads/nswbFile/1/nssolarispro_x-7d157.pdf. From the comparison of technical data, it was found that the product with which the EO Tekniku SH.P.K. has bid does not meet the minimum technical requirements specified in the tender dossier. The EO does not possess or has not submitted the documents required in the tender dossier, as follows: does not possess an authorization from the manufacturer (which the manufacturer has confirmed - see evidence 13); has not submitted a guarantee statement from the manufacturer; has not submitted a certificate or declaration of conformity. So, as seen from the above comparison of technical data, it turns out that the CA's finding is incorrect. The product we have bid with meets the required technical criteria, while that of the EO Tekniku does not meet them.

Fifth claim (V): The complainant claims that: CA, further stated "The economic operator has not submitted catalogs nor technical specifications for the following items. The CA has also applied double standards in this case. While it has unjustly cancelled us from the procurement activity, due to the lack of catalogs, it has not acted similarly towards the group of EOs proposed to be awarded a contract, despite the fact that for at least one item it has not submitted a catalog (e.g. for the product in position 107).

Sixth claim (VI): The complainant claims that: "From the analysis of the catalogs submitted by EO Tekniku Sh.p.k. on behalf of the group of economic EOs proposed to be awarded the contract, we have found that he designed them himself and presented them as if they were from DONGES GmbH Co KG. These are mainly products that he obtained from the internet from various manufacturers and presented them as if they were from this company. When designing these catalogs, he falsified a considerable part of the technical data in such a way that they would conform to the technical specifications required in Annex 1 of the tender dossier. For some of the products of other manufacturers which it has presented as if they were from DONGES GmbH Co KG, there is no evidence whether the EO possesses an authorization from the manufacturer or an authorization between the distributor DONGES GmbH Co KG and the manufacturers, as required in the tender dossier, therefore it should be verified whether it possesses them. There is a well-founded suspicion that the EO has manipulated the catalogs mainly for two reasons: In order to adapt the technical criteria to those required by the tender dossier, due to the lack of documentation required by the EA (authorizations, declarations, etc.) Since we were not allowed access to the manufacturer's authorizations, this remains to be ascertained by the review expert. Unfortunately, the CA's action was in violation of the LPP, which blackmailed certain foreign distributors (Germany and Albania), in order to convince them to withdraw the authorizations that we have received in a regular manner, in order to favor the group of economic operators A and E SH.P.K.; N.T.Sh. M.S.Medicom; Tekniku SH.P.K.. Such an action has never been heard of in Kosovo, and represents a new standard of blackmail, which the CA has raised from the local to the international level. However, this blackmail tactic has not been applied or has not managed to apply to all foreign distributors or manufacturers, but even in this case it has used

double standards. Double standards, in violation of Article 7, have also been applied through incorrect linguistic interpretations or inventions of non-existent deficiencies with the aim of canceling Albkos Safety from the procurement activity, and ignoring the numerous deficiencies of the EO Tekniku Sh.p.k. which, as a member of the consortium, has fabricated documents and falsified data with the beginning of the illegal benefit. The worst thing is, this group of EOs, besides being irresponsible, has a price about 480,000 EUR higher. Based on the above facts, we request the PRB to cancel the notification of our cancellation from the procurement activity and the notification of contract award to the group of EOs of A and E SH.P.K.; N.T.SH. M.S.Medicom;”Tekniku SH.P.K., to return the case for reconsideration and order the CA to act in accordance with the LPP”.

- Administration and evaluation of evidence -

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

Based on Article 111 paragraph 5 in connection with Articles 113 and 114 of the LPP, the Review Panel on 28/06/2024 authorized the review expert to conduct the initial review of the file and claims according to the complaint with no. 553/2024, which was submitted on 12/07/2024

Regarding the claims of EO “Sabit Makiqi” B.I, the review expert through report no. 2024/553 has assessed as follows:

After the administration and review of the case files, we clarify that the complainant in the request for Re-examination has submitted 8 complaint claims, while in the complaint submitted to the PRB, he has changed/added the complaint claims, thereby increasing the number of complaint claims. It is worth noting that the change in the complaint claims is in violation of Article 64.2 of Regulation No. 001/2022 on Public Procurement. 64.2 The complaint shall be prepared and submitted to the Procurement Review Body through the electronic procurement system, the dedicated function “Complaints”. The complaint claims must be the same as those presented in the request for review with the Contracting Authority. In the expertise, we will present the claims as they were in the Request for Reconsideration.

First finding (I): The technical expert, after administering the documentation, the DT's requirements on the technical specifications, namely the requirements for these devices in Annex 1, emphasizes that regarding these devices for positions 13, 14 and 15, all of these are required to be certified according to the EN 1147 standard. However, after examining the offer of the complaining EO, it is seen that the complaining EO has offered with devices that are not certified with the required European standard as required by DIN EN 1147, according to which the devices used by firefighters are certified. However, it has presented equipment that is certified according to the Chinese standard GA 137-2007, which is used in the safety equipment industry, in this case fire extinguishers. So, here we are dealing with two standards of the same nature but validated by different accreditation bodies. So, the complaining EO has not presented equipment

that is certified with the required standard, although the EO had the opportunity at the time of the tender to ask questions for additional clarifications regarding this issue. Therefore, based on the clarifications provided above, the technical expert believes that the complaining EO's complaint claim against the CA's decision in this matter is unfounded.

Second finding (II): The technical expert, after administering the documentation, the DT's requests on the technical specifications, namely Annex 1 regarding position 36, emphasizes that a set for the rehabilitation of pipes 52-110MM, a set of belts or bandages for rehabilitation during intervention in pipes, is requested, so according to the DT the request is to offer belts or bandages with certain dimensions: 2 pieces x for push pipe - 75 mm, width of the rehabilitation bandage 70mm, 2 pieces x for push pipe - 52 mm, width of the rehabilitation bandage 70mm, 2 pieces x for push pipe - 25 mm, width of the rehabilitation bandage 70mm. However, after examining the offer of the complaining EO, it is seen that the complaining EO regarding this position, the EO has presented equipment that can be used for pipe repair, but not as per the DT's request, so it has presented equipment that does not correspond to the requirements of position 36, where a set of belts or bandages is requested. Therefore, regarding this issue, the technical expert believes that the complaining EO's complaint claim against the CA's decision in this matter is unfounded.

Third finding (III): The technical expert, after administering the documentation and requirements of the DT on the technical specifications, namely Annex 1, regarding: Position 66: Emphasizes that a multifunctional fan is required for smoke removal, light foam and water mist generation. Whereas, the complaining EO, in accordance with the catalog presented in its bid regarding this position (see document Fire-Fighting Equipment Catalog-2024.5.28, page 79), has offered equipment that does not meet the requirements of the DT, since it has a larger air outlet diameter than required, the maximum dimensions of the equipment are larger than required and is not certified according to the ISO5801 standard regarding the effective air flow rate. But the offered equipment meets the Chinese standard for portable fire smoke ventilation (GB 27901-2011 <https://www.chinesestandard.net/PDF/English.aspx/GB27901-2011>). Therefore, from the explanations given above regarding this position, the technical expert believes that the complaining EO's complaint claim against the CA's decision is unfounded.

Position 70: Emphasizes that Equipment for managing windows is required. While the complaining EO conforms to the catalog presented in its bid regarding this position (see document

Catalog Fire-Fighting Equipment-2024.5.28, page 73) the offered equipment meets the requirements of the DT. So, the equipment conforms to the data from the catalog (page 73) contains protective glasses (1 x protective goggles) and other requirements according to the characteristics in the DT. Therefore, from the explanations given above regarding this position, the technical expert believes that the complaining EO complaining claim against the CA decision is unfounded.

Position 76: Emphasizes that a circular saw for cutting metal with a battery is required. While the complaining EO, in accordance with the catalog presented in its bid regarding this position (see

the document Fire-Fighting Equipment Catalog-2024.5.28, page 85), the offered device meets almost all the requirements of the DT, with the exception of the number of rotations. It is required that the number of rotations without load be 6500-6600 rpm, while the offered Makita product has a number of rotations of 4200 rpm. Therefore, from the explanations given above regarding this position, the technical expert believes that the complaining EO's complaint claim against the CA's decision is unfounded.

Position 80: Emphasizes that a set of lights for warning of danger is required. While the complaining EO conforms to the catalog presented in its bid regarding this position (see document Fire-Fighting Equipment Catalog-2024.5.28, page 89) the offered equipment meets almost all the requirements of the DT, with the exception of the maximum lighting time. In the DT, no less than 72 hours is required, while the EO according to the catalog has presented equipment that has a lighting time of no less than 38 hours (see page 89, Maximum lighting time of not less than 38 hours). Therefore, from the explanations given above regarding this position, the technical expert believes that the complaining EO's claim against the CA's decision is unfounded.

Position 82: Emphasizes that a common lamp is required. While the complaining EO conforms to the catalog presented in its bid regarding this position (see document Fire-Fighting Equipment Catalog-2024.5.28, page 92) the equipment offered by the EO meets all the technical requirements according to the DT. Therefore, from the explanations given above regarding this position, the technical expert believes that the complaining EO's complaint claim against the CA's decision is unfounded.

Position 87: Emphasizes that a metal broom for extinguishing field fires is required. While the complaining EO, in accordance with the catalog presented in its bid regarding this position (see the document Fire-Fighting Equipment Catalog-2024.5.28, page 98), the equipment offered by the EO meets all technical requirements, but the photograph presented in the catalog does not correspond to the technical specifications since the metal threads of the product do not seem to be according to the technical descriptions 360x50mm according to DT. Therefore, from the explanations given above regarding this position, the technical expert believes that the complaining EO's complaint claim against the CA's decision is unfounded.

Position 88: Emphasizes that Kamez - Sopatë is requested. While the complaining EO conforms to the catalog presented in its bid regarding this position (see document Fire-Fighting Equipment Catalog-2024.5.28, page 99) the equipment offered by the EO meets all the technical requirements, but the photo presented in the catalog does not correspond to the technical specifications conforming to which can be requested on the manufacturer's website China's Nanjing Fire Protection Technology Co., Ltd. (tuna.com.cn), as a result the offered product does not correspond to the request in the DT. Therefore, from the explanations given above regarding this position, the technical expert believes that the complaining EO's complaint claim against the CA's decision is unfounded.

Position 89: Emphasizes that a professional axe for firefighters is required. While the complaining EO, in accordance with the catalog presented in its bid regarding this position (see

document Fire-Fighting Equipment Catalog-2024.5.28, page 100), the equipment offered by the EO meets all technical requirements, but the photograph presented in the catalog does not correspond to the technical specifications that can be requested on the manufacturer's website China's Nanjing Fire Protection Technology Co., Ltd. (tuna.com.cn), as a result, the offered product does not correspond to the request in the DT. Therefore, from the explanations given above regarding this position, the technical expert believes that the complaining EO's complaint claim against the CA's decision is unfounded.

Position 90: Emphasizes that Axe - mountain is required. While the complaining EO conforms to the catalog presented in its bid regarding this position (see document Fire-Fighting Equipment Catalog-2024.5.28, page 101) the equipment offered by the EO meets all the technical requirements, but the photo presented in the catalog does not correspond to the technical specifications since according to the photo we are dealing with a shovel not an axe. Therefore, from the explanations given above regarding this position, the technical expert believes that the complaining EO's complaint claim against the CA's decision is unfounded.

Position 100: Emphasizes that Axe - mountain is required. While the complaining EO conforms to the catalog presented in its bid regarding this position (see document Fire-Fighting Equipment Catalog-2024.5.28, page 113) the equipment offered by the EO does not meet all the technical requirements, the set of grounding equipment is missing. Therefore, from the explanations given above regarding this position, the technical expert believes that the complaining EO's complaint claim against the CA's decision is unfounded.

Position 103: Emphasizes that a 5.0 KVA Generator is required. While the complaining EO conforms to the catalog presented in its bid regarding this position (see document Fire-Fighting Equipment Catalog-2024.5.28, page 116), the equipment offered by the Chinese company SZVEDO by the EO does not correspond to the photo presented in the catalog (Mobile Generator-Products-Suzhou Weiwei Electronic Technology Co., Ltd <http://www.szvedo.com/38.html>), it lacks the wheels. Therefore, from the explanations given above regarding this position, the technical expert believes that the complaining EO's complaint claim against the CA's decision is unfounded.

Position 107: Emphasizes that Starter & Battery Charger is required. While the complaining EO conforms to the catalog presented in its bid regarding this position (see document Fire-Fighting Equipment Catalog-2024.5.28, page 120) the equipment offered by the EO does not correspond to the photo presented in the catalog, it lacks wheels and handles for easier transport. Therefore, from the explanations given above regarding this position, the technical expert believes that the complaining EO's complaint claim against the CA's decision is unfounded.

Seventh finding (VII): Regarding position 3, where a portable fire engine pump with a required weight of <30 kg was requested, while the recommended EO offered a higher weight, namely 43 kg. The technical expert, after administering the documentation and DT's requests regarding this position, emphasizes that the technical characteristics for position 3 required that the equipment have a weight of <30 kg, while the recommended EO offered equipment with a weight greater than the required, namely 43 kg according to the offered catalog (see doc. 10, Catalog_1.pdf,

page 11). Therefore, from the explanations given above regarding this position, the technical expert believes that the complaining EO's complaining claim against the CA's decision is well-founded.

Regarding position 23, where an evacuation chair (for stairs) was requested, it was requested that the equipment have at least 3 safety belts and 4 wheels, while the recommended EO has offered equipment with only 2 belts and 2 wheels. The technical expert, after administering the documentation and DT's requests regarding this position, emphasizes that in the technical characteristics for position 23, it was requested that the equipment have 3 safety belts, while the recommended EO, according to the provided catalog, has offered equipment with only two safety belts. It was requested that the equipment also have four 5" wheels which enable transport on flat surfaces, while equipment with 2 wheels was offered according to the offered catalog (see doc. 11, Catalog_2.pdf, page 20). Therefore, from the explanations given above regarding this position, the technical expert believes that the complaint claim of the complaining EO against the decision of the CA is grounded.

Regarding position 67, where a combined hydraulic device with a battery was requested, it was requested that the device have a weight of <19.5 kg, while the recommended EO offered a device weighing 20.4 kg. The technical expert, after administering the documentation and DT's requests regarding this position, emphasizes that in the technical characteristics for position 67 it was requested that the device have a weight of <19.5 kg, while the recommended EO, according to the catalog provided, offered a device with a weight greater than the requested, namely the device weighing 20.4 kg was offered (see doc. 11, Catalog_2.pdf, page 77). Therefore, from the explanations provided above regarding this position, the technical expert believes that the complaining EO's complaint claim against the CA's decision is grounded.

Eighth finding (VIII): The Technical and Review Expert clarifies that, based on the analysis of the facts/evidence documented on the electronic platform E-procurement, regarding this issue, he believes that it is the responsibility of the evaluation committee, respectively the Public Procurement Office, to verify the documentation submitted by the EO, since authorization from the manufacturer and a declaration of conformity for the products offered were requested, ensuring that the data and information presented in the product catalog are accurate and valid, therefore, he considers the claim to be unfounded.

In conclusion, the Review Expert also clarifies that I have carefully analyzed the final clarifications dated 15.05.2024 for the implementation of decision PSH 0222/2024, and 0224/2024, the clarifications made on 08.03.2024 by the CA for the interested EO where for position 3 Portable fire engine pump, position 23 Evacuation chair (for stairs), and position 67 final Combined hydraulic equipment with battery. The CA had allowed that the EO can offer with equivalent products that meet the minimum technical criteria or better specified in Annex 1 of the DT, while the evaluation will be carried out by the professional evaluation commission according to the established criteria and the LPP. The CA also in the decision to reject the request for re-examination has re-emphasized that the Group of Economic Operators recommended for the contract according to the professional commission established by the CA, in accordance with Article 59 paragraph 1 of the LPP has fulfilled the requirements of the tender

dossier and the technical specification. Therefore, in accordance with the above findings, we assess that it remains the responsibility and discretion of the Contracting Authority, the professional evaluation commission, respectively the OPP, that the evaluation of the bids be carried out in full compliance with the requirements of the tender dossier, the Final Clarifications dated 15.05.2024, the clarifications made on 08.03.2024 by the CA for interested EOs, as well as with Article 59 paragraph 1 and paragraph 4, Article 56 paragraph 3 of the LPP and Article 72 paragraph of the LPP in such a way that the products are equivalent to the minimum technical criteria or better than those specified in Annex 1 of the DT, allowing equal treatment between economic operators in order to achieve the purpose of the LPP and value for money.

The expertise report has been received by both procedural parties through the e-procurement system where the contracting authority has partially agreed with the opinion given in the expertise report while the economic operator has not agreed with the opinion given by the review expert.

Based on Article 111 paragraph 5 in connection with Articles 113 and 114 of the LPP, the Review Panel on 28.06.2024 has authorized the review expert to conduct the initial review of the file and claims according to the complaint with no. 563/2024, which was submitted on 12.07.2024.

Regarding the claims of the EO "Albkos Safety SH.P.K., the review expert through report no. 2024/563 has assessed as follows:

After the administration and review of the case files, we clarify that the complainant in the request for Re-examination during the formulation of the complaint claims has used other linguistic terminology, while in the complaint submitted to the PRB, has changed/expanded the complaint claims, in which case it is impossible to understand which complaint claim really stands. It is worth noting the fact that the change of the complaint claims is in contradiction with Article 64.2 of Regulation No. 001/2022 on Public Procurement " 64.2 The complaint shall be prepared and submitted to the Procurement Review Body through the electronic procurement system, the dedicated function "Complaints". The complaint claims must be the same as those presented in the request for review with the Contracting Authority. In the expertise, we will present the claims as they were in the Request for Review.

The Review Expert explains that, based on the analysis of the facts/evidence documented on the electronic platform E-procurement regarding the second claim of the complaining EO, the professional evaluation commission, respectively the Public Procurement Office, in accordance with Article 52, paragraph 7 of the LPP, has conducted an effective check of the information by requesting additional information from the manufacturers, since two economic operators had bid with the same manufacturer. The contracting authority, in case of doubt regarding any information submitted by the economic operator, will carry out an effective check of the information and tender documentation. Since the CA had received confirmation from the manufacturer "DONGES GmbH & Co KG" who confirmed that for the tender: "Supply with Fire Extinguishing Equipment" No. 21432700-23- 14366-1-1-1 we support Tekniku L.L.C, with our products declared in the tender documentation. Since the manufacturer had supported the

offer of the GOE recommended for the contract, and not the offer of the complaining EO, the professional evaluation commission, respectively the OPP, rejected the offer of the complaining EO as irresponsible, in which case I consider that they acted in full compliance with Article 59 paragraph 4 of the LPP. The contracting authority, in the standard letter to the eliminated tenderer and in the decision on the rejection of the request for re-examination, had clearly presented the reasons for the elimination and at the same time had attached the email (confirmation) received from the manufacturer "DONGES GmbH & Co KG" through which it is confirmed that the manufacturer for the tender in question has confirmed that they support EO Tekniku L.L.C and not the offer of the complaining EO Alba-Soft shpk, despite the fact that the complaining EO had a clear reason for the elimination, it still continued with the complaint.

Further, the Review Expert clarifies that the first claim of the complaining EO, for the position of bridges for pipe protection, is related to the second claim since the complaining EO for this position has bid with products from the manufacturer DONGES GmbH & Co KG" and according to the evidence submitted by the manufacturer itself, the complaining EO does not have the legal support from the manufacturer for this product, consequently the offer of the complaining EO is considered irresponsible and I consider that the evaluation commission has acted in accordance with Article 59 paragraph 4 of the LPP.

The Review Expert explains that based on the analysis of the facts/evidence documented in the electronic platform E-procurement regarding the third and sixth claim of the complaining EO, the professional evaluation commission, respectively the ZPP, had requested additional clarifications from the manufacturer, to obtain confirmation as to which of the bidders it supports since the tender dossier had requested that the catalog be submitted together with the declaration of confirmation. In the request made by the professional evaluation commission, respectively the ZPP, to the manufacturer DONGES GmbH & Co KG" as to which of the bidders have your support and authorization to make the supply in the tender in question, the manufacturer DONGES GmbH & Co KG" had confirmed that it provides support to Tekniku L.L.C. Proof of confirmation from the manufacturer DONGES GmbH & Co KG.

The Review Expert explains that, based on the analysis of the facts/evidence documented in the electronic platform E-procurement regarding the fifth claim. The complaining EO, with the bid, had submitted a document with number 011 titled "Declaration on technical specifications", which was stamped only by the complaining EO and that it was not a request for the tender dossier, but did not submit a catalog at all for; Item 18. Brekore, Item 25. Snake Catcher Item 90. Axe - Mountain, Item 94. Pickaxe - Simple Item 96. Shovel, Item 97. Shovel, Item 98. Hammer Set (heavy, medium, light) Item 100. Electrician's Tool Set, Item 101. Professional Mechanic's Tool Set, Item 102. Spanner Set - Open and Closed, Item 115. Rebar Scissors 75 CM.

CA, in the tender dossier had placed the following request Request. Catalog from the manufacturer together with the declaration of conformity with which it is possible to assess the technical specifications offered that accurately specifies the required equipment. Evidence; Catalog and declaration of conformity from the manufacturer with sufficient details for assessment. So, the complaining EO with the offer has not submitted a catalog for the above-mentioned positions nor technical specifications from the manufacturer but has submitted only a

declaration signed and stamped by the complaining EO itself, through which it declares that their offer is in full compliance with Annex 1 - Mandatory technical specifications of the tender dossier "Supply with Firefighting Equipment" with procurement no. 21432700-23-14366-1-1-1, published by the contracting authority Emergency Management Agency. It is worth noting that such a request was not in the tender dossier and consequently I consider that such a statement does not meet the requirement of the tender dossier as regards the catalogue.

The review expert also explains that I have analyzed the standard letter of the eliminated tenderer and the decision of the CA for the rejection of the request for reconsideration regarding the fourth claim of the complaining EO, I consider that the CA has sufficiently explained the reason for the non-fulfillment of the technical specifications by the complaining EO regarding position 82. Common lamp / Floodlight. Therefore, in accordance with the above findings, we assess that the claims of the party to the complaint are unfounded.

In conclusion, the review expert also clarifies that it remains the responsibility and discretion of the Contracting Authority, respectively the Public Procurement Office, to ensure that the evaluation of bids is carried out in full compliance with Article 59 paragraph 4 and Article 56 paragraph 3 of the Public Procurement Law and Article 72 paragraph of the Public Procurement Law in a manner that allows for equal treatment between economic operators and achieves the purpose of the Public Procurement Law and value for money.

The expertise report was received by both procedural parties through the e-procurement system where the contracting authority stated that it agrees with the opinion given in the expertise report while the economic operator did not agree with the opinion given by the review expert.

- Findings of the Review Panel -

The Review Panel, after reviewing and analyzing all documentation on the e-procurement platform, complaining claims, and responses provided by the expert on the matter, considers that the expert reports contain a priori the essential elements of such a document as provided for in the provision of Article 113 in conjunction with Article 114 of the LPP, according to which the expert is required to review all procurement documentation, including all complaint claims, and to provide the panel and all parties with an independent and professional assessment of the procurement activity and the validity of the complaining claims. However, it should be noted that the expert report is not binding on the Review Panel and that any such report is assessed and/or analyzed in the overall context of the case files, the alleged facts and any other evidence, taking into account the nature of the possible violations, the course, nature and purpose of the procurement activity. Therefore, the fact in which cases and for what, the Panel relies or not, on any report and/or any of the recommendations, is a matter of his/her independent and professional judgment, as these responsibilities are addressed in terms of Article 98, 99 in conjunction with Article 105 of the LPP.

During the administration of evidence in the procedure, the review panel encountered irregularities with which the CA initiated this procurement activity. Initially, the procedure was initiated by the CA on: 16.02.2024, in this procedure, the procedure was corrected 4 times

(05.03.2024; 12.03.2024; 15.05.2024; 20.05.2024), where mainly changes were made to the requirements specified in the tender dossier.

The review panel during the examination of the procurement activity has noticed that in the e-procurement procedure, in the file the attached documents are described according to the date: 15.05.2024 1. in the requirements: Economic and financial capacity is required: The Economic Operator must prove the total revenues for the last three years (from the date of publication of the contract notice) must be a minimum of three years, but not less than € 3,000,000.00 In the case of a consortium, the group leader must meet at least 60% of the minimum turnover, the relevant report or reports from one or more banks on the economic and financial capacity from a licensed bank.

In Technical and Professional Capacity: The Economic Operator must provide evidence that it has successfully completed deliveries of the same or similar nature during the last 3 (three) years (from the date of publication of the contract notice) with no less than €700,000.00 In the case of a consortium, the group leader must meet at least 60% of the references, the Economic Operator must provide a list of contracts during the last three years from the date of publication of the project, signed and stamped by the Economic Operator, proven by references or acceptance sheets in copies signed and stamped by the relevant Authority which must indicate the procurement or contract number. Note No contract will be considered if positive references for the performance of the works or final acceptance reports are not attached. Technical and professional capacity Catalog from the manufacturer together with a declaration of conformity with which it is possible to assess the technical specifications offered that accurately specifies the required equipment., Catalog and declarations of conformity from the manufacturer with sufficient details for assessment. Technical and professional capacity Authorization from the manufacturer.

While in the tender dossier of 17.05.2024, the 60% stipulations that the group leader must fulfill have been removed.

In the notices: B54 Standard form for correcting errors in published notices dated 15.05.2024. The CA- AME has removed it as in the corrected file dated: 17.05.2024, while on 20.05.2024, three days later in B 54 it has corrected the procedure again where in the requirements in the Economic and Financial Capacity, it has again decided that in the case of a consortium the Group Leader must meet at least 60% of the minimum turnover. However, it has not corrected the file as required by the Public Procurement Regulation, in this case, in the last correction, the CA has not improved the tender file and consequently has created confusion and uncertainty among economic operators.

So, in this specific case, the contracting authority has made fundamental changes to the conditions foreseen in the tender dossier and the contract notice for participation in this procurement activity, and in this case, the contracting authority had to act in full harmony with Article 21.7 of the Public Procurement Regulation 001/2022, which states:

21.7 point d: If any correction of the error or additional information leads to a fundamental change of the conditions provided for in the original contract notice and the PPO determines that

there is a fundamental change, the PPO must cancel the procurement activity and re-advertise it if there is still an interest in continuing with the same procurement activity.

The review panel, also based on the claim of the complaining EO that the CA did not provide all the required evidence with the justification that the recommended one provided the request for a business secretary, assessed that the last change in the tender dossier requirement related to the economic and financial capacity, where the CA requested that: ".in the case of a consortium, the group leader must meet at least 60% of the minimum turnover", the review panel noted that the EO recommended for the contract, specifically the leader appointed by agreement according to Article 71 of the LPP, where it is determined that the group leader is EO A&E Sh.p.k, the same does not meet the economic and financial capacity requirement cited above. Therefore, the leader of the group established by agreement has not submitted evidence that it covers 60% of the value required in terms of economic and financial capacity.

The review panel, relying on Article 105, paragraph 2.10, considers that the decision taken in this matter is based on the administration of all evidence available in this case and that in making decisions it always takes into account Article 6 and Article 1 of the LPP, where the purpose of this law is to ensure the most efficient, most transparent and fair way of using public funds, public resources and all other funds and resources of contracting authorities.

The PRB starts from the fact that each CA (at every level) enjoys full knowledge in the exercise of competencies and the determination of needs in harmony with the budget capacity. Therefore, starting from the above and carefully administering all the evidence attached to the documents of this case, the Review Panel has stood as in the provision of the decision taken, convinced that it has applied the appropriate solution in accordance with the impact on and the nature of the issue in the concrete case, considering it also fair and reasonable to allow the funds deposited in the name of the complaint's fees, for both complainants.

The review panel, based on the facts described above, decided to refund the appeal fee in the amount deposited by the complaining economic operator based on Article 31, paragraph 4 of the PRB's Rules of Procedure.

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

President of the Review Panel

Mrs. Batisha Ibrahim

Legal advice:

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

Decision to be submitted to:

1x1 CA – **EMERGENCY MANAGEMENT AGENCY;**

1x1 EO – **“Sabit Makiqi B.I;**

1x1 Archive of the PRB;