



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

PRB. No.1026/23

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 (Law no. 04/L-042, supplemented and amended by Law 04/L -237, Law 05/L-068, supplemented and Law 05/L-092) Vedat Poterqoi - President, Vjosa Gradinaj Mexhuani - Member and Isa Hasani - Member, deciding according to the complaint of EO “Bahri Asllani”, against the Decision for contract award or a design competition regarding with the procurement activity “400MVA transformer supply , 24 400 kV for unit B1" with procurement number KEK-23-7573-1-1-1, initiated by the contracting authority (CA) - "Kosova Energy Corporation" sh.a, on the 06/02/2024 has issued this:

DECISION

1. **Refused**, as ungrounded the complaint of “Bahri Asllani”, with no.2023/1026 of the 18/12/2023, regarding with the procurement activity “400MVA transformer supply , 24 400 kV for unit B1" with procurement number KEK-23-7573-1-1-1, initiated by the contracting authority (CA) – “Kosova Energy Corporation” sh.a.
2. It is confirmed the Notice on the Decision of the Contracting Authority - Kosova Energy Corporation" sh.a, related to the procurement activity with the data as in point 1. of the provision.
3. Ordered the confiscation of the complaint’s fee is ordered in the amount deposited by the complaining economic operator based on article 31 par. 5 of the Rules of Procedure of the PRB, while the funds go to the budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances –

On 20.07.2023, "Kosovo Energy Corporation" sh.a. in the capacity of the Contracting Authority has published the Contract Notice B05 related to the procurement activity entitled "Supply with transformer 400MVA, 24 400 kV for unit B1" with procurement number KEK-23-7573-1-1-1. While on the 20.11.2023 CA has published B58 Notice on the decision of the Contracting Authority on contract award to the "Balkan Petrol SH.P.K"

This procurement activity was developed through an open procedure with the type of supply contract and with an estimated contract value of 5,000,000.00 €.

On the 27.11.2023, EO "Bahri Asllani" submitted a request for reconsideration against the aforementioned decision of the CA. On the 06.12.2023, the Contracting Authority rejected the request for reconsideration as unfounded.

On the 18.12.2023, PRB received the complaint from EO "Bahri Asllani" with no. 1026/23 related to the activity "Supply with transformer 400MVA, 24 400 kV for unit B1" with procurement number KEK-23-7573-1-1-1.

- On the stage of preliminary review-

The Review Panel has concluded that the complaint contains all the elements defined through Article 111 of the LPP and as such was submitted within the legal term in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for resolving disputes in the sense of Article 108/A of the LPP, from the economic operator who is an interested party 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 this complaint according to Article 105 of the LPP and there is no procedural obstacle to proceed with reviewing the complaint in a meritorious manner.

The claims of the complaining economic operator "Bahri Asllani" are presented as follows:

The Contracting Authority, on the 20.07.2023, announced the contract notice with no. of procurement KEK-23-7573-1-1-1 no. internal KEK-23-282-1-1-1, with the title of the contract given by the Contracting Authority: "Supply of Transformers 400 MVA, 24 400 kV for the BI unit". Two economic operators had competed in this procurement activity and that: Balkan Petrol SH.P.K, Zona Industrial Gërlica, 70,000 Ferizaj for the total value of the offer of 4,749,601.00 €, and - Bahri Asllani, Rx. Agim Ramadani, Aktash C1/9, 10,000 Prishtina, for the total value of the offer 4,722,888.64 €.

On 19.10.2023, the Contracting Authority issued the Notice on the Decision of the Contracting Authority described above, through which it notified the competing Economic Operators that the Kosovo Energy Corporation awarded the contract to the bidder "Balkan Petrol SH.P.K. " Ferizaj in the amount of 4,749,601,400 €. On the 24.10.2023 in EO N.T.SH "Ekoinvest" we submitted through the E-Procurement platform the Request for Review for the project "Supply of Transformers 400 MVA, 24 400 kV for the BI unit " with no. of procurement KEK-23-7573-1-1-

1, with no. internal KEK-23-282-1-1-1 within the period of 5 days after the Notification on the Decision of the Contracting Authority.

On the 27.10.2023, the Contracting Authority has published on the E-Procurement platform the notice on the Decision of the CA in the Request for Reconsideration, where it has described our request as partially based and returned the matter to re-evaluation. On 20.11.2023, the Contracting Authority, after the re-evaluation process, issued the Notice on the Decision of the Contracting Authority described above, through which it notified the competing Economic Operators that Kosova Energy Corporation sh.a. rewards the bidder with a contract Balkan Petrol SHP K," Ferizaj in the amount of 4,749,601.00 €. On 27.11.2023 in OB N, T.SH "Ekoinvest" we submitted through the Procurement platform the Request for Reconsideration, while on 06.12.2023 the Contracting Authority published in the E-Procurement platform, the notice on the Decision of the CA on the Request for reconsideration, where it has qualified our request as unfounded.

The announcement on the decision of the CA dated 20.11.2023 is an illegal decision, with incorrect certification of the factual situation, with incorrect application of the provisions of the material law and that due to the fact that they awarded the contract to EO "Balkan Petrol SH.P.K" who is factually irresponsible and EO "Bahri Asllani" illegally declared him irresponsible. While in addition to illegality, the aforementioned high decision is also arbitrary with elements of doubt based on the existence of the criminal offense of abuse of official duty with the sole purpose of opening a way for EO favored by irresponsible individuals since the same violations are made by the officials of the Contracting Authority even during the re-evaluation phase. Following this Request/Complaint, we will first deal with the irresponsibility of EO "Balkan Petrol SH.P.K" then we will prove and argue the responsibility of EO "Bahri Asllani BI — Ekoinvest" and at the very end we will highlight the arbitrariness and elements of suspicion of based on criminal offenses. Irresponsibility of EO "Balkkan Petrol SH.r.K" The EO mentioned above is irresponsible for the procurement procedure mentioned in point I of this request for the following reasons: In the Tender file (page 24) Requirements that the EO must fill in, part of Anex I, with point 5 it is defined "The manufacturer must prove with a document that he owns the testing laboratory for energy transformers for high voltages according to the IEC standard and must prove that he has performed at least one test--one transformer- of-power-400MVA-and-class I voltage-400-kV-or-higher, To be proved with a test report from the manufacturer.

First violation: EO "Balkan Petrol SH.P.K" had failed to present documentation with which it would testify (As required "The manufacturer must testify with a document") on the laboratory license and/or laboratory accreditation certificate to the manufacturer . While EO "Balkan Petrol SH.P.K" has presented a statement and some photographs as a "document". The CA in an arbitrary and illegal manner has accepted as "Evidence" a document created by itself that it owns a laboratory (see evidence I), so the EO recommended for the contract has failed to provide a valid document/evidence from any credible instance (ie certificate) and instead issued statements to himself in the format of simple letters. The same had to be declared irresponsible for the lack of a valid document proving the possession of the laboratory. The fact that CA

committed a flagrant violation by recommending for contracts an irresponsible EO who had failed to fulfill this criterion is indisputable, as this is also confirmed by the decision of the Procurement Review Body dated 10.02.2023 P.SH, no. 694 /22 on page 4, the first follower, point 3 was highlighted: "The complainant also asserted that the recommended EO did not provide convincing and/or sufficient evidence regarding the possession of the testing laboratory. In this regard, the expert concluded (from the research his) that this statement of the complainant is based on the fact that despite the declaration by the EO and the Manufacturer that it has a testing laboratory, the EO and the Manufacturer has failed to provide a valid document/evidence from another credible instance and not to issue a document on its own and a photo in the declaration format" (see evidence no. 2).

The second violation: Imagine how far the arbitrariness and illegality of the decision of the Contracting Authority goes, where in the next request (part of Annex 1, point 5): "He must prove that he has performed at least one test of a 400 power transformer MVA and voltage class 400KV or higher. To be proven with a test report from the manufacturer. In this case, the EO recommended for the contract has failed to fulfill such a request after submitting a test report from another laboratory, respectively from the enterprise ORGREZ a.s. divize Elektrotechnich Laboratori, Vitkova 17, Praha 8-Karlin, 186 00 (see evidence no. : 3). and not from the manufacturer's laboratory as requested in this point of Annex I. The aforementioned violation also proves that the manufacturer (ETD Transformatory as.) with which EO "Balkan Petrol SH.P.K" has bid does not have "the testing laboratory for energy transformers for high voltages according to the IEC standard as requested in the file of the tender.

The question arises; Could this arbitrariness of the evaluation commission be unintentional?? , or in an open and illegal manner, attempts are made to create a favored EO route by turning a blind eye and intentionally camouflaging the very clear requirements of the tender file. So, in addition to the fact that the Contracting Authority closes its eyes to the lack of a document that the manufacturer owns a testing laboratory (criterion which was determined by the CA itself) and the fact that the Contracting Authority is aware that the testing report was not provided by the manufacturer itself (criterion which was determined by the CA itself), these could not have happened by chance or due to any form of carelessness because the decision of the PRB described in point I l of this request proves that the PRB last year (for the same project, for the same request) has found that the manufacturer must possess a valid proof document from a credible instance (certificate) and not issue statements himself. (see evidence no. 2)

The above prove that the decision attacked with this request is illegal, and there are quite convincing arguments that lead to the suspicion that the responsible persons of the Contracting Authority have also consumed elements of the criminal offense (for which we will not expand much, but I will we turn to the competent authorities) only to declare an irresponsible Economic Operator as the winner according to the tender file and on the other hand, through arbitrary and illegal actions, declare the Economic Operator Bahri Asilani B. - EKOINVEST irresponsible.

Responsibility of the Economic Operator Bahri Asllani B.I.-EKOINVEST: In the Tender Data Sheet in point 8.1 & 8.2 Economic and Financial Capacity was requested "(promissory note) confirming that the company can receive a loan of 5 MILLION Euro Economic Operator Bahri

Asllani B.I. — EKOINVEST, in order to fulfill this criterion from the Tender dossier, had offered to the Contracting Authority the Letter of Support from Raiffeisen Bank Kosova "S.C for the Energy Corporation of Kosovo Sh.A in Pristina with number RBKO Ref: MD2324800002 dated 05.09.2023 (see evidence no. 4). in which it was stated "We confirm that N.T.SH. Ekoinvest / Bahri Asllani BI. Prishtina Kosova, NUI 810906620 is a client of our bank Raiffeisen Bank Kosovo J.S.C. We can support N.T.SH. Ekoinvest / Bahri Asllani B.I., street Agim Ramadani Prishtina Kosova with EUR 5,000,000.00 (in words 5 Million Euro) loan for the implementation of the project/tender: Supply of Transformer 400 MVA, 400Kv for the BI unit with procurement number KEK-23-7573-1-I-1 and internal number KEKC- 23-282-1-I-1, if the customer meets the bank's internal conditions for such credit. (The only fulfillment of the bank's internal conditions is the signing of the contract after the mortgage is concluded with the Decision on the registration of the mortgage? Main agreement no. 10 95 in the amount of 10,000,000.00 (ten million) Euros with validity from 14122018 to 14.122028) (see proof 5). From the Tender Dossier point 8.1 & 8.2 and Letter of Support apostrophized above, the following circumstances are indisputably proven: It is certified that the request of the tender file (defined by point 8.1 & 8.2) is the bank certification (promissory note) that the company can get a loan of 5 Million Euros. So an approved loan is not required (see the request of the DT tender file from point 17) but a letter of support is required - a promising note that the company can receive a loan 115 in the amount of 5 Million Euros. This letter of support issued by RBKO is based on "ACTDECISION" on the registration of the mortgage Main Agreement with no. 1095 in the value (ten million) reached on 14.12.2018 to 14.1242028 (see evidence m- 5). From the Support with RBKO Ref: MD2324800002 dated 05.09.2023 it is confirmed that the aforementioned bank can support NTSH Ekoinvest Bahri Asllani BI. with 5 Million Euros with credit limit or over-draft based on the decision document the aforementioned agreement for the implementation of the project/tender: Supply of Transformer 400 MVA, 400kv for unit B.I with procurement number KEK-23-7573-11 -1 and with internal number KEKC-23-282-1-I-1. So the Letter of Support is another act, while the loan approval is finalized with a full contract with the loan. Therefore, in the procurement procedure (points 8.1 & 8.2) an approved loan is not required but a promissory note is required. Therefore, the promissory note should not be interpreted as an approved loan. While in the part where it says that: "Also we, Raiffisen Bank Kosova J.S.C Robert Doli, Pristina, Kosovo do not have and do not accept any financial responsibility towards the beneficiary and the contracting authority on the basis of this issued document means that this Letter of Support does not represent any financial responsibility to the beneficiary or the Contracting Authority. It is completely clear and understandable that the loan-to-receiver relationship is a contractual relationship between the bank as a loan provider and the loan beneficiary as a loan recipient, and the rights and obligations of the contracting parties are regulated through the loan contract (as a bilaterally binding act).

From what was emphasized in point 19 of this request, it is confirmed in an accurate and complete manner that the Economic Operator "Ekoinvest" Bahri Asllani BI. has fulfilled completely and without a doubt the criteria defined in point 8.1 & 8.2 of the tender file. To support our legitimacy that we possess sufficient financial capacity to fulfill the requirements set forth in the TDS, we present the DECISION on the registration of the mortgage with no. Protocol: 011-944-1/1352/ 18. The main agreement with no. 1095 with a value of C 10,000,000

from which the Letter of Support issued by Raiffeisen Bank with reference number: MD2324800002 dated: 05.09.2023 and on this document (see evidence 5) is based the Letter of Support from Raiffeisen Bank with number RBKO Refi MD2324800002 dated 05.09.2023. Through the presentation of the ACTDECISION on the registration of the mortgage which is valid until 14.12.2028, we prove that we are legitimate in fulfilling the criteria defined in point 8.1 & 8.2 of the tender dossier and not only but exceeds them. The Contracting Authority with arbitrary and illegal actions and deliberately went outside the procedures of the LPP, violating the rules for additional clarifications defined by law, asking clarifying questions to the third party (see evidence no. 6) and in the same way abusively camouflaged the request of the tender file by asking the third party: "to confirm that the economic operator (beneficiary) Ekoinvest / Bahri Asllani B.I. has an approved limit for access to loans available of 5 Million Euros" !!! while the requirement of the Tender File is that a promissory note is required that a loan for the value of 5 Million Euros can be obtained. There is no other form of promissory note except the letter of support. The only question to the third party according to the Procurement Law can be asked "is it issued by you or not" while the Economic Operator can be asked for the original documents- and-additional clarifications- in this case the declaring commission has violated the declaration under oath by communicating with individual of the third party, misleading with questions asked who have consumed elements of the criminal offense as well as brought the third party into consumption of the criminal offense since the same has violated the law on privacy by disclosing confidential information. In this way, through arbitrariness and illegality, they had tried to confuse the Letter of Support with the approved credit limits, which are two separate issues (only to create confusion and ambiguity in a Letter of Support, which is very accurate in terms of content and language)). In response to this email, Raiffeisen Bank responded with the date 06.10.2023, in which it emphasized that "every decision on lending is based on our internal conditions and criteria". The actions of the CA, which now contain repeated legal violations for the second time, raise reasonable suspicions that the EO recommended by the contract is being favored by an individual within the CA, and therefore we request that a detailed inspection - expertise be made for the fulfillment or non-fulfillment of the financial capacities submitted by the EO recommended for the contract, respectively, about their authenticity and validity. All these actions of the Contracting Authority are more than an illegal decision because for the Economic Operator recommended for the contract, it closes its eyes in front of the indisputable facts which are covered in points 6 to 17 of this request and declares the Operator responsible. The economic operator who is irresponsible, which is Balkan Petrol Sh.p.k., while the complaining Economic Operator N.T.SH Ekoinvest / Bahri Asllani B.I takes a multitude of arbitrary and illegal actions just to declare him irresponsible. On the one hand, for this action by the first evaluation committee and the communications with an individual outside the KEK (being under oath) through which he misled the third party and in cooperation with him he committed a violation of the Law on Privacy and Disclosure of Secrets business, there is a well-founded suspicion that a criminal offense has been committed in collaboration, an action which we are obliged to denounce for misuse of official duty and violation of the declaration under oath. Consequently, the competent prosecutor's office will also be notified of such actions dealt with above. While, on the other hand, the second evaluation commission has continued the same path and has not taken the slightest effort to ask for additional clarifications, on the contrary, it has ignored the information provided by us.

Referring to the claims as above, the complaining economic operator considers that the Contracting Authority acted in violation of article 6, 7, 11, 59, 60, 72 of the LPP, as well as 28, 42, 39 of the public procurement regulation proposing that the complaint approves our complaining claims and return the case for reassessment.

The response of the CA to the request for reconsideration: "On the date: 27.11.2023, the Contracting Authority has accepted the request for reconsideration submitted by EO "EKOINVEST" regarding the procurement activity "Supply with transformer 400MVA, 24 400 kV for the BI unit" with procurement no.KEK-23-7573-1-1-1.

In accordance with Article 108/A, of Law No. 04/L-042 for Public Procurement of the Republic of Kosovo, amended and supplemented by Law No. 04/L-237, Law No. 05/1-068 and Law No. 05/1-092, after reviewing the Tender Dossier and reviewing the outcome of the tendering procedure, the Commission of the Contracting Authority based on the request for reconsideration of the Economic Operator clarifies the following:

The Contracting Authority (CA) has carefully examined the complaint claims and finds that the request for reconsideration does not reflect the factual situation since the process of re-evaluation of offers was not taken into account at all (you did not request and did not have access to the re-evaluation report), but the appeal claims are the same presented in the first request for reconsideration.

Complaining claims and responses of the Contracting Authority commission:

1. Complaint related to the request of the technical specification — point no. 5: The manufacturer must prove with a document that he owns a testing laboratory for power transformers for high voltages according to the IEC standard and must prove that he has performed at least one test of a transformer with a power of 400MVA and a voltage class of 400 ki/ or higher To be proven with a test report from the manufacturer.

The Contracting Authority's response:

a) Complaint related to the request of point no. 5 (first part) – “I must prove with a document that I own the testing laboratory for energy transformers for high voltages according to the IEC standard.

Since the matter has been re-evaluated (only for this claim) to clarify this issue in more detail, the re-evaluation commission has carefully handled this request of the tender file during the re-evaluation, requesting additional clarifications from the requesting unit regarding with this point of the technical specification.

Based on the clarification received from the requesting unit, the request of the tender file, the clarifications of the tender dossier, the re-evaluation commission has found that EO "Balkan Petrol" with the documentation submitted in the offer meets the requirements of this point of the technical specification.

In addition, the re-evaluation commission has also done research on the Internet and found that the ETD manufacturer has a laboratory certified according to the standards and this can be found at the link: <https://etd-transformers.com/e-t-1/>

Therefore, this complaining claim is completely unfounded, does not reflect the factual situation and that the re-evaluation process was not taken as a basis

b) Complaining claim, related to the request of point no. 5 (second part) — "I must prove that at least one test of a power transformer of 400MVA and voltage class 400 kV or higher has been performed. To prove with a report of testing by the manufacturer"-

It is surprising for the CA that the same complaint claim is repeated even though it was clarified by the CA with the decision (response to the request for reconsideration) dated 27.10.2023, that the Economic Operator proposed for the contract has presented the test report on behalf of the manufacturer "SHKODA -ETD" and with these the manufacturer has proven that it has produced and tested 400MVA power transformer and 400 kV/ voltage class according to the request of the tender dossier. The ORGREZ company has performed the chromatographic analyzes of the oils and not the transformer tests.

So, this complaint claim is completely unfounded, it does not reflect the factual situation.

2. The complaining claim related to the responsibility of the complaining Economic Operator regarding the requirements of the economic/financial situation, specifically the request of the tender file — access to credit available.

The response of the Contracting Authority: The aforementioned claim is unfounded because through the documentation presented, the clarifications received from the issuer of the document, you have not fulfilled the tender file requirement: the Economic Operator must have at least 5 mil. euro liquid financial assets or access to credit available. In the request for reconsideration, knowing that you do not meet this request, you tried to ignore the request for the tender file and only refer to the testimony. In addition, the Contracting Authority has clarified this issue through the answers given to the requests for clarification before the opening and the same have been sent to all interested economic operators, which your company has also accepted and it has been clarified as follows: It must be submitted certificate from one or several banks proving that the EO has access to available loans in the value of 5 mil. euros.

Being aware that you have not fulfilled this request and you have not argued/proved it even with the claims in the request for reconsideration, with the date 25.10.2023 one day after submitting the request for reconsideration (one and a half months after the opening of the offers) you have upload to the e-procurement platform additional documentation with which you have attempted to prove that this document will fulfill the above-mentioned request. Submission of additional documentation is contrary to Article 72 of the Law on Public Procurement as well as secondary legislation on public procurement.

The submitted document is late, it does not meet the requirements of the tender file, and through this document you are trying to mislead the Contracting Authority and other bodies (PRB) that may be involved in this procurement activity.

As for your claim for inspection and expertise of the financial documents submitted by EO "Balkan Petrol" it is unsustainable, unfounded and unsupported by any valid argument with which you would question the authenticity of the documents to which you refer .

The re-evaluation committee, after examining all the documentation, does not find any cause, evidence, reason or objective knowledge to doubt the authenticity and validity of these documents.

As for the complaining claim that the law on privacy was violated by disclosing confidential documents (the answer to this claim was given by the decision of the CA on 27.10.2023) it is unstable and unfounded, for the reason that the contracting authority did not disclose the confidential documents any third party and any action undertaken has been in full compliance with Article 11 of the LPP. KEC is not a third party for Raiffeisen Bank in this particular case since the document issued for this procurement activity is addressed to KEC. The CA has requested additional clarifications from Raiffeisen Bank and from no one else and according to the LPP has the right to clarify any ambiguity for each tender document issued by economic operators for the CA. The re-evaluation committee has evaluated the offers in compliance with Article 59 of the LPP and has treated all EO equally as provided in Article 7 of the LPP and finds that all complaints are unfounded. Based on the clarifications given above for the procurement activity "Supply with transformer 400MVA, 24 400 kV for the BI unit" with no. of procurement KEK-22-152-1-1-1 recommends that the request for reconsideration be rejected as unfounded.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 29/12/2023 has authorized the review expert to conduct the initial review of the file and claims according to complaint no. 1026/23, while on 07/01/2024 the review expert's report with no. 2023/1026 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 and that the decision of the CA remain in force.

The expertise report has been duly accepted by all procedural parties. CA declares that it agrees with the recommendations of the review expert's report, while EO disagrees 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 expert's report, the opinions of the parties regarding the expert's report, the complainant's submissions and documents, the contracts and documents of the contracting authority, the relevant documents related to the procurement activity as and all the evidence that has been proposed by the procedural parties.

Regarding the claims of EO "Bahri Asllani", the review expert through report no. 2023/1026 assessed as follows:

RESPONSE TO THE COMPLAINING CLAIMS OF THE COMPLAINANT EO

Introductory clarification, On the date: 17.12.2023, EO "Bahiri Asllani" B.I - NTSH "EKOINVEST - Prishtina, with complaint number: 2023/1026, expressed their reservations and objections regarding the Notice on the Decision of the Contracting Authority (CA) , where EO "Balkan Petrol" SH.P.K Ferizaj is recommended for contract regarding the procurement of the activity: "Supply with transformer 400 MVA, 24 400 kV for unit B1", with procurement number

"KEK-23-7573-1-1- 1", initiated by the Contracting Authority (CA) - "KOSOVA ENERGY CORPORATION" sh.a.

The contracting authority has followed an open procedure for this supply contract, determining the type of contract as supply, with an estimated value of: 5,000,000.00 €. EO "Bahri Asllani" B.I - NTSH "EKOINVEST - Pristina" has expressed the need for a detailed and fair review of the procedures followed by the Contracting Authority (CA), identifying every unacceptable aspect in the contract recommendation by the Contracting Authority for determining of the award of the contract in question. This complaint aims to ensure transparency and fairness in the procurement process.

Claim no. 1. The review expert gives his opinion regarding the complaining claim 1, after having administered and carefully reviewed the documents related to the facts and arguments in the electronic procurement platform, the flow and analysis of the procedure for this mentioned high procurement activity, for the complaint claim of the complaining EO Bahri Asllani B.I NTSH "EKOINVEST" further as a parachute of the complaint, the complaint claim according to the tender file for the part of Annex 1, point 5 as requested in the DT, I quote the request of the DT: (5. The manufacturer must prove with a document that he owns a testing laboratory for power transformers for high voltages according to the IEC standard and must prove that he has performed at least one test of a power transformer of 400MVA and voltage class 400 KV or higher. with a test report from the manufacturer.).

Therefore, taking as a basis the clarifications of the Economic Operators EO, according to article 53 of the LPP of the CA with the date: 11.08.2023, has raised on the electronic response platform regarding Annex 1 of the DT point 4 I quote: Regarding point 2 b) KEK agrees with the EO in its offer to present a Declaration from the manufacturer that the tests required according to IEC and ISO will be carried out by independent institutes certified by the certification body at the manufacturer's premises or if the manufacturer has a testing laboratory certified according to the standards applied. Which means that the CA has allowed the declaration from the manufacturer to be offered (these answers and clarifications become part of the Tender File), therefore the EO recommended for the contract has presented the Declaration from the manufacturer for testing, Declaration for testing laboratory nga prodhuesi ETD Transformatory a.s also attaching the test Laboratory equipment of EDT Transformatory a.s., according to the tender file (DT) and the response of the CA contracting authority dated: 11.08.2023, which means that the EO recommended for the contract has met the requirements of the DT and the CA acted in accordance with Article 59 of the LPP. Looking at the decision in the request for reconsideration dated: 06.12.2023 on claim 1 point a) the re-evaluation commission has confirmed through research on the manufacturer's website that the manufacturer possesses the Accreditation Certificate for Testing Laboratory with no. 298/2023 on behalf of ETD TRANSFORMATORY a.s. for the Electrical Testing Laboratory with validity until 09.06.2028.

As for the part where the complaining EO refers to the second part of request 5 of the tender dossier "I must prove that he has performed at least one test of a 400MVA power transformer and a voltage class of 400 kV or higher", the reviewing expert clarifies that with an offer, the EO recommended for the contract submitted test certificates for TRANSFORMER TESTS from SKODA ENERGO sro with prot no: 60TK/267/00 for 410kv voltage. The complaining EO did not notice the above document attached to the EO's offer recommended for the contract, but it was referred to another document issued by ORGREZ a.s., which in translation is for "Analyses

of insulating oil" (analysis of insulating oil) and therefore, the factual situation from the claim elaborated by the complaining EO has not been presented.

During the evaluation of the offers, the CA acted in accordance with article 40.4 and 40.6 of RRPP 001/2022 in relation to article 59 of the LPP. Based on these facts and taking into account the request of the above-mentioned CA and the above analysis, assess that the claim of the party in the complaint at this point is not sustainable.

The reviewing expert gives his opinion in relation to appeal claim 2, the reviewing expert, after examining the tender dossier, reviewing the course of the tendering procedure and the claims of the party in the appeal, clarifies the following:

Answer to claim no. 2 Regarding the claims of the complaining economic operator, that the Document issued by Raiffaisen Bank is in accordance with the requirements of the Tender File.

The reviewing expert clarifies that based on the analysis of the facts/evidence documented in the e-procurement electronic platform, the flow and analysis of the procurement procedure, related to this procurement activity, based on the Requirements on the economic and financial condition, article 8.1 & 8.2 of FDT, as follows:

Based on the additional clarifications according to Article 53 of the LPP and the answers from the CA dated: 11.08.2023 as follows:

Based on the Support Letter dated: September 5, 2023 issued by Raiffasen Bank issued to the complaining EO regarding this procurement activity, which states, I am quoting: "Also in Raiffasen Kosovo J.S.C. Robert Doll no. 9, Prishtina, Kosovo, we do not have and do not accept any financial responsibility towards the beneficiary and/or the contracting authority based on this issued document", therefore related to this CA - dated: September 29, 2023 in accordance with article 59 par. 2 of the LPP, through e-mail is addressed to the bank official who issued this document, which is signed and sealed, asking for clarifications as follows:

The reviewing expert also assesses that despite the requested clarifications, the complaining EO Bank has in no case accepted that it will support its client and has confirmed that I quote: "the previous exchange of letters does not represent a financial commitment on our part" and "it is not a guarantee that this amount will be available to the client".

CA - the evaluation commission has evaluated, examined and compared the EO participating in this procurement activity as well as the complaining EO, where it is stated in the standard letter of elimination that even after the clarifications/answers from Raiffaisen Kosovo J.S.C. - the responsible official (who signed and sealed the document - letter of support ref. MD2324800002); are not in "agreement" with the requirements of the tender file and the answers given by the CA on the date: 11.08.2023.

In the opinion of the reviewing expert, based on the above-mentioned clarifications, this appeal claim is not sustainable."

According to the above, the review expert handled the claims of the complaining economic

operator "Bahri Asllani" in a professional and objective manner, the argumentation in the report of the review expert is quite detailed, understandable and fully based on the relevant documents that refer to the activity of procurement. The findings in the review expert's report can be confirmed through the tender file as well as the documents with which the tenderers have offered. Consequently, the Review Panel regarding the claims of the complaining economic operator has forgiven the trust in the review expert's report. In this way, it was found that the claims of the complaining economic operator "Bahri Asllani" were unfounded.

- Findings of the Review Panel -

Based on the documents of this case and the primary purpose of the complaint, the Panel considered that regarding the issue in the present case, there is no need to convene a hearing with the parties, in accordance with Article 24 paragraph 1 of the Rules of Procedure of the PRB, as long as the submissions of the parties and their actions constitute a sufficient basis to decide on merit. 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, analyzing the documents of this case and the actions taken by the parties, their statements and the evidence administered during the course of this procurement activity, considers that the findings of the review expert and her opinion are acceptable and that the Panel is right considered his Report on the occasion of the decision without the need for the same to be repeated again.

In this particular case, from the review expert's report, the evidence presented by the complaining economic operator, the documents of the tender file, as well as from other circumstantial evidence, it was found that the complaining claims are unfounded. Based on the factual situation established as above, the Review Panel has given full confidence to the findings and recommendations in the review expert's report. Consequently, the Review Panel has found that all the claims of the complaining economic operator are unfounded.

The review panel after the administration and assessment of the evidence, the complete ascertainment of the factual situation, relying on the LPP as applicable material law, after reviewing the appeal claims, taking into account all the documents of the case and the recommendations of the review expert, has found that the complaint of the Economic Operator must be rejected as unfounded. Consequently, the Review Panel has decided to validate the Notice on the Decision of the Contracting Authority - "Kosova Energy Corporation" sh.a. dated 20.11.2023 regarding the procurement activity entitled "Supply with transformer 400MVA, 24 400 kV for unit B1" with procurement no: KEK-23-7573-1-1-1.

The Review Panel, based on the evidence presented in the expertise report and findings of the review expert, decides to give the right to the CA and to uphold the decision of the CA, this decision which was issued by an evaluation commission which is supposed to be professional in accordance with article 59 par. 1 of the LPP, where it says: "All members of the Evaluation Committee take full individual responsibility for the evaluation of the offer", then in application of article 1 of the LPP and in order not to prolong this procurement activity even further and in the absence of any convincing argument that the recommended EO may be irresponsible, then the panel assesses that the selection of the recommended EO for the contract is also the

responsibility of the CA. 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 EO recommended for the award of the contract based on article 24 paragraph 2 of the LPP quoted "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in compliance with complete with this law".

The return of a procurement activity without a contested legal basis for re-evaluation is not in harmony with Article 1 of the LPP, according to which, the purpose of this Law is, among others, quoted: "...to ensure the integrity and responsibility of public officials, civil servants and other persons who perform or are involved in a procurement activity, requesting that the decisions of such individuals and the legal and factual basis for such decisions are not influenced by personal interests, 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. As well as 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 requiring that the decisions of such individuals and the legal and factual basis for such decisions are not influenced by personal interests, are characterized by non-discrimination and a high degree of transparency, and are in compliance with the procedural and essential requirements of this law". Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations, which may appear during a procurement activity.

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 – **KOSOVA ENERGY CORPORATION sh.a;**

1x1 EO – **Bahri Asllani;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.