



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

Psh. No.627/24

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 Vedat Poterqoi –President, Batisha Ibrahim and Kimete Gashi –members of the Panel, deciding upon the complaint of EO “Marisa” SH.P.K., against the Decision to contract award or a design competition of the “MUNICIPALITY OF GJAKOVA” in the capacity of Contracting Authority (CA) regarding the procurement activity “Re-Tender-Rehabilitation and construction of public spaces” with procurement number 632-23-13225-5-1-1 “, on the 20/09/2024, has issued this:

DECISION

1. Approved, as partly grounded the complaint of EO “Marisa” SH.P.K, with no 2024/0627 of the 12/07/2024, to the CA "MUNICIPALITY OF GJAKOVA" regarding the procurement activity "Re-Tender-Rehabilitation and construction of public spaces" with procurement number 632-23-13225-5-1-1.
2. Remains in force, notification of the decision of the CA (B58), for the contract award dated 24.06.2024 regarding the high procurement activity mentioned in point 1 of the provision.
3. The return of funds deposited in the name of the complaint’s fee is allowed, and the complainant has the right, within a period of sixty (60) days from the date of receipt of this Decision, to submit a request for the return of funds pursuant to Article 31, paragraph 6, of the Rules of Procedure of the PRB, otherwise the funds shall be confiscated and transferred to the Budget of the Republic of Kosova.

REASONING

-Procedural facts and circumstances –

On the 24.11.2023, "MUNICIPALITY OF GJAKOVA" in the capacity of Contracting Authority has published Contract Notice B05 regarding the procurement activity "Re-Tender-Rehabilitation and construction of public spaces" with procurement number 632-23-13225-5-1-1. While on the 24.06.2024 the Notification on the decision of the Contracting Authority by which it awarded the contract to the EO "Joss Krasniqi & Berisha Com&Fonderia"

The contracting authority has implemented an open procedure, type of contract: - work, estimated contract value: 1,570,000 euro.

On the 01.07.2024, EO "Marisa" SH.P.K., has submitted a request for reconsideration against the above-mentioned decision of the CA. On the 04.07.2024, the Contracting Authority has rejected as unfounded the request for reconsideration.

On the 12/07/2024, the PRB has accepted the complaint from EO "Marisa" SH.P.K., with no. 2024/0627 regarding the activity "Re-Tender-Rehabilitation and construction of public spaces" with Procurement no: 632-23-13225-5-1-1.

-On the stage of preliminary review-

The Review Panel has found that the complaint contains all the elements set out in Article 111 of the LPP and as such has been submitted within the legal deadline in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for the resolution of disputes in the sense of Article 108/A of the LPP, by the economic operator that is an interested party according to Article 4 paragraph 1 sub-paragraph 26 of the LPP. In this way, the Review Panel has found that it is competent to review this complaint according to Article 105 of the LPP and there is no procedural obstacle to continue with the review of the complaint on its merits.

The claims of the complaining economic operator "Marisa" SH.P.K, are presented as follows:

The decision taken by the Contracting Authority Municipality of Gjakova is in violation of the Public Procurement Law and all its rules.

The Contracting Authority Municipality of Gjakova has published the tender entitled: "Re-Tender- Rehabilitation and construction of public spaces"

The Municipality of Gjakova has committed a violation by recommending an irresponsible economic operator and violating Article 1 (Purpose), Article 6 and Article 7.

Claim 1: For the Economic Operator Joos Krasniqi & Berisha Com & Fonderia EE, several authorizations have been submitted that are older than the amendment and correction of the tender dossier. As evidence, we present the authorizations and amendments to the tender dossier. This procurement activity has been amended by the PRB, which has requested the cancellation and amendment of the tender dossier criteria.

As can be seen below, the date of compilation of the tender dossier and the preliminary measure is much newer than the date of the authorizations. If the tender dossier had not been amended and compiled after the authorization dates, these authorizations would have been valid, therefore, according to the evidence presented, it is clearly seen that the authorizations in question are invalid.

Evidence: Authorizations with different dates older than the Tender Dossier Correction

As can be seen this authorization is older than 6 months

Claim 2: GOE Joos Krasniqi & Berisha Com & Fonderia EE has submitted an agreement that does not meet the criteria for a consortium agreement, since as can be seen in the agreement clause, these EOs have divided the execution of the works in percentages (%) and not the appointment of the leader, as required in the tender dossier. So, the merger of these two companies, Berisha Com and Fonderia EE, makes 60%, while the leader is 40%.

According to the documents and evidence, this GOE lacks a consortium agreement and the submitted agreement is in contradiction with the tender dossier, since to be a leader you must be 51% of the agreement.

Evidence: Agreement submitted by GOE Joos Krasniqi & Berisha Com & Fonderia EE

Tender Dossier Request Evidence:

Claim 3: GOE Joos Krasniqi & Berisha Com & Fonderia EE has submitted a special truck, where the tender dossier criteria are as follows: Truck with basket...

We have done a Google search and we have seen that this vehicle is a van or a truck, so this criterion is not met since even the vehicle's registration document does not state that it has a sidecar.

As evidence, please find the registration document below:

According to the terms and conditions of the tender dossier, GOE Joos Krasniqi & Berisha Com & Fonderia EE is irresponsible in the basic terms of this contract. Therefore, the Evaluation Commission and the Public Procurement Office have violated the Public Procurement Law by recommending an irresponsible GEO for a contract. This offer must be rejected.

GEO Infraplus & Selmans Network is also irresponsible, even though this tender dossier was prepared for this GOE and was favored, since EO Selmans Network has an agreement with a Bulgarian company for these products which are in the specifications of the tender dossier. Based on the fact that in several different authorities the same criteria are applied and the same EO is declared the winner.

Claim 1: GEO Infraplus and Selmans Network has the same defect as the recommended GOE, as it has authorizations with dates older than the correction and compilation of the tender dossier and tender estimate.

The evidence is below:

The evidence is found in Authorizations and Guarantees without dates where the authorization and guarantee are valid from the date of issue or indicate the date of conclusion of the agreement. Therefore, any document that does not have an issue date is invalid.

Claim 2: GOE Infraplus and Selmans Network have the same defect as the recommended GOE, as they have consortium agreements with dates older than the correction and compilation of the tender dossier and the tender estimate. According to the evidence presented, this GOE is irresponsible, as it did not refer to the tender dossier.

The evidence can be found below:

Claim 3. GOE Infraplus and Selmans Network have submitted a list of projects in the tender dossier that does not comply with the specifications of the tender dossier. The tender dossier clearly defines the procurement number and the name of the activity for each intended project.

This GOE has submitted two lists that do not have either the name of the projects they are intended for or the procurement number and this criterion is not met and this Offer should be rejected since this complaint is not part of the tender dossier.

Find evidence below

List of Selmans Contracts.

List of Infraplus Contracts

Find evidence List of Projects by TD

Claim 4. GEO Infraplus and Selmans Network have not fulfilled the Tender Dossier criterion that requires vehicles to be registered on the date of Tender submission. As specified in the Tender Dossier requirement, this criterion is eliminatory and its non-fulfilment should lead to GOE being declared irresponsible. The Tender Dossier specification requires that vehicles be registered on the date of tender submission. Failure to fulfil this criterion makes the offer of GEO Infraplus and Selmans Network not meet the necessary conditions for its acceptance since failure to fulfil the Tender Dossier requirements is an eliminatory criterion, and as evidence we will attach the unregistered truck's logbook

Evidence is the list of machinery and the license plate of the truck with the basket.

Claim 5. GEO Infraplus and Selmans did not meet this criterion of the TD where in the request of the TD it was requested that the registered vehicles must have a valid registration

This GEO did not meet this criterion either since in the list of Machinery it presented a truck with a crane but which does not have a registration.

Evidence is the list of machinery presented as well as the proof of the license plate

Registration is valid until 28/02/2024 and the tender submission date is 13/05/2024.

Claim 5. GOE Infraplus and Selmans Network have not met the criteria of the Tender Dossier that require the Bidder to submit a guarantee for the products. Selmans Network has an agreement for the distribution of materials of the company ENCHEO ENCHEVE-ETE LTD.

But the warranty for work cannot be issued by a distributor, but only by the manufacturer. EO Selmans has issued a warranty to its own company or to put it differently, it has issued a warranty itself for products that it does not produce itself, which is in violation of DT rules

If you are not a manufacturer, you cannot issue a warranty, but only sales and advertising or something similar

So this criterion is not met according to the tender dossier and this offer must be rejected

The evidence is below where the manufacturer does not give the right to guarantee the products manufactured by it but only its sale.

According to the terms and conditions of the tender dossier, GOE Infraplus & Selmans Network is irresponsible in the basic terms of this contract. The Evaluation Commission and the Public Procurement Office have acted in violation of the Public Procurement Law by recommending an irresponsible GOE for the contract.

Based on these arguments, it is clear that the offer of GOE Infraplus & Selmans Network should be rejected due to non-fulfillment of the criteria.

The Contracting Authority Municipality of Gjakova has not made a fair assessment and has not respected Article 72 of the LPP regarding the elimination of our Group.

Elimination for lighting is a scandalous elimination since we have two authorizations with the Turkish company and the Kosovar company Elektrostublla and both of these companies have different types of lamps and we prove to you according to the specifications of the TD.

Elimination regarding the Machinery Engineer we explain to you that on the same day and at the same time we had two tenders and in both tenders a Machinery Engineer was requested and was incorrectly loaded where as a result we prove to you that we have him on the staff list and we can send you the Engineer's contract for this project.

Appendix:

The contracting authority has not responded to us on the decision on the rejection of the request for reconsideration for claim no. 4-5 related to GOE Infraplus and Selmans Network sh.p.k

After all this data and evidence found in their offers, we request the PRB to return the case for re-evaluation and declare the recommended GOEs: Joos Krasniqi & Berisha Com & Fonderia EE as well as GOE Infraplus & Selmans Network irresponsible.

Also, to approve the appeal and declare the winner GOE Marisa sh.p.k Toifor & Nsht Viktory Com Pjeter Qerimi B.I.

The Municipality of Gjakova has violated the Public Procurement Law by declaring an irresponsible GOE. If the Public Procurement Law is not implemented, we guarantee that we will

send the case to the competent authorities and request that the PRB punish and revoke the license of the public procurement official for non-implementation and violation of the Public Procurement Law. The Contracting Authority must commit to the management and preservation of public funds, and to the implementation of the Public Procurement Law in a regular manner.

Referring to the above allegations, "Marisa" LLC considers that the Contracting Authority has acted in violation of Article 1 Purpose of the LPP No. 04/L-042, the CA has violated Article 6 Economy and Efficiency of the LPP No. 04/L-042, the CA has violated Article 7 Equality of Treatment/Non-Discrimination of the LPP No. 04/L-042, the CA has violated Article 28 Technical Specifications The CA has violated Article 37 Tender Samples Regulation No. 001/2022 On Public Procurement, the CA has violated Article 56 of the LPP No. 04/L-042, the CA has violated Article 60 Contract Award Criteria of the LPP No. 04/L-042, the CA has violated Article 69 Technical and/or Professional Ability of the LPP No. 04/L-042.

CA's response to the request for review: The Group of Economic Operators "Marisa Sh.p.k. & Toifor sh.p.k. & NSHT Viktory Com" on 01.07.2024, has submitted a request for reconsideration, regarding the procurement activity "Re-Tender- Rehabilitation and construction of public spaces", Procurement No.- 632-23-13225-5-1-1, Internal No.- 632-23-004-511.

The Contracting Authority Municipality of Gjakova, on 04.07.2024, has reviewed the request in question as follows:

You as the Group of Economic Operators have been eliminated because for the products for positions: 193,197, you have submitted a technical specification or test report for a product that, based on the transport of this product, is clearly not in accordance with the requirements of the tender dossier and the pre-contract.

According to the requirements of the tender dossier and the pre-contract in positions 193 and 197, it is required. Pos.-193-Supply, transport and assembly of the LED lighting body- LAMBARIO -LT33-09422 or similar with minimum characteristics:

Power of the LED lighting body>90W

Working temperature:>-20 °C to +40 °C

Power factor:>0.90

Photometric specification:

Luminous flux: >10800lm

CRI: Ra>70

Color Temperature -Natural:4000-5000K

Mechanical Specification:

Protection:> IP65-IK08

Warranty:>5 years

-While according to the test report presented by the EO:

Power of the lighting body: 51.42 W, less than the requirement where it is required equal to or greater than 90 W

Luminous flux 6753.3 lm, less than the requirement where it is required equal to or greater than 10800lm

PozL-197. Supply, transport and assembly of the lighting body LED-LAMBARIO -LT45-09122 or similar with minimum characteristics:

LED light body power > 100W

Dimensions: > 300x135x75mm

Working temperature: > -20 °C to +40 °C

Photometric specification:

Luminous flux: > 9000 lm

Color temperature-Natural: 4000-5000K

Mechanical specification:

Protection: > IP65

Warranty: > 2 years

-While according to the test report presented by the EO:

Light body power: 51.42W less than the requirement where required equal to or greater than 100W

Luminous flux 6753.3 lm, less than the requirement where required equal to or greater than 9000 lm

You as the Economic Operators Group have presented a Contract for Work for the Machinery Engineer for another project "Construction of buildings in the KSF Headquarters in Gjakova, Berisha and Melcnica in three parts, which is contrary to the requirements of the FDT. Your claims for GOE Joss Krasniq - Base & BerishaCom & Fonderia E & E

Your claim that the authorizations are dated earlier than the file correction is not valid. Because this is the same activity and there is no change in the parameters and product even though the file correction was made; Your second claim is also not valid, because the consortium agreement states: "The parties declare that they have agreed that the leader of this merger of companies will be the company Joos Krasniqi-Bazë".

Your claim regarding the fact that the group leader must fulfill 51% of the agreement, we clarify that this request has to do with the requirements on technical and/or professional capabilities, while the percentages presented in the consortium agreement have to do with the division of

tasks within the consortium members, therefore this claim of yours does not hold; Regarding the truck with a basket, the Group of economic operators recommended for the contract has fulfilled the request of the Contracting Authority in the TDS;

Your claims for GEO "Infraplus & Selmans Network

Your claim that the authorizations are dated older than the correction of the file is not valid, because this is the same activity and there is no change in the parameters and products even though the correction of the file has been made;

Your claim regarding the consortium agreement is not valid, because the same has fulfilled the request of the Contracting Authority in the TDS;

Your claim regarding the list of contracts is not valid, because the name of the activity or the procurement number is not required; Your claim regarding the guarantee is not valid.

Based on Article 111 paragraph 5 in conjunction with Articles 113 and 114 of the LPP, the Procurement Review Body on 19.07.2024 authorized the review expert to conduct the initial review of the file and claims according to the complaint with no. 0627/2024, while on 08.08.2024 the review expert's report with no. was submitted. 2024/0627 with the following recommendations: Based on the above-mentioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO be approved as partially grounded, the notice for cancellation of the procurement activity be canceled and recommends that the case be returned for re-evaluation.

The expertise report has been duly accepted by all procedural parties. The CA does not agree with the recommendations of the review expert report, while the EO partially agrees with the review expert report. The review panel has assessed that the conditions have been met to decide on this case without a hearing session 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 and the review expert report provide sufficient data to decide on the merits of the case.

- 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.

Regarding the claims of EO "Marisa" SH.P.K., - the review expert through report no. 2024/0627 has assessed as follows:

Introductory Clarification: Initially, we clarify that the complaining EO “Marisa” is not the leader of the consortium and the same has not attached to the complaint any special authorization for representation of the group in the PRB.

However, in accordance with the provisions of Article 114, paragraph 1 of the LPP, below you will find the answers to the complaining claims.

Claim no. 1

The first complaint claim according to complaint 627/24 is that the EO recommended for contract is irresponsible, since the group of EOs has offered old authorizations, more specifically that the tender dossier is much newer than the EO's authorizations.

The review expert's opinion is that as long as the authorizations bear the same procurement number and the same procurement title, the same cannot be considered unacceptable.

The authorization from BENITO bears the title “PARAMEAS REHABILITATION AND CONSTRUCTION OF PUBLIC SPACES in KOSOVO”, while the title of this activity is “Re-Tender- Rehabilitation and construction of public spaces” with procurement number 632-23-13225-5-1-

Based on the above, we assess that the complaint claim is unfounded.

In the authorization of the EO instead of “Re-tender”, it states “Parameasures”, however we cannot give

a finding or recommendation that this be used as a reason for the elimination of the EO.

While the authorizations from Betonika and Vlora Com doo bear the same procurement number as this procurement activity.

While the authorization from Encho Enchev is issued for a procurement activity with a different number, namely “632-22-5656-1-2-1”, which turns out to be another procurement activity, and as such, we consider it unacceptable.

Based on the above, we assess that the claims for authorization are partially grounded.

Claim no.2

The complaining EO claims that the EO recommended in the group agreement has stated that the leader will perform 40% of the works, while according to the complaining EO the leader should be 51% of the agreement.

We clarify that the request for 51% leader was for financial turnover, not for a percentage of the Works to be performed.

Request for the file:

“The Economic Operator must have a financial turnover with a total value of at least 3,140,000.00€, in the last 3 (three) years, in the case of a consortium the leader must have at least 51% of the turnover value”

Based on the above, we assess that the complaining claim for is unfounded.

Claim no.3

The complaining EO claims that the recommended EO instead of a truck with a platform truck has offered Iveco type 35.8 vans/trucks and the registration does not state that it has a platform truck.

During further research, we have found that the Iveco 35.8 in the registration document is “special 2-door truck”, while the registration document does not state that it has a platform truck, but this is not a confirmation that the truck does not have a platform truck since not always all vehicle details are found in the registration document.

Based on the above, we assess that the complaint claim is partially unfounded.

Claim no. 4

The complaining EO claims that this tender dossier was prepared for EO Selmans and that this EO was favored by the CA.

Initially, we clarify that the EO recommended for the contract is not EO: "Selmans" but is another EO.

We also clarify that this tender dossier has been corrected through the decision of the PRB, and after the publication of the new dossier, the PRB has not received another complaint regarding the dossier criteria for this procurement activity.

Claim no. 5

As for the EO recommended for contract, also for EO Selmans, the complaining EO claims that the same has old authorizations which it considers unacceptable.

We clarify that authorizations that bear the same number as this procurement activity, and supply agreements that are not limited to this project cannot be considered as unacceptable. Based on the above, we assess that the complaint claim is unfounded.

Claim no.6

The EO claims that the EO Selmans consortium agreement has old dates. Even in this case, EO Selmans has an agreement with Infra Plus, in which agreement the number and title of this same procurement activity are indicated, therefore we cannot consider them unacceptable.

Based on the above, we assess that the complaint claim is unfounded.

Claim no.7

The other complaint claim is that EO Selmans&Infraplus does not meet the request of the dossier for similar work.

After analyzing the bid of EO Selmans&Infraplus, we assess that this EO meets and largely exceeds the request of the CA for similar work in the amount of €2,355,000 in the last three years.

Claim no. 8

The EO claims that the EO recommended for the contract has offered vehicles (trucks) with expired registration.

The expert's assessment is that, despite the request of the dossier, the expiration of the truck's registration we consider it to be a minor deviation which does not constitute a change or deviation from the conditions and requirements of the dossier.

Claim no. 9

The complaining EO claims that EO Selmans has offered a guarantee in its own name and has not offered a guarantee from the Bulgarian manufacturer Enchio Enchev.

After analyzing the EO's offer, we found that the same is a distributor with exclusive rights to sell products in the Republic of Kosovo.

Also, according to this agreement, the Distributor undertakes services for the manufacturer's products in the territory of Kosovo, while the costs related to defects that may occur during the warranty period are covered by the manufacturer.

For the review expert, this document is acceptable, but in any case, the CA may request confirmation directly from the manufacturer in the event of a reassessment.

Claim no. 10

Regarding the reasons for the elimination of the complaining EO, which emphasizes that in addition to the lighting bodies for which it has provided a test report, the offer also includes products from other manufacturers, we provide the following clarifications.

The test reports for the lighting bodies (required in the tender dossier) offered by the complaining EO prove that the product has weaker functional properties than those required in the dossier, specifically the light power.

While the claim that the EO has other manufacturers, in the other catalog we still found that the lighting body does not have the power required in the tender dossier for 10800 Lumen. However, even if the other catalog (a product other than the one proven with a test report) met the requirements of the dossier, it would still be unacceptable because this means that the complaining EO has offered with variants, while variants were not allowed with this tender dossier.

Claim no. 11

Regarding the reason for the elimination that the Machinery Engineer with a contract for work is appointed for another project, the complaining EO claims that this person is a reserve/support staff and that the company has other engineers who meet this requirement, after analyzing the offer of the complaining EO, in the folder "Professional Staff" for the machinery engineer, Mr. Avdyl Prekadini has presented, where in the agreement he notes the name and number of another procurement, therefore we consider that the complaining claim is unfounded.

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Introductory Clarification: Initially, we clarify that the complaining EO "Marisa" is not the leader of the consortium and the same has not attached to the complaint any special authorization for representation of the group in the PRB.

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Claim no. 1

The first complaint claim according to complaint 627/24 is that the EO recommended for contract is irresponsible, since the group of EOs has offered old authorizations, more specifically that the tender dossier is much newer than the EO's authorizations.

The review expert's opinion is that as long as the authorizations bear the same procurement number and the same procurement title, the same cannot be considered unacceptable.

The authorization from BENITO bears the title "PARAMEASURES REHABILITATION AND CONSTRUCTION OF PUBLIC SPACES in KOSOVO", while the title of this activity is "Re-Tender- Rehabilitation and construction of public spaces" with procurement number 632-23-13225-5-1-1. Based on the above, we assess that the complaint claim is unfounded.

In the authorization of the EO instead of "Re-tender", it states "Parameasures", however we cannot provide a finding or recommendation that this be used as a reason for the elimination of the EO.

While the authorizations from Betonika and Vlora Com doo bear the same procurement number with this procurement activity.

While the authorization from Encho Enchev is issued for a procurement activity with a different number, namely "632-22-5656-1-2-1", which turns out to be another procurement activity, and as such, we consider it unacceptable.

Based on the above, we assess that the complaining claims for authorizations are partially grounded.

Claim no.2

The complaining EO claims that the EO recommended in the group agreement stated that the leader would perform 40% of the works, while according to the complaining EO the leader should be 51% of the agreement.

We clarify that the request for the 51% leader was for financial turnover, not for a percentage of the works to be performed.

File requirement:

“The Economic Operator must have a financial turnover with a total value of at least 3,140,000.00€, in the last 3 (three) years, in the case of a consortium the leader must have at least 51% of the turnover value”

Based on the above, we assess that the complaint claim is unfounded.

Claim no. 3

The complaining EO claims that the recommended EO instead of the truck with a platform has offered Iveco type 35.8 vans/trucks and the registration book does not state that it has a platform.

During further research, we have found that the Iveco 35.8 in the registration book is “special truck with 2 doors”, while the registration book does not state that it has a platform, but this is not a confirmation that the truck does not have a platform since not always all the details of the vehicles are found in the registration book.

Based on the above, we assess that the complaining claim is partially unfounded.

Claim no.4

The complaining EO claims that this tender dossier was prepared for EO Selmans and that this EO was favored by the CA.

Initially, we clarify that the EO recommended for the contract is not EO: “Selmans” but is another EO.

We also clarify that this tender dossier has been corrected through the decision of the PRB, and after the publication of the new dossier, the PRB has not received another complaint regarding the dossier criteria for this procurement activity.

Claim no.5

As for the EO recommended for contract, also for EO Selmans, the complaining EO claims that the same has old authorizations which it considers unacceptable.

We clarify that authorizations which bear the same number as this procurement activity, and supply agreements which are not limited to this project cannot be considered unacceptable.

Based on the above, we assess that the complaining claim is unfounded.

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The EO claims that the EO Selmans consortium agreement has old dates.

Even in this case, the EO Selmans has an agreement with Infra Plus, in which agreement the number and title of this same procurement activity are indicated, therefore we cannot consider them unacceptable.

Based on the above, we assess that the complaint claim is unfounded.

Claim no.7

The other complaint claim is that EO Selmans&Infraplus does not meet the request of the dossier for similar work.

After analyzing the bid of EO Selmans&Infraplus, we assess that this EO meets and largely exceeds the request of the CA for similar work in the amount of €2,355,000 in the last three years.

Claim no. 8

The EO claims that the EO recommended for the contract has offered vehicles (trucks) with expired registration.

The expert's assessment is that, despite the request of the dossier, the expiration of the truck's registration we consider it to be a minor deviation which does not constitute a change or deviation from the conditions and requirements of the dossier.

Claim no.9

The complaining EO claims that EO Selmans has offered a guarantee in its own name and has not offered a guarantee from the Bulgarian manufacturer Enchio Enchev.

After analyzing the EO's offer, we found that the same is a distributor with exclusive rights to sell products in the Republic of Kosovo.

Also, according to this agreement, the Distributor undertakes services for the manufacturer's products in the territory of Kosovo, while the costs related to defects that may occur during the warranty period are covered by the manufacturer.

For the review expert, this document is acceptable, but in any case, the CA may request confirmation directly from the manufacturer in the event of a reassessment.

Claim no.10

Regarding the reasons for the elimination of the complaining EO, which emphasizes that in addition to the lighting bodies for which it has provided a test report, the offer also includes products from other manufacturers, we provide the following clarifications.

The test reports for the lighting bodies (required in the tender dossier) offered by the complaining EO prove that the product has weaker functional properties than those required in the dossier, specifically the light power.

While the claim that the EO also has other manufacturers, in the other catalog we still found that the lighting body does not have the power required in the tender dossier for 10800 Lumen.

However, even if the other catalog (a product other than the one proven with a test report) met the requirements of the dossier, it would still be unacceptable because this means that the complaining EO has offered with variants, while variants were not allowed with this tender dossier.

Claim no. 11

Regarding the reason for the elimination that the Machinery Engineer with a contract for work is appointed for another project, the complaining EO claims that this person is a reserve/support staff and that the company has other engineers who meet this requirement, after analyzing the offer of the complaining EO, in the folder "Professional Staff" for the machinery engineer, Mr. Avdyl Prekadini has presented, where in the agreement he notes the name and number of another procurement, therefore we consider that the complaining claim is unfounded.

According to the above, the review expert has professionally and objectively treated the claims of the complaining economic operator "Marisa" SH.P.K., The argumentation in the review expert's report is quite detailed, understandable and fully based on the relevant documents referring to the procurement activity. The findings in the expert's report can be confirmed through the tender dossier as well as the documents with which the tenderers have bid. Consequently, the Review Panel regarding the claims of the complaining economic operator has given full confidence to the expert's report. In this way, it has been found that the claims of the complaining economic operator "Marisa" SH.P.K., are partially grounded.

- Findings of the Review Panel -

The Review Panel considered that regarding the issue in the concrete case, there is no need to convene a hearing session with the parties, in accordance with Article 24, paragraph 1, of the Rules of Procedure of the PRB, as long as the claims of the parties, their evidence, submissions and the expertise of the review expert, provide sufficient data to decide on the merits.

The review panel has independently and objectively, with due diligence and professional care, evaluated all the evidence in the case. The review panel, after administering and evaluating the evidence, fully establishing the factual situation, relying on the LPP as the applicable material law, after reviewing the complaints presented in the complaint no. 2024/0627, taking into account all the case files, has found that the complaints should be approved as partially grounded, but which do not have sufficient grounds for the procurement activity to be returned for re-evaluation. Consequently, the review panel has decided to confirm the Notice of Decision of the Contracting Authority Municipality of Gjakova, regarding the procurement activity entitled: "Re-Tender - Rehabilitation and construction of public spaces", with procurement number: 632-23-13225-5-1-1, initiated by (CA) - Municipality of Gjakova.

However, it should be noted that the legal fact 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 possible 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 the expert report and/or any of the recommendations, is a matter of his/her independent and professional judgment, as these responsibilities are addressed in the sense of Article 98, 99 in conjunction with Article 105 of the Public Procurement Law.

The Review Panel, regarding the claims of the complaining economic operator during the examination, the administration of evidence and the findings of the review expert's report, can clearly state that the complaining EO was rightly eliminated by the CA, because the complainant has provided Test reports for the lighting units (required in the tender dossier) that prove that the product has weaker functional properties than those required in the dossier, specifically the light power and that the lighting unit does not have the power required in the tender dossier for 10800 Lumen. The Review Panel, like the review expert, emphasizes that even if the other catalog (a product other than the one proven by the test report) met the requirements of the dossier, it would still be unacceptable, since this means that the complaining EO has bid with variants, whereas, the variants were not allowed in this tender dossier.

The complainant has also presented a machinery engineer with a work contract who has been appointed for another project, therefore, the PSH, as well as the review expert, considers that this does not comply with the requirements of the Tender Dossier. Regarding the other complaint claims against the EO recommended for the contract, the PSH considers that in some of them, responses have been given to complaint 2024/0625 and in some of them, including the complaint claims against the EO Selmans Network SHPK, it supports the reasoning of the review expert, without the need for the same to be repeated again.

The Review Panel emphasizes that each contracting authority (at central and local level) enjoys autonomy in procurement planning (Article 8) and in determining the needs to be met (Article 9), of course in accordance with the budgetary capacity and that the CA in the specific case had the right to decide also on the EO recommended for contract award based on Article 24 paragraph 2 of the LPP cited "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in full compliance with this law".

Returning a procurement activity without a legal contestable basis for re-evaluation is not in accordance with Article 1 of the LPP, according to which the purpose of this Law is, among other things, quoted: "...to ensure the integrity and accountability of public officials, civil servants and other persons who carry out or are involved in a procurement activity by 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 accordance with the procedural and substantive requirements of this Law".

Therefore, acting on the basis of the fundamental principles of 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 described above, and in particular paying due attention to the nature and purpose of the complaining claims.

Based on the above, the Review Panel considers that the actions and acts of the CA, regarding the fulfillment or not of the conditions described above and the complaining allegations in this case, constitute sufficient grounds for the decision of the CA to remain in force for the procurement activity, because the application of minor deviations as defined by the legislation in force, specifically Article 59, paragraph 4 of the LPP, where the responsibility is attributed to the contracting authority, therefore the application of this norm remains at the responsibility and discretion of the Contracting Authority, as defined by the referred provision.

The Panel assesses them according to its independent assessment within the meaning of Article 105, taking into account the requirement of Article 104, paragraph 1, of the cited Law according to which, quoted: “The procurement review procedure shall be implemented and carried out in a prompt, fair and non-discriminatory manner, aiming at the fair, lawful and effective resolution of the case...” and in accordance with Article 1, of the LPP, according to which, the purpose of this Law is, inter alia, quoted: “...to ensure the integrity and accountability of public officials, civil servants and other persons carrying out or involved in a procurement activity by 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 accordance with the procedural and substantive requirements of this Law”. Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations that may arise during a procurement activity.

Therefore, acting in accordance with the powers cited above and Article 104 paragraph 4 in conjunction with paragraph 1, according to which the procurement review procedure shall be implemented and carried out in a prompt, fair and non-discriminatory manner, aimed at the legal and effective resolution of the case, and 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, 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 – **MUNICIPALITY OF GJAKOVA;**

1x1 EO – “**Marisa SH.P.K.**”;

1x1 Archive of the PRB;