



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

Psh. No.1182/24

The Review Panel, appointed by the Acting President of the PRB, pursuant to Articles 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosovo (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-Chairperson, Isa Hasani and Kimete Gashi - Members of the Panel deciding according to (EO) “JOOS & KRASNIQI - BAZE” SH.P.K., against the Decision to award a contract or a design competition of “MUNICIPALITY - RAHOVEC” in the capacity of Contracting Authority (CA) regarding the procurement activity “CONSTRUCTION OF A FOUR-LANE ROAD FROM RAHOVECI TO XËRXË - LOT 1 - Re-tender” with procurement number 623-24-8684-5-1-1, on the 31/01/2025, has issued this:

DECISION

1. Approved, as partly grounded the complaint of “JOOS & KRASNIQI - BAZE” SH.P.K., with no. 2024/1182 dated 05/12/2024, whereas the decision of the CA "MUNICIPALITY - RAHOVEC" regarding the procurement activity CONSTRUCTION OF A FOUR-LANE ROAD FROM RAHOVEC TO XËRXË - LOT 1 - Re-tender with procurement number 623-24-8684-5-1 1.
2. Certified, B58 Notification on the Decision of the Contracting Authority regarding the procurement activity by the CA - “MUNICIPALITY - RAHOVECË”, dated 20.11.2024 according to the data as in point I of the provision.
3. Within 10 days, the CA must inform the PRB of all actions taken in relation to 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.
4. Since the complaint of the complaining EO is approved as partially grounded, the complaint fee shall be returned in the amount deposited upon filing the complaint. The complaining EO is obliged to, in accordance with Article 31, point 6 of the Rules of Procedure of the PRB, within sixty (60) days to make a request for the return of the complaint security, otherwise the deposit

shall be confiscated, and these funds shall be transferred to the Budget of the Republic of Kosovo.

REASONING

-Procedural facts and circumstances –

On the 09.10.2024, “MUNICIPALITY - RAHOVEC” in the capacity of the Contracting Authority has published the Contract Notice B05 regarding the procurement activity “CONSTRUCTION OF A FOUR-LANE ROAD FROM RAHOVECI TO XËRXË - LOT 1 - Re-tender” with procurement no.: 623-24-8684-5-1-1. Whereas on 20.11.2024 the Notice on the decision of the Contracting Authority for the contract award EO “Lika Trade” - Prishtina

The contracting authority has implemented an open procedure, type of contract: - work, estimated value of the contract: 1, 7,895,292.00 €.

On the 25.11.2024, EO “JOOS & KRASNIQI - BAZE” SH.P.K has submitted a request for reviewing against the above-mentioned decision of the CA. On 27.11.2024, the Contracting Authority has rejected as unfounded the request for reviewing.

On the 05.12.2024, the PRB has accepted the complaint from EO “JOOS & KRASNIQI - BAZE” SH.P.K with no. 2024/1182 regarding the activity “CONSTRUCTION OF A FOUR-LANE ROAD FROM RAHOVECI TO XËRXË - LOT 1 - Re-tender” with procurement no. 623-24-8684-5-1-1.

-On the preliminary review phase-

The Procurement Review Body 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 under Article 4 paragraph 1 sub-paragraph 26 of the LPP. In this way, the PRB has found that it is competent to review this complaint under 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 “JOOS & KRASNIQI - BAZE” SH.P.K are presented as follows:

The above reasons of the contracting authority are unfounded and unsustainable for the following facts: 1. Regarding the first reason for our elimination by the CA, where some reasons for elimination for the request 2.1. Project Manager, therefore, we will explain with concrete facts that the reason for the same is unsustainable and unfounded. The claims of the CA are that we have presented in our offer for the above request the engineer Mr. Enver Gashi, references issued by PEVLAKU for the expansion of the national roads M2-Segment Milosheve - Vushtrri

and the Expansion of the National Road N9-Segment Kline-Peje Lot 6, as the project manager, and also the company Joos Krasniqi has issued references for the project Expansion of the National Road N9-Segment Kline-Peje Lot 6 as the project manager.

We would like to clarify that the engineer in question has been working in our company since 2018 as a construction engineer registered as a secondary employee, therefore he has the right to work in other companies with work contracts. This fact means that during the implementation of the projects he also worked in our company as a Project Manager and in the company PE-VLA-KU as a works manager, for the same project. Therefore, the claim of the CA for our elimination does not stand because the references are real and should be taken into account.

Regarding the other claim regarding the contract of the aforementioned engineer, we clarify that we have presented the contract and the list of employees registered with TAK, and we can prove it with lists older than 3 years from TAK that the same engineer has been and is still employed since 2018 in our company. While regarding the CV, we clarify that the CV was given/sent to us by the engineer himself and we have not interfered with his documents. So the CV is filled out by the engineer himself, but despite this fact we are ready to present you with lists older than three years from TAK, which prove that the engineer has worked and continues to work in our company.

As for the minimum wage, we would like to clarify that at the time the employment contract was signed, the minimum wage for secondary workers was not set at €170, for the hours specified in the contract, and that our company had an agreement with a law firm that prepared the contracts and did not notice it as a technical omission.

Also, such a minimum salary requirement was not specified in the tender dossier, therefore, as a result, we are being eliminated in violation of the provisions of Article 56.3 of the LPP, which clearly states “3. The Tenderer, during open procedures, or the Candidate, during restricted procedures and competitive procedures with negotiations, shall not be disqualified or excluded from such procedures on the basis of any requirement or criterion that is not specified in the contract notice and the tender dossier”.

Regarding the other reason for our elimination regarding point 2.2. The Head of the Workshop, where the CA has stated that we have introduced Engineer Trimor Gjokokaj, allegedly does not meet the requirements for suitability as a Civil Engineer in the Constructive direction, because his profile is Structural (not constructive), we clarify that such reasoning for our elimination is unsustainable. The aforementioned engineer graduated at the Master's level at the Polytechnic University of Tirana in the Structural profile and the same one in our case is a Constructive profile. Our engineer is graduated in the Structural Branch (in Albania) but this direction and the Constructive direction are the same directions, but only the name changes. So the engineer presented by us is according to the request of the tender dossier and in this case we cannot and should not be eliminated from the procurement activity with such reasoning.

As for the CV, we would like to clarify that the CV was sent by the engineer himself and we have not made any interference in his documents and through the references presented by us, his experience is proven for this engineer. 3. . As for the other reason of the tender dossier, namely

for point 2.3. Graduated Civil Engineer or Master - Construction Management, with work experience min. 3 years after graduation, or Bachelor of Civil Engineering - Construction Management, with 5 years of work experience after graduation, where the CA has eliminated us with the reasoning that the contract with the construction engineer - construction management was signed by Mr. Egzon Berisha, who does not appear in the business certificate of the company Berisha Com Sh.p.k. This reason of the CA is untenable due to the fact that we have submitted the general authorization for Mr. in the offer. Egzon Berisha as authorized representative of Berisha Com SHPK.

We do not know for what purpose the authorization presented for Mr. Egzon Berisha was not taken into account, but once again we are attaching it in order for it to be analyzed once again and not to be eliminated with such a justification. ?! The same authorization allows the same to perform all signatures on behalf of the company, respectively on behalf of the director, therefore the CA's reasoning for such an elimination is unsustainable, because it is not necessary to present several authorizations or to present a special authorization only for signing contracts. As for the experience of the engineer Mr. Rexhep Sylejmani, we clarify that during the bidding there were some technical omissions where not all references for the presented engineer were attached. The contracting authority should have requested additional clarifications in accordance with the provisions of Article 59.2 and 72 of the LPP, but it did not do so. For the sake of accuracy, we are attaching another reference for the engineer issued by the company Saba Bellça SHPK, where even with this reference it is clearly seen that the engineer presented by us possesses the required experience according to the tender dossier.

We have also been eliminated for allegedly not fulfilling requirement 2.4.

Graduate Engineer or Master of Geodesy with (3) three years of work experience after graduation. Have evidence of having carried out projects in the field of construction, asphaltting and rehabilitation of roads, as well as at least 2 road expansion projects; • Notarized Geodetic License, for point 2.4;

Regarding the Young Geodetic Krasniqi presented by us in the offer, we clarify that the projects for which we have presented references are projects in which the engineer in question has completed geodetic work for the projects listed in References. We are once again attaching the same references that were also in the file uploaded by us on the E-procurement platform, through which the engineer's experience is verified. Also attached are additional references for this engineer, for which the CA had to request additional clarifications if there was any dilemma according to the provisions of Article 59.2 and 72 of the LPP.

As for the signing of the contract by Mr. Shaban Hoti for the company Joos Krasniqi, where it is stated that the same does not appear in the business certificate and that no authorization for signing contracts was presented in the bid, we clarify that this reason of the CA is also unsustainable. We have also presented with the bid the general authorization for Mr. Shaban Hoti as an authorized representative of JOOS&KRASNIQI-BAZË Sh.p.k. The same authorization allows the same to perform all signatures on behalf of the company, respectively on behalf of the director, therefore the CA's reasoning for such an elimination is unsustainable, because it is not

necessary to present several authorizations or to present a special authorization only for signing contracts. 5. Also for the other request of the tender dossier with no. 2.6. Graduated Engineer in Hydrotechnics or Master's degree, with (3) three years of work experience after graduation. Have evidence of having carried out projects in the field of construction, asphaltting and rehabilitation of roads, as well as at least 2 road expansion projects; we have been eliminated with the same reasoning as in the above-mentioned claim. Therefore, in this case too, we are giving the same claim as above.

Regarding the engineer Lorik Dervishaj presented by us in the offer, we clarify that the projects for which we have submitted references are projects in which he was employed with work contracts for certain projects and he possesses the references issued by our company. We are once again attaching the same references that were also in the file uploaded by us to the E-procurement platform, through which the engineer's experience is verified. Also attached are other additional references for this engineer, for which the CA would like to request additional clarifications if there was any dilemma according to the provisions of Article 59.2 and 72 of the LPP. As for the signing of the contract by Mr. Shaban Hoti for the company Joos Krasniqi, where it was stated that the same does not appear in the business certificate and that no authorization for signing contracts was presented in the bid, we clarify that this reason of the CA is also unsustainable. 6. We have been eliminated on the grounds that we have not fulfilled the other requirement of the tender dossier: Requirement 7: The Economic Operator must provide, together with the bid, the most detailed traffic management plan, including the description and sketches of the road that will be constructed; Evidence 7: The original traffic management plan signed by the Engineer or Bachelor of Communications and the management plan must be stamped by the company; In the justification, the CA stated that the plan submitted by us does not correspond to this procurement activity, because the title and number of the procurement activity do not appear and that the plan signed by the traffic engineer Mr. Zijadin Kastrati does not match the signature on the traffic management plan and the contract signed with this engineer.

This reason of the CA is untenable due to the fact that when we consider that there are identical sketches that we have received from the Procurement Office of the Municipality of Rahovec, it is noted that there are identical views that are presented in the Traffic Management Plan by our side and cannot coincide with any other procurement activity. Also, the requirement of the tender dossier was not that the traffic management plan be made with the project name and procurement number, therefore in this case we have been eliminated in violation of Article 56.3 of the LPP, since as we mentioned above, the aforementioned provision clearly specifies “3. The tenderer, during open procedures, or the candidate, during restricted procedures and competitive procedures with negotiations, shall not be disqualified or excluded from such procedures on the basis of any requirement or criterion that is not specified in the contract notice and in the tender dossier

7. The other reason for our elimination is related to requirement 9 of the tender dossier where it is requested

“Requirement 9: The Economic Operator must possess the means, facilities and technical equipment that are necessary for the implementation of the project, the equipment and mandatory mechanization according to the table in Annex 8 of the Tender Dossier”.

For this requirement we have been eliminated for the following reasons:

The CA for the equipment of the Special Semi-trailer with digital signaling for road traffic management has eliminated us because the booklet presented for the special semi-trailer with digital signaling for road traffic management with plates 01-650-XB, does not prove that it is for digital signaling according to the request. This reason of the CA is untenable due to the fact that the equipment presented by us is according to the request of the tender dossier, but if the CA had any dilemma regarding this issue, then it should have requested additional clarifications but it did not do so.

In relation to the above-mentioned equipment, we are attaching as evidence the photographs through which it is proven that the equipment presented by us is a semi-trailer for digital signaling for road traffic management, Semi-trailer with license plates 01-650-XB.

For the Pneumatic Hammer (hydraulic) equipment that is mounted on an excavator, min. weight 2.8-3.0 tons, we have been eliminated on the grounds that the weight does not appear on the invoice for the pneumatic hammer.

In relation to this point of elimination, to prove the opposite of what the CA has claimed, we are attaching the weight of the pneumatic hydraulic hammer which is according to the request specified in the FDT.

For the equipment HDPE pipe welding machine-min Fi 800-1200, we have been eliminated because the machine presented by us for welding pipes weighs 18 kg and cannot perform the required pipe welding, because the equipment usually weighs 300 kg-over 1 ton max. The CA's justification is unfounded because the presented machine, the FRIAMAT prime eco model from the manufacturer Aliaxis / Germany, is a machine that performs the welding function with the electrofusion process for various plastic (PE) fittings from 20mm to 1200mm in size, according to the technical sheet. The 18 kg weight of the FRIAMAT prime eco machine does not affect the function it was designed to perform. The machine can weld various plastic (PE) fittings using the electrofusion process according to European standards. Therefore, based on the above facts, it is clearly understood that the equipment presented by us complies with the requirements of the tender dossier. For the Vehicle equipment (Autobot for cleaning roads and sewers), we have been eliminated on the grounds that the truck, which is in the name of the company Anuar SHPK, is not in accordance with the requirements of the tender dossier because the booklet lists a truck with a crane for transporting containers, while the other entry lists a truck with a crane and a system for cleaning roads, but not for sewers. This reasoning of the CA is untenable due to the fact that the vehicle presented by us is a vehicle for cleaning roads and sewers with plate 01-886-U, so the same is according to the request of the tender dossier, which we can also prove through photos. Regarding this equipment, the CA should have requested additional clarifications, but it did not do so, discriminating against us as the responsible EO with the

cheapest price. Regarding the equipment, a double-cab truck that possesses signaling equipment for notification of road works, we have been eliminated because the double-cab truck does not appear in the booklet that it possesses the required equipment and that the booklet is not visible.

Regarding this reason for elimination, we clarify that it does not stand for the fact that for the equipment

Double-cab trucks with signaling equipment we have presented a truck that fully meets the requirements of the tender dossier. So the truck with license plates 01-507-SG for which we have concluded a rental agreement with the company Traffiks VA Sh.p. k meets all the requirements and as evidence, find the Booklet and the photo of the truck.

For the equipment Truck with a sweeper that possesses-Sprayers for bitumen and emulsion, the CA has

claimed that we do not meet the criteria for Truck with a sweeper that possesses sprayers for bitumen and emulsion.

This reasoning of the CA is untenable due to the fact that we have presented two trucks of this type in the offer, where the truck with plate 05-564-EB, is marked in the SUD that the same is a truck for spreading emulsion and the same can also be used for spreading bitumen since their aggregate state is the same. As is known from practice, Bitumen is one of the components for the production of Asphalt and not for spraying roads, therefore the equipment presented by us should be taken into account and we should not be eliminated with such reasoning.

For the equipment Asphalt grinding machine with a weight of min. 24-25 tons, we have been eliminated on the grounds that the document for the grinding of asphalt by KAG Asphalt is in German and is in contradiction with Article 13 of the LPP. Regarding the asphalt grinding machine equipment, we have presented the equipment with all accompanying documents, therefore the CA's assumptions about the language are not reasonable, since the invoice for this machine is also in English, but for the sake of correctness we also provide you with the Dud and the translated invoice, which confirms that the equipment is in accordance with the requirements of the tender dossier. For the professional drone device dedicated to inspection, monitoring or geodetic survey, we have been eliminated with the following justification: In your bid, you have presented a document issued by: A.VITEH+ which, according to the presented document, is not a manufacturer, but a trader/distributor of DJI drones, the requirements of the dossier were that the engineer must be trained/certified for the use of the professional drone by the manufacturer and not by the distributor/trader. The above-mentioned reason of the CA for our elimination is untenable due to the fact that the engineer whom we have presented for the use of the drone and who is also a geodetic engineer, it is clearly seen that this engineer possesses a third category certificate for the use of unmanned vehicles in accordance with REGULATION NO. 01/2021 ON UNMANNED AIRCRAFT SYSTEMS (SAP). The only institution authorized to certify pilots in the Republic of Kosovo is the ACC institution, so it is understood that our engineer meets all the conditions for operation in the territory of the Republic of Kosovo for any drone that is included up to the third category.

The reason for the elimination also stated that our engineer does not have a certificate from the manufacturer for the use of the drone but has certificates from the distributor. We clarify that an operator who may have a certificate from the manufacturer or distributor, but who is not registered as a pilot in the ACC register, then this certificate is not valid and this operator does not have the right to operate in the Republic of Kosovo. We also clarify that the DJI company is a world leader company headquartered in China and the policies of this company are such that they operate through a network of distributors and sellers authorized by the company, therefore it is impossible for any natural person to be certified by the manufacturer directly, but certain persons can be certified by official distributors. Therefore, in conclusion, we fulfill the request of the tender dossier and in no way can we and should not be eliminated with such a justification. 8. We have also been eliminated on the grounds that some of the rental agreements did not specify the equipment for which the agreements were concluded. The CA's reasoning that the presented agreements for renting machinery with some companies that we have presented do not contain data on which equipment they were concluded for does not hold true because we have offered rental agreements where the title and procurement method for the project in question are specified within the agreements and also in the tender dossier there was no request to specify decisively that the machinery must appear in the agreement. We have completed Annex 7, and none of the CA's reasons for our elimination at this point is sustainable. because the agreements are original and certified by a notary in the presence of both parties.

9. In the standard letter for eliminated tenderers, we were also eliminated with the justification that we had interfered with the pre-measurement. The CA's claim for interference with the pre-measurement on our part does not stand because we have completed the pre-measurement as determined by the contracting authority. Now that we have bid and been eliminated by the CA, we have analyzed the pre-measurement once again and we have noticed that the CA has set various formulas where there have been different calculations of quantities.

Since with the LPP and the Regulation, we as a company are not allowed to interfere with the pre-measurement, respectively, in quantity, we have only filled in the columns that have been determined by the CA to be filled in by the bidding economic operators.

The contracting authority has drafted the bill of quantities incorrectly or intentionally, we do not know, since at the moment that we have filled in the price columns, the authority had set formulas that only the three positions that the CA has mentioned, which have deducted the quantities themselves, at the moment that the prices were given in the price column. We suspect that these formulas have been set intentionally, leaning towards the economic operator declared the winner, since it is not the first time that such a thing has happened, and the winner of projects with the same errors has been declared the same EO. Along with this request for reconsideration, we are also attaching some photos of the bills of quantities, through which our complaint claim is proven. So we are once again clarifying that we have filled in the table as the contracting authority has prepared and compiled it and we are not guilty of why the formula compiled by the CA is incorrect or intentional. Realistically, we should not suffer for the errors of the contracting authority. Moreover, we suspect that in this case there is a rigging of this tender, because we as an economic operator have filled in the table as the contracting authority has compiled it, while

the EO recommended for the contract has filled it in by changing the formulas of the CA's table, which means that the EO recommended for the contract has interfered with the CA's formulas and should have been eliminated, taking into account that in no case is the EO allowed to interfere in the column of quantities set by the CA. Therefore, in this case, the CA's reason is untenable due to the fact that we cannot and should not be eliminated in any way from the procurement activity, due to the fault of the contracting authority.

We also clarify that the contracting authority has recommended for the contract an EO who is irresponsible for the following facts: The EO recommended for the contract is irresponsible for the fact that it has not fulfilled all the requirements of the tender dossier. In annex 8 of the tender dossier it is specified: Professional drone dedicated to inspection, monitoring or geodetic survey, equipped with a digital camera and a resolution of not less than 40 megapixels. The drone must have the ability to measure with PPK (Post processing kinematic) and PPK processing software. The approval from the ACC for the Engineer to operate the presented drone must be presented (Copy

notarized by the Engineer). The Engineer must be trained/certified for the use of the professional drone by the manufacturer. The specification from the drone manufacturer for the drone and camera must be presented. From the documentation presented by the EO recommended for the contract with the exact invoice presented, it is clearly seen that the GEOCAD company has purchased a Wingtra model drone with PPK capabilities, but the invoice presented does not indicate that the EO has presented any document for the possession of software for processing PPK data. Any measurement performed with a drone must be performed in software, therefore it is clearly seen that the company does not have evidence for the possession of software for processing drone measurements with PPK.

Therefore, in conclusion, the EO recommended for the contract does not meet the above-mentioned requirement and as such should have been eliminated from the procurement activity.

It should also be noted that in this procurement activity, double standards were used against us and in favor of the EO recommended for the contract and this fact is confirmed by the following reasoning:

In the reasons for our elimination, it was stated that for the engineer presented for the use of the drone, we did not present a certificate from the manufacturer, but we did present a certificate from the Distributor.

From the documentation presented by the EO recommended for the contract, it is clearly seen that this EO also did not present the certificate for the engineer from the drone manufacturer but presented a certificate from the drone seller.

Also, from the documentation presented in the offer, it is clearly seen that the GeoTech company, which is presented as a distributor of the Wingtra company, has issued a certificate to Mr. Fidan Hasaj. From the certificate it is seen that the training was one day, the certificate issued by the drone sales company GeoTech and signed by the authorized representative of the

company Ylber Shabani. Also the EO recommended for the contract does not meet the other requirement of the tender dossier where it is specified as follows "Requirement 6: The Economic Operator must have a Base for the production of Asphalt with a capacity of min. 240t h, licensed in Ownership or agreement for supply, Base for the production of Concrete licensed in Ownership or supply agreement, Quarry licensed in Ownership or supply agreement;”, while as documentary evidence

"Evidence 6: Notarized copy of the valid license issued by the Agency for Mines and Minerals in ownership. In cases where the Economic Operator has a supply agreement, the project and its duration must be specified. The agreement must be notarized between the lessor and the lessee in the presence of a notary;”.

The EO recommended for the contract has presented the agreements for the supply of asphalt, graders and stone crushers with the HaxhaKom company. When analyzing such agreements, they appear to have been signed by Milot Malaj with authorization and the same does not appear in the business certificate. Therefore, since we have been eliminated for the same thing, then the EO recommended for the contract should also be eliminated from the procurement activity and not use double standards, eliminating us and recommending the same EO for the contract, which is irresponsible.

In annex 8-List of mandatory equipment, the following equipment is also required: Electric traffic light for traffic management during works - 3 pieces. The EO recommended for the contract has presented a set of traffic lights in the bid, but it is clearly known that the set has 2 traffic lights and not three as was the request of the dossier tender. Therefore, from this fact, since the same has presented 2 traffic lights and not three as requested, it is clearly understood that the same EO is irresponsible and as such should be eliminated from the procurement activity. Based on these facts, it is clearly understood that the EO recommended for the contract is irresponsible and as such should have been considered by the CA, but such a thing was not done, openly favoring the EO recommended for the contract. Based on the above facts, it is clearly understood that the EO recommended for the contract did not fulfill the requirements of the tender dossier and as such should have been eliminated from this procurement activity. It should also be noted that the contracting authority, on the occasion of our elimination and the recommendation for the contract of the group of EOs “Lika Company” SH.P.K.; “Lika Trade” SH.P.K., with a price of: did not take into account the damage to the state budget at all, where the EO recommended for the contract has bid at a price of: €07,886,582.56, while we have bid at a price of €6,574,798.22. The difference between the price we have offered and the price of the EO recommended for the contract is in the amount of €1,311,784.34.

Note: We as a company have encountered almost the same dossier in 4 different tenders in 4 different authorities, therefore we suspect that this tender is rigged and that the requirements have been adapted for the EO recommended for the contract. On 27.11.2024, we have accepted the decision to reject the request for reconsideration, with the reasoning that the same is unfounded, but that no concrete justification based on concrete legal provisions has been provided in the decision.

The contracting authority in its decision to reject the request for reconsideration did not provide any justification regarding our complaint claims, but only described the reasons for our elimination which were given in the standard letter for eliminated tenderers. With this action, the contracting authority is proving once again the favoritism it is giving to the EO recommended for the contract and at the same time the discrimination that is being done to us as a responsible EO and with a price much cheaper than the price of the EO recommended for the contract. The same, since it was not able to prove the opposite of our complaining claims, did not provide any justification in relation to them, therefore this action clearly shows that if eventually our justifications for our elimination and our complaining claims against the EO recommended for the contract were unfounded, then the CA would have provided concrete facts opposing them, but since it did not do such a thing, then it is clearly understood that the same are sustainable.

In this case, the contracting authority has acted in complete violation of the provisions of Article 108/A of the LPP, paragraph 9, which clearly states “9. The refusal shall be justified and communicated in writing, in accordance with this law, to the complainant and all interested parties, if any. Furthermore, the contracting authority may prevent further proceedings upon receipt of a written notification from the complainant regarding his willingness to withdraw the request submitted for review”. The contracting authority in this case, in addition to not providing a justification under Article 108/A, paragraph 9, is also continuing to disregard Article 6 of the LPP, since it has recommended for the contract an EO with a price higher than the price of our bid. Based on all the evidence and facts mentioned above, we conclude that the examination, evaluation and comparison of tenders was not carried out in accordance with Article 59 of the LPP, because the group of EOs that did not meet all the requirements of the tender dossier and the contract notice was recommended for the contract. The main criterion for awarding the contract, which was the responsible tender with the lowest price, as provided for in Article 60, paragraph 1.1 of the LPP, was also not respected, because the group of irresponsible economic operators was recommended for the contract. Article 7 of the LPP was also not respected, because the group of economic operators recommended for the contract was favored, where the same one, even though it did not meet all the requirements of the FDT and the contract notice, was recommended for the contract, while we were discriminated against by not being declared the winner even though we met all the requirements of the FDT and the contract notice and we offered at the lowest price. Paragraph 1 of Article 7 of the LPP clearly provides that “The contracting authority shall treat economic operators equally and non-discriminatory and shall act in a transparent manner”. Similarly, paragraph 6 of Article 7 of the LPP provides that during the conduct of procurement activities, all contracting authorities shall ensure; that (yi) the selected tender complies with all substantive aspects of the relevant conditions, criteria and specifications, but in this case the CA did not comply with this legal provision either.

Article 1 of the LPP has also not been taken into consideration, since it is known that the purpose of this law is to ensure the most efficient, transparent and fair way of using public funds, public resources and all other funds and resources of contracting authorities in Kosovo. Referring to the claims above, “JOOS & KRASNIQI - BAZE” LLC considers that the Contracting Authority has acted in violation of Article 1, 6, 7, 52, 56,3, 59, 60, 69, and 72 of the LPP. Considering all the facts and arguments mentioned above, we request the PRB to take: DECISION to APPROVE, as

grounded, the complaint of EO JOOS & KRASNIQI - BAZE LLC & BERISHA COM LLC & ALBAVIA LLC and to CANCEL

the notification on the decision of the CA (B58) for the award of the contract and to return the case for

RE-EVALUATION, while the re-evaluation of the offers shall be carried out according to the legal provisions of the LPP and

in accordance with the requirements of the tender dossier and the contract notice, otherwise we will be forced to continue with complaints and objections for these violations in other higher instances.

Response of the CA to the request for reconsideration: Group of Economic Operators: JOOS & KRASNIQI

- BAZE SH.P.K.; BERISHA COM SH.P.K.;

Albavia sh.p.k. with address in JUNIK, regarding the procurement activity entitled: CONSTRUCTION OF A FOUR-LANE ROAD FROM RAHOVECI TO XËRXË - LOT 1 - Retendering, with Procurement Number: 623-24-8684-5-1-1, Internal Number: 623-24-056-5-1-1, against the Notice on the Decision of the CA, dated: 20.11.2024, published on the website: [https://e-](https://e-prokurimi.rks-gov.net)

[prokurimi.rks-gov.net](https://e-prokurimi.rks-gov.net), has filed a Request for Review dated: 25.11.2024, pursuant to Article 108/A, of the Law on Public Procurement (LPP) No. 04/L-042.

LEGAL BASIS FOR REFUSAL OF THE REQUEST We would like to clarify that your complaint claims are unfounded and unfounded, since the evaluation of the bids was made in accordance with Law No.

04/042, Law on Public Procurement. The Contracting Authority: Municipality of Rahovec, has notified you as the complaining Economic Operator, according to the B42 Standard Letter for the eliminated tenderer form, where we have stated:

REASONING: Your tender has been rejected for the following reasons: I inform you that you as the O.E. have not fulfilled the minimum requirements according to the Tender Dossier in Section II. Tender Data Sheet (TDS): Technical and professional capacity:

Requirement 2: The Economic Operator must have on the list at least the following professional staff:

2.1. Project Manager - Graduated Civil Engineer or Master -

Constructive Management, with work experience min. 5 years after graduation, Have evidence of having

managed projects implemented in the field of construction, asphaltting and rehabilitation of roads, as well as

at least two (2) managed projects in road expansion;

Required documentary evidence

- Relevant diplomas - Notarized copies, (notarization to be presented by the engineer himself to the notary);

- CV (signed by the engineer himself);

- Employment contract with the employer or agreement on engagement for this project,

(If you present a regular contract, it must be proven with a list of ATK in the last three (3) months,

if you present a project agreement, it must be notarized in the presence of the parties);

- Reference letter for previous work in the required field issued by the employer;

- A written declaration on the appointment of the Project Manager and the Site Supervisor - must be submitted in original, signed and stamped by the Economic Operator for

point 2.1 & 2.2;

The clarifications are as follows: In your submitted offer, for the position of Project Manager, you have introduced Mr. Enver Gashi; For the Engineer in question, a reference letter for previous work in the requested field issued by the employer is required and there is evidence that he has managed projects carried out in the field of construction, asphaltting and rehabilitation of roads, as well as at least two (2) managed projects in road expansion;

The reference issued by the Company: PEVLAKU, states that the same has been the workshop leader in two road expansion projects, and not the project manager as specified in the tender dossier request. The road expansion projects specified in the reference are: “Widening of the National Road M2-Segment Miloševë-Vushtrri”

and “Widening of the National Road N9-Segment: Klinë-Peja Lot 6”. Also, for the same engineer, a reference issued by the Leader of this Group himself: JOOS & KRASNIQI - BAZE SH.P.K. has been presented, where this reference also mentions the same project that is mentioned in the aforementioned reference “Widening of the National Road N9-Segment: Klinë-Peja Lot 6”,

however, in this case, the position of the same person appears as manager and not as the workshop leader. In this case, we are dealing with a discrepancy between the evidence, since two references were issued for the same project by two different companies, one of which stated that the engineer was the workshop manager, while the other stated that the engineer was the manager.

Also presented is the contract concluded between the engineer and the Company: JOOS

& KRASNIQI - BAZE SH.P.K., which appears to have been concluded on the date: 01.10.2018, but in the CV of the same it does not appear that he worked for your company. So in this case we are dealing with a discrepancy between the evidence presented. Also in the aforementioned contract, a salary of 150 euros is indicated, but according to the law in force at the time of signing the contract, the aforementioned engineer was 40 years old and according to the law in force at that time the minimum wage for workers over 35 years old was 170 euros per month, while the contract also states that the salary cannot be lower than the minimum wage. In this case, there are also previous practices, decisions of the PRB, namely decision No. 837-841-19, dated: 26.12.2019. Also, in the evidence presented by ATK for the aforementioned engineer, it appears that his primary job is not working at your company, while the contract states full-time hours, therefore in this case too we are dealing with inconsistencies between the evidence presented.

Therefore, your offer is considered irresponsible in accordance with Article 59.4 of the LPP. 2.2. Workshop Manager - Graduate Civil Engineer or Master - Constructive Management, with work experience of at least 5 years after graduation, Have evidence of having led projects implemented in the field of construction, asphaltting and rehabilitation of roads, as well as at least two (2) projects led in road expansion; Required documentary evidence • Relevant diplomas - Notarized copies, (notarization to be presented by the engineer himself to the notary); • CV (signed by the engineer himself);

- Employment contract with the employer or agreement on engagement for this project,

(If you present a regular contract, it must be proven with a list of TAK in the last three (3) months,

if you present a project agreement, it must be notarized in the presence of the parties);

- Reference letter for previous work in the required field issued by the employer;

- A written statement for the appointment of the Project Manager and the Workshop Leader - must be submitted in original, signed and stamped by the Economic Operator for point 2.1 & 2.2;

The clarifications are as follows:

In your submitted offer, for the position of Workshop Manager, you have introduced Mr. Trimor Gjistikaj; For the Engineer in question, it is requested: Constructive Direction, while in the Diploma presented with Diploma Number: M-1051, for this Engineer the Profile is stated: Structuralist, and Non-Constructive, as specified in the above-mentioned request, the same has also graduated on the date: 20.03.2018, while in his CV it appears that the same has only 4 months of work experience after graduation and that at the Company: NTSHN ARFA, so according to the CV the same does not fulfill the 5 years of experience required after graduation. Based on the table of INSTRUCTION No. 001/2023 ON PUBLIC PROCUREMENT, on page

40 we have an example of how to act: The offer also includes two references from the leader of the group: JOOS & KRASNIQI - BAZE SH.P.K., and the contract entered into appears to have been entered into on

date: 01.08.2018, but the CV does not indicate anywhere that the same person has worked for you as a company. Also, the evidence presented does not prove that the aforementioned engineer has at least two (2) projects led in road expansion. Therefore, your offer is considered irresponsible in accordance with Article 59.4 of the LPP.

2.3. Graduated Civil Engineer or Master - Construction Management, with work experience min. 3 years after graduation, or Bachelor of Civil Engineering - Construction Management, with 5 years of work experience after graduation, Have evidence of having implemented projects in the field of construction, asphaltting and road rehabilitation. Be certified for occupational safety and health;

Required documentary evidence

- Relevant diplomas - Notarized copies, (notarization to be presented by the engineer himself to the notary);

- CV (signed by the engineer himself);

- Employment contract with the employer or agreement on engagement for this project,

(If you present a regular contract, it must be proven with a list of ATK in the last three (3) months,

if you present a project agreement, it must be notarized in the presence of the parties);

- Reference letter for previous work in the required field issued by the employer;

- Notarized certificate for passing the professional examination in the field of occupational safety and health issued by the Ministry of Labor and Social Welfare, for point 2.3;

The clarifications are as follows: In your submitted offer, for the position of Graduate Engineer in Construction or Master in Construction Management, you have presented Mr. Rexhep Sylejmani; For the Engineer in question, it was requested: Employment contract with the employer or agreement on engagement for this project, while in your offer for this Engineer you have presented: Which is in contradiction with Article 2 of this contract, which states: The contract signed through the Contracting Parties, by the Company: BERISHA COM SH.P.K., on behalf of the Employer, was made by Mr. Egzon Berisha, where the person in question is NOT on the Business Certificate as Owner, also in the submitted offer he did not present any Authorization from the Company to sign contracts; The signing or Notarization of any document by a person who is not a director expressly contradicts Article 109 of the Law on Commercial Companies which states: "Each managing director is authorized to represent the Limited Liability Company as an Authorized Representative during the exercise of ordinary Economic Activity, including the authorization: 1.1 to conduct its Economic Activity of the Limited Liability Company; and 1.2 to sign agreements or other documents necessary for the exercise of

Economic Activity on behalf of the Limited Liability Company if such signature is reasonably related to the exercise of the ordinary Economic Activity of the Limited Liability Company. Any of those actions of the managing directors shall bind the Limited Liability Company, unless the Statute of the Limited Liability Company provides that some or all of the Managing Directors shall jointly represent the Limited Liability Company. The Joint Representation shall apply to third parties only if published by the ARBK, in accordance with Article 22 of this Law. 2. When carrying out transactions on behalf of the Limited Liability Company, in relation to the Limited Liability Company, the managing directors are obliged to implement the restrictions set forth in the Statute of the Limited Liability Company or established by vote of the Shareholders or the Board of Directors. The restriction of the right of representation shall not apply to third parties. 3. Any person, including the managing director, who knowingly claims to act on behalf of the Limited Liability Company in violation of the obligations set forth in paragraph 2 of this Article, shall be personally liable for all damages caused to the Limited Liability Company by such actions. "The same issue has been clarified in the PPRC FAQ, where in question no. 40, it has been clarified that persons who are not part of the business information as an authorized party cannot sign on behalf of the operator.

Also, for the Engineer in question, no evidence has been presented that he has experience in projects implemented in the field required according to the tender dossier. Therefore, your offer is considered irresponsible in accordance with Article 59.4 of the LPP. 2.4. Graduate Engineer or Master of Geodesy with (3) three years of work experience after graduation. Have evidence that he has implemented projects in the field of construction, asphaltting and rehabilitation of roads, as well as at least 2 road expansion projects;

Required documentary evidence

- Relevant diplomas - Notarized copies, (notarization to be presented by the engineer himself to the notary);
- CV (signed by the engineer himself);
- Employment contract with the employer or agreement on engagement for this project,

(If you present a regular contract, it must be proven with a list of ATK in the last three (3) months,

if you present a project agreement, it must be notarized in the presence of the parties);

- Reference letter for previous work in the required field issued by the employer;
- Notarized Geodetic License, for point 2.4;

The clarifications are as follows: In your submitted offer, for the position of Graduate Engineer or Master of Geodesy, you have presented Mr. Rinor Krasniqi;

The contract signed by the Contracting Parties, by the Company: JOOS & KRASNIQI -

BAZE SH.P.K., on behalf of the Employer, was made by Mr. Shaban Hoti, where the person in question

is NOT on the Business Certificate as Owner, nor has the submitted offer

presented any Authorization from the Company for signing contracts; The signing or notarization of any document by a person who is not a director expressly contradicts Article 109 of the Law on Commercial Companies which states: “Each managing director is authorized to represent the Limited Liability Company as an Authorized Representative during the exercise of ordinary Economic Activity, including the authorization: 1.1 to manage its Economic Activity of the Limited Liability Company; and 1.2 to sign agreements or other documents necessary for the exercise of Economic Activity on behalf of the Limited Liability Company if such signature is reasonably related to the exercise of the ordinary Economic Activity of the Limited Liability Company. Any of those actions of the managing directors shall bind the Limited Liability Company, unless the Statute of the Limited Liability Company stipulates that some or all of the Managing Directors shall jointly represent the Limited Liability Company. Joint representation shall be valid towards third parties only if it is published by the ARBK, in accordance with Article 22 of this Law. 2. When carrying out transactions on behalf of the Limited Liability Company, the managing directors shall be obliged, with respect to the Limited Liability Company, to comply with the restrictions set out in the Statute of the Limited Liability Company or established by a vote of the Shareholders or the Board of Directors. The restriction of the right of representation shall not be valid towards third parties. 3. Any person, including the managing director, who knowingly claims to act on behalf of the Limited Liability Company in violation of the obligations set forth in paragraph 2 of this Article, shall be personally liable for all damages caused to the Limited Liability Company by such actions. “ The same issue is clarified in the PPRC’s frequently asked questions, where in question no. 40, it is clarified that persons who are not part of the business information as an authorized party cannot sign on behalf of the operator.

The engineer in question graduated on: 11.10.2019, while from the evidence presented, it does not appear that he has carried out at least 2 road expansion projects. Therefore, your offer is considered irresponsible in accordance with Article 59.4 of the LPP.

2.6. Graduated Hydrotechnical Engineer or Master's degree, with (3) three years of work experience after graduation. Must have evidence that he has carried out projects in the field of construction, asphalting and road rehabilitation, as well as at least 2 road expansion projects;

Required documentary evidence

- Relevant diplomas - Notarized copies, (notarization to be presented by the engineer himself to the notary);
- CV (signed by the engineer himself);
- Employment contract with the employer or agreement on engagement for this project,

(If you present a regular contract, it must be proven with a list of ATK in the last three (3) months,

if you present a project agreement, it must be notarized in the presence of the parties);

- Reference letter for previous work in the required field issued by the employer;

The clarifications are as follows: In your submitted offer, for the position of Graduate Engineer of Hydrotechnics or Master, you have presented Mr. Lorik Dervishaj;

The Contract signed by the Contracting Parties, by the Company: JOOS & KRASNIQI - BAZE SH.P.K., on behalf of the Employer, was made by Mr. Shaban Hoti, where the person in question is NOT in the Business Certificate as the Owner, nor has the submitted offer presented any Authorization from the Company to sign contracts; The signing or Notarization of any document by a person who is not a director expressly contradicts Article 109 of the Law on Commercial Companies which states: "Each managing director is authorized to represent the Limited Liability Company as an Authorized Representative during the exercise of ordinary Economic Activity, including the authorization: 1.1 for the management of its Economic Activity of the Limited Liability Company; and 1.2 for signing agreements or other documents necessary for the exercise of Economic Activity on behalf of the Limited Liability Company if such signing is reasonably related to the exercise of the ordinary Economic Activity of the Limited Liability Company. Any of those actions of the managing directors shall bind the Limited Liability Company, unless the Statute of the Limited Liability Company stipulates that some or all of the Managing Directors shall jointly represent the Limited Liability Company. Joint Representation shall be valid towards third parties only if it is published by the ARBK, in accordance with Article 22 of this Law. 2. When carrying out transactions on behalf of the Limited Liability Company, the managing directors are obliged, with respect to the Limited Liability Company, to comply with the restrictions set forth in the Limited Liability Company's Articles of Association or established by vote of the Shareholders or the Board of Directors. The limitation of the right of representation does not apply to third parties. 3. Any person, including the managing director, who knowingly claims to act on behalf of the Limited Liability Company in violation of the obligations set forth in paragraph 2 of this Article, is personally liable for all damages caused to the Limited Liability Company by such actions. " The same issue is clarified in the PPRC's frequently asked questions, where in question no. 40, it is clarified that persons who are not part of the business information as an authorized party cannot sign on behalf of the operator.

Also for the same Engineer you have presented references issued by the Company: JOOS & KRASNIQI - BAZE SH.P.K., but in the CV presented it does not appear that the same has worked for you as a company. So in this case we are dealing with a discrepancy between the evidence presented. Also from the evidence presented you have not proven that the same has completed at least two road expansion projects.

Therefore your offer is considered irresponsible in accordance with Article 59.4 of the LPP. Requirement 7:

The Economic Operator must provide, together with the offer, the most detailed traffic management plan, including the description and sketches of the road that will be implemented;

Required documentary evidence

Evidence 7: The original of the traffic management plan signed by the Engineer or Bachelor of Communications and the management plan must be stamped by the company;

The clarifications are as follows: In your submitted bid, the plan presented by you does not correspond to this procurement activity, since the title and procurement number for this activity do not appear anywhere. It is also requested that the traffic management plan be signed by an Engineer or Bachelor of Communications.

The presented plan was signed by the Traffic Engineer Mr. Zijadin Kastrati, which Engineer you presented in Requirement No. 2.5 of Technical and professional capacity, but

in this case we are dealing with a discrepancy between the presented evidence, since in the traffic management plan prepared by the Engineer in question we have a different signature, while in the contract presented with this Engineer, we have a different signature. Therefore, your offer is considered irresponsible in accordance with Article 59.4 of the LPP.

Requirement 9: The Economic Operator must possess the means, plants and technical equipment that are necessary for the implementation of the project, the equipment and mandatory mechanization according to the table in Annex 8 of the Tender Dossier;

Required documentary evidence Evidence 9: The economic operator must complete the list of equipment as requested in Annex 8 of the Tender Dossier, the List of Equipment signed and stamped by the Economic Operator and the List of Equipment must be notarized by a Notary in the form of a Notarial Deed, where the list of equipment must be accompanied by notarized evidence of ownership (or rental) of the means, plants and technical equipment and capacities necessary to meet the requirements (according to the list in Annex 8 of the Tender Dossier), The equipment that is registered must be proven with the registration booklet (the equipment must be within the registration period), while other equipment the Economic Operator must prove with a document for the ownership of the equipment (Invoice, DUD or sales contracts, etc.)

Attention! In case the EO does not possess the equipment on ownership, it must provide the agreement for the rental of the equipment. The agreement must be in the name of this project with validity for the duration of this contract, signed and sealed by both parties in the presence of a notary; Evidence for the equipment must be provided in order according to the list attached in Annex 8 of the Tender Dossier, Also provide the characteristics or specific technical specifications for each of the equipment, The evidence must be visible;

List of tools, plants and technical equipment submitted by you: Also in your bid you have presented agreements/contracts for the rental of equipment presented in the bid as follows:

Agreement JOOS&KRASNIQI-BAZE SH.P.K. and Rahovica Commerce SH.P.K.;

Agreement JOOS&KRASNIQI-BAZE SH.P.K. and NNT ABC SH.P.K.;

Agreement JOOS&KRASNIQI-BAZE SH.P.K. and FSC ING SH.P.K.;

Agreement JOOS&KRASNIQI-BAZE SH.P.K. and EUROVIA SH.P.K.;

Agreement JOOS&KRASNIQI-BAZE SH.P.K. and KAG-Asphalt Company SH.P.K.;

Agreement JOOS&KRASNIQI-BAZE SH.P.K. and PZP Valjevo;

The agreements mentioned above do not indicate for which equipment they were concluded, therefore they cannot be taken into account by the Contracting Authority, because it is not known for which equipment they were concluded. In order to be considered a valid agreement, it was necessary to also mention the equipment that will be rented. Therefore, your offer is considered irresponsible in accordance with Article 59.4 of the LPP CA during the evaluation of the offers we have found that the Group of Economic Operators: JOOS & KRASNIQI - BAZE SH.P.K.; BERISHA COM SH.P.K.; Albavia sh.p.k, has intervened in the pre-measure, namely: In position No. 1.4.6: Supply and work of the buffer (100MN/m²) of crushed limestone 0-31.5mm with thickness t=20cm, in this layer the quantity for adjusting the geometry in curves and in the direction has also been calculated. The quantity calculated in the compacted state, Unit of measurement: m³, Quantity: 14250.00 m³, changing the Quantity to: 13950.00 m³

In position No. 2.3.4: Supply, transport and placement of 0-16mm sand at the end of the channel side and on the pipes, Unit of measurement: m³, Quantity: 1100.00 m³, changing the Quantity to:

1092.00 m³

In position No. 2.3.5: Covering and planning of the channel with CBR 15% filling material and compaction in 25cm layers up to the road body. Coverage up to the subbase layer of the road body, Unit of measurement: m³, Quantity: 2750.00 m³, changing the Quantity to: 2758.00 m³. When bidding, each bidding EO undertakes to have checked and accepted all the conditions of the Tender Dossier. This is also evidenced in the Tender Submission Form which is attached to its bid, but is also specified in Article 18.3 of Regulation No. 001/2022 on Procurement.

Public, quote: "Part C, Bid Submission Form, is the main part of the tender, because in this part the bidder declares that he has checked and accepts all the conditions of the tender and submits his financial bid. It consists of: Tender Form and Price List".

We clarify that the change in quantities is not related to arithmetic errors, arithmetic errors are clearly defined in the above Regulation referred to in paragraphs 8 and 9 of Article 41.

In this case, there are also previous practices by the PRB, PRB Decisions, respectively PRB Decision: 2023/0931, and PSH Decision no. 399/22; Therefore, your bid is considered irresponsible in accordance with the LPP; From the above findings, it was decided as in the provisions of this Decision

Based on Article 111 paragraph 5 in connection with Articles 113 and 114 of the LPP, the Procurement Review Body on 06.12.2024 authorized the review expert to conduct the initial review of the file and claims according to the complaint with no. 1182/24, while on 30.12.2024 the review expert's report with no. 2024/1182 was submitted 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, while the decision of the CA remains in force.

The expertise report has been duly accepted by all procedural parties. The CA agrees with the recommendations of the review expert report, and the EO also disagrees with the review expert report. The PRB 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 PRB Rules of Procedure, 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 submissions and documents of the complainant, 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 "JOOS & KRASNIQI - BAZE" SH.P.K- the review expert through report no. 2024/1182 has assessed as follows:

Claim no. 1: The main claim of the complaint according to complaint 1182/24 is related to the reason for the elimination of the complaining EO, specifically with the change of the quantities requested by the CA in the pre-measure.

The EO claims that the same did not change the quantities, but the pre-measure/formula set by the CA, upon filling in the price, automatically changed the quantities.

The complaining EO expresses its doubts that this error in the pre-measure formula was made intentionally by the CA.

On the other hand, the CA in rejecting the request for reconsideration states that: "When bidding, each bidding EO undertakes to have checked and accepted all the conditions of the Tender Dossier. This is also evidenced in the Tender Submission Form which is attached to its bid, but is also defined in Article 18.3 of Regulation No. 001/2022 on Public Procurement, quote: "Part C, the Bid Submission Form, is the main part of the tender, because in this part the bidder declares

that he has checked and accepted all the conditions of the tender and submits his financial bid. It consists of: the Tender Form and the Price List".

We clarify that the change in quantities is not related to arithmetic errors, arithmetic errors are clearly defined in the above Regulation referred to in paragraphs 8 and 9 of Article 41. In this case, there are also previous practices by the PRB, PRB Decisions, namely PRB Decision: 2023/0931, and PSH Decision no. 399/22; Therefore, your offer is considered irresponsible in accordance with the LPP;". After analyzing the case files, complaint and complaint claims, tender dossier and the preliminary measure, as well as the CA's decision to reject the request for reconsideration, it is initially worth emphasizing that the tender dossier, specifically the preliminary measure/price description, contains errors in the formula, as claimed by the complaining EO.

However, from the practice so far in the PRB through decisions: no. 382/24, no. 931/23, 49/23, errors in the formula in the price description/prices set by the CA, have not been allowed to be used even as a justification for canceling the activity.

More specifically through decision 931/23, where the complaining EO was the same economic operator, the review panel in the justification of the decision among other things finds:

"Therefore, the Panel, starting from this fact that other EOs have not touched the quantities determined by the CA, while the complainant has changed the quantities in the price with or without intention, then the complainant should have identified this in the pre-bidding phase and taken measures to improve this, as well as if it were necessary by filing a complaint with the CA and the PRB. Whereas, when submitting a bid, each bidding EO undertakes to have checked and accepted all the conditions of the Tender Dossier, this is also evidenced in the Tender Submission Form of the complainant which is attached to his bid, but also defined in Article 18.3 of Regulation No. 001/2022 on Public Procurement, quote: "Part C, the Bid Submission Form, is the main part of the tender, because in this part the bidder declares that he has checked and accepted all the conditions of the tender and submits his financial bid. It consists of: Tender Form and Price List". The Panel clarifies that the change in quantities is not related to arithmetic errors, arithmetic errors are clearly defined in the above Regulation referred to in paragraphs 8 and 9 of Article 41. As a result of all these actions/inactions cited above, the Review Panel supports the reasoning of the contracting authority and the report of the review expert that this complaining EO was rightly eliminated from this procurement activity."

In this case, we assess that we are dealing with the same situation as complaint 931/23 regarding the formula for the size and elimination of the EO. Based on all that was mentioned above, as well as based on the decisions of the PRB for similar cases, we consider that the complaining claim is unfounded.

Claim no. 2: Regarding the complaint claims for the project manager, the CA in the justification for the elimination, in addition to other reasons such as the minimum wage, the jobs of this person, etc., as a justification for the elimination has given that the specific person has not proven experience as a project manager for two road expansion projects.

The complaining EO in its complaint provides clarifications and justification regarding the salary, jobs of the person in question, etc., but does not claim that the person in question has experience as a “manager” for road expansion projects.

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

Claim no. 3: Regarding the other complaint claims, regarding staff, equipment, equipment rental agreements, etc., we consider that they are partially founded, since after analyzing the case files, we assess that for these complaint claims there was merit in at least requesting additional clarifications from the CA.

However, based on the responses given in claims 1 and 2, returning the case for re-evaluation for the purpose of further clarifications would not bring a change in the final result regarding the liability of the complaining EO.

Claim no. 4.: Complaint claims against the recommended EO, that the same did not provide a license for the drone software, we assess that such a thing (software license) was not a requirement of the tender dossier, therefore it cannot be used as a justification for the evaluation or elimination of the EO, consequently we assess that the complaint claim is unfounded.

Claim no. 5: Complaining EO claims that the EO recommended for the contract regarding the requirement for

"The engineer must be trained/certified for professional drone use by the manufacturer".

While the EO recommended for the contract has provided evidence from the distributor.

The complaining EO emphasizes that for the same evidence he himself was eliminated from the procurement activity, while another EO is recommended for the contract.

After analyzing the case files, we found that the EO recommended for the contract, as well as the complaining EO, have provided evidence from the dealer/distributor, therefore we assess that the CA's decision to eliminate the complaining EO and recommend another EO for the contract is in violation of Article 7 of the LPP. However, we must emphasize that this request is not a request from the FDT but is a request from Annex 1 to the technical specification. It is worth noting that in this specific case we are dealing with training for piloting drones, and unlike, for example, medical devices, where it is common practice for the staff of companies that perform the installation/assembly to be trained by the manufacturer itself (however, even in this case, the users of the equipment are trained by the representative/distributor), in the case of drones we are dealing with relatively inexpensive equipment, which is sold in much larger numbers and in practice, drone flight training is offered by many third parties.

The expert's opinion is that this issue in both cases can be treated as a minor deviation that uk h ton n e at a e o ed e n a ar ter t at, u ht t, d e ě e at e t era t ě p a htruara n ě n o t n e ntrat ěs d e n ě d en e e eri

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

Claim no. 6: Regarding the claim that the agreement for the asphalt base was signed by a person who does not appear in the business certificate, we assess that this is an internal matter of the company to determine the person who can sign the agreement on behalf of the company, regardless of whether it appears in the business certificate or not.

Also, regarding the claim that the EO recommended for the contract presented a set of traffic lights in the bid, but it is clearly known that the set has 2 traffic lights and not three as was the request of the tender dossier.

After analyzing the bid of the EO recommended for the contract, we have not found evidence that the same has offered two traffic lights as the complaining EO claims.

The report of the review expert has been accepted by both Parties, the CA has agreed, while the EO has not agreed.

Findings of the Review Panel — The Review Panel, after reviewing and analyzing all the complaint claims, the responses provided by the expert of the case engaged by the PRB, considers that the expertise reports contain a priori the essential elements of such a document as provided for by the provision of Article 113 in conjunction with Article 114 of the LPP, according to which the provision requires the expert to review all the procurement documentation, including all the 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.

The review panel has independently and objectively, with due diligence and professional care, evaluated all the evidence of the case. In this way, it has been found that the Contracting Authority has acted in accordance with the legal provisions on public procurement and the requirements of the Tender Dossier regarding the activity of “CONSTRUCTION OF A FOUR-LANE ROAD FROM RAHOVECI TO XËRXË - LOT 1 - Re-tender” with procurement no.: 623-24-8684-5-1-1.

The Review Panel, in the evaluation carried out on the preliminary measure offered by the complaining EO, has ascertained

some changes in the quantities in three different positions specified in this document.

In position No. 1.4.6, which includes the supply and work of crushed limestone buffer (100MN/m²) with dimensions 0-31.5mm and thickness t=20cm, a change has been noticed in the calculated quantity for this position. In this case, the quantity necessary for adjusting the geometry of the curves and the direction of the road body has also been included. The calculated quantity in compacted condition is 14,250.00 m³, which differs from the quantity presented by the complaining EO in its estimate, where a quantity of 13,950.00 m³ is recorded.

Also, in position No. 2.3.4, which relates to the supply, transport and placement of sand

0-16mm at the end of the channel on the sides and on the pipes, the calculated quantity is 1,100.00 m³. This

change has been evidenced compared to the quantity that appears in the complaining EO's bill of quantities, where a value of 1,092.00 m³ has been presented.

Also, in position No. 2.3.5, which relates to the covering and planning of the channel with 15% CBR filling material and compaction in layers of 25cm up to the road body, another

change has been evidenced. The calculated quantity for this position is 2,750.00 m³, while the complaining EO has presented a quantity of 2,758.00 m³ in its bill of quantities.

These changes in the quantity-quantity are important for the evaluation process and may have an impact on the final value of the cost and execution of the works, leading to the conclusion that the accuracy of the calculations made by the complaining EO are not in accordance with the conditions set out in the quantity.

The Panel, starting from the fact that other participating EOs out of 4 did not touch the quantities determined by the CA, while the complainant changed the quantities in the pre-measure with or without intention, then the complainant should have identified this in the pre-bidding phase and taken measures to improve this, as well as if necessary by filing a complaint with the CA and the PRB. Whereas, when bidding, each bidding EO undertakes to have checked and accepted all the conditions of the Tender Dossier, this is also evidenced in the Tender Submission Form of the complainant, which is attached to his bid, but also specified in Article 18.3 of Regulation No. 001/2022 on Public Procurement, quote: "Part C, Bid Submission Form, is the main part of the tender, because in this part the bidder declares that he has checked and accepts all the conditions of the tender and submits his financial bid. It consists of: Tender Form and Price List". The Panel clarifies that the change in quantities is not related to arithmetic errors, arithmetic errors are clearly defined in the above-mentioned Regulation in paragraphs 8 and 9 of Article 41. As a result of all these actions/inactions cited above, the review panel supports the reasoning of the contracting authority and the report of the review expert.

Also, Economic Operators interested in any participation in the procurement procedures that they bid on the occasion of bidding undertake that they have checked and accepted all the conditions of the Tender Dossier, this is also evidenced in the Tender Submission Form which is attached to its bid, but is also defined in Article 18.3 of Regulation No. 001/2022 on Public Procurement, quote: "Part C, the Bid Submission Form, is the main part of the tender, because in this part the bidder declares that he has checked and accepts all the conditions of the tender and submits his financial bid. It consists of: the Tender Form and the Price List". In case we are dealing with arithmetic errors, then they are defined in Article 40 of the RRPP, paragraphs 8 and 9 of this Regulation. The review panel, after administering and evaluating the evidence, fully ascertaining the factual situation, relying on the LPP as the applicable substantive law, after reviewing the complaint claims, taking into account all the case files and the recommendations of the review expert, has found that the complaint of the Economic Operator "JOOS & KRASNIQI - BAZE" SH.P.K. is approved as partially grounded.

Consequently, the Review Panel has decided regarding the procurement activity with the title “CONSTRUCTION OF A FOUR-LANE ROAD FROM RAHOVECI TO XËRXË - LOT 1 -

Re-tender” with procurement no.: 623-24-8684-5-1-1 to remain in force the decision of the CA. The Review Panel, taking into account the above-mentioned description and facts and after reviewing the case files, reviewing the complaining claims of the complaining economic operator, concrete analysis and documentation of the case, sees the complaint of the economic operator as partially grounded, supporting the expertise report.

Without the need for further analysis of the complaint claims and other evidence, the PRB always starts from the fact that each CA (at any level) enjoys full independence in the exercise of its powers and the determination of needs in accordance with the budgetary capacity, however, the review panel assesses the fact that the CA, during the development of this procedure, has taken care ex-officio of the basic principles of the LPP in order to respect the provisions of the LPP during the evaluation of the procurement procedure. However, because the first two complaint claims of the complaining EO are valid, the review panel assesses the complaint of the EO as partially grounded, but these claims do not constitute sufficient grounds for the procurement activity to be subject to the re-evaluation procedure.

The Review Panel decides to grant the CA the right to uphold the B58 Decision of the CA and to proceed with the next phase of this procurement activity, a decision which was issued by an evaluation committee which is supposed to be professional and also responsible according to Article 59.1 cited "All members of the Evaluation Committee take full individual responsibility for the evaluation of the bid". 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 to be met (Article 9), of course in accordance with the budgetary capacity and that the CA in accordance with Article 24 paragraph 2 of the LPP cited "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in full compliance with this law".

The Review Panel has also taken into account Article 104, paragraph 4 of the LPP, which stipulates that “In taking the specified measures, the PRB must act in a manner proportionate to the alleged violation or the issue for which the complaint was filed, and take into account the possible consequences of the actions or measures on all interests that may be harmed, including the public interest”. Consequently, the Review Panel has started from the fundamental principle of protecting the public interest, both in terms of preventing unreasonable delays and in protecting the principle of legality.

Therefore, the review panel in accordance with the Law on Public Procurement (LPP) and its fundamental principles, the Contracting Authority (CA) has the duty to ensure that the procurement process is efficient, transparent and fair, treating all economic operators equally and non-discriminatory. This also includes the obligation to guarantee the economic and effective use of public funds, by not contributing to and prolonging this procurement activity. Also, the

Review Panel is obliged to take into account the principle fact that it must also take into account the provisions of Articles 1, 6 and 7 of the LPP, the content of which constitutes a notorious fact for all CAs and EOs.

The Review Panel has decided in accordance with the legal competences within the meaning of Article 104, paragraph 1, in conjunction with Article 103, Article 105 and Article 117 of the LPP to implement the procurement review procedure in a prompt, fair, non-discriminatory manner, with the aim of resolving the case legally and effectively. Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations, which may arise during a procurement activity.

For points I and II of the decision, it was decided based on article 117 of the LPP in connection with article 29 and 31 paragraph of the PRB Work Regulation.

For point III of the decision, it was decided based on article 31 paragraph 4 and paragraph 6 of the PRB Work Regulation in connection with article 118 of the LPP.

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

President of the Review Panel

Mr. 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 – **MUNICIPAL ASSEMBLY - RAHOVEC;**

1x1EO–“ **JOOS & KRASNIQI - BAZE**” SH.P.K.”;

1x1 Archive of the PRB;