



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

Psh. No.560/23
572/23

Review Panel, appointed by the President of the PRB, Pursuant to the article 105, article 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 Law 05/L-092), in the composition of Vedat Poterqoi - President, Vjosa Gradinaj Mexhuani - member and Isa Hasani - member, deciding according to the complaint of the group of EO “Asfalt Group SH.P.K.-Gurebardhi SH.P.K.- Benita Company - Dreoni SH.P.K.- Gremnik, Kline, 3200, Kosove.” & ”Viktory Com, Pjeter Qerimi B.I - Company Eskavatori SH.P.K.- Marish SH.P.K., related to the procurement activity entitled: "Construction of Road X", initiated by the Contracting Authority (CA) - Municipality of Gjakova , on the 08.12.2023, has issued this:

DECISION

1. **Approved as partly grounded**, the complaint of the Group of Economic Operators "Asfalt Group SH.P.K.-Gurebardhi SH.P.K.- Benita Company - Dreoni SH.P.K.- Gremnik, Kline, 3200, Kosovo", submitted to the Procurement Review Body with 11.08.2023 with protocol number 2023/0560, for the procurement activity entitled: "Construction of Road X" with no. of procurement: 632-23-397-5-1-1, initiated by the Contracting Authority (CA) - Municipality of Gjakova.
2. Approved as grounded the complaint of the Group of Economic Operators "Victory Com, Pjeter Qerimi B.I - Company Eskavatori SH.P.K. - Marish SH.P.K., submitted to the Procurement Review Body on 11.08.2023 with protocol number 2023/0572, is approved as grounded. awarding decision related to the procurement activity entitled: "Construction of Road X" with no. of procurement: 632-23-397-5-1-1, initiated by the Contracting Authority (CA) - Municipality of Gjakova, is cancelled, the matter is returned to re-evaluation.
3. It is allowed the return of the deposited amount when the complaint is submitted, and the complaining economic operator is obliged, in accordance with article 31 point 6 of the PRB's work regulations, within sixty (60) days to make a request for the return of the insurance

complaint, otherwise the deposit will be confiscated and these funds will go to the Budget of the Republic of Kosovo.

REASONING

- Procedural facts and circumstances –

On the 14.04.2023, the Municipality of Gjakova, in the capacity of the Contracting Authority, has published the contract notice for the procurement activity entitled: "Construction of Road X" with procurement no: "632-23-397-5-1-1" Meanwhile, on the 24.07.2023, the notice on the decision of the CA was published.

GOE "Asfalt Group SH.P.K.-Gurebardhi SH.P.K.- Benita Company - Dreoni SH.P.K.- Gremnik, Kline, 3200, Kosova." & "Viktory Com, Pjeter Qerimi B.I - Company Eskavatori SH.P.K.- Marish SH.P.K. on the 28.07.2023 submitted a request for reconsideration to the CA. CA - Municipality of Gjakova by decision has rejected as unfounded the request for reconsideration of the GOE: "Asfalt Group SH.P.K. - Gurebardhi SH.P.K. - Benita Company - Dreoni SH.P.K. - Gremnik, Kline, 3200, Kosova." & "Viktory Com, Pjeter Qerimi B.I - Company Eskavatori SH.P.K.- Marish SH.P.K regarding the procurement activity "Construction of Road X" with procurement number: 632-23-397-5-1-1 initiated by - Municipality of Gjakova.

Dissatisfied with the decision of the CA, GOE complainant: "Asfalt Group SH.P.K.-Gurebardhi SH.P.K.- Benita Company - Dreoni SH.P.K.- Gremnik, Kline, 3200, Kosova." & "Viktory Com, Pjeter Qerimi B.I - Company Eskavatori SH.P.K.- Marish SH.P.K on the 11.08.2023 have submitted a complaint to PRB, with protocol number 560/23-572/23, against the decision of the Contracting Authority regarding the activity of the procurement described above.

The contracting authority has implemented an open procedure, type of contract: Work, estimated value of the contract: 4,357,000.00 €.

-On the stage of preliminary review-

The Review Panel has concluded that the complaint contains all the elements defined through Article 111 of the LPP and as such was submitted within the legal term in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for resolving disputes in the sense of Article 108/A of the LPP, from the economic operator who is an interested party according to article 4 paragraph 1 sub-paragraph 26 of the LPP. In this way, the Review Panel has concluded that it is competent to review this complaint according to Article 105 of the LPP and there is no procedural obstacle to proceed with reviewing the complaint in a meritorious manner.

The Review Panel concluded that there are no elements to prevent the conflict of interest, as required in the sense of Article 11 of the Regulation on the Work of PRB, therefore it analyzed all the documents of this subject, including all acts and actions of the parties and considered that there is a need to hold a public session with the parties and for these cases, in order to clarify them in as much detail as possible, the review panel held two sessions in the presence of the parties, all the evidence sufficient to decide on this case was presented, one was held on dt.

10.11.2023, the next on dt. 29.11.2023. In this case, the panel took into consideration all the complaint statements, acts and actions of the CA and the expert's report.

In fact (of course, regardless of the recommendations) the Panel notes that the procurement procedure that was applied in this case is presented in detail in the review expert's expertise report, explaining all the stages of the process and the actions taken by the parties in the comparative context with the acts in force, especially with the Public Procurement Rules.

Complaining statements of the complaining EO "Asfalt Group SH.P.K. - Gurebardhi SH.P.K. - Benita Company - Dreoni SH.P.K."

The complainant attacked the above-mentioned decision of the CA from his/her eliminated aspect because (according to the CA) Lideri Asfalt Group shpk presented the list of completed contracts where their total value is 1,808,522.58 €, in the request on possibilities technical and or professional item 9.1 & 9.2 is requested: The Economic Operator must provide evidence that he has successfully completed contracts of a similar nature in the last 3 (three) years (starting from the date of publication of the contract notice. In a value of no less than €6,535,000.00; during three in recent years, in the case of a consortium the leader must have at least 60% of the turnover value. So the leader, in this case Asfalt Grup shpk, must have completed contracts in the last three years with a minimum value of: $(6,535,000.00 \text{ €} \times 60\%) = 3,921,000.00 \text{ E}$, so this offer does not meet this condition, which is an eliminative fact from this tender. Given that the EO Group does not meet the above-mentioned requirements of the FDT, respectively, it has presented lists of completed contracts and the list of equipment that is not in accordance with the list for executed contracts and the list of equipment according to annex 7 of the TDS, therefore this offer has been rejected because the two lists mentioned above have not been completed and submitted as they were defined in the TDS (it was mandatory to complete and submit them with offers). Due to the lack of documents for the professional staff mentioned above, no additional clarifications have been requested in accordance with Article 72 of the LPP because the above mentioned lists are missing, which are an eliminative fact for your offer. First of all, we clarify that the reason for the elimination is unstable, because we fulfill the request in relation to contracts of a similar nature in the requested value of €6,535,000.00, and the leader also fulfills the request of 60% of the requested value. In the tender file, we have attached the list of the Leader's contracts with 18 contracts and proof of their completion, where the value of the contracts reaches 1,808,522.58 €, as the contracting authority has mentioned for this list. We, in addition to the above-mentioned list of public authority works, inform you that with the tender file we have also attached evidence of the performance of works with private companies, but due to a technical omission we have not attached the list of contracts with private companies. When the proofs of the completion of works with private companies are analyzed, it turns out that the leader ASFALT GROUP SH.P.K. exceeds the value of the contracts required in the tender file, so the request from our side that the leader has 60% of the value of the contracts is fulfilled. In relation to this, the reviewing expert has classified this claim as well-founded, concluding that the complaining EO, in addition to the list of public authority works presented, the complaining EO in the tender file has also attached evidence of the performance of works with private

companies, but that it has not attached to the list of contracts with private companies. Based on the LPP law No. 04-L-042 & 05-L-068 & 05-L-092 Article 72 Documentation and additional information 3. Provision of missing information or provision of information will be applied only to documents whose existence is fixed, before expiration of the deadline for the submission of tenders, and can be objectively verified. From this explanation, CA had to request additional information from the complaining EO to verify that this information is valid or not based on Article 72 as above. To verify the documents and information provided by the complaining economic operator (EO), the contracting authority usually considers all the elements presented in the tender file by verifying them. If you have received supplementary documentation from the recommended EO for the contract and the complaining EO has not, it is important to ensure that all information is equivalent and suitable for the tender requirements for all EOs. In some cases, the contracting authority may take additional steps to verify the information submitted by the economic operators, including the complaining EOs. The calculation of the value of the contracts completed in the last 3 years, starting from the date of the notification for contracts with private companies which have not been submitted in the offer, but based on Article 72 Documentation and additional information, I have made the calculations. The total amount of completed contracts is 5,918,053.72, which exceeds the value of 60%. This is an indicator that the leader of the company "ASFALT GROUP SH.P.K." has exceeded the value of the contracts requested in the tender file, fulfilling the requirement that the leader has 60% of the value of the contracts. It is important to meet all the criteria and requirements of the tender documentation. In this case, the value of the covered contracts is a key factor that the contracting authority had to evaluate to determine the ability to fulfill the tender obligations. Your appeal claim is based on the verified and documented information you have about the evidence of the completion of the works of the company "ASFALT GROUP SH.P.K." Regarding this finding of the expert, the review panel does not agree due to the fact that neither the complainant nor the expert has presented any concrete and/or convincing evidence for the panel by not correctly presenting the real situation of this complaining claim against the request of the Tender File, because the participating EO were obliged to complete this request as it is presented, because in the case of bidding they accepted all the conditions of the tender file without any restrictions. This is defined in the Tender Form submitted by them, as well as in Article 17.7 of the RRPP, which cites: Part C, the Tender Submission Form, is the main part of the tender, because in this part the tenderer declares that he has checked and accepts all the conditions of the tender and submits his financial offer". So the request of the Tender File has been " A list of completed contracts, completing Annex 6 of the Tender File, where the title of the contract, the amount of the contract, the start date and the end date and the beneficiary must be specified, as well as the references or certificates for the performance of the works attached to the list, in if the Economic Operator presents contracts and references with a private Economic Operator, then the Economic Operator must present the signed situations together with the bank transaction, which match the same contract-reference.". Based on this fact from the independent conviction of the Review Panel, the EO has failed to testify before the review panel that the same for the transactions offered in the offer had executed contracts and that these transactions are signed situations as was the request of the Tender File. For the presentation of these testimonies, the complaining EO has had the opportunity many times to argue his responsibility, by presenting contracts, acceptances of accepted situations

attached to bank transactions. The complainant, just as in the request for re-examination and in his complaint, has provided an additional document only the list which is titled as a list of contracts made with private companies, where most of them are named "asphalting" but failed to attach "contracts and situations signed" for the transactions that are attached to the offer, while on the other hand, the references that are included in the offer, in almost none of them, it is mentioned that the contracts were completed successfully, but only that they made the asphalt supplies. Therefore, finally, the panel assesses that the professional evaluation commission at the CA had rightly concluded that the group leader had failed to prove that he had fulfilled the DT's request of 60% of the value of the completed contracts, therefore, as a result of these EOs, Asfalt Group complains SH.P.K.-Gurebardhi SH.P.K.- Benita Company - Dreoni SH.P.K. are not responsible for this procurement activity. It is also worth noting that this contentious matter is also regulated by the secondary legislation, the Guide for public procurement, in which it is expressly provided that in the event that the list of completed contracts submitted does not meet the minimum requirements of the determined value, then reject the tender without requesting information. In addition, the professional procurement commission at the CA also supported this point. However, the review panel for the sake of the responsive principles of the LPP has evaluated the offer of the complainant including all the evidence provided to fulfill this request and came to the conclusion that the same has failed to fulfill the requirements of the Tender Dossier.

As for the complaining claims of the complaining EO against the EO recommended for the contract, the Review Panel will not stop at each appeal claim, but will stop only at the complaining claims that are decisive in meritorious decision-making regarding the issue of the EO recommended for the contract, as follows: The complainant attacked the CA's decision from the aspect of the responsibility of the EO recommended for the contract, claiming that in the list of equipment in the tender file at tender number 3, a truck (dumper) min 30 was required (trucks must have a vehicle registration certificate which has a valid registration deadline). In relation to this request, the EO group recommended for contracts has offered the following traction heads: 1. Traction head AB136CS Kazan AHR241 2. Traction head AAR879 Kazan AA763DR 3. Traction head AB974CM Tank AHR247 4. Traction head AB349JA Kazan ACR886. Evidence of offered in connection with this request are not according to the request, because they have offered Dump Trucks which are not dumpers and this is proven very easily when we compare the photos of the Dumpers that we have offered, with the tractor heads and the booklets that have been offered by the group of EO recommended for contracts, where it can be seen that, among other things, the weight is not 30 tons. For the Dumper, the CA has requested additional clarifications by asking the EO group recommended for contracts whether the towing heads and semi-trailers offered by the group perform the same function as the dumper truck? With this request for additional clarifications, the CA itself has actually admitted that the group of EOs recommended for contracts did not provide evidence according to the request, therefore in this case it was necessary to eliminate this group and declare their offer irresponsible. Likewise, the EO recommended for contracts in the above clarifications has confirmed that it did not bid according to the requirements of the tender file, where for Dumper the answer and clarification was given as follows: The dumper machines presented by us, complete all the criteria according to the request, that they have the same weight, the drum is the same as the dumpers and the tires

are big like the dumpers, which can also be seen from the presented photos. From these clarifications, it is clear that the EO group recommended for contracts has admitted itself that it has not provided evidence for the Dumper, but has tried to equate the tractors and semi-trailers offered by this group in terms of functionality. Furthermore, the contradictions of the EO group recommended for contracts are clearly seen because on the one hand they talk about dumper machines and on the other hand they emphasize that the characteristics of these machines are the same as Dumpers. This clarification clearly shows the irresponsibility of the EO group recommended for contracts. The clarification requested in this case is illegal and constitutes open favoritism for the EO group recommended for contracts. The action to request clarifications from the EO group recommended for contracts constitutes open favoritism, because there may be a company that did not own a Dumper, that owned a semi-trailer and towing head and that did not have an offer in this tender due to specific requests and machines, therefore, the treatment in this case must be done in accordance with the requirements of the FDT and the notification for contracts, and no substantial changes should be allowed. With these evidences, it was clear that this group of EO recommended for the contract did not provide evidence according to the requirements of the tender file, therefore it was automatically eliminated from the competition and no clarifications were requested. We ask the PRB experts to analyze in detail the evidence and booklets provided by the EO group recommended for contracts and to compare them with the requirements of the tender file and the specifications of the requested machines. In order to be a responsible EO, the tender in question must be in compliance with all the requirements presented in the contract notice and in the tender file, and this is provided for in article 59 paragraph 4 of the LPP. In this case, the tender of the group EO "PE-LA-KU SH.P.K. BRANCH IN KOSOVO; JOOS & KRASNIQI BAZE SH.P.K.; Roza Romani B.1., Tringe Smajli St. 1617, 10000, Prishtina is not in compliance with the requirements of the tender file. The technical review expert has found that the dumper trucks of the winning GOE have been verified by the winning GOE bid, which is said to have been borrowed from the company "G.P.G Company" sh.p.k., but it can be seen from this company that they were NOT borrowed Dumper truck cars, therefore evaluate the complaint claim of OE ASFALT GROUP SH.P.K. The review panel trusts the review expert and classifies the claim as grounded.

The complainant attacked the CA's decision from the point of view of the responsibility of the EO recommended for the contract, claiming that in the list of equipment in the tender file, serial number 8, it was requested: Loader min 32t -1 piece, while the EO recommended for the contract offered an agreement with BIBA X shpk for the Liebherr L564 Loader (custom number 32.700.0000). The EO group recommended for the contract has also attached evidence for a Liebherr L574 weighing 25,500 tons, which is normally heavier than the Liebherr L564. Here you can see the contrast of the testimony of the Liebherr L564 loader with a weight of 32,700.0000 with the real condition. Therefore, we ask the PRB experts to accurately analyze and compare the evidence and the facts of which supplier has the greatest weight and clearly the contradiction of the evidence provided by the EO group recommended for the contract will be observed. When analyzed and verified on the internet/catalogues, it is observed that the Liebherr L564 weighs 22-25 tons but does not have 32 tons. Also strange is the weight marked 32,700,0000, that is, with four zeros after the dot. Regarding the clarifications provided for the min 32t Loader - 1 piece, the EO group recommended for contracts gave the following

clarification: Point 8, the load over 32 tons is rented from the company "Biba X" in Albania. the contract is in part 29 of the tender file, on page 200 is the lease contract for this machine, while the document or document for this machine is on page 311. Considering the above-mentioned clarifications, we ask the PRB experts to verify the data of this device on the Internet, where our complaining claim can be verified. Determine that the offer of the winning GOE for the Loader 32 [t] is not in accordance with the technical requirements of the tender file, and that the complaint claim of EO ASFALTI GROUP SH.P.K. that the winning GOE has provided proof of the DUD and the lease contract for the brand LIEBHERR L 564 and how photo evidence has provided the brand LIEBHERR L 574 evaluate as based. The review panel trusts the review expert and classifies the claim as grounded.

The complainant attacked the CA's decision from the aspect of the responsibility of the EO recommended for the contract, claiming that in the list of equipment in the tender file, serial number 12, the following was requested: Ripper hydraulic bucket min. 2.5t maximum 3t, while the EO group recommended for contracts has offered as evidence: - HONOMAG brand loader - Liebherr brand loader These two machines presented by the EO group recommended for contracts are NOT Ripper 2.5 hydraulic trough -3 tons. In addition to not being hydraulic buckets, the same equipment presented by this group also weighs more than the requested 2.5-3 tons. These devices can be related to point 8 of the requested list of devices where a min 32t Loader is requested, but even with this request, the evidence of the required weight of 32 tons does not match, because one device weighs 9 tons, while the other 24,420 ours according to the customs DUD. Additional clarifications were also requested for this equipment, while the EO group recommended for the contract gave the following clarifications: For point 12, two loading buckets with shovels were presented, while a Ripper with a minimum weight of 2.5t and a maximum was requested. 3t. The loaders with the shovels that we have presented, the shovel is of the Ripper type, but since they do not have a dud or document separate from the loads, then it is necessary that they be inserted together with the loading machine, but that the type of shovel is the same as the one has been requested. Even from the explanation given by the EO group recommended for contracts, it is clear that the evidence provided by this group is not Ripper's hydraulic bucket. In addition, the group of EO recommended for contracts with clarifications has mentioned loaders with shovels, but we clarify that the Hydraulic Ripper Bucket is not for loading, but is a hydraulic bucket for extracting stones or hard materials. So even from the explanation of the EO group recommended for contracts, it is clear that the evidence provided by the EO group recommended for contracts is not in harmony with the requirements of the tender file. It is very clear that even in the functional aspect, the extraction of stones and hard materials is DIFFERENT from the loading of these materials. The reviewing expert has found that the winning GOE has provided evidence only the DUD where he claims to be with the Shovel Loader car and has not provided additional evidence Based on the requirements on technical and/or professional capabilities, he made this statement in the hearing held with party finding that the appeal claim is grounded. The review panel trusts the review expert and classifies the claim as grounded.

The appellant attacked the CA's decision from the point of view of the responsibility of the EO recommended for the contract, claiming that in the list of equipment in the tender file, serial number 14, the following was requested: Concrete transport truck (concrete-mixer truck) (the truck must have vehicle registration certificate which has a valid registration deadline), while the EO group recommended for the contract has provided the following evidence: Truck with license plate AA 247 ZV Truck with license plate AB 453 CJ Truck with license plate AB 928 CO Truck with license plate AA 921 CO. These trucks are owned by the company ALESIO 2014 SHPK, but for these trucks there is no agreement between PEVLAKU SHPK and Alesio 2014 SHPK that has rented these equipment. Therefore, these evidences have no value in this project and legally cannot be taken into account. With additional clarifications, the EO group recommended for contracts has also offered a lease contract concluded between ALESIO 2014 LLC as the lessor and PEVLAKU LLC as the lessee, but the contract is for the project "Construction of the exit road for part of the city circular" - MA Gjakove. Simply, this rental contract is invalid and cannot be taken into account because it is related to another project. This contract has no value for any of the equipment mentioned in this contract because it has nothing to do with this project and is not considered valid. The contract for the advanced equipment is only valid for one project, and that is the project for which they agreed, that is, for the project "Construction of the exit road for parts of the city circular" - KK Gjakove. This contract is specific and must be treated the same by all parties and specific contracts cannot be used for general projects without being specified. The reviewing expert declares that the truck for transporting concrete (concrete-mixer truck) (the truck must have a vehicle registration certificate which has a valid term of registration), while the group of EO recommended for contracts has provided the following evidence: Truck with license plate AA 247 ZV, Truck with license plate AB 453 CJ, Truck with license plate AB 928 CO, Truck with license plate AA 921 CO These trucks are in the property of the company ALESIO 2014 LLC, but for these trucks there is no agreement between PEVLAKU LLC and Alesio 2014 LLC that has rented these equipment related to the procurement activity: "Construction of Road X" with no. of procurement: "632-23-397-5-1-1", initiated by the Contracting Authority (CA) - GJAKOVA MUNICIPALITY. If the EO group recommended for the contract has offered a lease contract concluded between ALESIO 2014 ShPK as lessor and PEVLAKU ShPK as lessee for the project "Construction of the exit road to Pejë - part of the city circuit" in Gjakovë, this is a contract that does not belong to the procurement activity: "Construction of Street X" with no. of procurement: "632-23-397-5-1-1", initiated by the Contracting Authority (CA) - MUNICIPALITY OF GJAKOVA and as such is invalid. When a company needs rental equipment to develop a specific project, it is important to have a contract for the rental of this equipment for the respective project. In this case, since the lease contract is concluded for the specific project "Construction of the exit road to Pejë - part of the city circular", it has no validity to be evaluated as a contract concluded between two parties for the project in question. This contract is not in the tender file, but after the request for additional information from the CA to the EO recommended for contracts, this agreement was sent, which does not meet the requirements of a contract for the procurement activity: "Construction of Road X" with no. of procurement: "632-23-397-5-1-1", initiated by the Contracting Authority (CA) - GJAKOVA MUNICIPALITY Your complaint claim is based on proven and documented information, i.e. the contract presented by the EO

recommended for contracts after the request for additional information, this agreement was sent which does not meet the requirements of a contract for the procurement activity: "Construction of Street X" with no. of procurement: "632-23-397-5-1-1", initiated by the Contracting Authority (CA) - GJAKOVA MUNICIPALITY. The review panel, as well as the review expert, finds that it classifies the claim as grounded.

The complainant attacked the CA's decision from the point of view of the responsibility of the EO recommended for the contract, claiming that in the list of equipment in the tender file, serial number 23, the following was requested: Spraying truck for bitumen and emulsion-1. For additional clarification regarding this equipment, the group of EO recommended for contracts has responded as follows: For point 23, Spraying truck for bitumen and emulsion. 2014" shpk which is found in part 29 of the tender file, on page 202, while the vehicle document in question is on page 268, where the purchase invoice no. 18 with the data and other documents of the vehicle is presented, From analyzing the documentation of this group of EO recommended for contracts and clarifying the data regarding this equipment, we clarify as follows: In part no. 29 of the tender file submitted by the group of EO recommended for contracts, there is a lease agreement between the lessee ALESIO 2014 ShPK and the lessee PEVLAKU ShPK, where the equipment that is received and leased in this agreement is listed as in following: Being that; From this list, it is clear that there is NO leasing/renting of the Bitumen and emulsion spray truck equipment. So this device is not part of the contract in question. Regarding the answer with clarifications, where the purchase invoice with No. 18 on page 268 is mentioned, we clarify that in this invoice it appears that in this invoice it appears that ALESIO 2014 Shpk bought a used truck with bitumen tanks, okay this invoice has nothing to do with the equipment rental contract and this equipment mentioned in the invoice is not part of the contract, which was also referred to by the EO group recommended for contracts. Simply, this invoice is an unimportant and worthless document for this project because it is not included in the equipment rental contract. Moreover, the bill is pretty invisible and unclear. With additional clarifications, the EO group recommended for contracts has also offered a lease contract concluded between ALESIO 2014 ShPK as the lessor and PEVLAKU ShPK as the lessee, where in the list of this contract there is a Targa AA 704 PY bitumen spraying truck. With this color, the group of EO recommended for contracts has shaded it, alluding that this equipment was taken on loan, but we clarify that this equipment is part of the lease contract dated 18.05.2023, and that this contract has no do with the project that this group has offered and for which it has given clarifications, but this contract is for another project, and in this contract it is written clearly as follows: Given that: Company "PE-VLA-KU" sh .p.k. participates in the tender "Construction of the exit road for Peje-Part of the city circuit" with the Contracting Authority Municipality of Gjakova and it is interested in renting the necessary tools for the execution of the works in case of winning the tender, according to the list below: So it is about the project "Construction of the exit road for parts of the city circular" - KK Gjakove. Simply, this rental contract is invalid and cannot be taken into account because it is related to another project. This contract has no value for any of the equipment mentioned in the contract because it has nothing to do with that project and is not considered valid. For comparison, we clarify that another contract concluded by these two parties, and submitted with the tender file, clearly states and specifies that it is for this project, which is found on page 202 in part 29 of the submitted file, and it is written as following: Being

that ; The company "PE-VLA-KU" sh.p.k. participates in the tender "Construction of Road X" with the Contracting Authority Municipality of Gjakova and it is interested in renting the necessary tools for the performance of the works, in case of winning the tender, according to the list below: From these clarifications, it is clearly understood that the EO group recommended for the contract did not provide evidence for the Bitumen and emulsion spray truck equipment. From the evidence mentioned above, it is clear that the EO group recommended for contracts offered contracts that were not concluded for this project and that have no value for this project, but there are also contracts that were concluded for this project, therefore from this comparison we understand evidence and contracts that are not for this project. appeal claim 6 is related to claim no. 5, so the contract is attached, which is related to another project but is not related to "Construction of the exit road for part of the city circular" - KK Gjakove. Your complaint claim is based on proven and documented information, i.e. the contract presented by the EO recommended for contracts after the request for additional information, this agreement was sent which does not meet the requirements of a contract for the procurement activity: "Construction of Street X" with no. of the procurement: "632-23-397-5-1-1", initiated by the Contracting Authority (CA) - MUNICIPALITY OF GJAKOVA, but it is about another project such as "Construction of the exit road for parts of the city circular" - KK Gjakove.

Based on all these findings and findings, consequently the complaining EO Asphalt Group SH.P.K.-Gurebardhi SH.P.K.- Benita Company - Dreoni SH.P.K., is not responsible for this procurement activity but the complaining claims against the GOE recommended for the contract Pe Vla-Ku & Joos Krasniqi - Baze and Roza Komani B.I are stable and also the GOE recommended for the contract is not responsible for this procurement activity and the CA regarding the selection of this GOE as the winner did not act in harmony with the article 59 and 60 of the LPP. Therefore, in conclusion, the complaint of the complaining EO is partially based because it has provided facts and the complaint claims against the recommended person are based as mentioned above from the findings of this panel.

Complaining statements of the complaining EO "Victory Com, Pjeter Qerimi B.I - Company Eskavatori SH.P.K. - Marish SH.P.K".

The complainant has attacked the above-mentioned decision of the CA from the aspect of his/her elimination, because the reason for the elimination related to the fact that we as a company have not completed the Complaint of Contracts is unfounded since we have completed and attached the list of Projects according to the Annex of the Tender File, the Procurement Activity as well as the procurement No. Also, according to the Annex that is in the tender file, we can present another document that evidences such performance before we comply with the criteria of the contract and complete the Annex of Contracts as it is before in the DT, we will also attach the List of Projects as evidence once again . Any list that we attach in relation to the list of projects is acceptable according to the LPP and GUIDELINES No. 001/2023 FOR PUBLIC PROCUREMENT, so you as the CA are trying to discriminate and cheat. Only the measurable criteria that are defined in advance in the tender file can be used for evaluation. The contracting authority can only use criteria that are directly relevant to the subject of the contract -PROVE - List of Projects Contract Complaint. Regarding this, the review expert finds that considering the

documentation provided, the EO has not violated the tender criteria, despite the claims of the CA that say that you have not met the criteria. According to the information found in the e-procurement, you have completed the criteria and documentation according to Annex 7 of the Tender Dossier and have presented a list of projects to prove the fulfillment of these criteria, always completing all the information required in Annex 7 even though this annex has not been completed as a concrete document. The justification of the EO to oppose the claims of elimination is based on the fact that it has fulfilled the requirements and obligations of the contract and the tender. So the list of projects as evidence of the fulfillment of the tender criteria is a document that fulfills this criterion. So the complaining EO has presented a list of projects as evidence of past work, which shows the fulfillment of the tender criteria. Also, referring to Annex 7 of the Tender Dossier, not completed but attaching the list of projects which contains all the descriptions as it is in Annex 7, does not represent a problem in the verification to eliminate the complaining EO. Claim 1 of the complaining economic operator, based on the documentation provided, is justified because the completion of this document does not change the course of the final decision, since the information in Annex 7 is the same as the List of Contracts as it is before in the TD. As well as the examining expert. The review panel, as well as the review expert, finds that the complaining EO has provided the list of completed contracts, which has the same content as in the TD, attaching all the evidence in accordance with the request of the Tender dossier, therefore the complaint claim is grounded.

The complainant has attacked the above-mentioned decision of the CA from the eliminated aspect of it/thanks to the other reasoning of the elimination related to the list of assets as after the Complaint to the TD, this claim is also unfounded because we presented the List of Assets according to TD after the changes you made as CA in the conditions and criteria of TD. You, as CA, are in conflict with your demands of DT, therefore all these claims from you are unfounded. "Only the measurable criteria that are previously defined in the tender dossier can be used for evaluation. The contracting authority can only use criteria that are directly relevant to the subject of the contract -PROVE - List of Equipment Complaint Claim3. Regarding the other reasoning that you lack certificates for safety and health at work, it is unfounded since we have presented Mr. Zijadin Mehmeti, who has a certificate for Safety and Health at Work, we will attach the evidence. As the GOE, we fulfill all the requirements in the tender file and are responsible according to the DT Criteria, therefore the claims from the CA are unfounded and do not conform to the DT, so the evaluation was not made according to the FDT Criteria below. to find the evidence according to DT. The Economic Operator must provide proof that it has at least 50 (fifty) workers as well as sufficient professional staff for the execution of the project as follows a). An engineer. Bachelor of Civil Engineering (constructive direction or road infrastructure), or Master of Civil Engineering (constructive direction or road infrastructure), project manager with 5 years of work experience after graduation in project management. b). An engineer. B.Sc. of construction, constructive direction, or Master in constructive direction, workshop leader with 5 years of work experience after graduation as a workshop leader in construction, rehabilitation or road reconstruction projects, to be certified for site management and organization. c) An engineer B.Sc. of construction, constructive direction or Master in constructive direction with 5 years of work experience after graduation and proof that he has completed at least 2 projects of the same nature. Be certified for protection and safety at work. Ç).An engineer. B.Sc. of geodesy, licensed

with 3 years of work experience after graduation and proof that he has completed at least 2 projects in the required field. d). An engineer. B.Sc. of Construction, Hydrotechnics, with 3 years of work experience after graduation. Dh). An engineer. B.Sc. of Electrical Engineering or Master with 3 years of work experience f).An Eng. B.Sc. of Communication with 3 years of work experience after graduation or Bachelor of Communication with 5 years of work experience after graduation. "Only the measurable criteria that are previously defined in the tender file can be used for evaluation. The contracting authority can only use criteria that are directly relevant to the subject of the contract EVIDENCE - List of Engineers and other evidence. According to the Law on Public Procurement and GUIDELINES No. 001/2023 FOR PUBLIC PROCUREMENT, specifically according to Article 38 Clarification of Tenders, additional clarifications should have been requested to complete or clarify the documents presented, so the CA did not take the Law on Public Procurement as a basis and has proposed an irresponsible GOE, below you will find the clarification as per Guideline No. 001/2023 for Public Procurement. Article 38 Clarification of Tenders 38.1 In order to facilitate the examination, evaluation and comparison of tenders, CA may request from each tenderer individually for clarification of his/her tender. PPRC has approved a standard form B47 for clarifications to be used by CA "Request for clarification of the tender". The request for clarification and the response must be made through the electronic platform. 38.2 No change in price or other material condition or aspect of the tender may be requested, offered or permitted. 38.3 However, it is allowed for a contracting authority during the evaluation to request and receive information or documents, which are missing from the application/tender. These documents, however, must objectively present sufficient evidence that reasonably reflects the existing situation prior to the date of publication of the Contract Notice. 38.4 The contracting authority will ensure the possibility of providing additional information under the same conditions for all Economic Operators and will request information from Economic Operators in order to clarify the content of unclear statements, certificates included in tenders or requests for participation. Clarification and request for additional information, supplementary information and documents is part of the assessment procedure. The request passes / fails and the validity of the offers/applications can be decided only after submitting the answers to the questions requested by the Contracting Authority and after reviewing the additional documents submitted. 38.5 The contracting authority may invite the Economic Operators to complete or clarify the certificates and documents presented in accordance with articles 65-71 of the LPP, i.e. the evidence submitted for the requirements of suitability, requirements of professional suitability, economic and financial condition and technical and professional ability, quality certificates, requirements of EO groups. Regarding these complaints, the review panel thinks that there is no need to issue them at all, because according to the decision on the request for re-examination of the CA dated 03.08.2023, the rest of the complaint by the EO has been completed and as such it is considered that you you are in order as long as the CA has not responded to the other claims but only to claim no. 1. However, the complaining EO has provided sufficient evidence on their responsibility and fulfillment of these requirements and the CA can use article 72 of the LPP in this regard . The review panel, as well as the review expert, finds that it classifies the claim as well-founded. The panel is forced to take into consideration the principle fact that the tender offered by the complaining EO is for €199,996.88, cheaper than the EO recommended for the contract, and that this fact cannot be denied even by

the CA. Apart from this, the CA must take into account the provisions of articles 1, 6 and 7, the content of which is a well-known fact for all CAs and EOs.

The complainant has also attacked the CA's decision from the point of view of the responsibility of the EO recommended for the contract, but the review panel does not consider it necessary to issue those findings when some of them have already been addressed in the complaint no. 2023/0560 and consequently it has resulted that GOE is not responsible for this procurement activity.

- Conclusion -

Based on the above, the Review Panel considers that CA has acted contrary to the provisions of Article 7, 59, 60 and 72 of the LPP. The Review Panel considers that the actions and acts of the CA, and the evaluations of the review expert regarding the fulfillment or not of the conditions described above and the complaint statements in this case constitute a sufficient basis for the procurement activity to be re-evaluated again because in the opposite will contradict the scope of the LPP and the argumentative basis of the appeal claims, which the Panel evaluates according to its independent assessment in the sense of Article 104 in relation to Article 105 of the LPP. The return of a procurement activity based on a contested legal re-evaluation is in harmony with Article 1 of the LPP, according to which, the purpose of this Law is, among other things, cited: "...to ensure the integrity and responsibility of public officials, civil servants and other persons who perform or are involved in a procurement activity by requiring that the decisions of such individuals and the legal and factual basis for such decisions, not be influenced by personal interests, be characterized by non-discrimination and a high degree of transparency and be in accordance with the procedural and essential requirements of this law". Also, the assessment of the review panel is also based on the fact that each bidding EO is responsible for his/her offer being in accordance with the requirements set out in the Tender Dossier and for any ambiguity regarding any claim placed in the tender dossier, they have the right to attack in the pre-bidding stage, even with a complaint to the PRB, otherwise they become binding for each bidder as such. However, the CA is obliged to make the assessment, examination and comparison of tenders in accordance with Article 59 of the LPP. As well as in accordance with article 56.3 of the LPP, in which it is determined that: "The tenderer, during open procedures, or the candidate, during limited procedures and competitive procedures with negotiations, will not be disqualified or excluded from such procedures on the basis of any request or the criterion that is not mentioned in the contract notice and in the tender file". As well as in the sense of Article 7 that each participating EO is treated fairly and equally.

Regarding Article 105, taking into account the requirement of Article 104, paragraph 1, of the cited Law according to which, quoted: "The procurement review procedure will be implemented and carried out in a fast, fair and non-discriminatory manner, which aims at the fair, legal and effective resolution of the matter..." 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 .

Therefore, from the above, the review panel in accordance with article 117 of the LPP decided as in the provision of this decision.

President of the Review Panel

Mr. Vedat Poterqoi

Legal advice:

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

Decision to be submitted to:

1x1 CA – **MUNICIPALITY OF GJAKOVA;**
1x1 EO – **“ASFALT GROUP” SH.P.K., N.SH.T. VIKTORY COM;**
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.