



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

Psh. No.582/24

The Review Panel, appointed by the President of the Procurement Review Body (PRB), based on Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova (LPP) composed of Batisha Ibrahim –President, Vedat Poterqoi and Kimete Gashi Brajshori – members of the Panel, deciding upon the complaint of EO “KOSOVA WATER AND ENERGY” SH.P.K.”, against the Decision to contract award or a design competition regarding the procurement activity “Supply of fittings” with procurement number KRURGJA-24-1868-1-1-1, initiated by the contracting authority (CA) – “Regional Water Supply Company GJAKOVA” SH.A, on the 20/09/2024, has issued this:

DECISION

1. Approved, as partly grounded the complaint of EO “KOSOVA WATER AND ENERGY” SH.P.K.”, with no 2024/0582 of the 01/07/2024, whereas the decision of the CA – “Regional Water Supply Company GJAKOVA” SH.A regarding the procurement activity “Supply of fittings” with procurement number KRURGJA-24-1868-1-1-1, while the decision of the CA remains in force.
2. Within 10 days, the CA must inform the PRB of all actions taken regarding this procurement activity, otherwise, for non-compliance with the decision, the PRB may take measures against the CA as provided for in the provisions of Article 131 of the Law on Public Procurement of Kosova.
3. Since the complaint of the complaining EO is approved as partially grounded, the complaint fee is refunded in the amount deposited when submitting the complaint. The complaining EO is obliged, in accordance with Article 31, point 6 of the Rules of Procedure of the PRB, to request the return of the complaint security within sixty (60) days, otherwise the deposit will be confiscated, and these funds will be transferred to the Budget of the Republic of Kosova.

REASONING

-Procedural facts and circumstances –

On the 06.03.2024, Regional Water Supply Company GJAKOVA" SH.A in the capacity of Contracting Authority has published Contract Notice B05 regarding the procurement activity “Supply of fittings” with procurement number KRURGJA-24-1868-1-1-1.

This procurement activity was carried out through an open procedure with the type of service contract and with an estimated contract value of 750,000.00 euro.

On the 18.06.2024, EO “KOSOVA WATER AND ENERGY” SH.P.K., has filed a request for reconsideration against the Notice on Decision B58 of the Contracting Authority.

On the 21.06.2024, the Contracting Authority has published the decision by which the complaints of the Economic Operator are rejected as unfounded and the notification on the decision of the Contracting Authority is confirmed.

On the 01.07.2024, EO “KOSOVA WATER AND ENERGY” SH.P.K., has submitted to the PRB the complaint with no. 0582/2024.

-On the stage of preliminary review-

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

The claims of the complaining economic operator “KOSOVA WATER AND ENERGY” SH.P.K., are presented as follows:

You do not meet requirement No. I related to Technical and/or professional capacity in the contract notice as the references presented by you do not meet the CA's requirement which is to provide evidence that you have successfully completed supplies in the past three years from the date of publication of the contract notice in the amount of more than 1. 125,000.00 Euros. 1 The supplies must be of a similar nature (only for phased parts).

The EO has presented the list of supplies, where Ref. 1 is out of time, Ref. 2,3,4,9,10,11 are for the execution of works where it has given the values of the supplies for the performance of these works but the values of the supplies presented in the list do not appear in the presented references. Request 11 is that it presents references for similar supplies (only for fusion parts).

Ref. 5. 6. 7. 8 are references as requested by the DT but their total value reaches I41.907.48C. so it does not meet the value required in the DT.

You do not meet requirement no. 2 of technical and/or professional skills.

We as CA through the letter of clarification have requested additional clarifications for some documents. EO KWE SI IPK has presented these documents where some of them do not meet the request of the CA which we will list as follows: Position 5 and 6: The items presented in the catalog are not of the required type. The connectors presented for position 5 and 6 are hose adapters of dimensions above ND300 required in position 4. The required connectors have side shoes for placing the pipe in the center until tightening is done; Position 7 The items presented in the catalog are not of the required type. The presented "High tolerance stepped coupling" connectors are connectors for connecting two pipes that do not have the same external diameter, therefore not connectors required for AC pipes; Positions 12 and 13. Not accepted. The EO has presented a catalog in French. According to the LPP, only documents in Albanian, Serbo-Croatian and English are accepted; Position 44. The articles presented in the catalog are not of the required type. It is required that the angle of the Q part be 22.5°, while it is offered with an angle of 22°.; Position 52. Not accepted. The EO has presented a catalog in German. According to the LPP, only documents in Albanian, Serbo-Croatian and English are accepted; Position 57. The items presented in the catalog are not of the required type The equipment presented in the katalog is not according to the request, a non-return valve with a counterweight is presented; Position 60. The items presented in the catalog are not of the required IC type. Equipment that does not meet the request is presented; Position 61. The catalog does not have all the required dimensions. Missing: 2/1/2"; 3"; 4"; Position 64. The items presented in the catalog are not of the required type Ambushell Series 800 is presented instead of the required repair kits; Position 65 and 66. The items presented in the catalog are not of the required type. The connectors presented for these positions are suitable for positions I and 3; Position 68. The items presented in the catalog are not of the required type. It was presented with a hydrant of dimension DN 50, therefore not of the required dimensions; Position 70,71,72 and 73. Not accepted. The EO has presented a catalog in German. According to the LPP, only documents in Albanian, Serbo-Croatian and English are accepted.; Position 76, 77. 78. 79. 80. 81. 82 and 83. The items presented in the catalog are not of the required type. The EO has presented a catalog of GRP pipes and not for the required connectors. In relation to the above-mentioned reasons for our elimination, we clarify that these reasons are unfounded and unfounded, for the following reasons: Initially, we would like to clarify that the CA, on 30.05.2024, sent us a standard letter for Tender Clarification with several requests for clarifications, to which we, as an Economic Operator, have responded with concrete clarifications on 05.06.2024. Despite the fact that we have provided our responses at the request of the contracting authority, the same has eliminated us instead, not taking our clarifications into account at all. The contracting authority initially acted in accordance with Article 59.2 and 72 of the LPP, requesting clarifications regarding ISO Standards, authorization from Instal Pla.sl and regarding catalogs, requesting that catalogs for positions I-28 be sent and that the items for each position be underlined. We have provided all the evidence regarding these requests for clarification, attaching, valid ISO standards, authorization upon request and catalogs with underlined positions, but the contracting authority has not taken into account all the clarifications and in this case has not fully respected Article 59.2 and 72 of the LPP. The contracting authority has not fully respected Article 59.2 and 72 of the LPP. because if there were dilemmas regarding any other evidence, then it should have

requested clarifications for these evidence as well, and not initially requesting clarifications for three points while now it eliminates us for references where dilemmas arise that are not as requested and do not have the values as described in the list of contracts. If these dilemmas existed, then clarifications should have been sought for references and other evidence, but such action of the CA indicates discrimination against our company and favoritism of the EO recommended for the contract. Regarding reference no. 1 where it is said that it is out of time, we clarify that we have attached the Reference from the CA. KRU Gjakova where the guarantee period of the project is precisely clarified in the Contract, which is two years. Regarding References No. 2, 3, 4, 9, 10, 11 where it is stated that they are for the execution of works where the values of the supplies for the performance of these works have been provided but the values of the supplies presented in the list do not appear in the presented references, while the DT's request is to present references for similar supplies (only for the structural parts), we clarify that the request of the tender dossier was as follows: 1. The Economic Operator must provide evidence that it has successfully completed supplies in the past three years from the date of publication of the contract notice in the amount of 1,125,000.00 Euro. The supplies must be of a similar nature (only for the structural parts). If applied in a group, the leader must have at least 60% of the required value of the supplies. Required documentary evidence 1. List of supplies from the Economic Operator specifying the supplies made, the amount of the contracts and the time. The list must be attached as evidence (i) where the supplies are made for a public authority in Kosovo or in another country, a copy of the relevant certificate (certificate or acceptance report or reference) issued or co-signed by such authority serves as evidence of this supply. (ii) where the supplies are made for a private buyer, a copy of any document signed by the buyer and the evidence of such work serves as evidence of this supply; The references contested by the CA with no. 2,3,4, 9,10, 11 are in accordance with the request of the TDS, because they are similar. The request was to provide similar supplies, and evidence was not requested only for the phasonic parts, while the interpretation of the CA that evidence should be provided only for supplies for the phasonic parts is a one-sided interpretation and does not coincide with the nature and purpose of this project, because in this project it is also foreseen to make supplies with many pipes, etc.

Article 2.1 of the TDS foresees the purpose of this project, where it is written, we quote "Due to the numerous defects in the service area, both in water supply and sewage, the company is responsible for their remediation within the appropriate time frame. With the implementation of this supply, all defects in water supply and sewage in the Municipality of Gjakova, Rahovec and several villages of the Municipality of Prizren will be remedied. The contract is broken down into quantities, which include a total of 129 positions, including PE RC pipes, fittings and other accompanying elements. So, from the purpose of this project and the dimensions, it is understood that this project is related to the repair of defects, including pipes, fittings and other accompanying elements, therefore, the contracting authority, during the evaluation of our bid, has incorrectly interpreted the requirement of Article 9.1&9.2 of the TDS regarding the requested references and has interpreted this requirement in contradiction with the nature and purpose of this project. The requirement is very clear that similar supplies must be provided, and nowhere does it state decisively that evidence must be provided only for supplies for phasonic parts, because if this requirement is interpreted in this way then where is the word similar and it

is not really allowed to require similar supplies. The interpretation of the requirements cannot be done in a one-sided and partial manner, not taking into account the word similar and taking into account a word in brackets. In reality, the required documentary evidence only requires the list of supplies and does not mention any phasing parts or any other evidence, therefore, in this case, the list of supplies should be taken into account because no specific request was requested (in the required documentary evidence. The required documentary evidence should normally specify exactly what companies must offer to fulfill the relevant request, while in this case we have a large space in the required documentary failure and we cannot really be eliminated in this case for this reason. Regarding the references of our company, we clarify that the contracting authority itself knows best that we fully meet this requirement, and even exceed the required value because there are three large contracts that have been implemented by us, and the contracting authority was the Gjakova RWC. We are talking about contracts with ordinal numbers in the list of contracts no. 1, 3 and 11, therefore it only took seriousness and dedication to analyze these contracts and the reality is very clear. Only contract number 11 in the value of € 7,300,000.00, has € 2,487,000.00 supplies, and this fact is confirmed by the CA, because the customs clearances have been signed and stamped by the Gjakova RWC itself and confirmed by the Ministry of Economic Development (we have only presented one form and evidence where you have all of this in the CA archive since the project is a donation to the Gjakova RWC. Even with apologies, the supplies are proven and this evidence should have been taken into account by the contracting authority. So, if only this contract were analyzed by KRIJ Gjakova, then it would be correctly confirmed that we exceed the tender dossier requirement that the value of the supplies be €1,125,000.00. Also, the reference issued by BRUNATA OOD, Sofia, where we were a subcontractor and the contracting authority was N.P. Termokos, where it is noted that we have made supplies for over a million.

In the list of contracts, we have set all the values of the supplies as follows. What the CA needed was only to analyze with dedication these evidences provided by us. Considering the request that was to prove the value of the supplies, then it turns out that we fulfill this request, and even exceed the required value many times, therefore we ask the review expert to analyze in detail the evidences provided by us, while forcing the contracting authority to make a real assessment and especially to take into account the evidences, where it was the contracting authority itself. Despite the fact that we exceed the required value of the supplies, this tender has over 150,000.00 6 only pipes etc., therefore the tendency of the CA to give another interpretative direction to the request of the tender dossier constitutes only a tendency of favoritism/discrimination. So, in each variant and no matter how the request is interpreted, we still fulfill the request of the creditor's file. Regarding the reason for elimination regarding the positions that are noted in the standard letter for eliminated tenderers, we clarify that for these positions we could have provided additional clarifications, if the contracting authority had requested clarifications from us, but the CA did not properly use Article 59.2 and 72 of the LPP, because for some issues and evidence it requested clarifications while for some others it did not, despite the fact that we were able to clarify these positions as well. We will clarify all these potential dilemmas of the CA if additional clarifications are requested from us by the contracting authority.

Regarding the reason for elimination that you have provided the catalog for various positions, in French, German, etc., we clarify that in these cases it is allowed to request clarifications and that according to the opinion of the PPRC, given in question No. 13. dated 22.06.2023, therefore in this case. The Contracting Authority should have requested additional clarifications. Therefore, we request the PRB to oblige the contracting authority for any dilemma it has to request clarifications from us. On 13.06.2024, we have made a request to the Contracting Authority through the official e-mail for access to the documentation of the other bidder, namely the EO recommended for the contract where we have noticed that the Economic Operator "N.P.T Xërxa", has some documents that are not in accordance with the requirements of the tender dossier. In article 9.1&9.2 of the PDT it is required: 2. The economic operator must be authorized by the manufacturer or authorized dealer for all. Products no. 01-128 according to (Part II. Description / prices) 2. Authorization from the manufacturer or authorized dealer for all products No. (H-128 (Part II. Description of prices), The authorizations offered by the EO recommended for the contract are from different manufacturers but are from other years and are not for this project, therefore these authorizations should not be taken as a basis and valid. Normally the authorizations should be for the tender in question and that the manufacturer's offer should correspond to the positions required in the tender dossier.

The authorizations provided by the EO recommended for contract are as follows: Authorization from Fonderia dL(I9.04.2022; Authorization from Fiting dt,01,06.2023; Authorization from (Timatermi dt.03.07.2023; Authorization from Rast Trade dt, 15.06.2023; Authorization from. Maxivod dt. 11.04.2022.

These authorizations should not be considered valid and in accordance with the requirements of the tender dossier, therefore this EO is irresponsible because the authorizations are not in accordance with the requirements of the tender dossier and it is not known whether they are still valid. The assessment of the CA in relation to the offer of the EO recommended for the contract is a subjective, contradictory and favorable assessment. because in the notification of the decision dated 17.05.2024, the contracting authority itself has eliminated OF NTP Xërxa with the following justification:

Your tender is irresponsible for the following reasons: You have not fulfilled point no. 3 of the requirements 111.2.4) Technical and professional capacity of the contract notice for the following reasons:

Position 2: The catalogue does not have all the required dimensions. Missing: 0 150/180; 0 200/225; 0 250/280; 0 350/355

Position. 12. The catalog does not have all the required dimensions. Missing: 0110-L 250; 0 125-L 250; 0 160-L=250; 0 140-L 250; 0 200-L=250; 0 225-L 250.

Position 13. The catalog does not have all the required dimensions. Missing: 0110-L=250; 0 125-L=250; 0 150-L-250; 0 200-L-250.

Position 17. The catalog does not have all the required dimensions. Missing: 0 50/1"; 0 63/1.5": 0 63/2"; 0 75/1": 0 75/1.5"; 0 180/1".

Position 73. The catalog does not have all the required dimensions. Missing: DN630.

Position 86. The catalog does not have all the required dimensions. Missing: M 16x80; M 16x90; M 16x100; M 16x120; M 20x100; M 20x120; M 20x140; M 22x100; M 22x120; M 22x140; M 24x60; M 24x70; M 24x80; M 24x100; M 24x120; M 24x140; M 24x160.

Position 123. The catalog does not have all the required dimensions. Missing: o 160/160- o 200/200; v 250/250; 315/315

Position 124. The catalog does not have all the required dimensions. Missing: A 160/90 and 45; 200/90 and 45: & 250/90 and 45: 315/90 and 45

We claim that all these positions do not have the required dimensions as stated by the contracting authority itself, therefore for this reason this EO is irresponsible.

After the review, in the notification of the decision dated 1.06.2024, the contracting authority initially requests clarifications from the EO recommended for the contract, where the same provides clarifications on 30.05.2024 with a statement as follows:

DECLARATION

Our company declares that you can find attached the product catalogs according to your request for clarification of the tender received through the electronic procurement system on 30.05.2024, for the tender with the title: "Supply with fittings" and with procurement no.:

KRURGJA-24-1868-1-1-1.

The attached catalogs are for the following positions:

1. Position no. 2
2. Position no. 123
3. Position no. 124
4. Position no. 125
5. Position no. 126
6. Position no. 127
7. Position no. 128

Note: For the catalogs for Positions No. 125, 126, 127 and 128 - if you still have problems with reading them (because the catalog itself from the manufacturer is like that, and not as a result of scanning) - we declare that we can also physically deliver them to your office. For any other additional help, we are available to provide you with assistance! Date: May 30, 2025.

From these evidences, it is seen that the contracting authority has requested clarifications for positions No. 2, 123, 124, 125, 126, 127. 128 and has not requested clarifications for all those

positions that it had eliminated in the first evaluation. So it has not requested clarifications for positions 12, 13, 17, 73, 86 for which it had found that the required dimensions were missing.

How is it possible to once find that the required dimensions for these positions are missing, and then consider them in order without requesting additional clarifications.

Although these deficiencies were identified by the contracting authority itself, it now recommends the EO NPT Xërxa for the contract, therefore the question arises how is it possible for the same EO to become responsible for this procurement activity within a one-month period.

With this action of the CA, the tendencies favoring the EO recommended for the contract are understood and the unfair evaluation and unequal treatment of our company in relation to the EO recommended for the contract is clearly understood, therefore these actions of the CA are discriminatory actions against us and favoring the EO recommended for the contract and these actions are in complete contradiction with Article 7 of the LPP.

We received the decision to reject the request for reconsideration on 21.06.2024, where the request for reconsideration was rejected, but no concrete and legal reason was given.

In the decision to reject, among other things, the CA responded as follows:

Response from the CA: the requesting entity clarifies as follows: The Contracting Authority, in accordance with Article 72-Documentation and additional information of the LPP, has requested clarifications from the EO on several points where there were uncertainties. No completion of the catalogs for items that did not meet our request has been requested:

Catalogs that are presented in unofficial language. Positions 12, B, 52, 70, 71, 72. 73 - Catalogs presented that do not fit the requested items. Position 7. 44. 57.60, 64.65,66.68, 76, 77. 78. 79,80. 81. 82. 85.

Also in the additional informative response: You have presented for position 5 and 6 as a katalog continuation of the dimensions of position 4.

In relation to this response, we clarify that if the contracting authority has not requested clarifications for positions that do not meet the requirements of the tender dossier, then why did the CA not act the same way with the EO recommended for the contract, that is, declare it irresponsible for the positions that do not meet the requirements of the dossier, as it eliminated in the first evaluation. So you have actions of the CA with double standards, another response was as follows:

-Reference 1 is out of date - the works were completed in 2020. Ref. 2,3,4, 9, 10, 11 are for the execution of works? where the values of the supplies for the execution of these works have been given but the values of the supplies presented in the list do not appear in the references presented. TD's request is to present references for similar supplies (only for the phasing parts).

Regarding: The CA's request regarding supplies only for the phased part is discriminatory and should have been responded to in the phases determined according to the LPP. We have also explained above that the request was initially interpreted incorrectly and in a biased manner,

because similar supplies were requested, but despite this we fully comply with the request of the tender dossier, as argued above. Regarding our complaint claim regarding the authorizations of the EO recommended for the contract, the Contracting Authority has responded as follows:

Regarding: -The claim that the competing EO has submitted an authorization but that most of them were old and that the authorization should be for the tender in question does not stand since our request is; Authorization from the manufacturer or authorized dealer to sell products No. 01-128 (Part II Description of prices) and nowhere is authorization mentioned for the tender in question

In this way, we as the CA consider your complaint claim as unfounded and reject as unfounded your request for reconsideration.

Also regarding this issue, we have explained above that it is not known whether the authorizations are for this project and whether they are valid at this time, therefore our suspicion had to be confirmed.

Based on the evidence and facts mentioned above, it results that the examination, evaluation and comparison of tenders was not carried out in accordance with Article 59 of the LPP and at the same time the main criterion for awarding the contract was not respected, which was the responsive tender with the lowest price according to Article 60 paragraph 1.1 of the LPP.

We are the cheapest bidder in this procurement activity, therefore when we consider the irresponsibility of the EO recommended for contract and the highest price, then there is a risk of damaging the budget of the RWC Gjakova in the amount of 36,477.35 €, when it is known that the value of the bid of the EO recommended for contract is 717,158.03, € while the value of our bid is 680,680.68 €.

Also, the CA has not respected Article 7 of the LPP. because it has discriminated against us by not declaring us the winner even though we have fulfilled all the requirements of the FDT and the contract notice and at the same time we are the EO with the cheapest price.

Paragraph 1 of Article 7 of the LPP clearly stipulates that the Contracting Authority shall treat economic operators equally and non-discriminatory and shall act in a transparent manner.

Also, paragraph 6 of Article 7 of the LPP provides that "During the conduct of the procurement activity, all contracting authorities shall ensure; that (vi) the selected tender complies with all substantive aspects of the relevant conditions, criteria and specifications, but the CA did not comply with this legal provision either because the irresponsible EO was recommended for the contract.

The CA should have also taken into consideration Article 1 of the LPP, since it is known that the purpose of this law is to ensure the most efficient, transparent and fair way of using public funds and public resources as well as all other funds and resources of contracting authorities in Kosova.

Referring to the allegations above, EO "KOSOVA WATER AND ENERGY" SH.P.K., considers that the Contracting Authority has acted in violation of Article 1, 6, 7, 52, 56, 59, 60, 64, 69, 72, 439 of Regulation No. 001/2022 on Public Procurement Article 40 of Regulation No.

001/2022 on Public Procurement. Based on the evidence mentioned above, we request the PRB to take: DECISION 1. The complaint of EO “KOSOVA WATER AND ENERGY” SH.P.K. is approved. as grounded, II b is annulled, the notification and decision of the CA for contract award and the case is returned for re-evaluation, IIL the contracting authority is OBLIGED that during the re-evaluation, the examination, evaluation and comparison of the offers be carried out in accordance with the requirements of the tender dossier, the Contract notice and in accordance with the provisions of the LPP.

CA's response to the request for review for EO "KOSOVA WATER AND ENERGY" SH.P.K.,

The request for review by the Economic Operator KWE SHPK, regarding the procurement activity entitled: Supply of fittings, with Proc. No. KRURGJA-24- 1868-1-1-1, is rejected as unfounded:

COMPLAINING CLAIMS OF: Economic Operator; KWE SHPK,

- Article 72- Documentation and additional information
- Article 52-Notification of contract award criteria
- Article 7- Equal Treatment/Non-discrimination
- Article 4.6 - Procurement Code of Ethics
- Article 9.2 - Tender dossier

REASONING:

- Regarding the claim that the CA has violated Articles 7 of the LPP. The CA clarifies that there has been no violation of these articles, since the CA ensures that the funds are being used in the most fair and transparent manner and that all EOs are treated equally and non-discriminatory.
- Regarding the claim that the CA has violated Article 52 of the LPP, the CA clarifies that there has been no violation of these articles, since the Contracting Authority in the contract notice and in the tender dossier has specified the criteria that were used for the award of the contract.
- Regarding the claim that the CA has violated Article 72 of the LPP, the CA clarifies that there has been no violation of this article since the CA has requested economic operators to submit, supplement, clarify or complete the necessary information or documentation within a certain time limit, provided that such requests are made in full compliance with the principles of equal treatment and transparency.

Response from the CA: The requesting entity explains as follows:

The Contracting Authority in accordance with Article 72-Documentation and additional information of the LPP has requested clarifications from the EO for several points where there were uncertainties. No completion of the catalogs for items that did not meet our request was requested: Catalogs that were presented in an unofficial language. Position 12, 13, 52, 70, 71, 72,

73 Catalogs presented that do not match the requested items. Position 7, 44, 57, 60, 64, 65, 66, 68, 76, 77, 78, 79, 80, 81, 82, 83.

Also in the additional information response: You have presented for position 5 and 6 as a catalog continuation of the dimensions of position 4.

Regarding:

- Ref.1 is out of time - the works were completed in 2020.
- Ref. 2,3,4,9,10,11 are for the execution of works where the values of the supplies for the performance of these works have been provided, but the values of the supplies presented in the list do not appear in the references presented.

TD's request is to present references for similar supplies (only for fittings).

Regarding:

The CA's request regarding supplies only for the phased parts is discriminatory and should have been

reacted in the phases determined according to the LPP.

Regarding:

- The claim that the CA in the standard letter to the eliminated tenderer states:

You do not meet requirement no. 2 of technical and/or professional skills.

It is clearly seen that it is a technical omission for point 3 of technical and/or professional skills since it is distinguished below that it is about position 3 - Product catalogs - with a technical description of the product offered - Catalogs to be presented from position No. 01-128. (Part II Description of prices) In the catalog, the items you have offered for each position should be underlined.

Regarding:

-Your claim that the competing EO has submitted authorizations but that most of them were old and that the authorization should be for the tender in question, does not stand since our request is: Authorization from the manufacturer or authorized dealer for all products No. 01-128 (Part 11. Description of prices) and nowhere is authorization mentioned for the tender in question.

- In this way, we as the CA consider your complaint claims as unfounded and reject your request for reconsideration as unfounded.

Based on Article 111 paragraph 5 in connection with Articles 113 and 114 of the LPP, the Procurement Review Body on 08.07.2024 authorized the review expert to conduct the initial review of the file and claims according to the complaint with no. 0582/2024

Regarding the complaints no. 0582/24 on 30.07.2024, the review expert's report 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, the contract award notice be canceled and the procurement activity be canceled in its entirety.

The expertise report with no. 0582/24 has been duly accepted by all procedural parties. CA declares that it does not agree with the recommendations of the review expert's report, and the EO does not agree with the review expert's report.

The review panel has assessed that the conditions have been met to decide on this case without a hearing session within the meaning of Article 24, paragraph 1 of the Rules of Procedure of the PRB, taking into account that the claims of the parties and their submissions, the evidence and the report of the review expert 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 report of the review expert, the submissions and documents of the complainants, 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 “KOSOVA WATER AND ENERGY” SH.P.K., the review expert through report no. 2024/0582 has assessed as follows:

Response to the Complaining Claims.

The complaint claims are not listed according to the complaint of the economic operator but are issued based on the reasons for the cancellation of the complaining EO by the Contracting Authority according to the Standard Letter for Cancellation.

Claim 1. According to complaining claim no. 1, CA-KRU Gjakova has eliminated the economic operator with the justification that the complaining EO does not meet criterion 1 regarding technical/professional skills, since the references provided do not meet the request of the CA in the tender dossier:

According to the CA-KRU Gjakova, the EO presented the list of supplies:

- Ref. 1 is out of time

- Ref. 2,3,4,9,10,11 are for the execution of works where the values of the supplies are not in the presented references.

The review expert explains that the CA -KRU Gjakova in the tender dossier has requested the following:

Requirements: 1. The Economic Operator must provide evidence that it has successfully completed supplies in the past three years from the date of publication of the contract notice in the amount of more than 1,125,000.00 Euro. The supplies must be of a similar nature (only for phased parts). If applied in a group, the leader must have at least 60% of the requested value of the supplies.

Evidence:

1. List of supplies by the Economic Operator specifying the supplies made, the amount of the contracts and the time. The list shall be attached as evidence (i) when the supplies are made to a public authority in Kosovo or in another country, a copy of the relevant certificate (certificate or acceptance report or reference) issued or co-signed by such authority shall serve as evidence of this supply. (ii) when the supplies are made to a private buyer, a copy of any document signed by the buyer and evidence of such work shall serve as evidence of this supply; (The reference or acceptance report of the supplies must be in accordance with the list presented.

The review expert explains that the request in the tender dossier was ambiguous because it refers to references to similar supplies, while the description in brackets refers only to the same parts, which means it refers only to the same references that have similar parts. The description of such a request with two meanings may have caused uncertainty among economic operators in the preparation of the tender dossier, and this is also evidenced in the relevant case where this uncertainty has led to such a complaint.

The complaining economic operator has provided a list of references with a total value of projects of 20,226,795.41 €, while the value of supplies alone is 6,282,060.88 €.

In order to better clarify this list and the attached references, the Contracting Authority during the bid evaluation phase had to request additional clarifications according to Article 72 of the LPP, Article 38 of the Public Procurement Regulation 001/2022 and Article 10 of the Public Procurement Operational Guide 001/2023.

In this way, through these clarifications, it would have been possible to clarify and accurately verify the value of the supplies included in the references and contracts offered.

Based on the above description, the offer of the complaining economic operator, the evaluation report, the tender dossier, we recommend to the review panel that the complaining claim no. 1 is partially founded.

Claim no. 2. According to the CA-MH, the complaining economic operator does not meet requirement no. 2 of technical and professional skills. EO KWE shpk, according to the contracting authority, has presented documents where some of them do not meet the CA's requirement, which are listed below:

Complaint claim: Authorization from the manufacturer or authorized dealer for all products No.

01-128 (Part II. Description of prices). The authorizations provided by the EO recommended for the contract are from different manufacturers but are from other years and are not for this project, therefore these authorizations should not be taken as basis and valid. Normally the authorizations should be for the tender in question and the manufacturer's offers should correspond to the positions requested in the tender dossier.

Authorizations provided by the EO recommended for contract: Authorization from Fonderia dated 09.04.2022; Authorization from Fiting dated 01.06.2023; Authorization from Climaterm

dated 03.07.2023; Authorization from Bast Trade dated 15.06.2023; Authorization from Maxivod dated 11.04.2022

These authorizations should not be considered valid and in accordance with the requirements of the tender dossier, therefore this EO is not responsible because the authorizations are not in accordance with the requirements of the tender dossier and it is not known whether they are still valid. Technical expert:

The authorization issued by a manufacturer or an authorized dealer is required by the CA for the procurement subject in question, and the EO undertakes to fulfill its obligations by the deadline specified in the contract as requested in the TD, therefore the complaining claim is grounded.

Claim no. 3: Decision dated 17.05.2024 on the reasons for the elimination of EO NTP Xërxa with the following justifications:

Technical expert: The findings of the evaluation commission on the reasons for elimination are generally based on EO NPT Xërxa and KWE sh.p.k. The exception is position 5 and 6 from the KWE sh.p.k catalog because these positions are found on page 22 Stepped couplings and flange adapters. Some of the positions were missing dimensions required by TD; Similar items were offered that do not comply with the dimensions required by TD.

The technical expert agrees with the evaluation committee dated 17.05.2024 because neither of the EOs meets the technical requirements and both are irresponsible, therefore it is considered grounded.

Complaining claim no. 4. The request for clarification from the re-evaluation commission for EO NPT Xërxa, and the statement submitted on 30.05.2024, proves that the CA has requested clarification for positions no. 2,123,124, 125, 126, 127,128 and has not requested clarification for all those positions that it had eliminated in the first evaluation, namely positions 12,13,17,73,86 for which it had found that the required dimensions were missing.

Technical expert: Positions no. 2,12,13,17,73,86,123,124 do not meet the technical requirements which were considered reasonable by the evaluation and re-evaluation commission, while positions 125,126,127 and 128 from the catalog of the manufacturer PESTAN for pipes, connectors and pipe bends made of PVC material (KG) PIPES are subject to this finding.

Position 125: Dimensions 050/250; 050/500; 050/1000; 075/250; 075/500; 075/1000; 0110/250; 0110/500; 0110/1000; 0125/1000 are missing.

Position 126: Dimensions 050 and 070 are missing.

Position 127: Dimensions 050/50 and 075/75 are missing.

Position 128: Dimensions 050 90° bend and 45° bend and 075 90° bend and 45° bend are missing. From this manufacturer the bend angle is 87.5 °.

This complaint claim is unfounded because the re-evaluation commission is independent from the evaluation commission and evaluates the offers from the beginning.

Recommendation: CA should decide in request no. 3 that the economic operator in its offer also submits the Declaration from the manufacturer for specific technical characteristics that are not in the manufacturer's catalog, manual or brochure.

Due to the large volume with many positions, it would be better to divide this procurement activity by Lottery.

Complaining claim No. 5

Regarding the complaint claim for the submission of catalogs in German, the review expert concludes that it is necessary to act according to the opinion of the PPRC of 13. 22.06.2023 How should the CA act, in case a tenderer submits a tender document in a language other than that authorized by Article 13 of the LPP? . Based on the explanations of this opinion, we conclude that we are dealing with a partially grounded complaint claim.

The review experts, based on the above description of all complaining claims and in the technical aspect, recommend that we are dealing with two irresponsible bidders.

According to the above description and taking into account all the case files, additional clarifications, the tender dossier, the complaining claims of the complaining economic operator, Article 59 of the LPP, Article 6 of the LPP on Economy and Efficiency, we recommend the cancellation of the procurement activity according to Article 62 of the LPP in the absence of responsible bidders.

If the Contracting Authority has an interest in retendering this activity, it should take into account the recommendations of the review and technical expert in this report. Based on the above-mentioned clarifications, the review expert proposes to the review panel: The complaint of the complaining Economic Operator EO “KWE SHPK.” is partially grounded to cancel the Notice on the decision of the CA dated 11.06.2024, the contract award notice. To cancel the procurement activity in its entirety, as described above.

- Findings of the Review Panel -

Based on the documents of this case, the Panel considers that regarding the issue in the concrete case, there is no need to convene a hearing with the parties, within the meaning of Article 24 paragraph 1 of the Rules of Procedure of the PRB, taking into account the fact that the claims of the parties and their submissions, the evidence as well as the report of the review expert, it was necessary to hear the parties.

The Review Panel assesses that the Review Expert Report, drafted at the request of the PRB regarding the dispute in this case of public procurement activity, does not contain the essential elements of such a document as foreseen by the provision of Article 113 in conjunction with Article 114 of the LPP, according to which the expert is required to review all procurement documentation, including all complaint claims and to provide the Panel and all parties to the dispute with an independent and professional assessment of the procurement activity and the validity of the complaining claims.

However, it should be noted that the legal fact that the expert report is not binding on the Review Panel and that any such report is assessed and/or analyzed in the overall context of the case files, the alleged facts and any other possible evidence, taking into account the nature of the possible violations, the course, nature and purpose of the procurement activity, therefore, the fact in which cases and for what, the Panel relies or not, on the expert report and/or any of the recommendations, is a matter of his/her independent and professional judgment, as these responsibilities are addressed in the sense of Article 98, 99 in conjunction with Article 105 of the Public Procurement Law.

In the specific case, from the report of the review experts, the evidence presented by the complaining economic operator, the documents of the tender dossier and other evidence of the case, the Review Panel does not trust the report of the review expert, because based on the factual situation and the complainant's claim that their offer was rejected (eliminated) by the CA on many points which are specified in the standard letter for the elimination of the EO and the Complainant's complaint, it can be clearly assessed that the factual and real situation has not been correctly reflected and the experts' reasoning is not based on evidence and arguments.

Initially, the complainant has attacked his/her elimination regarding the references that were not accepted by the CA, because the supplies must be of a similar nature (only for the phasing parts). The review expert in this case has not issued any findings, except that the CA should have requested additional clarifications, and for this so-called finding the PSH does not support it because there are no facts or arguments that the complainant has offered similar contracts in accordance with the requirements of the TD, it is referring to Article 72 of the LPP which is not binding on the CA but contains the word "may". For the Review Panel, this finding of the expert, besides being contradictory, is not in accordance with legal provisions and is not substantiated. Therefore, after administering the documents and evidence in this procedure, where the CA has re-evaluated the bids, it supports the decision of the contracting authority regarding the reason for the elimination of the complainant, based also on opinion No. 11 of the PPRC, which cites: "Such a determination is the exclusive competence of the CA. Therefore, the Responsible Procurement Officer, with the assistance of the request unit and/or experts in this field, can determine similar services. In this case, the codes specified in the FPP can also serve as a good orientation for determining similar supplies, services or works, where currently 8,323 FPP codes are published on the Electronic Public Procurement Platform. Therefore, the review panel finds that the actions of the CA are in accordance with the legal provisions and the offer of the complaining EO was rightly rejected.

The PSH considers that this complaining EO should have clarified with the CA before bidding, clarification which is allowed by the legal provisions, specifically Article 53 of the LPP, in which case in the pre-bidding phase, any interested party, if they have an interest in participating in a procurement activity and consider that the requirements set are not relevant and are discriminatory, such as the drafting of the tender dossier not being in accordance with Article 27 of the LPP, or any evidence regarding their accountability needs to be clarified, then they could have clarified in advance, if there are still uncertainties and they do not receive a response, they

can submit a request for re-examination to the CA and then a complaint to the PRB, whereas, in this case the complaint was filed at the contract award stage, in which case the complainant has accepted all the requirements of the Tender Dossier when bidding in this procurement activity and has offered prices. This is also confirmed by the Bid Submission Form, where through this form he has declared that he has checked and accepts all the conditions of the tender and submits his financial bid. In fact, this Form according to Article 17.7 of Regulation No. 001/2022 on Public Procurement is the main part of the bid.

It is also worth noting that the technical review expert deals more with the reasons for the elimination and the findings of the evaluation committee dated 17.05.2025 and does not deal with the technical reasons for the elimination of the complainant by the committee on 06.06.2024. Where for the review panel, most of the findings of the bid evaluation committee that the items presented in the catalogs mentioned in the standard letter of elimination of the complainant are not in accordance with the requirements of the DT are consistent.

In order to be competitive in a procurement procedure, economic operators must meet all the required conditions and present a complete and regular offer to the contracting authority. This process must compete for fair transparency and ensure the best possible choice for the contracting authority. In this context, even according to the independent judgment of this panel, the CA, nor the EO, should not invoke sub-legal provisions to request additional clarifications for the bidders' documentation in any case, especially when these provisions are not binding on the CA (Article 72 of the LPP), since as explained above, all bidders are aware of the obligations and procedures for applying for tenders. And it should not be seen as a valid reason to intervene in the procurement process in an insufficiently reasonable manner. This ensures that procurement procedures remain efficient and fulfill their purpose of securing public contracts in a fair and equitable manner for all interested parties.

The Review Panel decides in accordance with legal provisions not to release for evaluation the complaining claims that were not submitted in time during the preliminary phase according to the legislator's authorizations in the sense of Article 108/A and 109 of the LPP in connection with Article 64.2 of the REGULATION No. 001/2022 ON PUBLIC PROCUREMENT by the complaining EO and the same have not been subject to review by the PRB. In this case, the complainant has raised as an issue the complaining claim that the Authorizations offered by the EO recommended for contract are from different manufacturers but are from other years and are not for this project, therefore these authorizations should not be taken as basis and valid. The PSH, based on the request of the Tender Dossier and the Contract Notice, can very easily ascertain that the CA has not requested that these authorizations have not been requested for years and for the relevant activity, therefore, based on Article 56.3 of the LPP, no EO can be eliminated from the procurement activity for a request that is not placed in the CN/TD.

The Review Panel has independently and objectively, with due diligence and professional care, evaluated all the evidence of the case, and based on Article 59.4 of the LPP, it was found that the Contracting Authority did not act in violation of the legal provisions on public procurement and the requirements of the tender dossier regarding the procurement activity "Supply of fittings" with procurement number: KRURGJA-24-1868-1-1-1. Consequently, the Review Panel

regarding the claims of the complaining economic operator qualifies them as partially grounded but not sufficient grounds for the procurement activity to be returned for re-evaluation, as stated above.

Therefore, the Review Panel decides to grant the CA the right and to leave in force the decision of the CA, a decision which was issued by a re-evaluation commission which is supposed to be professional and also responsible according to the cited Article 59.1 "All members of the Evaluation Commission 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 the planning of the procurement (Article 8) and in the determination of the needs to be met (Article 9), of course in accordance with the budgetary capacity and that the CA in the concrete case had the right to decide also on the EO recommended for the award of the contract based on Article 24 paragraph 2 of the LPP cited "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in full compliance with this law".

Without the need for further analysis, the PRB always starts from the fact that each CA (at any level) enjoys complete independence in exercising its powers and determining needs in harmony with budgetary capacity, but the CA must also take care ex-officio of the basic principles of the LPP and, when drafting the criteria of the tender dossier, not to draft technical specifications that conflict with the provisions of the LPP.

The Review Panel has decided in accordance with the legal powers 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.

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

President of the Review Panel

Mrs. Batisha Ibrahim

Legal advice:

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

Decision to be submitted to:

1x1 CA – **Regional Water Supply Company GJAKOVA" SH.A;**

1x1 EO – **“KOSOVA WATER AND ENERGY SH.P.K”;**

1x1 Archive of the PRB;