



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

Psh. No.574/24

The Review Panel, appointed by the President of PRB, based on Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosovo (Law no. 04/L-042, supplemented and amended by Law 04/L-237, Law 05/L-068, completed and Law 05/L-092) in the composition of Vedat Poterqoi - President, Kimete Gashi and Batisha Ibrahim - Member, deciding according to the complaint of EO “U - UNIQUE” SH.P.K., against the Decision on contract award or a design competition of the “KOSOVA POLICE” in the capacity of the Contracting Authority (CA) related to the procurement activity “Construction of the garage facility in the Enver Zymberi camp - Mitrovica” with procurement number 214-24-1581-5-1-1, on the 22/08/2024 has issued this:

DECISION

1. **Approved**, as partially grounded the complaint of “U - UNIQUE” SH.P.K., with no. 2024/574, dated 01/07/2024, while the decision of the CA "Kosova Police" regarding the procurement activity "Construction of the garage facility in the Enver Zymberi camp - Mitrovica" with procurement number 214-24-1581-5-1-1, remains in force.
2. The complaint's fee is returned to the amount deposited when the complaint is submitted. The complaining economic operator is required to, in accordance with Article 31 point 6 of the PRB's work regulations, within sixty (60) days make a request for the return of the complaint insurance, 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 13.03.2024, Kosova Police, in the capacity of the Contracting Authority, has published the Contract Notice B05 for the procurement activity "Construction of the garage facility in the Enver Zymberi camp - Mitrovica" with procurement number 214-24-1581-5-1-1. Whereas on 13.06.2024 the Notice on the decision of the Contracting Authority with which it awarded the contract to EO: "Euroing SHPK"-

The contracting authority has implemented an open procedure, type of contract: - work, estimated value of the contract: **607,440.98 €**.

On the 18.06.2024, EO "U - UNIQUE" SHPK submitted a request for reconsideration against the aforementioned decision of the CA. On the 20.06.2024, the Contracting Authority rejected the request for reconsideration as unfounded.

On the 01/07/2024, PRB has received the complaint from EO "U - UNIQUE" SHPK, with no. 2024/0574 related to the activity "Construction of the garage facility in Enver Zymberi camp - Mitrovica" with procurement no: 214-24-1581-5-1-1.

-On the preliminary review stage-

The Review Panel has determined that the complaint contains all the elements defined through Article 111 of the LPP and as such was submitted within the legal deadline in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for resolving disputes in terms 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.

Claims of the complaining economic operator "U – UNIQUE" SH.P.K are presented as follows:

On the 13.06.2024, we received the standard letter for the eliminated tenderer. On the 13.06.2024, we requested access to the documentation of all EOs participating in this activity. In order to have access, we were notified on 13.06.2024 that the requested documents can be provided to us on 14.06.2024 at 14:00. During the analysis of the standard letter for the eliminated tenderer, we noticed that the evaluation commission under the CA: KOSOVA POLICE violated the provisions of the LPP and public procurement regulations. In the following, we present our arguments against the Reason for cancellation by the CA.

Claim 1: "The violation by the CA of Article 10 Means for the promotion of Transparency; Initially, in the access to the documents at the procurement office, we were not allowed access to all the documents that were requested in the TD, which consequently means that we cannot assess whether the EO recommended for the contract is responsible, as well as without approach, we cannot mention any comparison with our offer.

The CA cannot keep as secret the documents that are essential for the evaluation of the tender, we can also testify that even in cases where we have fulfilled the request for business secrecy, the procurement office itself has given you all the documents to the other EOs. , where we can conclude that EOs are discriminated depending on which company it is and according to their personal interests.

Claim 2: "Article 7 - Equality in Treatment / Non-Discrimination in relation to other EOs; For us as an EO participating in this procurement activity, it is senseless how the CA - KOSOVA POLICE can classify us as an EO in various procedures with very similar requirements sometimes unsuccessful and sometimes eliminated where for both activities we have offered almost the same list of contracts. This shows that the CA is using double standards, inequality and discrimination during the evaluation of offers in order to reward the EO with a contract that are being favored in almost every procurement activity under the Kosovo Police, the EO recommended for this procurement activity, the office of procurement have a collaboration with other contracts as well, we were eliminated from this procurement activity even though our offer was cheaper for 16,167.66 EURO, i.e. we were eliminated because we spoiled someone's interests within the procurement.

This reason for the elimination that we have offered insufficient construction contracts does not stand for the reason that all the contracts attached with technical acceptances from our side are in full compliance with the request of TD and TDS exactly according to the request in Article 9.1 & 9.2 of the TD - Requirements on technical and/or professional capabilities, i.e. meet 100% of the required condition (of the same and similar nature) to the required documentary evidence - List of signed contracts of the same or similar nature similar. (See description according to TD)

So, based on the TD, the commission had the opportunity to ask for clarifications for each contract if there was ambiguity about the nature of the works, even though it is clear that they are the same/similar.

Below you will find the recapitulation for this activity that we have been illegally eliminated as well as the recapitulations of some of the contracts attached to this file for this procurement activity:

1. Recapitulation of the activity: CONSTRUCTION OF THE GARAGE FACILITY IN THE ENVER ZYMBERI CAMP - MITROVICË, No. of Procurement 214-24-1581-5-1-1

All the positions mentioned above correspond to the references/contracts presented by us, which include works on architecture, electrical installations, machinery, water supply and sewerage.

(The above recapitulation of this activity corresponds to all the recapitulations of our contracts in the clarifications presented below) Arrangement of the park in the center of the village of Plave worth: 29,983.15 €

This contract in itself contains positions very similar to the nature of the contract (See recapitulation of the advance for this contract) Construction and renovation of school facilities worth: 81,465.92 €

The very title of this contract says construction and renovation, so this contract is exactly the same as the nature required in the DT. Renovation of the DPSF (Department of Social and Family Policies) facility worth: 48,440.84 €

Even this contract itself contains positions very similar to the nature of the contract (See the recapitulation of the advance for this contract)- 024-Renovation of the facility of the Dragash CMF with a value of: 69,368.70 €

Also, this contract itself contains positions very similar to the nature of the contract (See recapitulation of the advance for this contract) Construction of spaces for cabinets, under the roof of the Sinan Thaqi school in the village of Zojz, worth: 94,413.57 €

We cannot understand how such a contract was ignored by the CA on the grounds that it is not of the same or similar nature where this contract contains many positions similar to the nature of this activity (See recapitulation of the pre-measure for this contract). Renovation of the existing facilities in the Special Institute in Shtime worth: 64,373.00 €

This contract is also of a similar nature and many positions of this contract are the same as the nature of the positions in this activity. (See recapitulation of advance for this contract). - 071 - Renovation of the QMFs in Bresana, Uapushnik, Bellobrad as well as the AMFs in Blaç and Kosavë - Retendering worth: 63,360.00 €

This contract is about the renovation of 5 clinics in some villages of the municipality of Dragash, where the job positions are: Architecture, Waterworks Installations, Electricity, Machinery. So all these positions are exactly the same positions with the nature of the contract in this activity.

118- Construction of the studio in Krevecices in the village of Pllav worth: 22,222.22 € (See recapitulation of advance for this contract).

Construction of the stadium in the village of Blaq - (two-year project) with realized value: 106,903.00 € (See recapitulation of the amount for this contract). Realization of construction works for the functionalization of Pediatrics in SP Mitrovica | worth €218,980.21 (See recapitulation of advance for this contract). - Subsidies for Energy Efficiency in Kosova (SEEK) worth: 433,080.22 € (See recapitulation of the advance for this contract).

This contract contains construction work in energy saving, in which case our company has carried out these works in a total of 31 residential houses in the entire territory of Kosova where Energy Efficiency has been achieved during the implementation of Architecture works (Facade of buildings, Works of roof in buildings, Carpentry Work) and Machine Work. So all these works are of the same or similar nature to this procurement activity.

These are some of the contracts presented in the submitted list where only these contracts reach the value of 1,232,590.83 €, where all these contracts presented in the list are according to the request in the Contract Notice and Tender dossier.

If you compare the recapitulation of completed contracts with the recapitulation of the pre-measurement of the offer of this activity, then this does not require deep analysis to understand that our contracts are the same and similar to the nature of this activity, which consequently the CA has discriminated against us illegal.

Another proof that we have met all the requirements is the email addressed to the certification company for ISO 3834-2 and the email addressed to our staff for documentation verification, where if all the requirements had not been met the commission would not have asked for such clarifications because the goal of the CA was to eliminate our company, at any cost, that is, it acted with two or three standards until they convinced themselves to eliminate us without reason. So in TD, contracts of the same or similar nature were requested and we cannot understand how the CA-Evaluating Commission ignores our contracts and shows that their goal was to eliminate us from this procurement activity with a scandalous and not at all professional decision.

CA - The evaluation committee has violated Article 40 point 40.2 where the contracting authorities cannot change, modify or remove pre-defined requirements, criteria or specifications or add some new ones during the examination, evaluation and comparison of tenders, therefore this elimination from the of the CA is in contradiction with the LPP, Regulation 001/2022 because we as EO have offered References similar to the nature of the contract in the value: 1,499,956.77 Euro, where this value is significantly greater than the value requested by the CA(600,000.00 Euro).

Also, the CA through this decision has violated:

Article 1 - Purpose: “CA did not respect this law due to the fact that it did not ensure the efficient and transparent use of public funds”.

Also, some of the members of the evaluation committee violated their integrity and responsibility as a public official involved in this procurement activity, where they influenced their personal interests or with recommendations to someone else, that is, they show discrimination during the evaluation of the offers, leaving aside the procedural requirements and inherent to this law and through these violations point 3 of this law has also been violated, where this law aims to promote the creation of a professionalized institutional culture unaffected by material interests, impartial, ethical, among official persons that carry out or are involved in a procurement activity, asking such persons to behave following the principle of the most efficient, cost-effective, transparent and fair use of public funds and resources while strictly adhering to the procedures and the essential conditions of this law.

Article 6 - Economy and Efficiency: Our offer is at the lowest price for 16,167.66 EURO, i.e. as defined in the TDS - Award criteria - Lowest price and CA with its decision failed to ensure that public funds and resources public to be used in the most economical way, simultaneously taking into consideration the purpose and subject of the procurement.

Article 56 - General Provisions on the Selection of Participants and the Awarding of Contracts CA and the evaluation commission through the Notice on the decision and the standard letter has violated this article because it did not respect the main criterion for awarding the contract - the lowest price and bypassing the offer made an unfair selection of participants where it evaluated an offer with a higher price as responsible in this procurement activity.

Article 59 - Examination, Evaluation and Comparison of Tenders CA committed a violation of this article because seeing that all the requirements set forth in the contract notice and in the tender file are in compliance on our part by accurately completing each point of the TDS - did not consider our offer responsible with an unprofessional and poorly analyzed assessment, based on the clarification of Claim no. 2 as we explained above.

Article 60 - Criteria for Contract Award: This article was not respected at all due to the fact that our offer is the offer with the lowest price as defined in the TDS - Award criteria - responsible EO with the lowest price, where we in this particular case, we are U-UNIQUE SHPK, which fulfills this criterion.

Article 69 - Technical and/or Professional Ability: "The CA, through the Notice on the decision and the standard letter, has violated this article due to the fact that even in the report of the evaluation committee it is clearly seen that all the technical and professional criteria defined in the contract notice and The tender dossier was completed by us and for the purpose of our elimination only one written sentence was used. We quote part of the standard letter: EO has provided insufficient evidence for construction, leaving aside the request in the TD which states that the same nature or similar during the last 3 (three) years. We cannot understand how for a request where the requested value was 600,000.00 Euros, contracts in the amount of 1,499,956.77 Euros are not sufficient. Therefore, the evaluation commission committed a scandalous violation of this article by not analyzing at all and ignoring the contracts presented by us, which are in full accordance with the nature of the contract and with the requirements in the contract notice and the tender file. based on the clarification of Claim no. 2 as we explained above.

Referring to the claims as above, "U - UNIQUE" SHPK considers that the Contracting Authority has acted in violation of Article 1, 6, 7, 10, 56, 59, 60 and 69 of the LPP. Proposing that for the Reasons and facts presented above, and because the public interest is not harmed by the possibility of receiving services in time, and on the other hand, to stop and prevent the serious damage that has been caused to the applicant denying the complainant the legal right to be rewarded with a contract as there is no legal basis to act otherwise, we request that after examining the complaining claims and the evidence presented, the PPO at the KOSOVA POLICE make a decision: APPROVED as well-founded COMPLAINT of EO "U-UNIQUE" SH.P.K. The Notification of the Contracting Authority's decision is CANCELED for Notification of the decision of the CA dated 13.06.2024 The matter should be returned to RE-ASSESSMENT taking into account all the findings which have been mentioned above and in the case of the re-assessment to be in harmony with the legal requirements as well as the requirements of the tender file and the notice for contract.

CA's response to the request for reconsideration: The Contracting Authority has not violated Article 1 Purpose.

The purpose of the activity is to receive supplies fully according to the requirements of the CA and the criteria have been determined in accordance with the purpose of the procurement activity and as a result the CA has ensured the most efficient, transparent and fair way of using public funds, public resources as well as all funds and other resources of the contracting authorities in Kosovo, determining the conditions and rules that will be applied, the procedures that have been followed, the rights that have been respected and the obligations that will be fulfilled by persons, economic operators, enterprises, contracting authorities, concessionaires of works and public bodies that develop, engage in, participate in or are interested in procurement activities or that involve or relate to such funds and/or resources.

The Contracting Authority has not violated Article 6 Economy and Efficiency

The CA has not violated Article 6 of the LPP since all contracting authorities are obliged to ensure that public funds and public resources are used in the most economical way, simultaneously taking into consideration the purpose and subject of the procurement.

Public funds and public resources that have been offered or made available under a public contract shall be used only by such contract and only for the purposes of the same.

The contracting authority has not violated Article 7 of the LPP Equality in treatment and non-discrimination does not exist.

The contracting authority will treat economic operators equally and non-discriminatory and will act transparently.

Therefore, the CA has treated all Economic Operators equally based on the technical and professional requirements of the Tender dossier and Contract Notice.

During the management of this procurement activities, the CA - Kosovo Police will ensure; (i) the widest possible participation of interested economic operators regarding the price and subject matter of the procurement; (ii) the regular publication, sending and/or availability of all notices, information and documents related to the procurement activity in accordance with this law; (iii) elimination of practices, criteria, requirements and technical specifications that discriminate in favor of or against one or more economic operators; (iv) that all technical specifications and all requirements for selection and award, including the relative importance of each such requirement and award criterion, are specified in the contract notice, TDS that no requirement, criterion, specification that has not been specified thus, not to be used in the selection or awarding process, and (vi) that the selected tender complies with all substantive aspects of the relevant conditions, criteria and specifications and the CA has acted in full harmony with the LPP and ROGPP and the complaining claim is unfounded.

Article 56 - Responsible Provisions on the Selection of Participants and Contract Award

The claims that the CA has violated Article 59 of the LPP, do not stand as the CA, clarifies that it has not violated this article since the evaluation of the offers was done in harmony with the Law

on Public Procurement, in accordance with the criteria defined in the Tender dossier and in the Contract Notice and has recommended for the contract the EO that has met all the criteria set in the Tender dossier and in the Contract Notice with the cheapest responsible price. Therefore, the claim that CA committed a violation does not stand.

Article 59 - Examination, Evaluation and Comparison of Tenders

The claim that the CA has violated Article 59 of the LPP, does not stand because the examination, evaluation and comparison of the tenders was done in harmony with Article 59 of the LPP and according to the requirements of the tender dossier and the contract notice.

Precisely the elimination of the complaining EO was done keeping in mind article 59 of the LPP since in article 59.4 it is clearly stated that the contractor will consider a tender as responsible only if the tender in question is in compliance with all the requirements set forth in the contract notice and in the tender dossier, while the tender of the complaining EO was not in compliance with the requirements of the tender dossier.

Article 60 - Criteria for Contract Award Article 60

The claim that the Contracting Authority violated Article 60 does not hold. The contracting authority has acted in full harmony with the LPP, with the criteria of the TD and the Contract Notice, therefore the claim is unfounded. The main criterion was the responsible tender with the lowest price.

Article 69 - Technical and/or Professional Ability

The claim that the CA has violated Article 69 does not hold, on the contrary, it carefully treated all the bidding EOs and handled all the criteria according to the DT and the Contract Notice. The offer of the complaining EO did not meet the criteria and failed because according to the reasoning in the Standard Letter:

Requirement 1 The economic operator must provide evidence that he has successfully concluded contracts of the same or similar nature during the last 3 (three) years (from the date of publication to the notification of contracts) not less than 600,000.00 €

Evidence I-The Economic Operator must provide a list of signed and executed contracts of the same or similar nature during the last 3 (three) years (from the date of publication of the contract notice), signed and sealed by the Economic Operator, certified with references or final technical acceptance reports in copies signed and sealed by the relevant Authority, for the works carried out and accepted, which must indicate the number of the procurement or contract, the value of the contract, the date of signing the contract, the nature of work and place of execution of works.

When the construction is done for a public authority in Kosova or in another country (outside RKS), the acceptance certificate or references (in references the value should be mentioned) issued by such authority must be submitted as evidence.

When the construction is done for a private buyer, the acceptance certificate or reference must be submitted. Remarks No contract will be considered unless a positive reference for the performance of works or final technical acceptance reports is attached.

The economic operator in the request for reconsideration has only emphasized that he fulfills the request regarding the contracts, while he has not given any evidence or arguments about which contracts are under construction.

First of all, we clarify that the request correctly states when the construction is done for a public authority which evidence must be provided, as well as when the construction is done for a private buyer which evidence must be provided, therefore the list of contracts with evidence from the complaining EO does not coincides with the request and the requested value according to the tender dossier of 600,000.00 € is not reached.

So the term construction was used in the requested documentary evidence and the claim of the complaining EO, that no construction contracts were requested in the tender dossier, is ungrounded.

The complaining EO has claimed that the entire list of contracts is a construction contract, but this is inconsistent and not correct.

As can be seen from the list presented and from other evidence, some of the contracts have been completed with renovations, repairs, electrical installations, sewerage, etc., therefore these contracts cannot be taken into account and are not according to the request of the TDS and according to the notification for contract.

The claim of the complaining EO that these contracts are according to the request of the tender dossier are unstable and unfounded.

Even the complaining EO himself mentions that the presented contracts include work, excavations, graveling, construction, electrical installations, etc., therefore from this claim it is understood that the complaining EO does not have honorarium contracts in the required value or similar. Contracts of a similar nature are those construction contracts, such as the construction of schools, gyms, housing construction, house construction or others, but which are construction, and renovations, electrical installations, etc. are not considered to be of a similar nature.

The claim of the complaining EO is also unsustainable that in different procedures with very similar requirements they are sometimes classified as unsuccessful and sometimes eliminated, where for the two activities they have offered almost the same list of contracts. Procurement activities are different and each procurement activity has defined requirements of the tender file and the assessment is based on these requirements, therefore when it meets the requirements of the file it is considered responsible, while when it does not meet the requirements it is normally considered a tenderer eliminated.

EO has provided insufficient evidence for construction as requested in DT and Contract Notice. The evidence provided is generally renovations and low-rise constructions that contradict the requirements specified in the DT and Annex for contracts. Therefore, the offer is rejected. The

complaining EO has only described the provisions of the LPP, but in no way has he argued that these have been violated provisions of the LPP.

Relying on article 111 paragraph 5 related to articles 113 and 114 of LPP, the Procurement Review Body dated 07.05.2024 has authorized the review expert to conduct the initial review of the file and claims according to complaint no. 0574/2024, while on 18.07.2024 the review expert's report with no. 2024/0574 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 founded, the contract award notice be canceled and recommends that the matter be returned for reassessment.

The expertise's report has been duly accepted by all procedural parties. CA disagrees with the recommendations of the review expert's report, while EO agrees with the report of the review expert.

The review panel has assessed that the conditions have been met to decide on this case without a hearing in the sense of Article 24 paragraph 1 of the Rules of Procedure of the PRB, taking into account that the claims of the parties and their submissions, the evidence and the review expert's report provide sufficient data to decide on the merits of the case.

-Administration and evaluation of evidence -

In order to fully verify the factual situation, the review panel administered as evidence the expert's report, the opinions of the parties related to the expert's report, the submissions and documents of the complainant, the letters and documents of the contracting authority, the relevant documents related to the procurement activity as and all the evidence that has been proposed by the procedural parties.

Regarding the claims of EO "U - UNIQUE" SH.P.K., - the review expert through report no. 2024/0574 assessed as follows:

The procurement activity entitled: "CONSTRUCTION OF THE GARAGE FACILITY IN ENVER ZYMBERI-MITROVIĆ CAMP" with no. of procurement: "214-24-1581-5-1-1", initiated by the Contracting Authority (CA) - KOSOVO POLICE, with open procedure, type of work contract, lowest responsible price criterion.

CA dated 12.06.2024 publishes notice B58 on the recommendation for contract EO "Euroing" SHPK, while the complaining EO is eliminated with the reasoning:

EO has failed in the criterion: "Request I The economic operator must provide proof that he has successfully completed contracts of the same or similar nature during the last 3 (three) years (from the date of publication of the contract notice) not less than €600,000.00 Evidence 1-The Economic Operator must provide a list of signed and completed contracts of the same nature or similar during the last 3 (three) years (from the date of publication of the contract notice), signed and sealed by the Economic Operator, evidenced by references or final technical acceptance reports in copies signed and sealed by the relevant Authority for the works realized and accepted, which must indicate the number of the procurement or contract, the value of the contract, the

date of signing the contract, the nature of the work and the location of the work. • When the construction is done for a public authority in Kosovo or in another country (outside the RKS), the certificate of acceptance or references (in references the value should be stated) issued by such authority must be submitted as evidence. • When the construction is done for a private buyer, a certificate of acceptance or reference must be submitted. Note: No contract will be considered unless a positive reference for the performance of works or reports of final technical acceptances, EO has provided insufficient evidence for construction as requested in TD and Contract Notice. The evidence provided is generally renovations and low constructions where they contradict the requirement specified in the TD and Annex for contracts. Therefore, the offer is rejected.

As a result, the complaining EO claims in the complaint that the CA has eliminated the same unfairly, despite offering the lowest price.

The examining expert after analyzing and reviewing the documents of the case clarifies that the nature of the procurement activity is the construction of a garage for armored vehicles, which in E-procurement have submitted the technical specification and the sketches with construction drawings.

After analyzing the reason for the elimination of the complaining EO, we clarify that, the same possesses the list of projects completed within three years, which according to the list witnessed, the same possesses various projects such as construction, renovation, inventory, painting, arrangement of the park etc. While the CA in TD has requested that projects of the same or similar nature be offered, which specifies in the requested evidence that:

However, since the CA has not specified which of the projects does not meet the requirement, then as such, the reviewing expert considers that the CA should, in the re-evaluation during the analysis of the offers, in the reasons for elimination, specify which of the projects do not fall under the tender dossier request!

- Findings of the Review Panel -

Based on the documents of this case, the Panel considers that regarding the issue in the present case, there is no need to convene a hearing with the parties, in the sense 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, evidence as well as the review expert's report provide sufficient data to decide on the merits.

The review panel assesses that the report to the review expert was drawn up at the request of PRB regarding the dispute in this case of public procurement activity, as provided by the provision of article 113 in relation to article 114 of the LPP, according to which the expert is required to review all procurement documentation, including all appeal claims and provide the Panel and all parties to the dispute with an independent and professional assessment of the procurement activity and the validity of the appeal claims. The fact that the review expert did not fully implement his duties and responsibilities.

However, it should be emphasized the legal fact that the expert's report is not binding on the Review Panel and that each such report is evaluated and/or analyzed in the general context of the case documents, asserted facts and other eventual evidence, taking into account the nature of eventual violations, the flow, nature and purpose of the procurement activity, therefore the fact that in which cases and for what, the Panel relies or not, the expert's report and/or any of the recommendations, belongs to its independent and professional judgment/ thanks, just as these responsibilities are addressed in terms of article 98, 99 related to article 105 of the Public Procurement Law.

As a result, the Review Panel in this case cannot support the review expert's recommendation, which does not have a legal basis or evidence to turn the public procurement activity into a re-evaluation. The reviewing panel for the complaint submitted with protocol number: 2024/0574, has analyzed the report of the reviewing expert, drawn up by the expert at the request of the PRB to review the legal basis of the complaining claims of the complaining economic operator related to the procurement activity "Construction of the garage facility in Enver Zymberi camp - Mitrovica" with no. of procurement: 214-24-1581-5-1-1 of the contracting authority, Kosovo Police. The panel notes that the reviewing expert did not analyze all the documents of the case, including the response of the contracting authority to the request for reconsideration to the complaining economic operator. The complainant attacks the reason for his/her elimination, where, according to the Contracting Authority, the complainant has not presented evidence related to the defined request of the FTD, where the CA - Kosovo Police has eliminated the complainant because he/she has not fulfilled the Request regarding the execution of contracts "The economic operator must provide evidence that he has successfully completed contracts of the same or similar nature during the last 3 (three) years (from the date of publication of the contract notice) for no less than €600,000.00" Related to this Review Expert except that it clarifies the different type of contracts offered by the complainant, he contradicts and after no concrete findings and without addressing you at all, even the CA, quote: *"However, since the CA has not specified which of the projects does not meet the requirement, then as such, the reviewing expert considers that the CA should, in the re-evaluation during the analysis of the offers, in the reasons for elimination, specify which of the projects do not fall under the tender file request! Therefore, the claim of the complaining EO is partially based, recommending that the CA return the case for reassessment"*.

For the Review Panel, this finding of the expert, in addition to being contradictory and contradicting itself, is also not in accordance with the legal provisions and argued. Therefore, it supports the decision of the contracting authority about the reason for the elimination of the complainant based on opinion No. 11 of the PPRC, which quotes: "Such a determination is the exclusive competence of the CA." So the Responsible Procurement Officer with the help of the request unit and/or experts in this field can determine similar services. In which case, the codes of defined in the FPP where currently 8,323 FPP codes are published in the Public Procurement Electronic Platform. Therefore, the review panel finds that the actions of the CA are compliant legal provisions and by right the offer of the complaining EO was rejected.

- Conclusion -

Based on the above, the Review Panel considers that the CA did not act contrary to the provisions of Article 59 and 60 of the LPP, cited in the Complaint. 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 of the complainant in this case do not constitute a sufficient basis for the procurement activity to be re-evaluated because otherwise it will conflict with the scope of the LPP and the argumentative basis of the appeal claims, which the Panel evaluates according to its independent assessment in terms of Article 104 in relation to Article 105 of the LPP.

The return of a procurement activity without a contested legal basis in the reassessment and only with a partial claim and not argued with clarifications and legal provisions, is not in harmony with Article 1, of the LPP, according to which, the purpose of this Law is between among others, cited: "...to ensure the integrity and responsibility of public officials, civil servants and other persons who perform or are involved in a procurement activity by requiring that the decisions of such individuals and the legal and factual basis for the decisions such, not to be influenced by personal interests, to be characterized by non-discrimination and a high degree of transparency, and to be in accordance with the procedural and essential requirements of this law". It is worth emphasizing that the contracting authority is responsible, in accordance with Article 24.2 of the LPP, to develop procurement activities in accordance with the legal provisions for public procurement that are in force. Regarding Article 105, bearing in mind 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 case..."

The Review Panel, taking into account the above mentioned description and facts and after reviewing the case, the complaint of the complaining economic operator, concrete analysis and documentation of the case, sees the operator's complaint as partially founded, recommending that the procurement activity with "Construction of of the garage facility in Enver Zymberi camp - Mitrovica" with no. of procurement: 214-24-1581-5-1-1 to remain in force.

Therefore, acting on the basis of the basic principles of the procurement review procedures, which, among others, are specifically sanctioned by the provision of Article 104 of the LPP and at the same time analyzing the documents of this case in relation to the facts and circumstances of described as above, especially paying due attention to nature and for the purpose of the appeal claims, the Review Panel took into consideration all the assertions of the complainants, the acts and actions taken by the CA, the review expert's report and analyzed them with take care of all the papers of this case and considers that the complaining assertion of the complaining EO is unfounded and rejected, as they are given in the findings of the panel.

In making this decision, the review panel also took into consideration the requirements of Article 104, paragraph 4 of the LPP, according to PRB, it should act as soon as possible, to

act proportionately to the alleged violation or the matter for which the complaint is filed, and take as a basis the possible consequences of the actions or measures therein all interests that may be harmed, including the public interest.

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

President of the Review Panel

Mr. Vedat Poterqoi

Legal advice:

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

Decision to be submitted to:

1x1 CA – **Kosova Police;**
1x1 EO – **U - UNIQUE " SH.P.K.;**
1x1 Archive of the PRB;