



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

Psh. No.795/24
797/24

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 – member, Isa Hasani - member, deciding upon the complaint of EO “TEHNOBURIMI” D.D., as well GOE “EING COM” SH.P.K” against the Decision to award a contract or a design competition of the “MINISTRY OF CULTURE OF RS AND ÇJK”, in the capacity of the Contracting Authority (CA) regarding the procurement activity “Work for the implementation of the detailed project (main implementer) of architecture and engineering, for the construction of the Athletics Stadium in Kamenica” with procurement number 207-24-1665-5-1-1, on the 05/11/2024, has issued this:

DECISION

1. Approved as partly grounded the complaint of the EO “TEHNOBURIMI” D.D. with no. 2024/0795, dated 05/09/2024 and EO “EING COM” SH.P.K with no. 2024/0797, whereas the decision of the CA “MINISTRY OF CULTURE OF RS AND ÇJK” regarding the procurement activity “Work for the implementation of the detailed project (main implementer) of architecture and engineering, for the construction of the Athletics Stadium in Kamenica” with procurement number 207-24-1665-5-1-1.
2. Remains in force, Notice on the Decision (B58) of the Contracting Authority MINISTRY OF CULTURE OF RS AND ÇJK, regarding the procurement activity with the data as in point I of the provision.
3. In accordance with Article 31, point 4, of the Rules of Procedure of the PRB, the complaining economic operators shall be refunded the complaint fee in the amount deposited upon filing the complaint. The complaining EO shall be obliged, in accordance with Article 31, point 6 of the Rules of Procedure of the PRB, to make a request for the return of the complaint security within sixty (60) days, otherwise the deposit shall be confiscated, and these funds shall be transferred to the Budget of the Republic of Kosova.

REASONING

-Procedural facts and circumstances –

On the 28.02.2024, the "MINISTRY OF CULTURE OF RS AND ÇJK " in the capacity of the Contracting Authority has published the Contract Notice B05 regarding the procurement activity entitled "Work for the implementation of the detailed project [main implementer] of architecture and engineering, for the construction of the Athletics Stadium in Kamenica" with procurement number 207-24-1665-5-1-1.

This procurement activity was carried out through an open procedure with the type of work contract and with an estimated contract value of 3,500,000.00 euros.

On the 16.08.2024, the CA published the Notice on Decision B58 through which it awarded with the contract.

On the 21.08.2024, EO "TEHNOBURIMI" D.D. has filed a request for review against the Notification on Decision B58 of the Contracting Authority. On 21.08.2024, EO "EING COM" SH.P.K. has also filed a request for review against the Notification on Decision B58 of the Contracting Authority.

On the 26.08.2024, the Contracting Authority has published the decision through which the complaints of both Economic Operators are rejected as unfounded and the notification on the decision of the Contracting Authority is confirmed.

On the 05/09/2024, EO "TEHNOBURIMI" D.D. submitted to the PRB the complaint with no. 0795/2024, while on the 05/09/2024 EO "EING COM" SH.P.K., submitted to the PRB the complaint with no. 0797/2024.

-On the preliminary review phase -

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.

Taking into account the fact that both complaints are related to the same procurement activity, namely to the notification of the same decision of the Contracting Authority regarding this procurement activity, it has been decided that complaint no. 0795/24 and complaint no. 0797/24 shall be merged and treated as a unified case within the meaning of Article 16 paragraph 1 of Regulation no. 01/2020 on the Work of the Procurement Review Body.

The claims of the complaining economic operator "TEHNOBURIMI" D.D. are presented as follows:

Dissatisfied with the Decision on the Request for Review of the CA DATED 26.08.2024, regarding the procurement activity: Work for the implementation of the detailed project (main implementer) of architecture and engineering, for the construction of the Athletics Stadium in Kamenica, with Procurement No.: 207-24-1665-5-1-1 within the legal deadline of the law and rules of Public Procurement in the Republic of Kosova, we exercise this: Complaint

Complaining claim 1: "In the notification on the CA decision dated 16.08.2024, one of the reasons we were eliminated as a Group of EOs was that we did not attach some positions at all, which according to the CA could not be corrected in any way and for this reason we were eliminated. We state that this point does not hold, due to the fact that our errors were not arithmetic errors in this case that would exceed the value of 2%, but were simply omissions or technical or administrative errors that could have been corrected and continued with a request for clarification from the CA. The CA in this case did not request any clarification and eliminated us. This is in contradiction with the Law on Public Procurement because Article 59 point 4 of the LPP, among other things, states:

The contracting authority shall consider a tender as responsive only if the tender in question complies with all the requirements set out in the contract notice and in the tender dossier. Notwithstanding the foregoing, the contracting authority may consider a tender as responsive if: (i) contains only errors or inaccuracies which can be corrected without changing the material condition or aspect of the tender in question, or (ii) contains only minor deviations which are not likely to cause material changes or deviations from the characteristics, conditions, and other requirements set out in the contract notice and in the tender dossier; provided that any such deviation is quantified, to the extent possible, and taken into account in the evaluation and comparison of tenders.

So, according to the LPP, this omission or error in the documentation could have been corrected by asking us for clarifications for this part, because the price in this case for the total of that part was given and included, we had no unfilled positions and the total at the end of the price matches in full. So once again, all positions were filled, except that a part was missing which, if clarification were requested and attached later by us, would be completed without any change in the total price, because as we mentioned, only a part or a page of the bill of quantities was missing, and the prices were set for all positions.

The CA in this case did not take into account the fact that our offer was the offer with the cheapest price, which is also stipulated in the TD that the criterion for awarding the contract is the lowest price, which would also contribute to the preservation of public funds as foreseen in the LPP.

Therefore, we request from the Procurement Review Body that this complaint of ours be approved as sustainable.

Complaint Claim 2: "The CA in the second reason for elimination did not mention at all what we did not submit in the bid or what shortcomings our bid has, it only said that there were other errors, which is in violation of the LPP, because the CA is obliged to evaluate and examine every

part or every document of the bid, and not to refer to point 1 of the elimination where, according to the CA, there is an error in the amount, which is not true.

The CA in this case has only made an almost simple description without providing facts about our shortcomings and based on point 1 which does not hold true at all, which we present in the complaint claim 1. Therefore, we request the PRB to treat this part regarding the evaluation and examination of the tender, and to approve our complaint claim as well-founded, because the CA in this case has only made a description that there are administrative errors which in fact do not exist, and has not provided facts for what it says.

Complaining claim 3: “Based on Article 7 Confidential Business Information and Access to Documents of REGULATION No. 001/2022 on public procurement, our Company “TEHNOBURIMI DD” in the capacity of Consortium Leader between the Companies TEHNOBURIMI DD and “PLURAL SHPK” on 19/08/2024, has requested from the Contracting Authority access to the documentation of the winning bid. Following our request, we have received the documentation of the winning bid. The documentation we received is incomplete, because the CA did not give us access to all the documents, citing the fact that they are business secrets, where in this case the CA also gave us a copy of Annex 3. After the analysis we have made of the documentation, it is clear that the CA did not give us all the documents, which is quite worrying. The CA in this case acted illegally, due to the fact that it did not give us all the documents, and in this case, as a fact worth mentioning, is that in some cases, in terms of technical and/or professional capacity, Although the EO Group has left them according to Annex 3 as business secrets such as professional staff, dynamic plan etc., the CA has still given us access, while we have not been given access to the required Equipment and the list of equipment. We have our doubts about the fact that we have not been given access to the required Equipment and the List of equipment, because it is possible that in certain cases for certain equipment the EO Group declared the winner may be irresponsible or may not possess all the equipment as required in the TD.

We say this based on the Notice on the Decision of the Contracting Authority dated 11/06/2024 where the CA finds irregularities, respectively eliminates this Group of EO for these reasons: The Requests submitted by the CA-MKRS, Economic Operator Group of Economic Operators LIMITPROJECT SH.P.K.; DELTA- CCD SH.P.K.; Rinesa SH.P.K., Rr. Ahmet Gashi Hll, L3,1, 10000, Prishtina, Kosova, do not meet the criteria:

- Notarization of the SUD for the Excavator is missing.
- Notarization of the SUD for the Dozer is missing.
- Tipper truck 01-696-UT has no registration, the last registration is dated 04.03.2021.
- 2-door concrete mixer truck with registration number 05-402-ER, missing seal and signature in the registration booklet.
- Industrial containers are not specified m2.

So, according to the aforementioned Decision of the CA dated 11/06/2024, this Group of EO had all the deficiencies or all the reasons for elimination in the Mechanism or equipment, and this is now related to the fact that for this reason we have not received access to this part of the documentation. Also, in this case the question naturally arises, how did this Group of EO initially get eliminated while now being declared the winner?

Also, the CA should not have taken into account the Request for secrecy of the EO Group, due to the fact that all members of the Group in Annex 3 or in the request for business secrecy, have not completed the part where justification is required as to why the relevant documents are required to be business secrets?

Therefore, we request the PRB Panel to assess this complaint claim of ours as sustainable, thus enabling the development of a transparent, equal procurement procedure, as required by the LPP.

Referring to the allegations above, EO "TEHNOBURIMI" D.D. considers that the Contracting Authority has acted in violation of Article 1, 7, 59, 69 and 72. Based on the facts and arguments presented above, we request from the PRB review panel that our COMPLAINT be approved as grounded, and that the Contracting Authority be OBLIGED to return the case for Re-evaluation, and in this case to enable an efficient, transparent and equal procurement procedure for the EO.

CA's response to the request for reconsideration: "The absence of positions that you also admit that you did not attach and that you characterize as technical or administrative errors do not fall into the category that the CA should have requested as additional documents, nor does it fall into the category of arithmetic error comparison since the CA has no knowledge of what the prices were. Decision on the review of the request for reconsideration in the procurement procedure: Work for the implementation of the detailed project [main implementer] of architecture and engineering, for the construction of the Athletics Stadium in Kamenica with number 207-24-1665- 5-1-1 and 207-24-014-5-1-1. placed in those positions. So, the lack of positions in the pre-measure constitutes an elimination violation and as such your documentation has been compared as such by the evaluation commission, so the CA has no guarantee that these positions will be implemented on the ground by the Economic Operator applying as such "touching" the pre-measure, removing, adding, placing positions is an elimination category.

The Contracting Authority regarding the procedure: Work for the implementation of the detailed project [main implementer] of architecture and engineering, for the construction of the Athletics Stadium in Kamenica with number 207-24-1665- 5-1-1 and 207-24-014-5-1-1 has eliminated you even with the first Decision of the Contracting Authority (and in the request for reconsideration dated 14.06.2024 by you) you have failed to present any defensive or supplementary facts that you meet the criteria of the CA. In this form, when an EO has a complete elimination criterion, the CA can present the others as general errors that "even in the case of completion" cannot complete your offer and in this form your offer remains irresponsible, respectively you are an Eliminated Operator. All the criteria on which the company in question was eliminated in the request for reconsideration dated 12.06.2024, the same has attached and completed in the submission of the request, as such its documentation is

completed with this request: Based on the above, the EO: Group of Economic Operators LIMITPROJECT SH.P.K.; DELTA - CCD SH.P.K.; Rinesa SH.P.K.: has presented the complete documentation and that their offer according to the second commission was a responsible offer.

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

The basic allegations of the complaining economic operator are presented as follows: The contracting authority has committed a flagrant violation of the material legal basis of the applicable public procurement legislation/rules, violating the principle of legality, the principle of equality and non-discrimination, the principle of independence and impartiality in decision-making, and based on considerations other than those permitted by law in order to deny GOE "EING COM" SH.P.K & "EL BAU" SH.P.K the right to be awarded a contract, we consider that it has acted in violation of the material provisions of the LPP, the procurement rules specified as follows:

Claim No. 1: I object to the decision of the CA, namely because we were unfairly eliminated by the evaluation committee, since all the points mentioned for elimination are unfounded and biased against us.

The reasons for elimination according to the evaluation committee are:

One [1] person. 1.5. Main Leader- Component Mechanical Engineering - Field of Studies Mechanical Engineering - Direction of Thermopower Five [5] Years of professional experience in the implementation of detailed projects [main implementation] of mechanical engineering.

One [1] person. Since Eng. Faton Behrami — Presented as Eng. of Machienry has presented the direction of thermopower graduated in July 2018 and that in his CV he has presented work until 2020 (i.e. from the date of graduation until 2020) The same does not meet the work experience criterion of 5 years of professional work experience (since in the CV) there is no work presented from 2020. Therefore, based on Article 10 of the Public Procurement Guidelines 001/23, it states: CV which does not meet the requirements of our objection to the reason for elimination regarding the first point:

1. The first objection to the elimination that we have not provided references for work experience for Mr. Faton Behrami, this claim does not stand because for the engineer in question we have submitted a CV where all the projects he has managed/led after his graduation are mentioned dated: 22.03.2018 onwards, where in addition to fulfilling the CA's requirement of five years of professional work experience with the evidence provided, it exceeds the requirement of the tender dossier, however, with the request for reconsideration to reconfirm that we are a responsible GOE, we are attaching the evidence that is specifically reflected and which has been recorded in our bid documentation. which if the CA had any uncertainties, it was able, according to Article 72 of the LPP, to request additional clarifications and, in case of doubt, to carry out an effective control according to Article 52.7 of the LPP in the real reflection of this situation in order for the evaluation of the tenders to be carried out in accordance with paragraph 4 of Article 59 of the LPP.

The CA during the evaluation of the tenders did not take into consideration the purpose and principles of the law by eliminating us as the responsible GOE with the cheapest price for something that the CA could easily have requested additional clarifications and we as the GOE have been and are ready to provide any clarification and any evidence to prove our responsibility for this procurement activity. It is meaningless and illegal to avoid the provisions of the LPP for certain purposes and to propose for contract award a GOE who, besides being irresponsible, has also offered a higher price than us, and in this case the CA violates every principle of the LPP by damaging the budget of the Republic of Kosovo because the comparison between the financial offer from our side in relation to the recommended GOE which is irresponsible is in the amount of: 158,101.46 Euros

Evidence 1: References proving work experience that were specified in the CV for engineer Faton Behrami.

Regarding this complaint claim, we, as GOE unfairly eliminated by the CA, have attached to the request for reconsideration the evidence for Mr. Faton Behrami, which the CA has not addressed at all. Moreover, if we analyze the standard letter for the eliminated tenderer as well as the rejection of the request for reconsideration, for the reasons for the elimination for the same point it has given different (contradictory) assessments and findings. by not fairly examining the evidence presented regarding work experience, where below we present the contradictory assessments by the CA on the same tender issue, the evidence presented by his graduation from 2018, in addition to fulfilling the requirements of the tender dossier, exceeds the meaning of the evidence for work experience in managing the relevant projects.

As evidence, we have attached references proving specific work experience of over 5 years for Engineer Mr. Faton Behrami, where this evidence has been provided according to the completed projects mentioned in the CV where the completed projects are listed with the same data submitted with the offer.

Regarding this claim against the elimination of the complaining EO, the Contracting Authority has emphasized as follows:

The Requests submitted by the CA, the Economic Operator Group of Economic Operators EING COM SH.P.K. EL-BAU SH.P.K meets the criteria

One person. 1.5. Main leader- Component Mechanical Engineering - For example, studies Mechanical Engineering- Direction of thermo-energetic engineering - Five [51 years of professional experience in the implementation of detailed projects [main implementer of mechanical engineering. - One person. After Eng. Faton Behrami — Presented as Eng. Of Machinery has presented the direction of thermo-energetic engineering graduated in July 2018 and that in his CV he has presented experience until 2020 i.e. from the date of graduation until 2020) The same does not meet the work experience criterion of 5 professional work experience (since in the CV) no work has been presented from the year 2020. Therefore, based on Article 10 of the Public Procurement Guidelines 001/23, it states: CV which does not meet the criteria Reject the tender and additional clarifications requested.

Evidence: CA's response to the request for reconsideration

Response from the Contracting Authority:

The Contracting Authority has eliminated you as a Group of Economic Operators since the submitted CV of the Mechanical Engineer Mr. Faton Behrami did not meet the criteria presented by the Contracting Authority. They emphasize: that Mr. Behrami graduated in July 2018 and that the same has attached CV only:

This part is valid documentation for the CA, where the same is calculated to have worked from July 2018 to February 2020.

The rest of the projects are submitted by Mr. Behrami, but the year of the work is not mentioned, in this form based on Article 10 of the Guidelines. Your offer is an irresponsible offer since the CV does not meet the criteria of the CA — it is stated in this article that it should be rejected and additional clarifications were requested.

In addition, you as the EO have attached several references to the company Piramida that are irrelevant to us as the CA and a reference from Piramida to Mr. Behrami, who has not declared this company at all in his CV, has been employed since April 2020.

Claim No. 2: We oppose the decision of the CA, respectively, because we were unfairly eliminated by the evaluation committee, since all the points mentioned for elimination are unfounded and tendentious towards us.

The reasons for elimination according to the evaluation committee are:

1.11. Water pumping machine [Water pumping machine] [Minimum reference specifications] - Flow rate 20.00m³ h; - Suction height 6.00m; Delivery 20.00m. - One [1] unit. The Economic Operator Group "EING COM" LLC: EL-BAU LLC has submitted an invoice in which no details of the characteristics or type of water pump are presented, but only water pump and water motor are indicated. In the attached catalog, which does not convince the contracting authority that this specification is related to the invoice since the catalog does not meet the criteria of the CA, since the maximum water flow rates are 18.3m³/h for the TRM 2.2 AP device and 13.2 m³/h for the 13.2 device.

Objection to the reason for our elimination regarding the second point:

The second objection to the elimination is that we have not submitted evidence of possession of the pump equipment and also the technical specifications from the manufacturer and where the TR 4 pump model meets the request of the CA, where this is clearly seen from the curve and performance data and also from the table, where for a height of 20 m the flow rate is 20.5 m³/h, or with a capacity of 20m³/h at a height of 21.2m. These data are in the attached technical specifications and we have not mentioned anywhere the TRm 1.3 and TRm 2.2 AP models but which are part of the technical specifications from the manufacturer, we have attached a photo where the model is not mentioned, therefore this assessment by you is baseless, unprofessional because you have assessed incorrectly and with a tendency to unfairly eliminate us from this activity. The CA has not made the assessment in accordance with the requirements of the tender

dossier because in the reasons for our elimination because according to the requirements of the tender dossier, it is not required that the specifications of the equipment be mentioned in the contract or invoice.

The CA's request was as follows: Documentary evidence requested:

The loan agreement, in the name of this project or the manufacturer's document or any official administrative document confirming that the machinery, vehicle or construction equipment meets the Minimum Reference Specifications only in case the specifications are not an integral part of the documentation required above, signed and stamped by the economic operator, and most importantly - other mandatory conditions, related to the E-Request for Machinery, Vehicles and Construction Equipment.

Since our bid presented a pump with all the specifications required according to the tender dossier, for which we bear full responsibility that we possess the same pump presented in the bid with the required specifications, therefore before the CA eliminated us for this issue, the CA had the opportunity to request additional clarifications from us, respecting and implementing the provisions of Article 1, 6 and 72 of the LPP, but since this has not been done by a 611th person, then we have clarified with the request for review the model of the pump which is also attached with a signed and stamped photo by us attached to the offer as well as the table and curve with the performance data of the equipment, which were attached to the offer where the specifications are described in detail. Also, the claim regarding the invoice issue is in contradiction with the request of the file itself due to the fact that an EO cannot be disqualified for something that the CA has not specified in the tender dossier.

Furthermore, paragraph 3 of Article 56 provides as follows: "3. A tenderer, in open procedures, or a candidate, in restricted procedures and negotiated procedures, after the publication of the contract notice, shall not be disqualified or excluded from such procedures on the basis of any requirement or criterion not specified in the contract notice and in the tender dossier".

In this regard, we are attaching the link of the pump with the relevant specifications which correspond to the specifications of the tender dossier, but due to the large capacity we have only offered two pages, while to have clearer technical specifications regarding the pump, we are attaching the link where you can verify it online <https://www.pedrollo.com/wp-content/uploads/2024/04/TRITUS EN 50Hz.pdf> As well as the table and curve with the performance data of the equipment, which were attached to the offer where the specifications are described in detail. E.g. For a height of 20 m the flow rate is 20.5 m³/h, Or with a capacity of 20m³/h at a height of 21.2m. Evidence 2: Illustrated curve according to the data in the table for the TR4 model pump.

It is worth noting that the CA, during the evaluation, did not act in accordance with Article 7 of the LPP - Equal Treatment/Non-Discrimination, using double standards, where the GOE, during the request for reconsideration dated: 12.06.2024 for the reasons for elimination, attached to the request for reconsideration the evidence with which it claims to be responsible, which the CA also accepts as valid, while in our case, in addition to not considering them at all, it rejects them

without any basis or argument and still continues to leave its decision in force, disregarding Articles 1, 6, 7, 59 and 72 of the LPP.

Claim No. 3: As for the LLC recommended for the contract, we claim that this GOE does not meet the requirements of the tender dossier and is irresponsible in this procurement activity.

In addition to the points presented below where this GOE is irresponsible, we also believe that there are other reasons why the GOE recommended for the contract does not meet the requirements of the tender dossier. However, since we have not been provided with full access in order to reflect and present our claims to the GOE recommended for the contract, we request the review expert to review these complaints because we believe that this GOE is irresponsible in this procurement activity, since in the Standard Letter for the eliminated tenderer dated 11.06.2024 the reasons for the elimination of this GOE which is irresponsible according to the documentation are given as follows: o Notarization of the SUD for the Excavator is missing • Notarization of the SUD for the Dozer is missing o Tipper truck 01-696-UT has no registration, last registration dated: 04.03.2021 o 2-door concrete mixer truck with registration 05-402-ER, seal and signature are missing in the registration booklet 0 Industrial containers are not specified m2.

Although we have requested clarifications for these reasons for elimination during the re-evaluation of the bids, these have not been provided to us and we suspect that the other documentation for the other machines is also lacking, therefore we request the review expert to handle these complaints in a professional manner and to prove the irresponsibility of the GOE for this procurement activity.

Claim No. 4: We also believe that the GOE according to the Tender Submission Form generated by the system after uploading the documents does not appear anywhere that it has submitted the documentation as requested below:

Requirements G- 1.2. Development of a cash flow plan; This is a continuation of point 1.1.

Technical basis for drafting the cash flow plan - Gantt Chart Gantt Chart. Financial basis for drafting the cash flow plan Financial offer.

Therefore, we suspect that it has not provided a cash flow plan in accordance with the requirements of the tender dossier.

According to the decision to reject the request for reconsideration, the CA has opposed our claim by presenting the following data, for which we request the review expert to verify and correctly reflect the uploading of these documents to the system, because during the access to the documents, we were offered the document named "DYNAMIC WORK PLAN - Kamenic.pdf" in PDF format, where there is a discrepancy with the data presented below (file capacity, creation date and time). The document that was offered to us in the access:

Referring to the allegations above, the Complainant "EING COM" SH.P.K., considers that the Contracting Authority has acted in violation of Articles 1, 6, 7, 24.2, 59, 69, and 72 of the LPP.

CA's response to the request for reconsideration for EO "EING COM" SH.P.K., the Contracting Authority, has eliminated you as a Group of Economic Operators since the submitted CV of the Mechanical Engineer Mr. Faton Behrami did not meet the criteria presented by the Contracting Authority. We emphasize: that Mr. Behrami graduated in July 2018 and that he has only attached his CV:

This part is valid documentation for the CA, where the same is calculated to have worked from July 2018 to February 2020.

The rest of the projects submitted by Mr. Behrami are not mentioned in the year and the part where he worked, in this form based on Article 10 of the Guidelines Your offer is an irresponsible offer since the CV which does not meet the criteria of the CA - it is stated in this article that it should be rejected has requested additional clarifications.

In addition, you as the EO have attached several references to the company Piramida that are irrelevant to us as the CA and a reference from Piramida for Mr. Behrami who has not declared this company at all in his CV, which he has been employed from April 2020 onwards.

The Contracting Authority has eliminated you as a Group of Economic Operators for this fact. You have attached that you possess two Pumps, one 1.2. TRM and one 2.2. AP TRM, based on the attached Specification regarding these pumps (although they do not provide any assurance that these pumps) belong to the 2016 Invoice, it is seen that these Pumps 1.3. and 2.2. are not pumps that meet the criteria of Decision on the review of the request for re-examination in the procurement procedure: Work for the implementation of the detailed project [main implementer] of architecture and engineering, for the construction of the Athletics Stadium in Kamenica with number 207-24-1665-5-1-1 and 207-24-014-5-1-1.

CA. You have attached this detail in this request for reconsideration: Underlined in red, TR4 even though you do not have this device available. This constitutes a change in arguments and at the same time you emphasize that you do not have the TR4 device available but TRm2.2. and 1.2. TRm which specifically have a smaller capacity than the CA's request.

All the criteria on which the company in question was eliminated in the request for reconsideration dated 12.06.2024 have been attached and completed in the submission of the request as such its documentation is completed with this request:

Based on these 11 statements above, the EO: Group of Economic Operators LIMITPROJECT SH.P.K.; DELTA - CCD SH.P.K.; Rinesa SH.P.K.: has submitted complete documentation and that their offer according to the second commission was a responsible offer.

The claim is unfounded since the EO has fulfilled these criteria in detail and has submitted both the Dynamic Plan and the Development of the plan and the flow of financial resources:

Based on Article 111 paragraph 5 in conjunction with Articles 113 and 114 of the LPP, the Procurement Review Body on 12.09.2024 authorized the review expert to conduct the initial

review of the file and claims under complaint no. 0795/2024, while on 16.09.2024 the Review Panel authorized the review expert to conduct the initial review of the file and claims under complaint no. 0797/2024.

Regarding complaint no. 0795/24 on 30.09.2024, the review expert's report no. 2024/0795 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 grounded, the contract award notice be canceled and the case be returned for re-evaluation.

Regarding complaint no. 0797/24 on 01.10.2024, the report of the review expert with No. 2024/0797 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 grounded, the contract award notice be canceled and recommends that the case be returned for re-evaluation.

The expertise report with no. 0795/24 has been duly accepted by all procedural parties. The CA declares that it does not agree with the recommendations of the review expert report, while the EO does not agree with the review expert report.

The expertise report with no. 0797/24 has been duly accepted by all procedural parties. The CA declares that it does not agree with the recommendations of the review expert report, while the EO has not provided a response to the review expert 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 "TEHNOBURIMI" D.D., the review expert through report no. 2024/0795 has assessed as follows:

Claim no.1: The review expert emphasizes that Article 38, specifically point 38.2, Article 40, point 40.8 and 40.10 of REGULATION No. 001/2022 ON PUBLIC PROCUREMENT, provides that when the Contracting Authority is allowed to request clarifying information regarding the price, therefore the review expert in this case finds that the Contracting Authority has acted in accordance with these legal provisions, the expert also explains that according to INSTRUCTION No. 001/2023 ON PUBLIC PROCUREMENT in accordance with Article 72, it is interpreted as an Administrative Condition when the price is missing, the tender is rejected

without requesting further information. Therefore, for the reasons stated above, you are eliminated from this Procurement Activity.

The review expert finds this complaint claim to be UNBASED.

Claim no. 2: Regarding this claim, the Contracting Authority was based on the reason for your request in the first phase of the evaluation, so it may have interpreted it in this way, but based on the legal provisions, the expert explains to the Contracting Authority that the provisions of the LPP interpret this as follows:

A decision to re-evaluate the selection of bidders or the award of the contract does not imply a change in the initial result, which means that the reasons for the first elimination should have been highlighted in the re-evaluation because each re-evaluation returns to the initial phase, based on Article 7 Equality of Treatment/Non-Discrimination. The review expert finds this complaint claim to be founded.

Claim no.3: Regarding this claim, the review expert clarifies that, in addition to the evidence elaborated on the platform, due to uncertainties regarding this claim, she requested clarifying information from the Contracting Authority on 16.09.2024. The Contracting Authority provided immediate clarifications by offering mutual cooperation.

Based on these explanations, the expert explains that the Contracting Authority has accepted the documentation and the Request for Reconsideration submitted by Limit Project SHPK dated 12.06.2024, where after the first Decision on the Notification of the Contracting Authority, this EO, as an EO dissatisfied with the decision of the CA, has filed a Request and all the evidence to prove that it possesses the Documentation.

Referring to the Documentation submitted by the EO Limit Project SHPK to the Contracting Authority during the Re-evaluation phase based on the Report submitted on 08.08.2024, it is stated that this tenderer has fulfilled the requirements of the Contracting Authority based on the evidence provided in its request for Re-examination. Based on the clarifications, the review expert finds the evidence received from the Economic Operator to be grounded, but again disputes the evidence of the booklet presented on 01.08.2024 as follows:

Since the truck's registration number 01-696-UT, the last registration found in his bid is dated 04.03.2021, which was presented in the submitted bid, while the other submitted evidence is dated 01.08.2024, which actually shows that the submitted document was not valid before the Contract Notice (published on 28.02.2024), while REGULATION No. 001/2022 ON PUBLIC PROCUREMENT, article 38, point 38.3, states:

However, it is permissible for a contracting authority during the evaluation to request and obtain information or documents that are missing from the application/tender. These documents, however, must objectively present sufficient evidence that reasonably reflects the existing situation prior to the date of publication of the Contract Notice. The review expert finds this complaint claim to be partially grounded.

Claim no. 4: While regarding the claim of the complaining EO that:

The CA should not have taken into account the Request for secrecy of the EO Group, due to the fact that all members of the Group in Annex 3 or in the request for business secret, have not completed the part where the justification is requested as to why the relevant documents are required to be business secret?

The review expert regarding this complaining claim of the complaining EO notes that the EO proposed for award of the contract has submitted the following statement:

EO recommended for the contract with the justification that it has fulfilled the Request for confidentiality but has not provided any specific justification regarding the request as to why the presented documents should be considered business secrets, the review expert explains that Article 11 of the LPP and Article 7 paragraph 7.5 and 7.6 of RRPP 001/2022 regulates the issue related to the classification of business secret information. The complaining EO despite the fact that it has fulfilled the request for business secret according to Article 68 and 69 of the CA

The review expert assesses that the CA was obliged in accordance with Article 11 paragraph 4 of the LPP, as well as that Articles 10 and 11 of the LPP and Article 7 of the RRPP determine the conditions when a document should be considered a business secret. The same is also clarified through the Interpretation of the PPRC with no. 31 of 24.10.2023 where at the end I quote "According to Article 7.7 of the RRPP, it is the responsibility of the CA to ensure that the parts that have been declared as business secrets are not made available to other economic operators. For this purpose, the CA must act in accordance with paragraphs 4 and 5 of Article 11 of the LPP. Therefore, the review expert assesses that the complaining claim is grounded. The review expert finds this complaining claim to be grounded.

Regarding the claims of the complaining economic operator "EING COM" SH.P.K., the Review Expert through report no. 2024/0797 has assessed that:

Regarding the clarification of the EO (EING COM SH.P.K.) on the progress of this procurement activity as well as the incomplete access of the Contracting Authority to the documentation of the EO proposed for contract award, the review expert clarifies how the following statement was completed:

EO recommended for the contract with the justification that it has fulfilled the Request for Confidentiality but has not provided any specific justification regarding the request as to why the presented documents should be considered business secrets, the review expert explains that Article 11 of the LPP and Article 7 paragraph 7.5 and 7.6 of RRPP 001/2022 regulates the issue related to the classification of business secret information. The complaining EO, despite the fact that it has completed the request for business secret according to Article 68 and 69 of the CA, the Review Expert assesses that the CA was obliged to comply with Article 11 paragraph 4 of the LPP, as well as that Article 10 and 11 of the LPP and Article 7 of the RRPP determine the conditions when a document should be considered a business secret.

The same is also clarified through the PPRC Interpretation no. 31 dated 24.10.2023 where I quote at the end "According to Article 7.7 of the PPRC, It is the responsibility of the CA to

ensure that the parts that have been declared as business secrets are not made available to other economic operators. For this purpose, the CA must act in accordance with paragraphs 4 and 5 of Article 11 of the PPL. Therefore, the review expert assesses that the complaint claim is grounded. The review expert finds this clarification as grounded for reasons of the legal provisions mentioned above.

Regarding claim 1: Based on the legal provisions, the expert explains that the complaining operator has submitted documentation for the engineer Mr. Faton Behrami, where according to the submitted CV, the projects managed from the period 22.03.2018, which date precedes the graduation date onwards, were presented, therefore the complaining EO, in the case of the request for review (has submitted evidence), has submitted references according to the projects mentioned in the CV, which prove the work experience according to the request of the CA. The review expert assesses that the complaining operator, according to the CV and the evidence presented, as follows:

- Reference presented by: AS-Term, where the CV states the period of engagement: March 2017 - February 2020.
- Reference presented by: F-SHPED, during the period of engagement at AS-Term March 2017 - February 2020, dated: 07.07.2019.
- Reference presented by: 2T sh.p.k., where in the CV the name of the project indicates the engagement period: March 2018 - October 2018.
- The reference presented by PIRAMIDA HVAC, which is attached to the request for reconsideration, proves the projects mentioned in the CV, where for each project the References issued are in the name of PIRAMIDA HVAC and Mr. Faton Behrami, for the period: 02 April 2020 to 15.01.2024.
- Reference presented by: ATC, stating the engagement period: 2022-2023, dated: 04.03.2024

The review expert, based on the submitted bid and the evidence provided (in the request for Reconsideration), considers that the EO meets the request of the CA. The review expert finds this complaining claim as BASED.

Regarding the second claim (II): the review expert initially explains that the CA's request according to the tender dossier was as follows:

Required Documentary Evidence: "Purchase Contract or Invoice - One [1] copy of the original, notarized. Loan Agreement, in the name of this project

Manufacturer's document or any official administrative document confirming that the machinery, vehicle or construction equipment meets the 'Minimum Reference Specifications' - only if the 'specifications' are not a substantive part of the documentation requested above –

One [1] copy, signed and stamped by the economic operator. Important note - Other mandatory conditions, related to the Requirements E- Mechanization, vehicles and construction equipment”.

The review expert assesses that the complaining economic operator, when submitting the bids for the equipment "Water Pumping Machine", has attached the Purchase Invoice together with the technical specifications for the presented equipment. Regarding the elimination of the capacity of the equipment "Water Pumping Machine", we emphasize that the complaining economic operator, according to the request for review, has attached and has precisely explained which pump it has presented according to the TR 4 model, elaborating it also through the curve where all the technical specifications of the pump which have been submitted together with the bid are clear.

The expert assesses that the CA has violated the legal provisions when rejecting the request for review by claiming that the invoice presented by the complaining operator does not match the pumps offered and that the complaining economic operator has distorted the facts, for the reviewing expert assesses that the complaining operator has not provided any different documents in the case of the request for review except for those presented according to the offer, but has only clarified by specifying the pump model and technical specifications, therefore the elimination of the complaining economic operator by the CA is in contradiction with Article 56 paragraph 3 which states: "The tenderer, during open procedures, or the candidate, during restricted procedures and negotiated procedures, after the publication of the contract notice, shall not be disqualified or excluded from such procedures on the basis of any requirement or criterion not specified in the contract notice and in the tender dossier". Furthermore, the expert assesses that the complaining operator has provided sufficient evidence to convince the CA that the equipment in question meets the technical specifications and that this fact can be verified through the online link: <https://www.pedrollo.com/wp-content/uploads/2024/04/TRITUS EN 50Hz.pdf>

The review expert finds this complaining claim to be grounded.

Regarding claim 3: "Regarding this claim, the review expert clarifies that, in addition to the evidence elaborated on the platform, due to uncertainties regarding this claim, she requested clarifying information from the Contracting Authority on 16.09.2024. The Contracting Authority provided immediate clarifications by offering mutual cooperation. Based on these clarifications, the expert clarifies that the Contracting Authority has accepted the documentation in the Request for Reconsideration submitted by Limit Project SHPK on 12.06.2024 where after the first Decision on the Notification of the Contracting Authority, this EO as an EO dissatisfied with the decision of the CA has filed a Request and all the evidence to prove that it possesses the Documentation. Referring to the Documentation submitted by the EO-ik Limit Project SHPK, the Contracting Authority during the Re-evaluation phase based on the Report submitted on 08.08.2024, it is stated that this tenderer has fulfilled the requirements of the Contracting Authority based on the evidence provided in its request for Reconsideration.

Based on the explanations, the reviewing expert finds the evidence received from the Economic Operator to be well-founded, but again disputes the evidence of the booklet presented on 01.08.2024 as follows:

Since the truck's registration number 01-696-UT, the last registration found in his bid is dated 04.03.2021, which was presented in the submitted bid, while the other submitted evidence is dated 01.08.2024, which actually shows that the submitted document was not valid before the

Contract Notice (published on 28.02.2024), while Regulation No. 001/2022 on Public Procurement, Article 38, Point 38.3 states:

However, it is permissible for a contracting authority during the evaluation to request and obtain information or documents that are missing from the application/tender. These documents, however, must objectively present sufficient evidence that reasonably reflects the existing situation prior to the date of publication of the Contract Notice. The review expert finds this complaint claim to be partially grounded.

Regarding claim IV (fourth): the review expert explains that the request according to the tender dossier was as follows:

Requirements G- Planning Requirements 1.1. Development of Gantt Chart; - The maximum contract implementation period is twelve [12] months. 1.2. Development of financial flow plan; This is a continuation of point 1.1. Technical basis for the development of the financial flow plan - Gantt Chart. Financial basis for the development of the financial flow plan - Financial offer.

Required documentary evidence Gantt Chart [Contents] - Weekly schedule[1] within the maximum contract implementation period; - All items as specified in the detailed project pre-measure [main implementer] - implementation start and completion period for each item of the detailed project pre-measure [main implementer]. [Submission form] - Submitted in Albanian and in digital format [PDF]. Financial Flow Plan [Contents] - Financial Flow Plan - The financial flow must be in accordance with the implementation periods of the sub-components; - The financial flow must be in accordance with the financial offer submitted. [Submission Form] - Submitted in Albanian and in digital format [PDF]. Important Note - The planning must be specific and implementable, as it constitutes an integral part of the contract and serves as essential documentation for contract management. The economic operator Group of economic operators - Consortium, must calculate that the entire building will be worked on during all seasons and without interruption, regardless of climatic conditions. - All documentation included in the framework of 'G[1]Planning Requirements', will be updated only in terms of calendar, after the completion of the procurement procedure and before the officialization of the contract.

Based on this claim, the review expert finds that based on the submitted Offer, EO- Limit Project SHPK has submitted the Dynamic Plan (Gantt Chart) according to the requirements of the Contracting Authority (I was unable to upload the plan to this platform), hence this claim. The review expert finds this complaint claim to be unfounded.

Findings of the Review Panel —

The Review Panel assesses that the Review Expert Report regarding the dispute in this case of public procurement activity contains the essential elements of such a document as provided for in 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 emphasized 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 file, the alleged facts and any other evidence, taking into account the nature of the possible violations, the course, nature and purpose of the procurement activity, therefore the fact that in which cases and for what, the Panel relies or not, on the expert report and/or any of the recommendations, is a matter of his/her independent and professional judgment, as these responsibilities are addressed in the sense of Article 98, 99 in conjunction with Article 105 of the Public Procurement Law.

The Review Panel, having analyzed the documents of this case and the actions taken by the parties, their statements and the evidence administered during the course of this procurement activity, considers that the findings of the review expert's report and his assessments are unacceptable for the following reasons:

Regarding complaint 2024/0795, the complaining EO "TEHNOBURIMI " D.D." The review panel has administered the procedure and it is found that in the Price List (Pre-measures-pre-calculation), positions are missing, no prices have been offered, which the CA has rightly eliminated by considering it as an irresponsible offer for this procurement activity, therefore the RP has not been issued in other claims as long as they are not relevant regarding the merits of this complaint.

The Review Panel has also administered all the evidence regarding the complaint claims submitted by GOE "EING COM SH.P.K."- Prishtina regarding complaint no. 2024/0797, and considers that in the review expert's report the complaint claims are partially grounded because the review expert only responded superficially, not taking into account the CA's reasoning at all. Therefore, the Review Panel in these circumstances gives full confidence to the elaborations of the contracting authority in the decision of 26.08.2024 for the rejection of the request for review of the complaining EO of 21.08.2024. In this way, the Review Panel has found that the complaining EO has not managed to meet all the requirements of the tender dossier, therefore the CA's decision is based on the report of the complaining EO, for these reasons the CA has strongly opposed the expertise report with no. 2024/0797. The Review Panel, based on the findings in this procedure, concludes that the Contracting Authority - MINISTRY OF CULTURE OF THE RS AND THE ÇJK" has eliminated the GOE "Eing Com SHPK" due to the fact that in the Contract Notice and Tender Dossier, among the requirements on technical/professional capabilities, it was also requested• One [1] person. 1.5. Principal Investigator - Component Mechanical Engineering - Field of study Mechanical Engineering - Thermo-Energy - Five [5] years of professional experience in the implementation of detailed [main implementation] projects in mechanical engineering. - One [1] person.

So the complaining GOE has offered Eng. z.F.B - Presented as Eng. Of Machinery has presented the direction of the term energy graduated in July 2018 and that in the CV presented there is a description of work until 2020 (i.e. from the date of graduation until 2020) The same does not meet the work experience criterion of 5 years of professional work experience (referred to CV) has not presented any work from 2020. Therefore, based on Article 10 of the Public Procurement

Guideline 001/23, it states: CV that does not meet the criteria - Reject the tender without requesting additional clarifications. So, this Engineer offered based on the CV does not meet the work experience required by the CA and based on Guideline 001/2023, Article 10 states that if the CV does not meet the requirements / criteria, reject the tender without requesting clarifications.

Regarding the complaint regarding the Water Pumping Machine, Group of Economic Operators EING COM SH.P.K.; EL-BAU SH.P.K. has submitted an invoice in which it has not presented details of the characteristics or type of water pump, but only marked water pump and water motor... In the attached catalog which does not convince the contracting authority that this specification is related to the invoice, because according to the catalog provided there are two types of pumps TRM 1.3 AND TRM 2.2 AP. None of the pumps presented in this catalog meet the criteria of the CA, since the maximum per liter of m³ of water is 18.3m³/h for the TRM 2.2. AP device and 13.2 per m³/h for the 13.2 device. Even in this case, the review expert for the Public Service does not provide any detailed justification between the required specifications and the device that the complaining EO has offered in its bid, but provides a link, where according to her, through this link it can be concluded that the complaining EO has fulfilled the request, while the review expert does not explain it at all.

Regarding the complaint against the recommended EO regarding the booklet, it is seen that the booklet states valid until: 04.08.2024 and it turns out that it was registered on 03.08.2023 before the Contracting Authority opened this procedure.

Therefore, the Review Panel upholds the decision of the CA to remain in force, a decision which was issued by an evaluation committee 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, consequently since the Review Panel has found, as did the CA, that the complainant is irresponsible (eliminated) and based on the decision of the CA and the standard letters, the other participating EOs are eliminated and have not filed a complaint (i.e. they have agreed to their elimination), then in accordance with Article 1 of the LPP and in order not to prolong this procurement activity further and without any concrete reason and in the absence of any convincing argument that the recommended EO may be irresponsible, then the panel assesses that the selection of the EO recommended for the contract is also the responsibility of the CA.

In this regard, the Panel also explains that the Contracting Authority (CA), within the meaning of Articles 1 and 6 and in accordance with Article 115 of the Law on Public Procurement, in its capacity as initiator of this procurement activity, had the opportunity to review its decision based on the findings of the review expert. The Law specifies that if the CA confirms that the claim or all claims are valid and have not been rejected by the complainant, they may undertake the corrective actions recommended by the expert. However, even in this case, the CA has continued to reject the expert report, reiterating that the CA considers the bid of the recommended EO as responsive, while the bid of the complaining EO as irresponsible.

Therefore, regarding the restriction of access to documents that have been treated as business secret documents, the Review Panel considers that it is justified, but even if the procurement activity is eventually re-evaluated and access can be granted to each participating EO, they would still not be able to file a complaint since in reality all other bidders, including the complainant, based on the above explanations and the report of the professional evaluation commission, within the CA are qualified as irresponsible and parties without legal-material interest according to Article 4.1.26 of the LPP, since they cannot under any circumstances be a potential winner based on their bid for this public contract.

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

Based on the above, the Review Panel considers that the actions and acts of the CA, and the assessments of the review expert regarding the fulfillment or not of the conditions described above and the complaint statements in this case constitute sufficient grounds for the procurement activity to be returned for re-evaluation.

The Review Panel has decided in accordance with the legal competences within the meaning of Article 104, paragraph 1, in conjunction with Article 103, Article 105 and Article 117 of the LPP to implement the procurement review procedure in a prompt, fair, non-discriminatory manner, with the aim of resolving the case legally and effectively.

Point I of the decision was decided based on Article 117 of the LPP in connection with Article 29 and 31 paragraph of the PRB Work Regulations.

Point II of the decision was decided based on Article 131 of the LPP in connection with Article 29 paragraph 3 of the PRB Work Regulations.

Point III of the decision was decided based on Article 31 paragraph 4 and paragraph 6 of the PRB Work Regulations in connection with Article 118 of the LPP.

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

President of the Review Panel

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 – **MINISTRY OF CULTURE OF RS AND ÇJK;**

1x1EO–“ **TEHNOBURIMI " D.D”;**

1x1 EO – “EING COM SH.P.K.;

1x1 Archive of the PRB;