



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

Psh. No.610/23

Review Panel, appointed by the President of the Procurement Review Body (PRB), Pursuant to the article 105, article 106, and 117 of the Law on Public Procurement of the Republic of Kosova (LPP) as well as articles 21 and 29 of the PRB Work Regulations 01/2020, amended on 09. 08. 2023, in the composition of Vedat Poterqoi - President, deciding according to the complaint of the Economic operator (EO) "Proglobal" SH.P.K, against the Decision to cancel the procurement procedure of Kosova Energy Corporation sh.a. in the capacity of the Contracting Authority (CA) related to the procurement activity: "Supply of personal protective equipment at work (accessory)" with procurement no: KEK-23-2997-1-1-1, on the 16/10/2023, has issued this:

## DECISION

1. **Approved**, as partly grounded the complaint of the EO "Proglobal" SH.P.K with no. 610/2023 of the 23.08.2023, while the decision of the CA- Kosova Energy Corporation sh.a. related to the procurement activity "Supply of personal protective equipment at work (accessory)" with procurement number KEK-23-2997-1-1-1, **Remains in force**.
2. Within 10 days, the CA must inform the PRB about all the actions undertaken in relation to this procurement activity, otherwise, for non-compliance with the decision, the PRB can take measures against the CA, as provided by the provisions of Article 131 of Law on Public Procurement in Kosova.
3. The funds deposited in the name of the tariff tax on the complaint to the account of the economic operator "Proglobal" sh.pk are returned.

## REASONING

- Procedural facts and circumstances –

Kosova Energy Corporation sh.a, in the capacity of the Contracting Authority, dated 31.03.2023 submitted the Contract Notice - B05, for the procurement activity with title: "Supply of personal protective equipment at work (accessory)" with procurement number KEK-23-2997-1-1-1.

On the 20.08.2023, the CA published B58-Notice on the Decision of the Contracting Authority with which decision it canceled the procurement activity in the absence of responsive offers.

On the 07.08.2023, EO “Progobal” SH.P.K submitted a request for reconsideration to the CA. Whereas on the 15.08.2023, CA- KEC sh.a rejected the request for reconsideration of the complaining Economic Operator as ungrounded.

The economic operator “Progobal” SH.P.K., dissatisfied with the Decision of the CA for cancellation, on the 23.08.2023 submitted a complaint to PRB, which was registered with protocol number 610/23.

*During the preliminary review phase*

The Review Panel concluded that the appeal in this case was filed in accordance with Article 109.1 of the LPP, according to which against any decision taken by the CA, any interested party can submit a complaint to the PRB after conducting a preliminary procedure for resolving dispute in accordance with Article 108/A of this law. Since the Applicant has the status of the interested party in the sense of Article 4, paragraph 1.26, and the complaint contains the essential elements provided for in Article 111 of the cited Law, it means that it met the conditions foreseen in the sense of the cited provisions and falls under the powers of this Body, in the sense of Article 105, of the LPP.

The Review Panel has also concluded that there are no circumstances of conflict of interest in the sense of Article 11 of Regulation no. 01/2020 of the Work of the Procurement Review Body related to article 4 paragraph 1 under paragraph 75 of the LPP.

Based on the actions described above, the PRB has appointed the Review Panel and has also appointed the evaluation expert, as provided by article 111, paragraph 5 of the LPP, with the duty that the same in the sense of article 113 of the cited Law, to do the initial review of the dossier and complaining claims, in relation to the procurement activity described above. Regarding this, on the 11.09.2023, the review expert submitted the evaluation reports with recommendations:

- The complaint of the complaining EO is approved as partially grounded,
- The CA's decision to cancel the procedure should remain in force

The expertise’s report has been duly accepted by all procedural parties. The Contracting Authority has notified the Review Panel that it agrees with the recommendations of the expert, while the Complaining Economic Operator has announced that it does not agree with the recommendations of the review expert.

Complainant's statement regarding the review expert's report: "Answer to the expert's report. Expert report no. 2023/0610 dated 11.09.2023. We appreciate the work of the expert who made a professional analysis, taking about 90% of the complaint claims of EO Progobal, as based, rather, based on the facts and arguments presented. As for the other 3 disputed claims, Progobal's offer, despite the negligible differences with those of TD, we are sure that the products offered for these 3 positions (1; 13; 20) are more advanced from the safety aspect,

compared to those of TD assigned by CA. The technical specifications of Personal Protective Equipment at work established by the CA in TD, are already 15 years ago, which have not been renewed and changed in relation to the most advanced EN Standards, as well as the composition and quality of the materials from which they are produced. In the pre-bidding phase, we requested 3 additional clarifications for certain items, in which there were omissions as well as descriptions of the old EN Standards that were no longer used. We believe that the quality of protective equipment, and not only, should not be measured by the thickness or weight of the product, because the technology of the materials has been advanced so that they are lighter in weight or thickness, while offering higher safety.

In this aspect, the products offered for these 3 positions by Proglobal shpk are more advanced, which means that they offer a higher level of security than what is required in TD. The following are the technical data and EN Standards for TD articles as well as articles offered by Proglobal shpk, which can easily be ascertained that the products we have offered are more advanced in terms of safety, followed by additional EN Standards.

Position 1. Gloves made of Nitrile material that have been requested to be in TD are for protection from chemical substances according to Standard EN374-2; As well as for mechanical work according to Standard EN420; EN388 Gloves made of Polyvinyl Chloride material offered by EO Proglobal are for protection against chemical substances according to Standard EN374-1; EN374-2; EN374-4; EN374-5; EN16523 As well as for mechanical work according to Standard EN420; EN388 The gloves delivered by EO Proglobal are much more advanced than what is required in TD, because they provide safety for use for all chemical substances. Position 20

Gloves for welding, in TD, it is required to be  $32 \pm 2\%$  in length. Welding gloves offered by OE Pro global are 35cm long. The gloves delivered by OE Proglobal 3cm longer provide safety for use and are higher than what is required in DT. The difference in length for 3 cm is for the benefit of the CA, respectively the workers who will use it for welding. Position 13. Neoprene rubber gloves, it is required in TD to be 1.1mm thick. With standards: EN420: 2003 EN388: 2003 (3,1,2,1) EN374-1, EN 374-2, EN 374-3. The neoprene rubber gloves offered by EO Proglobal are 0.75mm thick, also for protection from chemical substances according to EN ISO 21420:2020; EN388:2016+A1:2018; EN ISO 374-1:2016+A1:2018; EN16523-1: 2015; EN ISO 374-2:2019; EN ISO 374-4: 2019; EN ISO 374-5:2016. The gloves delivered by EO Proglobal are much more advanced than what is required in TD, because they offer safety for use for all chemical materials. The CA's arguments to cancel it do not stand. The offer of Proglobal shpk is responsible and at the lowest price. We propose that the matter be reassessed and decided as in the provision”.

#### Administration and evaluation of evidence

The Review Panel analyzed all the documents of this case, including all the acts and/or actions of the parties, as described above (procedural facts and circumstances), there are no elements to prevent the conflict of interest, as required in terms of Article 11 of Regulation on the Work of the PRB, related to paragraph 1.75, article 4 of the LPP and at the same time analyzed all the documents of this matter, including all acts and actions of the parties and considered that there is

no need to convene a hearing with the parties, as long as the submissions of parties and their actions, constitute a sufficient basis to decide on the merits as provided by paragraph 1, article 24 of the PRB Working Regulation, and that there is no need to request the contracting authority and/or the complainant to provide additional information and/or explanations, in the sense of paragraph 3, of article 116 of the LPP.

*Answers of the CA regarding the complaining claims in the decision to reject the request for reconsideration*

Your claims are unfounded because: Contracting Authority KEC sh.a. made the evaluation based on the requirements of the tender file and the legislation in force applied in the Republic of Kosovo. Your offer did not meet the technical specifications of many positions according to annex 1 of the tender dossier. Some of the points that made your offer irresponsible are the neoprene gloves for which the thickness was requested to be 1.1 mm while you offered 0.75 mm, which means there is a thickness deviation of about 30% from the request of the tender file. also other points such as material, standards, protection level, which for some positions have not been offered according to the request of the tender dossier, are also important, which have to do with the security of the employees of the Corporation.

*Claims of the Complainant "Inovix"*

- *The first claim (I)* - The contracting authority - KEC sha, the decision dated 15.08.2023, initially issued it outside the legal deadline defined by paragraph 6, of article 108/A, of the LPP, where it is defined: - " The contracting authority will consider the request within three (3) working days from the date of submission of the application or, when applicable, from the date of receipt of additional information and documents provided for in paragraph 5 of this article. The deadline mentioned above, in specific justified cases, can be extended for no more than three (3) additional days, and the complainant will be informed of this". The complaining EO submitted the request for reconsideration on 07.08.2023, while the CA issued the decision and rejection on the 15.08.2023, i.e. outside the deadline set by law. Likewise, the CA, according to the decision against the request for reconsideration, did not handle our complaints, as defined by paragraph 8, subsection 8.4, of article 108/A, of the LPP, which defines the cases when the CA can reject the request as not based: "the contracting authority has reviewed its decision in terms of what is requested by the complainant". So, CA - KEC, it has not dealt with our facts and claims, what we have asked for. Reasoning of the CA, for elimination of our offer and not dealt with by decision related to Rubber protective gloves from chemicals - with reasoning, The material of the gloves was offered coton lingin while nitrile was requested. 35cm length is offered, it does not stay. In TD position 1, it is required that the gloves are made of nitrile material, the inner part is made of cotton, with Standard EN374-2; EN 420; EN388; The material of the gloves offered PVC7335 is made of PVC (Polyvinyl Chloride) and cotton, or a variant of what is specified in the tender file. In point 4.1, in the TDS, the provision of variants is authorized/allowed, respectively it is not prohibited. As for the requirements of technical and professional capacity, CA-KEC has requested, Catalog parts of the catalog or graphic presentations and or photos of products with technical descriptions as well as product certificates regarding adaptation and specifications or standards.

• *The second claim (II)* - Based on the qualifying requirements, EO "ProGlogal", shpk, has offered in compliance with all the qualification requirements, has presented products in compliance and according to standards, presenting evidence, catalogs and certificates of conformity for the products offered, therefore the justification for the elimination of our offer, contradicts article 52, paragraph 3 and article 59, of the LPP. Gloves PVC7335 part of the offer are made of PVC material (Polyvinyl Chloride) which is apparently equivalent/similar to nitrile material. The inner part is also made of cotton material. The gloves offered with the offer offer safety and higher than what is required in TDS and TD, and such a thing is allowed with LPP. The PVC7335 gloves part of the offer are more advanced both in use and in terms of safety - they are certified with the following standards: EN ISO 21420:2020; EN388:2016 A1:2018; EN ISO 374-1:2016 A1:2018; EN16523-1: 2015; EN ISO 374-2:2019; EN ISO 374-4: 2019; EN ISO 374-5:2016. In DT, the length of the handle is required to be 30cm $\pm$ 2%. The PVC7335 gloves part of the offer are 35cm long - the difference is negligible, while it is to the benefit of the CA, since the safety is higher for the user/worker, considering that the gloves are for protection from chemical substances. AK's reasoning, for leather work gloves, that the length of the gloves is missing, Glove size 10 is 25.4cm, Protection level is (4.1.3.3.X), does not hold. In DT position 2, the handle size 10 was requested, to be 26cm in length  $\pm$ 1%. Level of protection against mechanical hazards (4.1.3.1).

• *Third claim (III)*- The leather gloves L-4 part of the offer are 25.4cm long - the difference is negligible. The protection level of the gloves part of the offer is (4.1.3.3.X). The gloves part of the offer are of the highest quality, for the reasons: Puncture resistance is required in TD 1) The gloves part of the offer have resistance to puncture 3) They have an additional level of safety and Cut resistance ISO 13997 (A to F) . The excuse of CA, winter work gloves, that the length of the glove is missing, does not hold. In TD position 3, the required length is 26cm  $\pm$ 1%.

• *The fourth claim (IV)* - Gloves 330 part of the offer and contested by CA, are 26cm long. The reasoning of AK, industrial protective helmets, that the durability period is missing, the weight of the helmet is missing, does not hold. In TD, position 5 is required - the durability period should be 5 years - The weight of the helmet should be approximately 350g  $\pm$ 4%, where all these data are described and confirmed. Helmet QUARTZUP3 part of the offer. It has a shelf life of 5 years. The weight of the helmet is 345gr. The CA's justification for protective gas masks with a filter does not stand. In TD, position 10 is required - Class 1 protective mask. Explanation Class 1 holding mask - is the mask with the lowest level of protection. It is usually used for short periods of use and when there are no high risks. The 757-N filter is the mark of the Climax manufacturer, the 757-N parameter does not determine the quality. The 757-N filter has much lower parameters of protection against various gases, compared to the BLS 400 SERIES filter part of the offer.

• *The fifth claim (V)* - The BLS 5000 SERIES mask part of the offer is of class 3 - this means that it provides 3 times more safety than what is required in the DT (the higher the class parameter, the higher the safety higher). The BLS 5000 mask offers the highest level of safety. The BLS 400 SERIES filter part of the offer meets and exceeds the conditions defined in the DT technical specifications compared to the 757-N filter that was requested. The BLS 400 SERIES

filter has the highest level of protection - ABEK2. While the DT filter, 757-N has lower level of protection ABEK1. The justification of AK, for rubber/neoprene gloves, that it has offered a thickness of 0.75mm while 1.1mm was requested, does not hold. In DT position 13, the gloves are required to be 1.1mm thick with standards: EN420: 2003 EN388: 2003 (3,1,2,1) EN374-1, EN 374-2, EN 374-3. Appeal claim 6, VE509 TOUTRAVO gloves part of the offer are 0.75mm thick. The thickness or weight of the material does not determine the quality of the product. The advancement of material technology has made the products as light as possible. The VE509 TOUTRAVO gloves in the offer offer safety and higher than what is required in FDT and DT, which is permissible with LPP. VE509, meet the standards: EN ISO 21420:2020; EN388:2016 A1:2018; EN ISO 374-1:2016 A1:2018; EN16523-1: 2015; EN ISO 374-2:2019; EN ISO 374-4: 2019; EN ISO 374-5:2016. The difference in thickness is negligible, while it is to the benefit of the CA, since the safety is higher for the user/worker since they are certified with more EN Standards, than what is required in the TD, considering that the gloves are for protection from materials chemical.

- *The sixth claim (VI)* - The HAR35 safety belt part of the offer is now produced as a new product under the name REVOLIN HAR35M. Which meets and exceeds the conditions and standards required in DT, since they are certified by several EN Standards, such as: EN365; EN358; EN361; EN363; EN364. There are a total of 2 safety belts and we will supply them with the new product REVOLIN HAR35M TEST 5 - Safety belt REVOLIN HAR35M. Reasoning of AK, for welding gloves, that a length of 35cm, size 10 was offered, while a length of 32cm was requested  $\pm 2\%$  and size 11, is unsustainable. In DT position 20, welding gloves with a length of 32cm  $\pm 2\%$ , size 11 are required. There are a total of 2 safety belts and we will supply them with the new product REVOLIN HAR35M TEST 5 - Safety belt REVOLIN HAR35M. Reasoning of AK, for gloves for welders, that a length of 35cm, size 10 was offered, while a length of 32cm  $\pm 2\%$  and size 11 was requested, does not hold. In DT position 20, welding gloves with length 32cm  $\pm 2\%$ , size 11 were requested.

- *Seventh claim (VII)* - Welding gloves CA615K part of the offer are 35cm long. Take into account that they are longer and that they will be used for welding, that is, the safety is greater. While the difference in length is negligible. The gloves are produced in sizes 9, 10, 11. AK - KEK, when ordering, you can specify and choose the desired size. Test 6 - Welding gloves CA615K. The reason of CA, for protective glasses for welding, is that the thickness of the glass is missing, it does not stay. In TD position 21, protective glasses for welders with a thickness of 2.6 mm were requested. Appeal claim 9 Protective glasses for welders TOBA3 part of the offer. They are standardized with the standards: EN 166 1 F ; EN 169; EN175 F, as requested in Annex 1 - Mandatory technical specifications of DT, the thickness of the glass is 2.6mm. The standards also determine the quality of protective glasses for welders, including the thickness of the glasses. Evidence 7 - Glasses TOBA3. So our company has presented evidence as requested in the tender file to the requirements of technical and professional capacity, namely in point 21.3 of the FDT, it is determined that: "Product samples will be required to be submitted before signing of the contract only by the winning EO". The reasoning of the CA in the standard letter does not stand, and even contradicts the provisions of article 28 and 52 of the LPP, where paragraph 3 defines: "Only measurable criteria and which are previously defined in the tender file can be

used for evaluation ". Therefore, the CA, in the case of eliminating our offer, has gone beyond the requirements defined in the Tender File and Contract Notice. The very fact that the CA requested product samples after signing the contract means that the CA enjoys the right to apply quality and other dimensions during the execution of the contract and this is related to Article 81 of the LPP - Contract Management, therefore we cannot be eliminated for issues that are not defined as qualifying requests but executive requests. Through the additional clarifications of CA - KEC, I was able to clarify all our products for which dilemmas have appeared and as defined by article 59 and 72 of the LPP.

#### Findings and clarifications of the review expert

- *First finding (I)* - The first claim of the complainant according to complaint 610/23 is that the CA has not respected the provisions of Article 108/A of the LPP. Specifically, the complaining EO claims that they submitted a request for reconsideration on 07.08.2023, while the CA did not respond until 15.08.2023. After analyzing the evidence through E-Procurement, the reviewing expert confirms that the request for reconsideration was made on 07.08.2023, while the decision of the CA was made on 15.08.2023, which means outside the legal deadlines stipulated by Article 108/A. According to Article 97 of Regulation 001/2022 on public procurement, point "p", Failure to respect the time limits in issuing a decision on requests for reconsideration is considered a serious violation. Based on what was mentioned above, we estimate that the complaining claim is grounded.
- *The second finding (II)* - The other complaining claim is that the CA has not dealt with the appeal claims according to the request for reconsideration. After analyzing the CA's decision, we found that the CA concretely answered only about the thickness of the neoprene gloves, where the CA requested a thickness of 1.1mm while the EO offered 0.75mm. The CA for all other complaining claims have responded in a general way that for some positions they were not offered according to the request of the file related to the safety of the employees. Even in this case, we estimate that the CA did not act in accordance with the provisions of article 108/A par.8 subpar.8.4, therefore we consider that the complaining claim is grounded.
- *The third finding (III)* - the complaining EO in his complaint has many claims about the fulfillment/non-fulfillment of the technical specifications set by the CA. For most of the complaining claims regarding the technical specifications, we consider that the EO has offered them in accordance with the requirements of the tender file or they have offered an equivalent product in the sense of article 28 par.6 of the LPP. Despite the difference in the designation AK for most of these specifications, I can ask for additional clarification. However, in this report we will focus on 3 positions/elements which we consider to be inconsistent with the requirements of the file and cannot be considered to be equivalent to what was requested by the CA in the tender file. For position 1, gloves made of "Nitrile" material were requested. while the complaining EO has provided gloves made of PVC material. EO claims that this is only a variant of what was requested and that variants were not prohibited by the tender file. After analyzing the complaining claims and after the research done, we have found that the Nitrile material, in addition to being more expensive, is at the same time a more durable material than the PVC material, so we consider that in this particular case it cannot be said that the gloves from the

material PVC is equivalent to nitrile gloves, as nitrile gloves are both more expensive and more durable. The second point is the specification for welding gloves, where the file request was welding gloves with a length of 32cm  $\pm 2\%$ , size 11. While the complaining EO in the complaint confirms that for this position they offered gloves with a length of 35cm, however the complaining EO claims that "Take into account that they are longer and that they will be used for welding, that is, the safety is greater while the difference in length is negligible".

- The review expert estimates that in this particular case the  $\pm 2\%$  tolerance of 32cm is exceeded. Although the complaining EO claims that the difference is negligible and thus provides even greater security, in this particular case we estimate that it is at the CA's discretion to assess whether the discrepancy of the required dimensions is acceptable to the CA. As for the rubber/neoprene gloves, the CA in the technical specification has requested a thickness of 1.1mm, while the complaining EO has offered a thickness of 0.75mm and claims that "The thickness or weight of the material does not determine the quality of the product. The advancement of material technology has made the products as light as possible". Even in this case, we estimate that the difference in the dimensions/thickness of the handle from the same material cannot be equivalent. In other words, the thickness of 0.75mm cannot be equivalent to 1.1mm. Based on all that was mentioned above, we estimate that the complaining claims are partially justified, with the exception of gloves made of Nitrile material (PVC is offered), welding gloves (the allowed tolerance of  $\pm 2$  is exceeded), as well as the thickness of neoprene gloves where 1.1mm was requested (0.75mm was offered). Findings of the review expert.

#### Findings of the Review Panel

In order to fully confirm the factual situation, the Review Panel administered as evidence the Review Expert's Report, the opinions of the parties regarding the review expert's report, the submissions and documents of the complaining Economic Operator and the Contracting Authority, and found that the complaint submitted by the EO "Inovix" SHPK for the aforementioned procurement procedure is partially grounded.

The review panel independently and objectively, conscientiously and professionally evaluated all the evidence of the case. In this way, it was found that the Contracting Authority did not act contrary to the provisions to be claimed by the complaining economic operator. The Review Panel considers that the actions and acts of the CA and the evaluations of the review expert regarding the fulfillment or not of the conditions described above and the complaint statements in this case do not constitute a sufficient basis for the procurement activity to be re-evaluated because, this contradicts 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 for re-evaluation is not in harmony with Article 1 of the LPP, according to which the purpose of this Law is, among other things, quoted "...to ensure the integrity and responsibility of public officials, civil servants and other persons who perform or are involved in a procurement activity by requiring that the decisions of such individuals and the legal and factual basis for such decisions, not be influenced by personal interests, be characterized by non-discrimination and a high degree of transparency and be in accordance with the procedural and essential requirements



of this law". The Review Panel considers that the course of the procurement activity is characterized in accordance with the legal provisions, which in relation to the intended purpose of this procurement activity, from the point of view of this Panel, have been implemented with increased care and in a professional manner.

From the review expert's report, the evidence presented by the complaining economic operator, the documents of the tender file as well as from other circumstantial evidence, it was found that the claims are partially based but that do not affect the change of the final epilogue of the complaint. Based on the factual situation ascertained as above, the review panel in its independent evaluation considers that the evaluation was made according to the requirements of the tender file, therefore in accordance with article 62 of the LPP and article 43 of the Regulation, the tender was canceled because no responsible economic operator has offered, as it was also explained in the review expert's report, and it is estimated that the decision of the CA to cancel remains in force.

The review panel after the administration and assessment of the evidence, the complete ascertainment of the factual situation, relying on the LPP as applicable material law, after reviewing the complaining claims, taking into account all the documents of the case and the recommendations of the review expert, has found that the decision of the CA to cancel the procurement procedure must remain in force.

The Review Panel has decided in accordance with the legal powers in the sense of Article 104 paragraph 1 in relation to Article 103, Article 105 and Article 117 of the LPP for the implementation of the procurement review procedure in a fast, fair, non-discriminatory manner, in order to legal and effective resolution of the case.

For points I and II of the decision, it was decided based on article 117 of the LPP in relation to article 29 of the Rules of Procedure of the PRB

For point III of the decision, it was decided based on article 118 of the LPP in relation to article 31 paragraph 6 of the PRB Work Regulations.

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

**President of the Review Panel**

Mr. Vedat Poterqoi

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**Legal advice:**

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

Decision to be submitted to:

1x1 CA –**KOSOVA ENERGY CORPORATION sh.a.;**

1x1 EO – **“PROGLOBAL SH.P.K;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.