



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

Psh. No.1238/24

The Review Panel, appointed by the Acting President of the PRB, pursuant to Articles 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova (LPP) composed of Vedat Poterqoi – President, deciding according to (EO) “NOVUS” SH.P.K,” against the decision to contract award or a design competition of the “Veterinary and Food Agency” in the capacity of Contracting Authority (CA) regarding the procurement activity “Development and maintenance of the Food Control and Traceability Management System (FCMS)” with procurement number 40800-24-9255-2-1-1, on the 12/02/2025, has issued this:

DECISION

1. **Dismissed as not allowed** the complaint of “NOVUS” SH.P.K, no. 2024/1238, dated 19/12/2024, regarding the procurement activity “Development and maintenance of the Food Control and Traceability Management System (FCMS)” with procurement number 40800-24-9255-2-1-1.
2. **Remains in force**, B58 Notice on the Decision of the CA of the “Veterinary and Food Agency”, regarding the procurement activity “Development and maintenance of the Food Control and Traceability Management System (FCMS)” with procurement number 40800-24-9255-2-1-1.
3. The funds deposited in the name of the tariff fee for filing the complaint are returned to the account of the Economic Operator “NOVUS” SH.P.K. The complaining EO is obliged, in accordance with Article 31, point 6 of the PRB's Rules of Procedure, to make a request for the return of the complaint security within sixty (60) days, otherwise the deposit will be confiscated, and these funds will go to the Budget of the Republic of Kosova.

REASONING

-Procedural facts and circumstances –

On the 17.09.2024, the “Veterinary and Food Agency” in the capacity of the Contracting Authority has published the Contract Notice B05 regarding the procurement activity with “Development and maintenance of the Food Control and Traceability Management System (FCMS)” with procurement no.: 40800-24-9255-2-1-1. While on 29.11.2024 the Notice on the decision of the Contracting Authority for the award of the contract. EO “Tretak SH.P.K.” - Prishtina.

The contracting authority has implemented an open procedure, type of contract: - service, estimated contract value: 300,000.00 €.

On the 04.12.2024, EO “NOVUS” SH.P.K., has submitted a request for reviewing against the above-mentioned decision of the CA. On the 10.12.2024, the Contracting Authority has rejected as unfounded the request for reviewing.

On the 19/12/2024, the PRB has accepted the complaint from EO “NOVUS” SH.P.K., with no. 2024/1238 regarding the activity “Development and maintenance of the Food Control and Traceability Management System (FCMS)” with no. procurement: 40800-24-9255-2-1-1.

-On the preliminary review phase-

The Procurement Review Body 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 under Article 4 paragraph 1 sub-paragraph 26 of the LPP. In this way, the PRB has found that it is competent to review this complaint under Article 105 of the LPP and there is no procedural obstacle to continue with the review of the complaint on its merits.

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

On September 17, 2024 - CA opens the Public Procurement Activity with procurement no. 40800-24-9255- 2-1-1, with Title: “Development and maintenance of the Food Control and Traceability Management System (FCMS)” (“Procurement Activity”). EO Novus has previously submitted a Request for Review against the Tender Dossier which was constructed in violation of Law No. 04/L-042 on Public Procurement of the Republic of Kosovo, amended and supplemented by Law No. 04/L-237, No. 05/L- 068 and No. 05/L092 (Procurement Law or LPP), and the Validity of the certificates of the employees of the Operator recommended for award by contract.

As we have submitted in the first request for review dated October 24, 2024, the technical requirements set by you as the CA regarding the staff positions such as Project Analyst, Software Developer, Database Administrator, BI Specialist and Web Developer are discriminatory and the same limit the offers from interested EOs, as well as the same are not necessary to implement the project in question.

Although the requests of EO Novus have not been reviewed and approved - the offer submitted by the EO recommended for contract is irresponsible.

Meanwhile, the Complaint claims of NOVUS regarding the irresponsible offer of the Winning EO in the Request for Review have not been addressed at all by the CA, and the Decision regarding the

Request for Review based on the facts as follows:

1. Complaining claim no. 1: The recommended EO is not responsible because it does not meet requirement no. 1 from article 9.1. & 9.2. of the Tender Data Sheet (TDS)

The Tender Dossier, in Article 9.1. & 9.2. of the FDT, required the following: “The economic operator or group of economic operators must provide evidence that it has successfully completed contracts for similar services in the field of software systems and applications development in the last 3 years (meaning the time period preceding the date of publication of the contract notice). The total value of the services provided must be min. 450,000.00 Euro.”

The recommended EO does not meet requirement no. 1 of Article 9.1. & 9.2. of the FDT, namely according to the evidence submitted for these contracts, the value of the projects related to the development of Software applications does not meet the value set as a criterion for selecting a responsible operator in the Tender Dossier and Contract Notice for the activity in question.

Initially, the evidence presents the reference issued by the company “Katrori”, but there is no evidence of when the contract value of EUR 21,240.00 was realized, since the list is presented from 2016 to 2022. While the criterion is to present the work performed in the last three years. The evidence also presents other contracts, which in total do not reach the total value of the services performed

minimum EUR 450,000.00, presented as follows:

Contractor of the recommended EO Contract Value

“Katrori” EUR 21,240.00

“Integra” EUR 71,200.00

Kosovo Customs EUR 73,839.00

Other contracts EUR 22,400.00

Total: EUR 188,679.00

In addition, other contracts, which have a value of EUR 22,400.00, do not belong to similar services in the field of development of systems and software applications, but relate to the development of websites, ERP Systems, maintenance of mobile billing, and others, which no longer correspond to the required field.

In this regard, the EO recommended with the contract has not fulfilled even 50% of the contract value of the amount of contracts required according to the FDT, making it irresponsible.

In response to the complaint claim 1, the CA concludes that the Evaluation Commission “has verified more than once and has concluded that the company has met the criteria for the Amount 450,000.00”. However, it has not provided any explanation as to how it reached this conclusion and has not examined in depth the claim presented by EO NOVUS based on the arguments and facts presented by the latter. This is unless the CA has kept other contracts hidden during access to the documentation.

2. Complaint No. 2: The recommended EO is not liable because it does not meet the requirement No. 3 from article 9.1. & 9.2. of the FDT Sheet Initially, regarding the requirement for a Project Manager with a minimum of 7 years of experience, qualified with a bachelor's degree, and qualified with a Project Management Professional (PMP) certificate, the recommended EO does not meet this FDT requirement.

The EO recommended for the contract, in the key position of Project Manager, has recommended the person Kushtrim Cernobregu, in the CV proven by him it does not appear that he has experience in Project Management, his positions are not relevant to the request in the tender dossier and the contract notice since they are mainly technical positions. Also, in the presented contract he is appointed as a Software Developer for specific parts of the contract for modules based on Frame Solutions and not as a Project Manager as requested. Among other things, a reference of at least 1 project carried out in the position of Project Manager was also requested, where the same has provided a reference from "Katrori" this reference which does not match the presented CV and is a project of minimal value and cannot be compared to the importance and scope of the project in question.

This claim, the CA has not considered at all.

In addition, regarding the request for a Software Architect, the EO recommended for the contract, for this position has presented Lirim Sylejmanin for whom the contract or valid employment agreement with the employer for this project is missing since the same was requested in the tender dossier as mandatory evidence.

The references provided as evidence by the EO in question are the reference issued by Burim Halili, as Senior consultant in the Project "EU supplies support to strengthening capacities of Food Safety, Veterinary and Phytosanitary sectors in Bosnia and Herzegovina", and it was not issued by the Contracting Authority or other organizations as requested in the tender dossier and in the contract notice, but by an individual person for whom it does not prove that he is part of that project and does not represent the Contracting Authority or other organizations as requested in the tender dossier as mandatory evidence.

Furthermore, the EO recommended for the contract, for the position of System Analyst, has presented Besmir

Sejdiu for whom the contract or valid employment agreement with the employer for this project is missing, since the same was requested in the tender dossier. Also, the references provided as evidence by the EO in question, the reference issued by OPERA SRL is for the position of Non-

Key Junior IT Expert, which does not coincide with the position of software analyst or software developer, as well as the reference issued by Burim Halili, as Senior consultant in the Project "EU supplies support to strengthening capacities of Food Safety, Veterinary and Phytosanitary sectors in Bosnia and Herzegovina", was not issued by the CA or other organizations as requested in the tender dossier and in the contract notice, but by an individual person for whom it does not prove that he is part of that project and does not represent the Contracting Authority or other organizations as requested in the tender dossier as a mandatory requirement.

Regarding the positions of Software Architect and System Analyst, the CA in the Decision on Rejection has assessed that because the staff offered for these positions are also owners of the recommended EO, it has not considered it reasonable to request employment contracts. Such an attitude is unacceptable since the mere fact that a person is a shareholder in a company does not mean that the same person offers a contribution to the company's affairs. Also, the issue of the mandatory request for references issued by the Contracting Authority or other organizations, such as the mandatory request for the tender dossier, has not been considered at all, it has only been stated that it is acceptable for us as the FVA without providing any additional information.

For the position of two senior software developers, regarding the criterion set by you as CA, where evidence was requested that at least one of them has experience with Frame Solution technology, the EO recommended for the contract has provided as evidence a reference from the company COMPUTAS based in Norway which is neither signed nor stamped as evidence, questioning its authenticity and reliability. This leaves room for doubts about the fulfillment of your request set as a criterion in the tender dossier and violates the principles of transparency and equality in procurement.

This can also be confirmed by the reference from COMPUTAS for Tomor Pupovci, staff of NOVUS SHPK, which is signed and stamped as a valid reference should be, see below

And the Reference provided by the EO recommended for the contract for Veton Shala, this reference is unsigned.

The CA, based on the Decision for Rejection, has considered these evidences as valid, even though it is clearly observed that these evidences do not contain all the elements to be considered as valid and reliable.

Finally, the EO recommended to be awarded the contract has provided as evidence for the certificate "MS SQL Server- Database Development and Designing Optimizing and Maintaining a Database Administrative Solution for MS SQL Server", a copy of the completion of the specific course from a training partner while it has not provided the professional level certificate verified by Microsoft, so it is only the completed training for this type of certificate, but not the certification requested by the CA itself in the tender dossier as mandatory evidence.

See the course certificate provided as evidence by the EO recommended to be awarded the contract:

Below you will find the form of the certificate which must be verified and valid according to the request in the tender dossier that the proposed person be certified. Therefore, based on the above,

the tender of the EO recommended is not responsive because it does not meet the requirement no. 3 from article 9.1. & 9.2. of the FDT Sheet.

On the other hand, the CA in the Decision on Rejection assesses that the Certificate submitted by the EO awarded the Contract is valid as far as the FVA is concerned, even though it has been proven by EO NOVUS what the form of the certified certificate actually looks like and that submitted by the winning EO does not meet the specified conditions.

3. Complaining claim no. 3: By setting the DT specifications, the CA acted in violation of Article 7 and Article 28 of the LPP. First, according to the request for a “System Analyst”, during the request for additional information, EO Novus proposed that, instead of specific qualification in .NET, proof of experience in similar implemented systems be allowed. However, this proposal was rejected by the Contracting Authority (CA). In this regard, EO Novus reiterates that by setting this specification, competition has been unnecessarily reduced, favoring certain economic operators, while experience and skills in similar systems are more than sufficient to meet the needs of this project, proving it with direct references from Contracting Authorities where a similar project has been implemented.

Proven experience of 7 years in the implementation of projects in the field of Food Safety, combined with appropriate education, fully ensures the competence required for this role. The criterion for qualification in .NET does not represent an essential need for the successful implementation of similar projects and creates barriers for EOs that have equivalent expertise in other systems. For two Senior Software Developers, EO Novus submitted alternative proposals for easing the criteria, which were rejected by the CA without clear justification, since the MS SQL Server - Database Administrator Certificate is not offered since 2021. The proposal to replace it with Azure Developer Associate was based on the fact that it is currently a relevant certificate, and the requirement that each developer have two certifications is unnecessary, since the certificates can be shared among staff to meet the requirements.

Regarding the request of the Database Administrator, the certification requested by the CA is discriminatory since this type of certification has not been offered since 2015, where this criterion automatically favors only individuals who have had the opportunity to complete this certification in the past and does not reflect the current reality of the labor market and technologies, since there are newer certifications adapted to current standards.

So, taking into account that EO Novus knows the development technology of this system as well as the essential details related to the software, then we reiterate once again that these requirements are formulated in such a way that potentially favor a certain economic operator.

This impression is based on the following aspects:

1. Excessive technical specifications and criteria that restrict competition and are not necessary for achieving the purpose of the project.
2. Rejection of reasonable alternative proposals by the CA, which are in line with the project requirements, thus increasing equality and competition in this activity.

3. Request for certificates that are no longer offered from previous years, which create an unnecessary advantage for economic operators that already possess these certificates.

The CA in the Decision on Rejection assesses that this complaint claim of EO NOVUS is unfounded, with the position that the CA has respected Article 7 and 28 of the LPP. However, only referring to the articles and what they determine for a CA is not sufficient justification that the CA has complied with these provisions nor an appropriate response to this complaint claim.

Referring to the claims as above, “NOVUS” SH.P.K., considers that the Contracting Authority has acted in violation of Article, 7, 28, 59 paragraph 4 Article 60 paragraph 1 point 1.1 as well as the Public Procurement Regulation No. 001/2022, the CA has violated these provisions: Article 17 - Tender Dossier The tender dossier shall be prepared in a manner that does not: a. Limit competition among EOs, or b. Discriminate against or act in favor of one or more EOs. Article 19- Technical Specifications, according to REQUEST: Based on the above arguments, the Procurement Review Body is invited to issue a

Decision so that: APPROVED in full as grounded the Complaint of EO NOVUS for the procurement activity with procurement no. 40800-24-9255-2-1-1, with Title: “Development and maintenance of the Food Control and Traceability Management System (FCMS)” initiated by the Food and Veterinary Agency. CANCELLED the notice for the award of the contract to EO Tretek SHPK dated 29.11.2024, regarding the procurement activity with no. Procurement No. 40800-24-9255-2-1-1, Title: “Development and maintenance of the Food Control and Traceability Management System (FCMS)” initiated by the Food and Veterinary Agency.

CA's response to the request for review: CA - AUVA after receiving the request for review has reviewed the validity of all claims of the complaining party.

Regarding the complaining claim of the EO that the CA has violated Article 7 of the LPP is unfounded, because as a CA we have respected this article and the contracting authority has treated economic operators equally and non-discriminatory and has acted transparently. The contracting authority will not execute any aspect of the procurement activity in a way that reduces or eliminates competition between economic operators or that discriminates to the detriment or benefit of one or more economic operators. In this case, as we have mentioned above, the contracting authority has treated both economic operators equally and non-discriminatory and according to the assessment and as mentioned above, you were not responsible because you did not meet the requirements of the tender dossier.

Regarding the complaint claim of the EO that the CA has violated Article 28 of the LPP, it is unfounded, because as the CA we have respected this article and the contracting authority has drafted the technical specifications in such a way that they are in accordance with the purpose of the procurement and aimed at ensuring the best possible access for all interested economic operators and tenderers. The contracting authority is specifically prohibited from drafting technical specifications that favor or discriminate against one or more economic operators, in this case we have not drafted technical specifications that favor or discriminate against economic operators.

Regarding the complaint claim of the EO that the CA has violated Article 59 of the LPP is unfounded, because as the CA according to paragraph 4 of this article the contracting authority will consider a tender as responsive only if the tender in question is in compliance 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) it contains only errors or ambiguities which can be corrected without changing the material condition or aspect of the tender in question, or (ii) it contains only minor deviations which cannot 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 during the evaluation and comparison of tenders. Therefore, the recommended EO does not meet requirement no. 1 of article 9.1. & 9.2. of the FDT - The Commission has verified them more than once and has concluded that the company has met the criteria for the Amount 450,000.00.

The commission has also verified that the person in question possesses the education, certification and experience. The Architect and the Analyst are also the owners of the company and we have not seen any reason to request a contract -MS SQL Server- Database Development and Designing Optimizing and Maintaining a Database Administrative Solution for MS SQL Server What is valid regarding the authority. -The required certificate for FrameSolution is valid regarding the AUV. The issuer of this document is a senior manager at COMPUTAS implementing FrameSolution Technology. The CA has recommended for awarding the contract to the EO at the lowest price and also the staff offered is qualified (They possess the education, certifications, experience)

Regarding the complaint claim of the EO that the CA has violated Article 60 of the LPP, it is unfounded, because as the CA we have respected this article and according to paragraph 1. The contracting authority will award the public contract to the economic operator that has submitted either: 1.1 the responsive tender with the lowest price, and in this case the EO recommended for the contract has the lowest price.

Regarding the complaint claim of the EO that the CA has violated Article 17 of the Regulation, it is unfounded, because as the CA we have respected this article and the tender dossier was prepared according to the regulation and for this reason we had competition in this procurement procedure, so there are two tenderers.

Regarding the complaint of the EO, the CA has violated Article 19 of the Regulation, which is unfounded, because as the CA we have respected this article and the definition of technical specifications that refer to a specific product or source, or a specific process, or trademarks, patents, types or specific origins or

are produced, is as a general rule prohibited. However, such a reference may be used in special cases, if such reference is accompanied by the words "or equivalent", in which case we have respected this article.

Based on the above, the CA FVA considers that the request for review is unfounded and the FVA, according to Article 108/A, paragraph 10.1, rejects the proposed request for review as unfounded and stands behind B58.

Based on Article 111 paragraph 5 in connection with Articles 113 and 114 of the LPP, the Procurement Review Body on 20.12.2024 authorized the review expert to conduct the initial review of the file and claims according to the complaint with no. 1238/2024, while on 30.12.2024 the review expert's report with no. 2024/1238 was submitted with the following recommendations: Based on the above-mentioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO be approved as partially grounded, the contract award notice be canceled and recommends that the case be returned for re-evaluation.

The expertise report has been duly accepted by all procedural parties. The CA does not agree with the recommendations of the review expert's report, while the EO has not provided a response to the review expert's report.

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

- Administration and evaluation of evidence -

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

Regarding the claims of EO "NOVUS" SH.P.K., - the review expert through report no. 2024/1238 assessed as follows:

ANALYSIS OF THE REVIEW EXPERT

The review expert has analyzed in detail the complaining claims of the economic operator NOVUS SH.P.K., examining whether they are in accordance with the requirements of the Contracting Authority (CA) and the provisions of the Law on Public Procurement (LPP). The following findings were derived from this review:

1. CONTRACTS AND REFERENCES

The review expert has carefully evaluated the list of submitted contracts to verify whether the economic operator recommended for the award of the contract, Tretak Sh.P.K., has successfully concluded contracts for similar services in the field of software systems and applications development during the last three years (in the period preceding the date of publication of the contract notice). The total value of the services provided must be a minimum of €450,000.00. The following findings were identified from this analysis:

Missing Documentation: The economic operator recommended for the award of the contract has not provided supporting evidence to confirm the declared value of the contracts and the time period for their implementation (start and end dates). This lack of information makes it impossible to fully verify compliance with the tender requirements.

Similar Nature: Most of the projects listed do not comply with the nature required by the CA. Some projects that could be considered similar do not meet the specific criteria set out in the contract notice.

Supporting Evidence: References and accompanying documentation, as well as acceptance certificates, are missing for most of the projects.

A detailed report for each contract presented in the list can be found below:

2. Development of Software Solution for Audit Process Digitalization

Client: Nexia KS M.

Completion date: 28.02.2022

Value: €11,500.

Reference: Present.

Status: Apart from the data in the list of contracts, there is no supporting evidence regarding the start and end date of the contract nor the value of the contract.

3. Development and Implementation of University Management ERP Software

Client: IBC-M.

Completion Date: 01.03.2023

Value: €59,000.00.

Reference: Present.

Status: The reference states that the contract was concluded on 12.12.2022, unlike the data in the list of contracts.

4. Software Development of the Journal Platforms

Client: IBC-M.

Completion date: 07.07.2023

Value: €36,000.00.

Reference: It is present.

Status: The contract has also been presented but neither (contract nor reference) shows the value which is presented in the list of contracts.

5. e-Commerce Software Solution

Client: IntegraTouch LLC.

Completion date: 02.09. 2024.

Value: €89,000.

Reference: Not present.

Status: The project is of a similar nature as requested by the CA but in the accompanying evidence the contract is presented in which only the date of signing appears. The EO has also provided an invoice dated 01.09.2023 in which 71,200.00 € have been invoiced, part of the contract agreement but the remaining part which in the contract states that it will be paid after 12 months has not been presented. Evidence for the full completion of the project is missing. 6.

Document Management System (DMS) Client: Katrori ITS.

Completion date: 25 October 2022.

Value: 21,240.00 €.

Reference: Present and valid.

Status: meets the criteria.

7. Accounting - ERP Platform for inventory management, invoicing, financial reporting and resource planning

Client: Nexia.

Completion date: 05.02.2024.

Value: €15,000.00.

Reference: Present and valid.

Status: Meets criteria.

8. iTracker - CRM

Client: Nexia.

Completion date: 18.06.2024.

Value: €9,000.00.

Reference: Present and valid.

Status: Similar but not specific project as requested.

9. Access to World Stock Exchange

Client: Kosovo Customs.

Completion date: 10.12.2023.

Value: €64,700.00.

Reference: Present and valid.

Status: Similar but not specific project as requested.

10. Supply of vehicle valuation application

Client: Kosovo Customs.

Completion date: 18.08.2024.

Value: €90,000.00.

Reference: Not present.

Status: In the submitted documents it is noted that a certificate of acceptance of supply was issued on 24.09.2024, which means that the contract is not completed according to the deadline set by the CA.

Also in these certificates it is not noted that the project is under development.

11. CRM and HR

Client: Geotech SHPK

Completion date: 31.05.2023.

Value: €19,000.00.

Reference: Present.

Status: Apart from the data in the contract list, there is no supporting evidence regarding the start and end date of the contract nor the value of the contract. Also, the project is similar but not specific as requested.

12. Website Creation and Maintenance

Client: MULTIFUNCTIONAL CENTER JSC

Completion date: 24.11.2022.

Value: €1,416.00.

Reference: Present.

Status: Apart from the data in the list of contracts, there is no supporting evidence regarding the start and end date of the contract nor the value of the contract. Also, the project is similar but not specific as requested.

13. Website dtk.rks-gov.net

Client: Ministry of Culture, Youth and Sports

Date of completion: 31.03.2022.

Value: €2,832.00.

Reference: Present and valid.

Status: Project is similar but not specific as requested.

14. Maintenance of the mobile billing system

Client: KUR "Mitrovica" SHA

Date of completion: 18.04.2024.

Value: €2,496.00.

Reference: Present.

Status: Apart from the data in the contract list, there is no supporting evidence regarding the start and end date of the contract nor the value of the contract. Also a similar but not specific project as requested.

15. Development, implementation and maintenance of the information management system for the full cycle of test analysis

Client: Medical Center SH.P.K.

Completion date: 20.04.2024.

Value: €1,180.00.

Reference: Present.

Status: Apart from the data in the contract list, there is no supporting evidence regarding the end date of the contract nor the value of the contract. Also a similar but not specific project as requested.

16. UNIREFs change services to the SCPE System

Client: AVUK

Completion date: 18.04.2023.

Value: €985.00.

Reference: Present.

Status: Apart from the data in the contract list, there is no supporting evidence regarding the start and end dates of the contract nor the value of the contract. Also the similar but not specific project as requested.

17. Services for changing the SCPE system communication with SEED++ (CEFTA)

Client: AVUK

Date of completion: 05.08.2024.

Value: €990.00.

Reference: Present.

Status: Apart from the data in the contract list, there is no supporting evidence regarding the start and end dates of the contract nor the value of the contract. Also the similar but not specific project as requested.

18. Website and application

Client: Unicamed

Date of completion: 29.04.2024.

Value: €3,000.00.

Reference: Present.

Status: Apart from the data in the contract list, there is no supporting evidence regarding the start and end dates of the contract nor the contract value.

19. CRM software for workforce management.

Client: Klaus Union CZ AS Branch in Kosovo

Date of completion: 06.03.2024.

Value: €3,6580.00.

Reference: Present.

Status: Apart from the data in the contract list, there is no supporting evidence regarding the start and end dates of the contract nor the contract value.

20. Team Planer - Web Application for Workforce Management

Client: Spitex Melinas Medical Care GmbH

Date of completion: 20.12.2023.

Value: €8,500.00.

Reference: Present and valid. The contract has also been presented.

Status: Meets the criteria.

21. eCommerce Platform - Online Order

Client: MBS Esszimmer GmbH.

Completion date: 06.10.2023.

Value: €2,400.00.

Reference: Present.

Status: Apart from the data in the contract list, there is no supporting evidence regarding the start and end date of the contract nor the value of the contract.

22. Development of Dental Laboratory Management Software

Client: Perfect Dent 4.0.

Completion date: 25.08.2024.

Value: €5,805.00.

Reference: Present and valid. The contract has also been presented.

Status: Meets the criteria.

23. Website Development

Client: Unicamed SHPK.

Completion date: 29.04.2024.

Value: €1,000.00.

Reference: No

Status: No supporting evidence provided.

24. Design and creation of the Active Networking Platform

Client: RECPIK.

Completion date: 20.10.2021.

Value: €600.00.

Reference: Present.

Status: Apart from the data in the contract list, there is no supporting evidence regarding the start and end dates of the contract nor the value of the contract. Also, the similar but not specific project as requested.

25. Software Development Services

Client: ASSECO SEE SH.P.K.

Completion date: 02.08.2024.

Value: €53,500.00.

Reference: Present.

Status: Apart from the data in the contract list, there is no supporting evidence regarding the start and end dates of the contract.

26. Development and Maintenance of cloud-native payment transfer solution

Client: Moneta L.L.C.

Completion date: 02.09.2024

Value: €11,800.00.

Reference: Present.

Status: Apart from the data in the contract list, there is no supporting evidence regarding the start and end date of the contract nor the value of the contract. Also, the project is similar but not specific as requested.

27. Website

Client: iDrive

End date: 25.02.2024

Value: €3,500.00.

Reference: Present.

Status: Apart from the data in the contract list, there is no supporting evidence regarding the start and end date of the contract nor the value of the contract.

28. Development of Car Auction System

Client: Carmax d.o.o

End date: 01.08.2024

Value: €16,100.00.

Reference: Present.

Status: Apart from the data in the contract list, there is no supporting evidence regarding the start and end date of the contract.

29. Web Platform 4talents.app

Client: Talentforge L.L.C.

Completion Date: 08.08.2024

Value: €20,000.00.

Reference: Present.

Status: Apart from the data in the contract list, there is no supporting evidence regarding the start and end date of the contract.

30. POS & Inventory Management - Software Development

Client: IntegraTouch LLC.

Completion Date: 2.09.2024.

Value: €374,382.

Reference: Not present.

Status: No supporting evidence provided.

31. Supply of an application for the evaluation of passenger vehicles, freight transport and special work vehicles

Client: IntegraTouch LLC.

Completion date: 18.08.2024.

Value: €257,000.00.

Reference: Not present.

Status: Project repeated twice.

32. PH Service and Management SH.P.K.

Client: iPacienti - web App.

Completion date: 19.10.2023.

Value: €7,080.00.

Reference: Not present.

Status: No supporting evidence provided.

33. Salesfleet - Development of a web and mobile application for salespeople

Client: Floil L.L.C..

Completion date: 15.06.2023.

Value: €11,328.00.

Reference: Not present.

Status: No supporting evidence has been provided.

Based on the above evidence, the review expert concludes that the evidence provided by the economic operator recommended for the award of the contract does not meet the minimum requirements of the Contracting Authority (CA). The CA should have requested further clarifications in order to verify the compliance of the submitted documentation and ensure that they meet the established criteria..

2. PROFESSIONAL STAFF

The complainant claims that the Economic Operator (EO) recommended for contract award does not meet the requirements of technical and professional capacity set out in the tender dossier/contract notice for the staff engaged in this project. The review expert has analysed the tender documents and found the following:

Project Manager: The evidence presented for the Project Manager, Kushtrim Cernobregu, does not fully meet the requirements of the CA. The PMP certification is valid, but his experience as a Project Manager does not reach the required level of 7 years and no clear reference for similar projects has been proven. His contract also describes him as a Software Developer and not a Project Manager, thus failing to meet the requirement for engagement as a Project Manager in this project.

Software Architect: The evidence submitted for Lirim Sylejman for the position of Software Architect meets some of the technical and academic requirements of the CA. He has extensive experience and is certified with the MCP. However, the lack of accurate references from a competent authority for projects in the field of food safety is a significant deficiency and makes the fulfillment of the criteria incomplete. It was also found in the evidence of the Software Architect that an authorization was submitted in lieu of an employment contract which does not meet the formal requirement of the CA for a valid employment agreement for the project.

System Analyst: The evidence submitted for Besim Sejdiu in the position of System Analyst meets some of the requirements of the CA, such as academic qualification and time experience are met, but evidence of advanced experience in .NET technology and specific experience in the projects required by the CA is missing. The references submitted are not issued by competent authorities or authorized organizations, but by individuals, not meeting the established standards. Also, in the evidence of the System Analyst, it was found that an authorization was submitted instead of an employment contract, which does not meet the formal requirement of the CA for a valid employment agreement for the project.

Senior Software Developers: The evidence submitted for Donika Bajrami and Veton Shala in the position of Senior Software Developer meets some of the requirements of the CA, such as academic qualification and time experience are met. Veton Shala has submitted a reference for experience in FrameSolution technology from COMPUTAS, as required by the CA, while Donika Bajrami has not submitted similar evidence. However, the reference submitted by Veton Shala does not contain specific and sufficient details about his role and the use of this technology and is incomplete, without a signature. The complainant has raised doubts about its authenticity, based on references issued by COMPUTAS for Tomor Pupovci, staff of NOVUS SHPK. The review expert, based on previous decisions of the Procurement Review Body (PRB), explains that this institution has a limited role in reviewing claims for authenticity, due to the lack of technical and professional capacities to verify the authenticity of documents.

MS SQL Server Certificate: The evidence submitted for the required MS SQL Server certificates by the awarded EO partially meets the requirements of the CA. The documentation submitted shows the completion of several SQL Server training courses, but evidence of a valid professional certificate issued by Microsoft, as specifically requested in the tender documentation, is missing. The requested certificates, including “MS SQL Server - Database Development” and “Designing, Optimizing, and Maintaining a Database Administrative Solution for MS SQL Server”, are not valid in the form submitted.

3. TECHNICAL SPECIFICATIONS

NOVUS LLC in its complaint to the PRB has also addressed issues related to the technical specifications and criteria set out by the Contracting Authority (CA) in the Tender Data Sheet (TDS).

The complainant argues that these specifications are unnecessary, excessive and outdated, limiting competition and favouring certain economic operators, contrary to the provisions of the Public Procurement Law (PPL). NOVUS stresses that the technical criteria for staff positions, such as System Analyst and Software Developer, are overly worded and do not reflect the real needs of the project. For example, the requirement for staff qualification in .NET was seen as unnecessary when equivalent experience could fulfil the project objectives.

For the two Senior Software Developers, the complainant has proposed that the certificates be replaced with alternatives such as Azure Developer Associate, considering that the MS SQL Server - Database Administrator certificate has not been active since 2021. The CA has rejected this without providing clear justification. The review expert, after analyzing the entire tender documentation, emphasizes that the determination of the evaluation criteria and technical specifications is the responsibility of the Contracting Authority, but these criteria must respect the principles of transparency, non-discrimination and equal treatment. Referring to Article 52.4 of the LPP, the establishment of criteria must not create an unfair advantage or restrict competition. From the above data it is noted that the claims of NOVUS SH.P.K. have a legal and technical basis. This is due to the fact that the CA's requirements for certificates, the MS SQL Server - Database Administrator Certificate which has not been offered since 2021 and the

certification required for the Database Administrator, which has not been offered since 2015, are outdated and limited requirements, not reflecting the current market reality and technological developments and creating an unfair advantage. The rejection of the alternatives proposed by NOVUS is contrary to the principles of transparency and equal treatment, as these alternatives are logical and meet the objectives of the project. Furthermore, Article 28 of the LPP prohibits the drafting of specifications that favor or discriminate against economic operators, while Regulation No. 001/2022 and Guideline No. 001/2023 emphasize that specifications must allow for the widest possible participation of economic operators.

As for the complaint claim that the requirement for qualification in .NET for the position of System Analyst, the review expert explains that the combination of professional experience and specific qualification in .NET will affect more genuine competition. However, these requirements should be determined on the basis of the importance of the project. 4. FINAL RECOMMENDATION OF THE REVIEW EXPERT Based on the detailed review of the tender procedure, the review expert finds that the bid evaluation process was not conducted in full compliance with legal requirements, including violations of Articles 59 and 60 of the LPP. The deficiencies identified in the documentation of the awarded Economic Operator (EO), including certificates and references of the staff engaged in the project, which are included in the submitted CVs, are irreparable and violate the integrity of the procedure. In accordance with Article 10.1 of the Guidelines No. 001/2023 on Public Procurement, the submitted CVs constitute an unchangeable part of the bid and cannot be supplemented or clarified after its submission. As regards the references to the contracts mentioned outside the CVs, the CA may request additional clarifications, but even if these clarifications are provided, the overall situation does not change, as the deficiencies in the CV documentation and certificates remain unfilled and irreparable.

The review expert also emphasizes that the evaluation criteria and technical specifications, although the responsibility of the Contracting Authority, should be drafted in a more realistic manner and reflect current technological developments. This will ensure a more inclusive process and in accordance with legal requirements, avoiding any form of discrimination or unequal treatment. Finally, given the identified shortcomings and in order to guarantee a fair and transparent process, the review expert recommends the cancellation of the current procurement procedure and its revision in accordance with the provisions of the Law on Public Procurement.

Findings of the Review Panel -

The Review Panel, after evaluating and administering the evidence according to the submitted complaint, clarifies that the findings in the review expert's report for this case are not sustainable. Consequently, the Review Panel regarding the claims of the complaining economic operator has not granted the review expert confidence regarding the claims of the complaining economic operator.

It is worth emphasizing the fact that for the Review Panel, the findings and recommendations of the review experts are not mandatory, but serve only as evidence among all other evidence that it evaluates in each case separately. The Review Panel decides independently, objectively and with due professional care, always protecting the public interest through the LPP and the secondary legislation in force for public procurement.

The review panel has independently and objectively, with due diligence and professional care, evaluated all the evidence in the case and considers that the Contracting Authority, during the examination, evaluation and comparison of the bids, has acted in accordance with the applicable LPP.

The Review Panel, after reviewing and analyzing all the documentation on the procurement platform, the complaint claims, and the responses provided by the experts of the case, considers that the expertise report does not contain a priori 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 the procurement documentation, if necessary to request additional clarifications from each party or even to interview the same for all complaint claims, and to provide the panel and all parties with an independent and professional assessment of the procurement activity and to ascertain the real and factual situation of the complaining claims.

From the evidence presented and the course of this procurement activity, it is concluded that the complaint submitted to the Procurement Review Body on 19/12/2024 by EO “NOVUS” SH.P.K.-Prishtina for the procurement activity entitled: “Development and maintenance of the Food Control and Traceability Management System (FCMS)” with procurement number “40800-24-9255-2-1-1”, initiated by the “VETERINARY AND FOOD AGENCY”, is dismissed as inadmissible because the same was not submitted in accordance with Article 108/A of the LPP and Article 60 par.1, point a) of the Public Procurement Regulation. As well as acting on the basis of the fundamental principles of procurement review procedures, which, among other things, are specifically sanctioned by the provision of Article 104 of the LPP and at the same time analyzing the documents of this case in relation to the facts and circumstances described above and the course of the procedure. As can be understood from the content of the complaint, a priori the complaint claims do not consist in the fact whether the economic interest of the Complainant has been attacked or not. Therefore, the Complainant cannot have the status of an interested party within the meaning of paragraph 1.26, Article 4 (Definitions), of the LPP, according to which an interested party is a person who can prove a material interest in the outcome of the procurement activity, because the complaining EO is considered a party without interest under 4.1.26 of the LPP and Article 111 of the LPP, because the complaining EO, in its complaint, requests the cancellation of the contract award notice. but not for the case to be returned for re-evaluation because, referring to the standard letters, this complaining EO is eliminated for not fulfilling the requirements of the Tender Dossier, in which case the complainant does not provide any evidence and arguments that these requirements of the Tender Dossier are fulfilled, but the same, although he has applied and has submitted his bid and since

he has not been selected as the winner, invokes that the CA has established discriminatory criteria and specifications, which means that he accepts that he has not fulfilled them because as such these requirements of the Tender Dossier are restrictive and have undermined competition. Consequently, the review panel finds that the complainant did not submit any complaint to the PRB before the bidding phase, he has accepted them and has offered a bid for them, This is also confirmed by the Bid Submission Form, where through this form he has declared that he has checked and accepts all the conditions of the tender and submits his financial bid. In fact, this Form, according to Article 17.7 of Regulation No. 001/2022 on Public Procurement, is the main part of the bid.

In the context of the explanations above, the Panel also applied Article 103 of the LPP, according to which, “The provisions of this part determine the fundamental and procedural rights and legal remedies available to interested parties as this term (“interested party”) is defined in Article 4 of this Law”. The meaning of this provision clearly confirms the opinion of this Panel that legal remedies can be put into motion only by interested parties, referring in this case precisely to the definition given 15 in Article 4 of the LPP.

Therefore, the complaining economic operator has failed to prove a material interest in this procurement activity result. Therefore, the review panel sees the complaining economic operator for this procurement activity as a party without a material legal interest, in accordance with Article 4, paragraph 1.26 of the LPP, which cites: “Interested party - a person who can prove a material interest in the result of the procurement activity implemented by the contracting authority in relation to a specific public contract or design contest, including any person who has been or may be at risk of harm from an alleged violation.”

The Review Panel bases this decision also on Article 31, paragraph 2 of the Rules of Procedure of the Procurement Review Body no. 83/20, and in consistency with decision 2023/0639, 2024/0578, 2024/0487

The review panel is obliged to take into consideration the principle fact that the tender offered by the complaining EO according to the CA is eliminated in the process of examination, evaluation and comparison of tenders, officially notified by the CA by means of a standard letter to the eliminated tenderer and by means of the complaint claims presented in his complaint, does not defend his elimination due to the unfulfilled requirements of the Tender Dossier. For these similar cases, the PRB on 09.02.2023, has published on its website a notice for EOs on how they will be treated in case these principles are not respected and they cannot then have the status of an interested party.

The Review Panel will not issue findings on the complaint claims but will briefly, for the sake of correctness, reflect the real and factual situation regarding the progress of this procurement activity and the complaint claims presented in the complaint.

Whereas, in this case, the review expert has issued an expertise report without being based on any real and factual findings, not even taking into account the documents of the contracting authority, where the CA AVU, on the occasion of the publication of this expertise report, has given his/her opinion on date 06.01.2025 on the electronic public procurement platform, strongly

opposing this report and presenting the facts and arguments contradicting the expertise. Likewise, the EO recommended for contract as an interested party in this procedure has reacted via email, presenting all the facts and arguments regarding the complaining claims.

Regarding the complaint regarding contracts and references, the CA reacted, quote: *“The Contracting Authority, during the review of the bid of the Economic Operator recommended for the award of the contract, has carefully and in detail analyzed all the documents submitted, including the list of completed contracts, contracts, acceptance reports, references and any other document submitted. Based on the requirements of Technical and Professional Capacity set out in the Public Procurement Law (PPL), it has been confirmed that the total value of the services provided by the operator meets the minimum requirement of 450,000.00 Euro, indicating the appropriate financial and technical capacity to perform the contract. The contracts presented include similar services in the field of software systems and applications development, thus also meeting the specific tender requirements for relevant and proven experience in the requested sector. - All the following Contracts, with references, are of a software application nature (Not Hardware or other nature of work)”. The Review Panel clarifies that for this reaction the CA has also provided the list of contracts underlined in yellow for which they have been acceptable with all evidence and all have a start and end date of the works, and it can be easily noticed based on the title of the contract that they are of a software nature. Likewise, the EO recommended in its explanation has all the documentation for these contracts where it confirms that it possesses all the documentation that proves that the contracts have been implemented, have been received on time in accordance with the request of the Tender Dossier.*

The complainant in his complaint also submitted complaints regarding the staff of the EO recommended for the contract. Regarding the project manager, it is seen that the review expert has mistakenly referred to the requirement of the Tender Dossier which states that “..his experience as a Project Manager does not reach the required level of 7 years and no clear reference for similar projects has been proven. His contract also describes him as a Software Developer and not a Project Manager..”, so based on this claim it is seen that the Review Expert does not refer to the requirement of the tender dossier, which requires that the Project Manager have a minimum of 7 years of work experience after graduation, but not this 7 years of experience as a project manager, even though based on Mr. Kushtrim Cernobregu is seen to have 7 years and 2 months of experience as a project manager, as presented in his CV: • “Litera, from April 2020” (4 years and 6 months), • “GDS, Sept 2018 - July 2019” - (10 months), • “PECB, June 2017 - Sept 2018” (1 year and 2 months), • PECB, Sept 2016 - June 2017” (9 months) Kushtrim Cernobregu has the contract as Project Manager for this project - proven by the contract which is attached to the bid. So the CA which clarifies that Kushtrim Cernobregu fully meets the requirements of the Tender Dossier set by the Contracting Authority: He is qualified with a bachelor's degree - proven by a copy of the diploma, He has over 7 years of work experience after graduation - proven by a CV that he has over 7 years of work experience. Has a valid contract with the employer for this project - proven by a copy of the contract, Is qualified with a Project Management Professional (PMP) certificate - proven by a valid copy of the certificate. Has a project manager reference - proven by a reference.

Regarding the Software Architect for whom the review expert has stated that an authorization has been attached instead of a work contract, it is clearly seen here that the review expert has not reviewed all the documentation because the offer of the EO recommended for contract also contains the registration certificate which evidences that Lirim Sylejmani is also the owner of this business, therefore, the CA has rightly reacted by stating that the architect has a valid agreement for this project - it has been confirmed through his statement that he has been appointed as a System Analyst for this project. Based on his CV, he is currently employed in the Economic Operator recommended by the evaluation commission at the FVA, and also the owner of the company TRETEK Sh.P.K., as confirmed by the ARBK register. Based on his signed declaration, which contains the full details of the procurement activity, including the title and number of the procurement activity for this project, he has signed and accepted any obligations and responsibilities arising from this process, including, but not limited to, the responsibilities related to the evaluation, review and recommendation of the respective candidacies for the execution of the contract in question. This commitment contains all legal and professional responsibilities related to this activity and the tendering process.

Based on the clear purpose and objective set out in the request for the Tender Dossier, which is to secure the engagement of a qualified professional in the field of software architecture, the Review Panel assesses that the contracting authority has decided to require and ensure that the selected EO has secured the services of a Software Architect with appropriate experience and qualifications, as set out in the tender documents.

In this context, and in accordance with this specific request and clear objective, the EO (Economic Operator) recommended for signing the contract fulfills these conditions and requirements in the most complete and professional manner, and even more so when these services are provided by the architect who is himself the owner of the EO recommended for the contract, who has the necessary skills and qualifications to manage the project in accordance with the technical and professional requirements defined by the contracting authority. This represents the main reason to consider the recommended EO as the most suitable for this activity, which will be carried out in accordance with the standards and requirements included in the tender dossier.

Regarding the System Analyst, the CA clarifies that this analyst is qualified with a master's degree - proven by a copy of the diploma, has over 7 years of work experience after graduation as evidenced by his CV which provides a list of professional projects implemented in .NET (in C#). There is a valid agreement for this project, confirmed by his statement that he was appointed as a System Analyst for this project. Based on the CV, he is currently employed by the Economic Operator recommended by the evaluation committee at the FVA, and also the owner of the company TRETEK Sh.P.K., as confirmed by the ARBK register. He is qualified with certificates in .NET - proven by valid copies of certificates issued by Microsoft. There are references to projects implemented in the field of Food Safety - proven by two valid references. The Review Panel, as well as for the Software Architect, the situation is the same and in accordance with this specific request and clear objective, the EO (Economic Operator) recommended for signing the contract fulfills these conditions and requirements in the most

complete and professional manner, and even more so when these services are provided by the System Analyst who is himself the owner of the EO recommended for the contract, who has the necessary skills and qualifications to manage the project in accordance with the technical and professional requirements defined by the contracting authority. This represents the main reason to consider the recommended EO as the most suitable for this activity, which will be carried out in accordance with the standards and requirements included in the tender dossier.

Regarding Two (2) Senior Developers V.SH and D.B., based on the documentation presented in the offer of the EO recommended for contract, it can be noted that they are qualified with a bachelor's degree proven by copies of the diploma, who have work experience of over 5 years after graduation and is proven in their CVs, have a valid contract with the employer for this project and is proven by copies of the contracts, and are qualified in .NET with the title "Microsoft Certified Professional" and in MS SQL Server with the title MS SQL Server - Implementation and Maintenance and MS SQL Server - Database Administrator - are proven by valid copies of certificates issued by Microsoft Whereas, at least one of the developers has experience with FrameSolution technology (evidence) - it has been proven with a valid reference that V.Sh. has experience in FrameSolution. For this, the CA has provided and the Contracting Authority has declared that it is reliable, since it came from officials of the company Computas - which is the author of the FrameSolution platform, this evidence provided by the CA is also in the offer of the EO recommended for the contract for as long as the PRB or any other body cannot argue the opposite of what the CA has declared, then I cannot eliminate an EO who has provided documentation and in the reference all the details that show that V. Sh. has worked on the project 'Computas-led Case Management Information System (CMIS)' by precisely mentioning the FrameSolutions technology and by setting every contact detail, such as email, phone number, address, etc. and even more so when the review expert does not at all make such a finding and if he does not have professional capacity in his field, then at least request the engagement of a technical expert in this field. The review expert does not do this action but only describes the complaints and mentions PRB decisions in which he does not set either their number or date. The PSH considers that the CA, whenever it doubts the authenticity of any document, has the full authority to act in accordance with Article 52.7 of the LPP, to conduct an effective control. Regarding the MS SQL Certificates, even in this case the review expert considers that "The requested certificates, including "MS SQL Server - Database Development" and "Designing, Optimizing, and Maintaining a Database Administrative Solution for MS SQL Server", are not valid in the form presented". Who does not at all dare to justify and argue the reason why they are not valid in the form presented and has not at all requested that these claims, which are of a technical nature, be supported by a technical expert, while the CA makes a strong objection by stating that Staff A. A. presented for the position of Database Administrator, possesses the required certifications, not only these required, but also other additional ones for database administrators, such as: MS SQL Server - Implementation and Maintenance MS SQL Server- Database Development, Designing, Optimizing, and Maintaining a Database Administrative Solution for MS SQL Server, Maintaining a Microsoft SQL Server Database, Implementing a Microsoft SQL Server Database , Writing Queries using SQL Server Transact-

SQL. These evidences are also provided in the Tender Dossier and the PSH in the absence of evidence and facts has no other way to act except to support this assessment of the CA and considers that the CA whenever it doubts the authenticity of any document has full authority to act in accordance with Article 52.7 of the LPP, to conduct an effective control.

While regarding the complaint claims regarding the technical specifications, it should be noted that the legislator in Article 108/A of the LPP has foreseen that complaints can be submitted in two cases, against the notification of the contract, which means in the pre-bidding phase and the other case after the notification of the contract award. In the pre-bidding phase, if any interested party has an interest in participating in a procurement activity and considers that the requirements set are not relevant and are discriminatory, as well as the technical specifications are not in accordance with Article 28 and the drafting of the tender dossier is not in accordance with Article 27 of the LPP, then it can submit a request for re-examination to the CA/PRB, whereas, in this case, the complaint is submitted at the contract award phase, and the complaint claims should be about the irresponsibility of the EO recommended for the contract, while the review expert is released in their review without the assistance of a technical expert, which in fact was not his duty and responsibility because at this stage the complainant has accepted all the requirements of the Tender Dossier when submitting his bid in this procurement activity.

As a result, the review panel finds that the complainant did not submit any complaints to the PRB before the bidding phase, for the same he has accepted them and for the same he has offered a bid, This is also confirmed by the Bid Submission Form, where through this form he has declared that he has checked and accepts all the conditions of the tender and submits his financial bid. In fact, this Form according to Article 17.7 of Regulation No. 001/2022 on Public Procurement is the main part of the bid. Furthermore, the CA in their objection stated that: *The technical specifications formulated by the Contracting Authority are structured in full compliance with the relevant provisions of the Public Procurement Law (PPL), with particular reference to Article 69, paragraph 4. These specifications are designed to ensure that the staff assigned to the implementation of the project have the essential skills and qualifications for the efficient management and successful execution of the tasks of high complexity that the project requires. The Contracting Authority guarantees and is committed to ensuring that all technical criteria established are fair, equitable and transparent for all bidders participating in the tendering process. This commitment reflects and guarantees a rigorous application of the principles of equality and competition, based on the factual and real needs of the project for determining the requirements for certifications and experience in specific technologies, and not simply arbitrary criteria that may favor a particular provider to the detriment of fair competition. As for the required certifications, referred to by the Review Expert as 'outdated', the 'Food Control and Traceability Management System (FCMS)' project was developed several years ago and is built on those technologies, therefore the requirements for such certifications for these technologies are entirely reasonable. These certifications are essential to ensure that the selected staff has the necessary expertise to manage and optimize the existing system effectively. Ultimately, these specifications are not only compliant with legal requirements, but are also critical to the success of the project, ensuring that the personnel engaged have the*

necessary skills and knowledge to face any challenges that will arise during the implementation of the project.

The Review Panel in this case assesses that based on this evidence of the contracting authority but also on the evidence provided by the EO recommended for the contract via email, it considers that the selection of the EO recommended for the contract is the responsibility of the CA which, based on Article 59 of the LPP.

Therefore, the Review Panel, after administering and evaluating the evidence, fully ascertaining the factual situation, relying on the LPP as the applicable substantive law, after reviewing the complaint claims, taking into account all the case files and the CA's response to the expertise report, assesses that the Economic Operator's complaint should be dismissed as inadmissible.

The Review Panel assesses that the CA, based on Articles 59 and 60 of the LPP, has recommended the EO with the cheapest responsive bid, a decision which was issued by an evaluation commission which is supposed to be professional in accordance with Article 59, paragraph 1 of the LPP, which states: "All members of the Evaluation Commission take full individual responsibility for the evaluation of the bid", then the panel assesses that the selection of the EO recommended for the contract is also the responsibility of the CA.

The Review Panel emphasizes that each contracting authority (at central and local level) enjoys autonomy in the procurement project (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 has the right to decide also on the EO recommended for the award of contracts, as in Article 24, paragraph 2 of the LPP cited "The contracting authority is responsible for ensuring that all procurement activities of the authority for these contracts are executed in full compliance with this law".

Conclusion –

Based on the competences of the PRB provided for in Article 105, in conjunction with Article 106 of the LPP, the Review Panel applied, among others, Article 103 of the cited Law, according to which all interested parties shall have equal access to procurement review procedures and legal remedies and that no decision of the PRB shall be taken or made in a manner that discriminates in favor or detriment of a participant in the procedure or another person or enterprise.

The Panel clarifies that in addition to Articles 1, 7, 27, 28 and 59 of the Law on Public Procurement, it is important to emphasize that all bidders are aware of the application process and submission of documentation in accordance with the tender dossier and the contract notice. They have sufficient experience in this field and are continuous participants in tenders published in the Republic of Kosovo, contributing to a fair and equitable application for all.

This ensures a fair and equal competition for all bidders and avoids the impact on the prolongation of procurement procedures, with "requests for continuous clarifications from bidders" for the documentation that they constantly process for applications in their bids. Therefore, the panel clarifies that in this case the responsibility falls on the bidder, who tenders

to win. Because it is evident and known to everyone, that in every case of contract notice, each bidder who does not possess “adequate equipment” or “requirements that may be discriminatory or unclear”, should, in the preliminary phase (before bidding), object to the same or, if necessary, ask questions or request clarifications from the CA. In this context, even according to the independent judgment of this panel, neither the CA nor the EO should invoke sub-legal provisions to request additional clarifications for the bidders' documentation in every case, since as explained above, all bidders are aware of the obligations and procedures for applying in tenders.

The complainant's request for completion of documentation should not be seen as a valid reason to interfere in the procurement process in an insufficiently reasonable manner and by interfering in the work of the CA without any evidence and jeopardizing both the fulfillment of the needs of the CA and the implementation of the contract. Each and especially the contracting authority must ensure that procurement procedures remain efficient and fulfill their purpose of ensuring public contracts in a regular and fair manner for all interested parties.

In fact, the purpose of this procurement activity also refers to Article 104 paragraph 4 of the LPP, according to which in taking the measures set out in this Part IX, the PRB must (i) act as expeditiously as possible, act in a manner proportionate to the alleged violation or the matter complained of and take into account the potential consequences of the actions or measures on all interests that may be harmed, including the public interest.

The PRB always starts from the fact that each CA (at every level) enjoys full independence in the exercise of its competences and the determination of needs in harmony with the budgetary capacity. Therefore, based on the above and carefully administering all the evidence attached to the documents of this case, the Review Panel has decided as in the provision of this decision, convinced that it has applied the appropriate solution in accordance with the legislation in force and the nature of the issue in the concrete case, considering it also fair and reasonable to allow the funds deposited on behalf of the appeal fee, including the economic operators who have been proven by access to the documents.

Based on the above, the Review Panel decided as in the provision of this decision, in accordance with Article 117 of the LPP. For point III of the decision, it was decided based on Article 31 paragraph 6 of the Rules of Procedure of the PRB.

President of the Review Panel

Mr. Vedat Poterqoi

Legal advice:

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

Decision to be submitted to:

1x1 CA – **VETERINARY AND FOOD AGENCY;**

1x1EO–“ **NOVUS” SH.P.K”;**

1x1 Archive of the PRB;