



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

Psh. No.1043/23

The Review Panel, appointed by the President of PRB, based on Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova (Law no. 04/L-042, supplemented and amended by Law 04/L-237, Law 05/L-068, supplemented and Law 05/L-092) in the composition of Vedat Poterqoi - President, Isa Hasani and Vjosa Gradinaj Mexhuani - Members, deciding according to the complaint of (EO) “S.I.G.” Sh.P.K., against the Decision on contract award or a design competition of “Kosova Energy Corporation” sh.a. in the capacity of the Contracting Authority (CA) related to the procurement activity “Physical security of KEK facilities” with procurement number KEK-23-4552-2-1-1, on the 12/03/2024 has issued this:

DECISION

1. **Approved**, as partly grounded the complaint of the EO “S.I.G.” Sh.P.K”, with no.1043/2023 of the 22/12/2023, while the decision of CA " Kosova Energy Corporation” sh.a related to the procurement activity "Physical security of KEK facilities" with no. of procurement: KEK-23-4552-2-1-1.
2. **Cancelled** the contract award notice related to the procurement activity “Physical security of KEK facilities" with procurement no: KEK-23-4552-2-1-1, initiated by the contracting authority (CA) – “Kosova Energy Corporation” sh.a, and the matter is returned to **Re-evaluation**.
3. Within a period of 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 of Kosova.
4. Since the complaint of the complaining economic operator is approved as partly grounded, the same fee paid when submitting the complaint is returned to him. The complaining economic operator is required to, in accordance with Article 33 point 6 of the PRB's work regulations, within sixty (60) days make a request for the return of the complaint insurance, otherwise the

deposit will be confiscated and these funds will be transferred to The budget of the Republic of Kosovo.

REASONING

- Procedural facts and circumstances –

On the 19.05.2023, “Kosova Energy Corporation” sh.a in the capacity of the Contracting Authority has published the Contract Notice B05 related to the procurement activity with "Physical security of KEK facilities" with procurement no: KEK-23-4552-2-1-1. While on 07.12.2023, B58 published the Notice on the decision of the Contracting Authority where it awarded with a contract the EO "Defence Security & International Security AHH SHPK.

This procurement activity was developed through an open procedure with the type of service contract and with an estimated contract value of 2,780,159.38 €.

On the 11.12.2023, EO "S.I.G." Sh.P.K., has submitted a request for reconsideration against the aforementioned decision of the CA. On 14.12.2023, the Contracting Authority rejected the request for reconsideration as ungrounded.

On the 22.12.2023, PRB received the complaint from EO "S.I.G." SH.P.K., with no. 1043/23 regarding the activity "Physical security of KEK facilities" with procurement no: KEK-23-4552-2-1-1.

- On the stage of preliminary review-

The Review Panel has concluded that the complaint contains all the elements defined through Article 111 of the LPP and as such was submitted within the legal term in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for resolving disputes in the sense of Article 108/A of the LPP, from the economic operator who is an interested party according to article 4 paragraph 1 sub-paragraph 26 of the LPP. In this way, the Review Panel has concluded that it is competent to review this complaint according to Article 105 of the LPP and there is no procedural obstacle to proceed with reviewing the complaint in a meritorious manner.

Claims of the complaining economic operator "S.I.G." Sh.P.K., are presented as follows:

Dissatisfied with the announcement on the decision of the CA "Kosova Energy Corporation" dated 07.12.2023 regarding the procurement activity "Physical security of KEK facilities" with no. KEK-23-4552-2-1-1 within the legal deadline in accordance with Article 109 of the Law on Public Procurement, we exercise this "Complaint":

Because the CA: Kosova Energy Corporation - Illegally recommended for a contract for the procurement activity with the above data an EO which has not met all the requirements of the CA established in the Contract Notice and the Dossier the tender also described the substantive rules in Annex 1 to the mandatory technical specifications.

It has not strictly implemented the decision of PRB with no. 593-597-594-23 dated 16.11.2023 that during the process of re-evaluation of offers to act on the basis of Article 59 and Article 72 of the LPP.

We clarify in detail: On 19.05.2023, the Contract Notice and the tender file were published on the E-procurement platform, giving sufficient details in Annex 1 - Mandatory technical specifications, where all economic operators are obliged to, during the drafting of The Financial Analysis regarding the price, to fully respect the current laws regarding the working hours and other rules related to the Labor Law, among other things, it has also mentioned the one for the workers. These requirements have been mandatory for all EOs.

On the other hand, on the 07.12.2023, the Contracting Authority publishes the notice on the decision of the CA where as a result it recommends for the contract award the EO "Defence Security & International Security AAH" Sh.p.k., after the re-evaluation of the offers, and that this company is not responsible based on the requirements stated by the Contracting Authority in the tender dossier, since the non-responsibility of this EO has also been filtered by the PRB Review Panel because the same price for the same of workers.

Fifth finding (V): The review expert regarding the claim of the complaining EO regarding the analysis of the EO "Defence Security" SHPC clarifies that, the complaining EO in the complaint has attached a testimony regarding the analysis, but in this case I think there is interference from 2 euros The complaining EO (you) has decided 1 euro, and as for the calculation, in the analysis it can be seen in point 4. For holidays 7,500 euros, but the CA during the reassessment process must clarify the analysis once again, and as such the claim is partially grounded.

The Contracting Authority did not consider this finding of the RP, since during the Reevaluation it did not clarify the analysis of the EO recommended for the "Defence Security & International Security AAH" contract.

The tendentious and wrong elimination of our company: Even in the preliminary decision of the PRB with no. 597-23 dated 16.11.2023, the Review Panel, even on the basis of the expertise carried out, supported the irregularity of the CA when it did the elimination of our company in connection with the reasoning that we do not fulfill the request with no. 3 regarding the patrol cars, even though we have provided sufficient evidence and have attached all the necessary documents.

The Review Panel in the issued decision obliges the CA to act in harmony with Article 72 of the LPP during the Revaluation of the offers and must act on the basis of their findings, which during this process the CA did not request any clarification regarding our offer, respectively regarding the patrol cars, which their justification for elimination is not based because the agreements with the companies that the cars can be used by us as a company for this procurement activity and that nowhere is it stated that a such a thing cannot happen, but the opposite of the reason for the elimination is found in the submitted agreements where such a thing is allowed by the company with which we have an agreement.

Access to public documents has been allowed to us partially since the documents classified as business secrets by the EO recommended for the contract have not been allowed to us and the CA has not respected the legal provisions of Article 7 (equal and non-discriminatory treatment), Article 10 (means for promoting transparency) and Article 11 (business secret information) of the LPP, because the CA did not provide us with the cleaned version of the documents which the EO has classified as a business secret, which has made it impossible for us to notice if the EO recommended for the contract possesses all other documents required according to the tender file and contract notice.

The operator recommended for the contract, we clarify that if we are based on your obligation to implement the Labor Law and other related rules as well as secondary legislation such as: the administrative instructions of the Ministry of Education and Culture regarding working hours, the decisions of the Government in regarding the minimum wages, we consider that this economic operator should not have been recommended for a contract, since with the offered price, he cannot under any circumstances implement the mandatory work of a worker of 176 working hours, nor pay wages and pension contributions to state bodies, and with the manipulative price, I won't be able to pay the other allowances (work at night, weekends, holidays) or give the employees annual paid leave, since with this price, not only will the workers be harmed, but also the state budget because it will not be possible to implement the contract according to the conditions set by you in the tender dossier (annex 1 - mandatory technical specifications).

You, as a Contracting Authority, are also violating the rights of workers since they are being underestimated and are being described as the lowest category with low wages, you must have the right to be given dignified wages and not to recommend an economic operator that they can't even give you good wages, and this is clearly affecting their performance and vigilance during work, so the economic operator will not be able to offer quality and professional services.

Also, as a Contracting Authority, they are in violation of the legal provisions of Article 17.31 of Regulation No. 001/2022 on Public Procurement, which states: "Offers from bidders who have not taken into account the obligations of the provisions of the protection of workers and the working conditions of identified by the contracting authority in the contract documents cannot be considered as complying with the contract documents. Furthermore, when bidders do not sufficiently take into account these obligations in their tenders, their tenders can be considered as abnormal low and may be rejected for this reason"

Also, Article 17.32 of Regulation No. 001/2022 states: "In the event that the price offered by the Bidder does not cover the minimum wages of the employees who will be included in the execution of the contract, regulated by the Ministries in different sectors, the offer may be considered an abnormally low offer. When determining the minimum wages and the wages to be paid to employees, Contracting Authorities and Bidders must respect the required minimum wages and the relevant taxes and social contributions published in the relevant sectors. The contracting authority may request information regarding the relevant minimum wages applicable by the Economic Operator during the evaluation of the justifications submitted by the Economic Operators".

Therefore, taking into account these legal provisions, the Contracting Authority has not precisely implemented the legal provisions of Article 7 of the LPP, as it has not treated all bidders equally, and has used double standards when evaluating bids. therefore, we consider that he did not act in accordance with Article 59.4 of the LPP, therefore the mandatory requirements in the tender file are not taken into account by the Contracting Authority itself, recommending for the contract an economic operator who cannot even come close to meeting the requirements of the tender file the tender.

However, with the offered price of the recommended EO, all these expenses cannot be covered even for the near future, let alone their implementation, especially in the cases with the offered price.

Article 56 of Labor Law No. 03/L-212 provides for additional payments of 30% and 50% for hours at night, weekends and holidays, where even in the financial analysis of this company these provisions have not been implemented, and there is no including the recommended EO for the contract.

In the financial analysis provided by the operator recommended for the contract, it can be seen that "Pension contribution", "Withholding tax" and "Additional payments for hours at night, holidays and weekends" are not included. in the Financial Analysis in accordance with the tender dossier, these are also foreseen in Article 56 of the Labor Law No. 03/L-212.

After accessing the public documents of this operator recommended for the contract, we noticed that the same pos in the financial aspect turns out to be irresponsible in the administrative aspect as well.

In this procurement activity, the Contracting Authority did not consider Article 7 of the LPP (Equality in Treatment/Non-Discrimination) where the purpose of this article is for the Contracting Authority to treat economic operators equally and not in a discriminatory way and also to act transparently.

The Contracting Authority has used double standards since during the evaluation of the offers and the required financial analysis, on the one hand, it obliges the Economic Operators to comply with the legal provisions of the Labor Law and other rules, on the other hand, even though the financial analysis shows that they do not these legal provisions within the Labor Law have been respected (so not all elements are included), it considers the offer of the recommended operator for the contract as regular.

Therefore, based on all the findings and those mentioned above, we consider that the Contracting Authority did not perform the procurement activity Evaluation, comparison and examination of tenders in accordance with Article 59.4 of the LPP, in which case it did not respect the main requirement-criterion and that was the responsible tender with the lowest price according to Article 60 of the LPP.

Referring to claims as above "S.I.G." Sh.P.K., considers that the Contracting Authority has acted in violation of Article 1, Article 1, 7, 28, 59, 61, 69 of the LPP as well as the Provisions of Regulation No. 001/2022 on Public Procurement that are supposed to have been violated :

Article 17, 27 and Article 40. Proposing that our complaint be approved as well-founded and the notice on the CA's decision related to the procurement activity "Physical security of KEK facilities" with no. KEK-23-4552-2-1-1 initiated by the "Kosovo Energy Corporation", and the matter be returned to re-evaluation, and after the Re-evaluation of the offers, I will reward the company which is the only responsive offer with the lowest price.

CA's response to the request for reconsideration: "The complaining claims are unfounded since: the Contracting Authority KEK sh.a has evaluated, examined and compared the offers in accordance with the requirements of the tender file.

1. Your claim that the CA wants to ask for clarifications regarding the defacement of vehicles is unfounded because, as we have noted in the standard letter for elimination, the CA cannot ask for clarifications since it was clear to the CA and yes we clarify once again that: the vehicles are owned by the companies RENT MARA and RENT ELRONI with which you do not have a direct agreement for the rental of vehicles and which are not owned by you. The vehicles are owned by the companies RENT MARA and RENT ELRONI with which you do not have a direct agreement for the rental of vehicles. In the offer, you have presented an agreement with the company JAGUAR SECURITY SH.P.K, which then has an agreement for the rental of vehicles from the RENT MARA and RENT ELRONI companies. In the agreement between JAGUAR SECURITY SH.P.K. and the two companies for providing vehicle rental it is stated that JAGUAR SECURITY SH.P.K can use the vehicles for its needs but it is not stated that it can be used by other companies as in the case in question. You know JAGUAR SECURITY SH.P.K is not part of the consortium group with you.

2. Your claim that the EO recommended for the contract does not cover the costs is unfounded, since based on the analysis received by the EO recommended after the request for clarification from the CA during the evaluation phase of this activity, it is seen that the EO recommended for the contract has included all the costs according to the request of the CA which was a request for the costs that in the tender file their cost was fixed and the EO in the submitted analysis it can be seen that the costs in words are covered therefore the CA has proposed to reward the EO responsible with the lowest price. At the same time, from the PRBO's decision, a detail is noted that you intervened in the analysis of the recommended EO by changing the price of the item from 2 Euro to 1 Euro. in accordance with the request of the tender file (attached below, find the evidence).

3.As for your claim that the EO recommended for the contract did not calculate the holidays, it is unfounded, since in the response/analysis of the recommended EO, the cost of the holidays in the amount of 7,500 Euros has been clarified (attached below find the evidence.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 27.12.2023 has authorized the review expert to conduct the initial review of the file and claims according to complaint no. 1043/23, while on 05.01.2024 the review expert's report with no. 2023/1043 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 based, the contract award notice be canceled and recommends that the matter be returned for reassessment.

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

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

- Administration and evaluation of evidence -

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

Regarding the claims of EO "S.I.G." Sh.P.K., - review expert through report no. 2023/1043 assessed as follows:

Answer to the complaining claims of the complaining EO: "Procurement activity: "Physical security of KEK facilities" with no. of procurement: "KEK-23-4552-2-1-1", initiated by the Contracting Authority (CA) – Kosova Energy Corporation sh.a, started with the contract notice dated 19.05.2023, the opening of offers has been made dated 12.06.2023, notification B58-revaluation is published on 07.12.2023.

The recommended EO for the contract is "Defence Security & International Security AAH Shpk. while the complaining EO was declared eliminated with the reasoning: "Reason: your tender was rejected for this reason: You presented vehicles that are not in your ownership. The vehicles are owned by the companies RENTA MARA and RENT EURONI with which you do not have a direct agreement for the rental of vehicles, in the offer you presented an agreement with the company JAGUAR SECURITY LLC which then has an agreement for renting vehicles from RENT MARA and RENT ELRONT companies. In the agreement between JAGUAR SECURITY SH.P.K and the two companies for leasing vehicles, it is stated that JAGUAR SECURITY SH.P.K can use the vehicles for its needs, but it is not stated that it can be used by other companies, as in the case in question. At the same time, JAGUAR SECURITY LLC is not part of the consortium group with you.

The complaining EO claims in the complaint that the CA did not evaluate the offers in accordance with articles 1, 7, 28, 59, 61, 59 of the LPP as well as in accordance with articles 17, 27, 40 of the public procurement regulation no. 001/2022, did not implement in detail, the decision of RP 593-597-594/23 dated 16.11.2023 not evaluating the offers based on article 59 and 72 of the LPP.

Claims of the EO complaining against their elimination by the CA: "The elimination of our company is tendentious and wrong: Even in the preliminary decision of the PRB with no. 597-23 of 16.11.2023, the Review Panel also based on the expertise carried out has given support to the regulator of the CA when he eliminated our company on the grounds that we do not fulfill the request with no. 3 regarding the patrol cars, even though we have provided sufficient evidence and have attached all the documents necessary.

The Review Panel in the issued decision obliges the CA to act in harmony with Article 72 of the LPP during the Revaluation of the offers and must act on the basis of their findings, which during this process the CA did not request any clarification regarding our offer, respectively regarding the patrol cars, which their justification for elimination is not based because the agreements with the companies that the cars can be used by us as a company for this procurement activity and that nowhere is it stated that a such a thing cannot happen, but the opposite of the reason for the elimination is found in the submitted agreements where such a thing is allowed by the company with which we have an agreement.

The Review Expert, after examining the documents of the case, clarifies that, analyzing in E-procurement, the CA during the re-evaluation process did not ask for clarification from the complaining EO regarding the cars, which claim was also presented in the case with no. 597/23, where the CA in the first assessment eliminated the same one on the grounds that it only has two vehicles with documents for use, while the documentation that the members of the consortium have in use is missing for the others.

For which claim in the first expertise 597/23 and the PSH decision 593-597-597/23, we have recommended that they be clarified in the reassessment in accordance with article 72 of the LPP.

And after the reassessment, with decision B58 dated 07.12.2023, the complaining EO was eliminated on the grounds that: Reason: "Your tender was rejected for this reason: "you presented vehicles that are not in your ownership. The vehicles are owned by RENT companies MARA and RENT ELRONI with which you do not have a direct agreement for vehicle rental. In the offer, you have presented an agreement with the company JAGUAR SECURITY LLC, which then has an agreement for the rental of vehicles from RENT MARA and RENT ELRONI. In the agreement between JAGUAR SECURITY SH.P,K and two companies for renting vehicles, it is stated that JAGUAR SECURITY SH.P.K can use the vehicles for its needs, but it is not stated that it can be used by other companies, as in the case in words. Njeherit JAGUAR SECURITY SH.P.K is not part of the consortium group with you.

Further, as such during the re-evaluation process, CA did not clarify the same: Requests in TD: Requests on technical and/or professional opportunities 9.1&9.2: Item 3. Equipment - Patrol vehicles

3. Evidence that the tenderer owns no less than 4 (four) off-road patrol vehicles (4x4). To prove with copies of vehicle registration certificates (traffic permits). where in the decision it is clarified that in the reassessment, clarifications must be sought in accordance with Article 72 of the LPP, and as such the claim of the complaining EO is found to be grounded, due to the fact that the CA did not request clarifications.

The review panel after the administration and assessment of the evidence, the full ascertainment of the factual situation, relying on the LPP as the applicable material law, after reviewing the complaints, taking into account all the case documents and the recommendations of the review expert, has found that the notification of the CA for the award of the contract must be canceled and the evaluations of the reviewing expert regarding the fulfillment or not of the conditions described above and the complaint statements in this case constitute a sufficient basis for the procurement activity to be re-evaluated. The panel evaluates and supports the reasoning of the reviewing expert, according to his independent evaluation, it assesses that the claims of the complaining EOs "Defence Security", "Security Code" and "S.I.G" for not fulfilling the request for the tender dossier by the recommended EO is based on the fact that the recommended EO has attached the financial analysis, where it can be seen that he calculated the salary of the workers at the price of 1.13 euros, while the CA in TD requested that the salary should not be lower than 2 euros. The CA regarding this point of appeal has not given any justification in the answers to the requests for re-examination. This point of the tender file, precisely its failure to complete, makes the EO recommended by the CA irresponsible for awarding the contract. Consequently, the review panel in its independent evaluation considers that in the case of evaluation, examination and comparison of offers, the CA has ruled in violation of Article 59 of the LPP.

Furthermore, the review panel evaluates as grounded the findings of the review expert, regarding the claims of the economic operators, and clarifies that the CA should act in accordance with these findings/recommendations during the reassessment, and request additional clarifications in accordance with Article 72 of the LPP, according to these findings.

The claim of the complaining EO against the recommended EO: "On the other hand, on 07.12.2023, the Contracting Authority publishes the notice on the decision of the CA, where as a result it recommends for the award of the contract EO "Defence Security & International Security AAH" Sh.p.k. after the re-evaluation of the offers, and that this company is also not responsible based on the requirements stated by the Contracting Authority in the tender file, since the non-responsibility of this EO has also been filtered by the Review Panel of PRB because the same price for the workers' compensation. Fifth finding (V): The examining expert regarding the claim of the complaining EO regarding the analysis of the EO "Defence Security" SHPC clarifies that, the complaining EO in the complaint has attached a testimony regarding the analysis, but in this case I think there is interference from 2 euros The complaining EO (you) has decided 1 euro, and as for the calculation, in the analysis it can be seen in point 4. For holidays 7,500 euros, but the CA during the reassessment process must clarify the analysis once again, and as such the claim is partially based . The Contracting Authority did not consider this finding of the PSH, since during the Reevaluation it did not clarify the analysis of the EO recommended for the "Defence Security & International Security AAH" contract.

The review expert after analyzing the documents of the case in E-procurement, analyzing and comparing them also with the expertise report 597/23, we clarify that the claim in the complaint 597/23 was:

Answer to the fifth claim of the complaining EO against "Defence Security & International Security AHH SHPK." The fifth claim: in this economic operator, during the calculations I

made, it can be seen that they are not in accordance with the legal provisions of Labor Law no. 03/L-212, because the calculation of the unit price per working hour is not in accordance with Article 56 of the same since additional payments are foreseen such as working hours at night, during holidays, during custody as well as during weekends, for which this EO has avoided accurate calculation, in which case it has managed to mislead the Contracting Authority so that I do not reach assessment to make the correct calculation.

Where then comes the finding (V): "The review expert regarding the claim of the complaining EO regarding the analysis of the EO "Defence Security" SHPC clarifies that, the complaining EO in the complaint has attached a testimony regarding the analysis, but I think that there is interference from 2 euros, the complaining EO (you) has set 1 euro, and as for the calculation, in the analysis it can be seen in point 4. For holidays 7500 euros, but the CA during the reassessment process must clarify the analysis once again, and as such the claim is partially grounded.

This finding is due to the fact that in the financial analysis evidence in the first complaint, you have attached a financial analysis where the sum is 1 euro, but in E-procurement, the financial analysis of Defense Security has set the sum of 2 euro, that's why I have it clarified that you, as the complaining EO, have placed 1 euro (in evidence), and as for the recommendation regarding the clarification of the analysis, during the re-evaluation process the CA did not ask for clarification in accordance with the decision of the RP. No. 594-597-593/23 dt: 16.11.2023:

Furthermore, the review panel evaluates as well-founded the findings of the review expert, regarding the claims of the economic operators, and clarifies that the CA must act in accordance with these findings/recommendations during the reassessment, and request additional clarifications in accordance with Article 72 of the LPP according to these findings."

In conclusion, according to the clarifications above, regarding the reason for the elimination of the complaining EO, I consider that the CA should be clarified, while regarding the claim of the complaining EO regarding the financial analysis, the CA should respect the decision of RP 594-597-593 /23, clarifying all statements emphasized by the recommended EO. Therefore, as such, I recommend that the matter be reassessed.

According to the above, the reviewing expert handled the claims of the complaining economic operator "S.I.G." in a professional and objective manner. Sh.P.K., the argumentation in the review expert's report is quite detailed, comprehensible and fully based on the relevant documents that refer to the procurement activity. The findings in the expert's report can be confirmed through the tender file as well as the documents with which the tenderers have bid. Consequently, the Review Panel regarding the claims of the complaining economic operator has given full confidence to the expert's report. In this way, it was found that the claims of the complaining economic operator "S.I.G." Sh.P.K., are partially grounded.

- Findings of the Review Panel –

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 appeal claims, taking into account all the documents of the case and the recommendations of the review expert, has found that the complaint of the Economic Operator is approved as partially founded. Consequently, the Review Panel has decided regarding the procurement activity entitled "Physical security of KEK facilities" with no. of procurement: KEK-23-4552-2-1-1, cancel the contract award notice and return the matter to re-evaluation. The Review Panel, taking into account the above mentioned description and facts and after reviewing the case, the complaint of the complaining economic operator, concrete analysis and documentation of the case, the complaint of the operator, in this way it was found that for the procurement activity with "Physical security of facilities of KEK" with no. of procurement: KEK-23-4552-2-1-1 For which there was a decision issued by RP No. 593-597-597/23, where CA is obliged to request additional clarifications in accordance with Article 72 of the LPP.

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 in accordance with the legal provisions for public procurement and the requirements of the tender file related to the activity of "Physical security of KEK facilities" with no. of procurement: KEK-23-4552-2-1-1. The review panel assesses that the review expert handled the claims of the complaining economic operator "S.I.G." in a professional and objective manner. Sh.P.K., and that the argumentation in the expert's report is quite detailed, comprehensible and based entirely on the relevant documents that refer to the procurement activity. The findings in the expert's report can be confirmed through the tender file as well as the documents with which the tenderers have bid. Consequently, the Review Panel fully supports the review expert's report regarding the claims of the complaining economic operator. In this way, the review expert has found that the claims of the complaining economic operator "S.I.G." Sh.P.K., are partially based and are dealt with the preliminary decision of the PRB for which the CA has not fully implemented, when it is well known that the decisions of the PRB are enforceable until they are challenged in any court according to the advice given legal and there is no decision from the court that the decision should be suspended.

The review expert emphasizes that the claims are the same and are dealt with by the RP decision. No. 594-597-593/23 dt: 16.11.2023. In conclusion, according to the clarifications above, regarding the reason for the elimination of the complaining EO, I consider that the CA should be clarified, while regarding the claim of the complaining EO regarding the financial analysis of the recommended EO for the contract, the CA should respect the decision of PSH 594-597-593/23, clarifying all statements emphasized by the recommended EO. Therefore, as such, I recommend that the matter be reassessed. The review panel assesses that the review expert has elaborated in sufficient detail the first time but also now and supports the reasonableness of the review expert that the matter be re-evaluated and the preliminary decisions for this procurement activity are respected and clarifications are requested in accordance with the article 59 and 72 of the LPP.

Otherwise, non-compliance with the decisions of PRB and not exhausting all the means available to the CA can be examined for a fair and impartial assessment, then it can be implied that the CA purposely prolongs the procurement procedure, which then results in with the conclusion of contracts through the negotiated procedure without publication of the contract notice

Based on the above, 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 constitute a sufficient basis for the procurement activity to be re-evaluated.

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. Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations, which may appear during a procurement activity.

For point I of the decision, it was decided based on article 117 of the LPP in relation to article 29 and paragraph 31 of the PRB Work Regulations.

For point II of the decision, it was decided based on article 131 of the LPP in relation to article 29 paragraph 3 of the PRB Work Regulations.

For point IV of the decision, it was decided based on article 31, paragraph 4 and paragraph 6 of the Rules of Procedure of the PRB in relation to article 118 of the LPP.

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

President of the Review Panel

Mr.Vedat Poterqoi

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 – **S.I.G. SH.P.K;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.