

**PROCUREMENT REVIEW PANEL**, appointed by the President Pursuant to the article 105 as well article 106 of the Law on Public Procurement of the Republic of Kosova no.04/L-042, amended and supplemented by Law No. 04/L-237, amended and supplemented Law no.05/L-068, amended and supplemented Law no.05/L-092, composed of: Mr. Nuhi Paçarizi – President, Mr. Blerim Dina – referent, Mr. Goran Milenković – member, deciding on the complaint lodged by the Economic operator “NPN Univers -MI” - Prishtina, against the decision of the the procurement activity with title: “Realization in Sculpture dedicated to the martyr Arsim Zeqiri - two year project” with procurement no.”613/17/4030/432”, initiated by the Contracting authority (CA) – Municipality of Lipjan, on the 26 of December 2017 has issued this:

## **DECISION**

**I. Approved**, as grounded the complaint of the Economic operator “NPN Univers -MI” - Prishtina, regarding with the procurement activity with title “Realization in Sculpture dedicated to the martyr Arsim Zeqiri - two year project” with procurement no.”613/17/4030/432”, initiated by the Contracting authority (CA) – Municipality of Lipjan.

**II. Cancelled**, the decision of the Contracting authority/Municipality of Lipjan, regarding the procurement activity with the title “Realization in Sculpture dedicated to the martyr Arsim Zeqiri - two year project” with procurement no.”613/17/4030/432”, initiated by the Contracting authority (CA) – Municipality of Lipjan, the case is returned for **re-evaluation**.

**III.** Contracting authority within 10 days must inform in written the Review panel for all actions taken regarding with this procurement activity and other parties in the procedure.

**IV.** Non-compliance with this decision obliges the Review Panel conform with the legal provisions of article 23.9 and 131 of the Law for Public Procurement of Kosova No.04 / L-042, amended and supplemented by Law No. 04/L-237, Law no.05/L-068, Law no.05/L-092, to take action against the Contracting Authority.

**V.** Since the complaint of the complaining economic operator “NPN Univers -MI” – Prishtina, is approved as grounded, it is returned the insurance fee of the complaint in the amount deposited when filing a complaint.

**VI.** Obligated complaining economic operator that conform article 33 point 6 of the Rules of Procedure of the PRB, within sixty (60) days is obliged to request to take back the funds, otherwise these funds will be confiscated and will pass to the budget of the Republic of Kosova.

## REASONING

Contract Notice regarding this procurement activity was announced on the: 01 of September 2017. The bid's opening was made on the: 11 of October 2017. The announcement for the result of the design contest was published on the 20 of November 2017, criterion for award: economically most favorable tender.

Complaining EO has received the notice of elimination on the 17 of November 2017, the results of the design contest were announced on the 17 of November 2017.

Against the notification for annulment of the complaining EO has filed a request for reviewing on the 21st November 2017, while the decision for rejection of the CA was done on the 24 of November 2017.

Complaining economic operator "NPN Univers- MI", as dissatisfied party has lodged a complaint at the PRB, on the 01 of December 2017 with protocol no.476/17 against the decision of the CA for the procurement activity with the title "Realization in sculpture dedicated to the martyr Arsim Zeqiri- two year project", initiated by the contracting authority (CA) / Municipality of Lipjan, claiming that:

- Article 6 of the LPP- Equality in Treatment / No Discrimination;
- Article 60 of the LPP- Criteria for contract award;
- Article 80 of the LPP- Composition and Decisions of the Jury.

Procurement Review Body, conform article 113 and 114 of the LPP on the 06 of December 2017 has authorized the review expert of the PRB, to review the validity of all complaining claims of the complaining party.

Review expert of PRB in the report dated 13 of December 2017 has recommended to the review panel to approve partly the complaint of the complaining EO NPN "Univers-MI", with residence in Prishtina, also to return for re-evaluation this procurement activity and Recommend the contracting authority to submit the case to MIA, conform article 130 of the LPP.

The contracting authority through written memo dated 18 of December 2017, has notified the review panel that it agrees partly with the report of the review expert.

The Economic Operator through a written memo on the 18 of December 2017 has notified the PRB that it agrees with the expertise's report.

At the hearing session of the main review of the 26.12.2017, where were present the review panel, representative of the contracting authority, representative of the complaining EO, review expert of PRB, reviewed the case files by checking and analyzing the documentation for the procurement procedure which consists of: authorization of initiation of the procurement activity, notice for the quotation contest, minutes on the bid's opening, decision on the establishment of the bid's evaluation commission, bid's evaluation report, design results report, the complaint of the economic operator, the report of the PRB expert, the memos of the parties to the proceedings.

During the presentation at the hearing session the representative of the complaining EO stated: “We after the competition in this tender, after the evaluation we officially requested access to the evaluation of the points and officially received it from the procurement officer and have these points signed. After the financial offer in mathematical calculations we have resulted the winner and we waited for the announcement, but in the final rating CA has declared us losers. According to evaluation and mathematical points we are the winner”.

Representative of the CA-MA of Lipjan in the hearing session for the main review stated: “I agree with the statement of the representative of the EO that the points are given as it received EO, but there were arithmetical errors and in the proper evaluation we have seen that is not given the evaluation as should be without proper verification. After detailed analysis, it is seen that this is given with errors. This is a very unusual complex assessment. Four positions have been evaluated: the artistic composition of the statue, a figurative expression that reflects the features and personality of the martyr Arsim Zeqiri, the degree of integration of the statue in the space where it is planned to be placed and the originality. For all these 7 evaluation members should have given points, and only for one bidder were 28 positions, 7 bidders multiply 4 positions make 28, these 28 positions multiply 8 bidders make 224. So in these 224 positions factually there is a technical mistake, that these technical mistakes can be made by anyone and take full responsibility of the colleague from as complaining EO this is derived from this table. There are two errors in this table; the first error is not the 1947/3 code but it is the 1949/3 code. The second error, figure 38500 according to the complaining EO is the price but this is not the price since the price is 68,500. From this it is seen that mistakes can be derived and likewise the error occurred by CA”.

Review expert has ascertained that: “Initially I clarify that this complaint is related to doubts regarding point manipulation and threats that claims complaining EO that was threatened by the member of the jury that was part of the evaluation commission. Based on these complaining claims as expert I have no competence to conduct investigations as to whether the events described by the complaining EO have occurred. Complaining EO has offered two lists that points awarded by the jury are different for the same EO. The same list that claims is ranked first with points is also in the letters of the CA. I do not want to prejudge whether it is a mistake or change of points, but article 130 of the LPP paragraph. 3 prescribes how to proceed the procedures to come to an end for the allegations of the complaining EO. That is what I have recommended in the expertise's report”.

In the final words, the representative of the EO stated: “We propose to the panel to approve our complaint as grounded and the case returns for re-evaluation”.

In the final speech the representative of the CA stated: “It is in the interest of the CA not to prolong this procurement activity and due to some technical mistakes we agree to return the subject to re-evaluation without prejudice to who will be the winner of this procurement activity”.

In the final words, the PRB review expert stated that stands by the expertise's report and the findings given in the report.

Review panel, after reviewing the memos of the case, reviewing the complaining points of the complainant, ascertainments, concrete analysis and recommendations of the review expert, statements of the parties to the proceedings, discussing and screening the evidence as a whole during the hearing session of the main review, ascertained that Complaining EO according to the table of letters of the described points is ranked first with points earned to other EO, total 68.239 total points, while in the evaluation report compiled by the jury commission there is a difference of points compared to the table of above mentioned.

The review panel ascertains that at the hearing session of the main review the representative of the CA stated that during the evaluation of the projects there have been errors, which has affected not to make a fair assessment for all EOs, therefore considering the facts and evidence of presented in the complaint, the statements of the parties to the proceedings during the hearing session of the main review, the panel evaluates that CA in this procurement activity has violated article 7 of the LPP- Equality in treatment / non-discrimination for the fact that it did not treat the project design right, therefore review panel ascertains that during the re-evaluation of the procurement activity, CA should take into account the findings given in the decision.

Review panel conform article 117 of the LPP, and based on the presented evidence as above, decided as in the provision of this decision.

**Legal advice:**

Aggrieved party can not appeal against this decision, but it can file charges for damage compensation within 30 days, after the receipt of this decision with the lawsuit In the Basic Court In Prishtina at the Department for Administrative Affairs.

President of the Review Panel

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Mr. Nuhi Paçarizi

Decision to be submitted to:

1x1 CA – “Municipality of Lipjan”

1x1 EO – “Univers -MI” - Prishtina

1x1 Archive of the PRB

1x1 For publication on the website of the PRB.