



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

Psh. No.568/23

Review Panel, appointed by the President of the PRB, Pursuant to the article 105, article 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 Isa Hasani-member, Vedat Poterqoi-member and Vjosa Gradinaj-Mexhuani-member, deciding according to the complaint of EO “Rojet E Nderit” SH.P.K., against the Decision to cancel the procurement procedure related to the procurement activity “Securing the objects of Municipality of Prishtina” with procurement number 616-19-3238-2-1-1, initiated by the contracting authority (CA) – Municipal Assembly of Prishtina, on the 31/11/2023, has issued this:

## DECISION

1. Refused, as ungrounded the complaint of the EO “Rojet E Nderit” SH.P.K, with no.568/2023 of the 11/08/2023, related to the procurement activity: “Securing the objects of Municipality of Prishtina” with procurement number 616-19-3238-2-1-1, initiated by the contracting authority (CA) – Municipal Assembly of Prishtina, while the Decision of the CA regarding the above mentioned activity remains in force.
2. In accordance with Article 31 point 5, of the Rules of Procedure of the PRB, the complaining economic operator is confiscated the complaint’s fee in the amount deposited when the complaint is submitted, while the funds go to the Budget of the Republic of Kosova.

## REASONING

- Procedural facts and circumstances –

On the 17.05.2023, the Municipality of Prishtina, in the capacity of the Contracting Authority, published the Contract Notice B05 related to the procurement activity with title: “Security of the facilities of the Municipality of Prishtina” with procurement number 616-19-3238-2-1-1.

Whereas on the 25.07.2023, CA has published B58 Notice on the decision of the Contracting Authority to cancel the procurement activity.

This procurement activity was carried out through an open procedure with the type of contract for supply and with an estimated contract value of 2,100,000.00 €.

On the 27.07.2023, EO "Rojet E Nderit" SH.P.K. submitted a request for reconsideration against the aforementioned decision of the CA. On the 03.08.2023, the Contracting Authority rejected the request for reconsideration as ungrounded.

On the 11.08.2023, PRB received the complaint from EO “Rojet E Nderit” SH.P.K. with no. 568/23 related to the activity “Security of facilities of the Municipality of Prishtina” with procurement number 616-19-3238-2-1-1.

*-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 “Rojet E Nderit” SH.P.K. are presented as follows:

The complaining Economic Operator has submitted a Request for reconsideration against the decision of the CA to cancel the procurement activity, while the CA in the response to the request for reconsideration has emphasized that on the 25.07.2023 it published a Notice on the decision of the Contracting Authority through which it announced that it was canceled procurement activity with the following reasoning: *All economic operators have substantially exceeded the estimated value or have been eliminated for different reasons from the decisions of the contracting authority or from the decisions of the PRB during the preliminary processes of re-evaluations... The Contracting Authority in the file - pre-measure has described only the number of positions and hours without specifying the minimum number of workers for this service activity. Since the violations in this procurement activity cannot be corrected at this stage, we consider that it is better to cancel the procurement activity so that with the new tender*

*the Contracting Authority will draw up more measurable, well-specified criteria and respect the LPP and secondary legislation in force.*

The complaining claims that the Contracting Authority acted in violation of Article 7, 27, 59, 60 of the LPP of the Regulation on Public Procurement Law no. 04/L-042 amended and supplemented by Law no. 04/L-237, Law no. 05/L-068 and Law no. 05/L-92 asking the Review Panel in PRB to approve the complaint and compel the Contracting Authority to reevaluate it correctly and in accordance with the LPP TD and your clarifications by re-announcing our offer as the cheapest and responsive one.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 08/28/2023 has authorized the review expert to conduct the initial review of the dossier and claims according to complaint no. 568/23, while on the 08/09/2023 the report of the review expert was submitted with no. 2023/0568 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 rejected as ungrounded and that the decision of the CA remain in force”*.

The expertise’s report has been duly accepted by all procedural parties. CA declares that it agrees with the recommendations of the review expert's report, while EO has declared that it does not agree with the review expert's report.

- 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 regarding the expert's report, the complainant's submissions and documents, the contracts 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.

Initially, the Review Expert explains that this procurement procedure has been the subject of review in PRB, Decision no. 735,744,757/19; Decision no. 82,83,92/20; Decision no. 332/20; Order no. 563/20; Decision no. 896,912/20; Decision no. 230,267/22; Decision 359/22; Decision 42/23;

Regarding the claims of EO "Rojet E Nderit" SH.P.K., the review expert through report no. 2023/0568 has evaluated the complaining statements. The reviewing expert explains that on 28.07.2023, EO "Rojet e Nderit SH.P.K" - Prishtina, filed a complaint with no: 2023/0568, against the notice of cancellation, related to the procurement activity: "Securing the facilities of the Municipality of Pristina" with no. of procurement: "616-19-3238-2-1-1", initiated by the Contracting Authority (CA) - Municipality of Prishtina. Below, the reviewing expert gives his opinion regarding the procurement activity. The review expert explains that this procurement activity has been started since 19.06.2019 and for the same there is a large number of complaints which have been submitted to the PRB and in response to them a total of 7 decisions have been issued by the review panels-PRB and decisions from CA. The reviewing expert, based on the chronological and time course of this procurement activity and analyzing the bidding prices of all

the Economic Operators who have bid, clarifies that the value offered by each economic operator that participated in this procurement activity exceeds the value of provided for the same. On 06.01.2023, the CA made a decision to cancel the procurement activity on the grounds that: CA - The Committee for the reevaluation of offers during the examination of the offers found that all EOs that have bid have exceeded the estimated value for this project. The estimated value of this project was 2,100,000.00 euros. According to Law No. 04/L-042 for Public Procurement of the Republic of Kosova, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092, article 62- Completion of the Procurement Activity, paragraph 2, point 2.1 reads as follows- "2. Contracting authorities may terminate that procurement activity which will not result in the award of the contract only for one of the following reasons: 2.1 all responsible tenders contain prices that exceed the budget of the contracting authority for this procurement activity". Based on article 62 of the LPP as well as the EO bidding prices for this procurement activity, the review expert's opinion is that since all EOs have exceeded the estimated value of the procurement activity, then the CA- Municipality of Prishtina has right to take the decision to Cancel the Procurement Activity as provided by the Law on Public Procurement.

From the list of EOs, it can be seen in the summary table of the bidders, including the complaining EO "Rojet E Nderit" they have offered at a much higher price than the estimated value of the procurement activity. While the estimated value is 2,100,000.00 €, the offered value of the complaining EO - Guard of Honor is 3,107,462.40 €, respectively the offered value is 47.97% higher than the estimated one or 1,007,462.40 € more. The LPP clearly clarifies the way a framework contract works, but even if the answer given by the CA on the 03.06.2019 had been taken into account, which in this case is also not in accordance with the LPP, regarding the question posed by the EO complainant if the estimated value is sufficient to cover the costs of the activity, where the CA had said that "the Framework Contract can be increased by 30% and reach the value of 2,730,000.00 €, again the bidder's value is much higher compared to the value of provided". Therefore, based on what was clarified above, we estimate that the Contracting Authority has acted in accordance with Article 62 of the Public Procurement Law, which explains when a procurement activity can be cancelled".

According to the above, the review expert handled the claims of the complaining economic operator in a professional and objective manner "Rojet e Nderit" The argumentation in the report of the review expert is quite detailed, understandable and fully based on the relevant documents that refer to the activity of procurement. The findings in the review expert's report can be confirmed through the tender dossier as well as the documents with which the tenderers have offered. Consequently

*- Findings of the Review Panel -*

Based on the documents of this case and the primary purpose of the complaint, the Panel considered that regarding the issue in the present case, there is no need to convene a hearing with the parties, as long as the submissions of the parties and their actions constitute a sufficient basis to decide in terms of meritorious. In this case, the Review Panel based its findings mainly on the relevant provisions of the LPP, which foresee and regulate such situations, which may arise during a procurement activity, such as the Complaints in this case.

The review panel in the context of the facts and documents analyzed as above from the review expert report finds that the complaining Economic Operator has exceeded the estimated value of the procurement activity, which was determined by the budget of the Contracting Authority for the Procurement Activity. Provision of facilities of the Municipality of Prishtina” with procurement number 616-19-32, in the value of 2,100,000.00 €, while the complaining EO has bid with the monetary amount of 3,107,462.40 €,

Article 62, paragraph 2 and sub-paragraph 2.1. of the Law on Public Procurement determine the termination of the procurement activity" 2.. Contracting authorities may terminate that procurement activity which will not result in the award of the contract only for one of the reasons: 2.1 all responsible tenders contain prices that exceed the budget of the contracting authority for the procurement activity”

The Review Panel, based on the above-mentioned facts, has decided to reject the complaint of the complaining EO “Rojet e Nderit” and finds that the Contracting Authority, in accordance with the Law on Public Procurement, has decided to cancel the procurement activity no. 616-19-3238-2-1-1. for “Security of facilities of the Municipality of Prishtina”.

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 Rules of Procedure of the PRB.

For point II of the decision, it was decided based on article 31 paragraph 5 of the PRB Work Regulations related 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. Isa Hasani

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**Legal advice:**

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

Decision to be submitted to:

1x1 CA – **MUNICIPAL ASSEMBLY OF PRISHTINA;**

1x1 EO – **“Rojet e Nderit” SH.P.K.;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.