



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

Psh. No.917/23

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) as well as articles 29 and 31 of the PRB Work Regulations 01/2020 amended on 09. 08. 2023, composed by Vedat Poterqoi - President, Vjosa Gradinaj Mexhuani - Member and Isa Hasani - Member, deciding according to the complaint of the Economic Operator (EO) “ALFA.i” as well as the complaint of the Economic Operator (EO) “Ejona” SH.P.K., against the Decision on cancellation of the procurement procedure, non-execution of the decision of the PRB of the Municipality of Peja in the capacity of the Contracting Authority (CA), related to the procurement activity "Installation of heating and adjustment of lighting in the Karagaq Sports Gym in Peje LOT 1 Installation of heating central and ventilation in the Karagaq and Leshan Gym LOT 2 Lighting adjustment in the Karagaq Sports Gym” with procurement number 635-23-5904-5-1-1, on the 12/01/2024 has issued this:

DECISION

1. Approved, as grounded the complaints of EO "ALFA.i" under no. 2023/0917 dated 17/11/2023 and the complaint of EO "Ejona" Sh.P.K. with no. 2023/0927 dated 20/11/2023, while the decision of the CA Municipality of Peja regarding the procurement activity "Installation of heating and adjusting the lighting in the Karagaq Sports Gym in Peje LOT 1 Installation of central heating and ventilation in the Karagaq Gym and Leshan LOT 2 Lighting adjustment in the Karagaq Sports Gym" with procurement number 635-23-5904-5-1-1 , is canceled and returned to re-evaluation.
2. These complaints are considered as adjudicated matters (Res Judicata) since the complaining claims are the same as in the PSh Decision. no. 2023/0565 dated 20. 10. 2023 and the decision Ex. no. 2023/0579 dated 25.10.2023, where the object of the dispute and the parties are the same, therefore these cases are considered as “Res Judicata” judged cases in accordance with the legislation in force.

3. The CA is ordered within 5 days to inform the PRB about all the actions taken regarding this procurement activity, otherwise, the PRB has the right to take measures against the CA for non-compliance with the decision as provided by the provisions of Article 131 of the LPP.
4. Since the complaints of the complaining EOs are approved as grounded, the complaint's fee will be returned to the amount deposited when the complaint was submitted.
5. The complaining EO is obliged, in accordance with article 31 point 6 of the PRB's Rules of Procedure, within sixty (60) days to make a request for the return of the complaint insurance, otherwise the deposit will be confiscated, and these funds pass the Budget of the Republic of Kosovo.

REASONING

- Procedural facts and circumstances -

On the 09.06.2023, the Municipality of Peja, in the capacity of the Contracting Authority, has published the contract notice for the procurement activity entitled: "Installation of heating and adjustment of lighting in the Karagaq Sports Gym in Peje LOT 1 Installation of central heating and ventilation in Karagaq and Leshan Gym LOT 2 Adjusting the lighting in the Karagaq Sports Gym" with no. of procurement: 635-23-5904-5-1-1 Meanwhile, on the 26.07.2023, the notice on the decision of the CA was published.

For this aforementioned procurement procedure, two decisions were taken by the PRB review panel: no. 565/23 and no. 579/23.

In relation to these complaints, it has been decided to cancel the announcement on the decision of the CA for LOT 1, recommending that the matter be returned for reassessment.

On 02. 11. 2023, the re-evaluation report of the CA was published and the procurement activity was cancelled.

Against this decision, on the 06.11.2023, EO "Alfa.i" submitted a request for reconsideration, which the CA rejected on 09.11.2023.

Also, against the cancellation decision dated 07.11.2023, the economic operator "Ejona Sh.P.K" submitted a request for reconsideration, which was rejected by the CA on the 09.11.2023.

On the 17.11.2023 EO "ALFA.i" - Prishtina, filed a complaint with no: 2023/0917, against the cancellation of the procurement activity, related to the procurement activity: "Installation of heating and adjustment of lighting in the Karagaq Sports Gym in Peje LOT 1 Installation of central heating and ventilation in the Karagaq Gym and Leshan LOT 2 Lighting adjustment in the Karagaq Sports Gym" with no. of procurement: "635-23-5904-5-1-1".

Also on 20.11.2023, EO "Ejona" Sh.P.K., with no: 2023/0927, filed a complaint against the cancellation of the aforementioned procurement activity.

- Evaluation and administration of evidence -

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.

Based on the actions described above, the PRB has engaged the evaluation expert in accordance with Article 111, paragraph 5 of the LPP, with the duty that the same, in accordance with Article 113 of the cited Law, conducts the initial review of the file and complaints, in relation to the procurement activity described above. In this regard, on 25.08.2023, the review expert submitted the evaluation report with the following recommendations:

The claims of the complaining economic operator EO "Alfa.i" are presented as follows:

- The first claim (I), the Complainant claims that: "During the evaluation of your offer, the evaluation committee found that you meet the criteria required in the Tender dossier and in the Contract Notice, as per the general conditions of D It has been requested that the professional staff be certified with professional certificate level IV (Installation, heating, sewerage and water supply), while you lack the Professional Certificate of the technical staff and you lack the notarized diploma for the part of the technical staff, Also the professional staff of Engineers lacks a Certificate for fire protection, and in your offer you have not completed Annex - 7 placed by the CA in the TD where it was requested to be completed and signed by the EO, it was an administrative condition since it is an ANNEX special that must be completed, therefore we hereby inform you that your offer is irresponsible and you are eliminated from this PA". The request for reconsideration was made by us on 31.07.2023, while the decision to reject the request for reconsideration was sent on 04.08.2023. We submitted the complaint on dt. 10.08.2023. The review expert's expertise was issued on 25.08.2023 with no. 2023/0565. The PRB decision was issued on 25.10.2023 No. 2023/0565. The PRB expert in his expertise dated 25.08.2023 with no. 2023/0565 had concluded that our complaint was well-founded and that we had been unfairly eliminated in this procurement activity. It also confirmed the responsibility of our offer and the irresponsibility of the EO recommended for the contract CTA ShPK. Likewise, the review panel with decision No. 2023/0565 dated 25.10.2023 had approved our complaint as well-founded and the matter was returned for reassessment. The review panel has fully supported the findings of the review expert, who concluded that we were unfairly eliminated and had approved all our complaints even in relation to the EO recommended for the contract, and also the representative of the CA in the session was agreed that the matter should be reassessed and that the bids be evaluated according to article 59 and 72 of the LPP. After the re-evaluation,

dated 02.11.2023, the second notice was issued on the decision of the CA (B58) where this procurement activity was canceled on the grounds that there are no responsible bidders. Whereas we have been eliminated with the reasoning because: During the re-evaluation of your offer by the re-evaluation commission, it has been found that in your offer you do not meet the criteria required in the TDS, since in your offer you have not completed the Annex - 7 decided by CA in TD where it was requested to be completed and signed by EO for the Implementation Deadline and Guarantee Period, it was an administrative condition since it is a special ANNEX that must be completed, therefore we hereby inform you that your offer is without responsible and you are eliminated from this PA". This reason for elimination was one of the reasons for elimination in the first assessment, where the review expert and the review panel found that this reason for elimination was also unstable and unfounded. In relation to this reason for elimination, we confirm that this point has been dealt with by the decision of the PRB and normally it is considered a judged case - Res Judicata according to article 105 paragraph 2.16 of the LPP and should be treated as such.

- First of all, we clarify that the completion of annex 7 was not a requirement of eligibility (it was not a requirement of the FDT) as it was mentioned in the expertise of the reviewing expert, but despite this fact, we have provided evidence-the guarantee statement in a document special, and we have also offered a dynamic plan with an implementation deadline, therefore the said request is fulfilled. From these clarifications and concrete evidence, it is clearly understood that the decision of the review panel No. 2023/0565 dated 25.10.2023, decision. Likewise, EO "CTA" Sh.p.k., (former EO recommended for the contract) is irresponsible for the following reasons: Notarized Agreements with machinery engineers are missing, Certificate for fire protection for ing. Xhevat Berisha was not presented according to the request, where it was requested that the same be notarized, but the EO recommended for the contract did not present it notarized, therefore this EO is irresponsible. For the manager Mr. Shaqir Elezaj The Certificate for Energy Audit in Buildings is not notarized, therefore this EO is irresponsible. Likewise, the agreements presented by the EO recommended for the contract for the technical staff are not notarized as specified in the tender file, at the same time their Certificates are not notarized. These claims of ours and findings were also confirmed by the expertise and the decision of the review panel No. 2023/0565. EO EJONA LLC is irresponsible for the following reasons: It has been requested to present the catalog of products as follows Catalog, from the manufacturer or dealer for positions No. C1, C2, D1 & D2 as evidence Copy of the Catalog from the manufacturer or dealer, while there delivered the manufacturer's catalog where in the C1 position in the Technical Specification of A.K. it is requested that the heating capacity be 140 cu. While in the catalog the heating capacity is presented to be 138 k. Also, Annex 1 of the Technical Specification of the Tender File is not stamped, and this capacity does not meet the Technical Specification, therefore referring you to Guideline No. 001/2023 For Public Procurement Article 10. Clarification of tenders during the tender evaluation process It is clearly stated as follows. The catalog has been submitted, but the technical specification for the offered goods is missing - Reject the tender without requesting further information. According to Article 69 of the LPP, on 09.11.2023 we have accepted the decision to reject the request for reconsideration, on the grounds that the same is unfounded, but no concrete facts and evidence have been given for such a refusal. The contracting authority in the decision to reject the request for reconsideration

regarding the reason for our elimination has given the same reasoning as in the announcement on the decision of the CA. This reasoning of the CA clearly shows the fact that our claims are stable, and the CA has no arguments to contradict these claims with concrete facts.

- We are the responsible EO in this procurement activity and this fact has been confirmed by the review expert and the PRB review panel, but the CA with completely unfounded, illegal and subjective reasons has eliminated us from this procurement activity. The contracting authority, realizing that it cannot in any way eliminate us from this procurement activity and that it cannot cancel this tender, has now issued another justification in the decision for rejection, arguing that the CA cannot have available government guaranteed means of 250,000.00 euros, for the year 2023. From this reasoning, the tendency of the CA is clearly seen that we, as the responsible EO, do not sign the contract, since in the announcement on the decision of the CA there was no justification such, but in order for us not to sign the contract now, the CA issues such a rationale. Based on the above-mentioned facts, it is clearly understood that the CA's decision to reject the request for reconsideration is unfounded and unstable, moreover tendentious towards our company as a responsible EO. From the testimonies and evidence mentioned in this complaint, it appears that the cancellation of this procurement activity was done in violation of Article 62 of the LPP and Article 43.5 and 43.7 of Regulation No. 001/2022 on Public Procurement. Article 7 of the LPP was also not respected, because we were discriminated against by not being declared the winner even though we met all the requirements of the TDS and the contract notification. Paragraph 1 of Article 7 of the LPP clearly provides that "The contracting authority will treat economic operators equally and non-discriminatory and will act in a transparent manner". During the development of this procedure, article 1 of the LPP was not taken into consideration, as it is known that the purpose of this law is to ensure the most efficient, transparent and fair way of using public funds, public resources as well as all funds and other resources of contracting authorities in Kosovo.

The claims of the complaining economic operator EO "Ejona LLC", are presented as follows:

- The first claim (I): Article 97-Failure to respect the decisions of the PRB and PPRC CA violates the aforementioned article by not respecting the decision announced by the PRB to return the matter to re-evaluation. Therefore, the CA does not return the case to re-evaluation, but announces the decision to cancel the procurement activity with the same claims which the PRB has described as unfounded on 25.10.2023. This is another serious violation that the CA decided to do, due to the impossibility of declaring the favorite EO the winner.
- The second claim (II): Article 59 Examination, Evaluation and Comparison of Tenders - CA violates the aforementioned articles by repeating the violations made in the first evaluation. CA decided to eliminate us from the competition again, this time with demands that were not in the TD nor in the Contract Notice. So, the CA eliminates us with the claim that we did not sign and seal the Annex of technical specifications, nor that this was not a requirement in the TD at all. Also, we have submitted the Declaration for technical specifications which covers this request even if it was in TD. - CA eliminates us with the second claim that the product offered by us does not meet the technical requirements and this claim does not hold. As for this claim, the CA also has the decision of the PRB, which rejects this claim of the CA as unfounded. Where the CA

had to ask for clarifications (even though we submitted these clarifications during the requests for reconsideration and the session at the PRB). We are again attaching the technical specification of the chiller (we have also presented the same in PRB), where it is clearly seen that the chiller offered by us meets all the technical requirements.

- The third claim (III): Article 7 Equality in Treatment/ Non-Discrimination CA has repeatedly violated the above-mentioned Article by doing the disputing for us and favoring the EO once declared winner "CTA" Sh.P.K. The CA tried to declare the aforementioned EO winner, which had offered the highest price, eliminating two EOs and issuing unfounded decisions. This decision was also called unfounded by the PRB with their decision dated 25.10.2023 and the PRB decided to return the matter to re-evaluation, asking the CA to make a request for clarification regarding the technical specification and documents that are unclear. Due to the impossibility of announcing the winner of the favored EO, the CA decided to completely cancel the procurement activity, once again announcing an unfounded decision. So, the CA tries to reward the EO in question at all costs, not taking into consideration the LPP, if it opposes, it cancels the activity in its entirety.

- The fourth claim (IV): CA has violated the aforementioned Articles for the reason: CA publishes the rejection of the Request for Reconsideration without considering our claims at all, but in the rejection of the request for reconsideration it has only repeated the claims as in the letter of elimination. So it is the second time that the CA does not consider our request for reconsideration at all and does not justify the rejection as the LPP says. Regarding the claims of EO "Alfa. i" the review expert through report no. 2023/0917 assessed as follows:

Clarification for the Review Panel: The Contracting Authority, Municipality of Peja, has developed the procurement activity entitled: "Installation of heating and adjustment of lighting in the Karagaq Sports Gym in Peje LOT 1 Installation of central heating and ventilation in the Karagaq and Leshan Gym LOT 2 Adjustment of lighting in the Karagaq sports gym", with procurement number: 635-23-5904-5-1-1, open procedure, type of contract: Work, estimated value of the contract: €590,870.72. The Contracting Authority has published the Notice for the Contract dated 09.06.2023, while, on 15.06.2023 and 07.07.2023, he published B54 Standard Form for the correction of errors. On 26.07.2023, the CA issued the Notice on the Decision of the CA. Complainant EO "ALFA.I Sh.P.K" on 31.07.2023 submitted a request for reconsideration to the CA, against the Decision of the CA, while the CA on 04.08.2023 issued a Decision rejecting the request for reconsideration, consequently against this Decision of the CA, the complaining EO "ALFA.I SH.P.K" dated 10.08.2023, has submitted a complaint to the PRB. The procurement review expert, according to authorization 2023/0565, and in accordance with Article 114 of The LPP, has examined the complaining claims of the complaining EO, after reviewing and administering the evidence, case documents on the e-procurement electronic platform, regarding the findings and findings, the procurement review expert submitted the Expertise Report dated 25.08. 2023 with no. 2023/0565, as a result, the Review Panel dated 25.10.2023 issued a Decision on the complaint with no. 2023/0565. Also, the procurement review expert, according to authorization 2023/0917, presents the following findings and findings: the Contracting Authority Municipality of Peja, this procurement activity has turned the

subject into a Re-evaluation, and after the Re-evaluation of the offers , dated 02.11.2023 issued the notice on the decision of the CA, on the grounds that "Peja Municipality Cancels Lot 1 as not even one offer has been responsible". Meanwhile, the complaining EO "ALFA.I Sh.P.K" , against the decision of the CA, on 06.11.2023 submitted a request for reconsideration to the CA, and on 17.11.2023, submitted a complaint to the PRB. As for the complaining claims of the complaining EO, presented in complaint 2023/0917 for this procurement activity, the reviewing expert did not review these complaint claims, due to the fact that the same complaint claims were reviewed in case no. 2023/0565, therefore, based on paragraph 2 and 3 of article 16 of the PRB's Rules of Procedure, since the complaints are the same as those previously examined by the Review Panel, this case is treated as a judged case "res judicata".

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

Regarding the claims of EO "Ejona Sh.P.K", the review expert through report no. 2023/0927 assessed as follows:

Clarification for the Review Panel: The Contracting Authority, Municipality of Peja, has developed the procurement activity entitled: "Installation of heating and adjustment of lighting in the Karagaq Sports Gym in Peje LOT 1 Installation of central heating and ventilation in the Karagaq and Leshan Gym LOT 2 Adjustment of lighting in the Karagaq sports gym", with procurement number: 635-23-5904-5-1-1, open procedure, type of contract: Work, estimated value of the contract: €590,870.72. The Contracting Authority has published the Notice for the Contract dated 09.06.2023, while, on 15.06.2023 and 07.07.2023, he published B54 Standard Form for the correction of errors. On 26.07.2023, the CA issued the Notice on the Decision of the CA. Complainant EO "Ejona Sh.P.K." dated 31.07.2023 submitted a request for reconsideration to the CA, against the Decision of the CA, while the CA on date 04.08.2023 issued a Decision rejecting the request for reconsideration, therefore against this Decision of the CA, the complaining EO "Ejona Sh.P.K." on 14.08.2023, submitted a complaint to the PRB. The procurement review expert, according to authorization 2023/0579, and in accordance with article 114 of the LPP, has reviewed the complaints of the complaining EO, after reviewing and administering the evidence, documents of the case on the e-procurement electronic platform, regarding findings and conclusions, the procurement review expert submitted the Expertise Report dated 28.08.2023 with no. 2023/0579, as a result, the Review Panel dated 25.10.2023 issued a Decision on the complaint with no. 2023/0759. Also, the procurement review expert, according to authorization 2023/0927, presents the following findings and findings: The Contracting Authority Municipality of Peja, this procurement activity has turned the matter into Re-evaluation, and after Re - evaluation of the offers, dated 02.11.2023 issued the notice on the decision of the CA, with the reasoning that, "Peja Municipality Cancels Lot 1 since not a single offer has been responsible". Meanwhile, the complaining EO "Ejona Sh.P.K.", against the decision of the CA, on 07.11.2023 submitted a request for reconsideration to the CA, and on 20.11.2023, submitted a complaint to the PRB. As for the complaint claims of the complaining EO, presented in complaint 2023/0927 for this procurement activity, the review expert did not

review these complaint claims, due to the fact that the same complaint claims were reviewed in the case with No. 2023/0579, therefore, based on paragraph 2 and 3 of article 16 of the PRB's Rules of Procedure, since the complaints are the same as those previously examined by the Review Panel, this case is treated as a judged case "res judicata".

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

- Findings of the Review Panel –

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 for this procurement activity. The review panel after the administration and evaluation of the evidence, the complete ascertainment of the factual situation, relying on the LPP as applicable material law, after examining the complaining claims, taking into account all the documents of the case, found that the appeals should be approved as based. Consequently, the Review Panel has decided to oblige the CA to return the procurement activity to the Reassessment, since it is considered that the CA did not act in accordance with the legal provisions and recommendations given with the preliminary decisions of the PRB dated 25.10.2023 with No. 2023/0565, as well as with the decision dated 25.10.2023 with No. 2023/0579, the activity has been reassessed, therefore, since the complaints of the complaining EO are repeated for the second time in accordance with the Rules of Procedure of the PRB, specifically Article 16.2, they should be treated as "Res Judicata". Likewise, Article 105 paragraph 2.16 of the LPP clarifies: "In repeated cases with the same complaining claims, where the object of the dispute and the parties are the same, in cases that have been examined before, the Chairman of the Review Panel treats them as cases judged "res judicata".

Based on the above-mentioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO be approved as well-founded, the contract award notice be cancelled, and recommends that the matter be returned to Reassessment.

After analyzing the aforementioned documents which were available to the Review Panel, such as: Complaints of the complaining EO, reports of the review expert, preliminary decisions of the PRB regarding this procurement activity, it is well known that the decisions of the PRB are binding for contracting authorities and all parties in the procedure, and that against the decisions of the PRB, the parties can appeal to the competent court within the legal term with regular legal remedies, in accordance with the legal advice given in the decision.

Therefore, the Review Panel requests from the Contracting Authority (CA) Municipality of Peja to fully implement the aforementioned decisions of the PRB. The PRB orders the Contracting Authority (CA) - Municipality of Peja to take measures to implement the aforementioned decision within five (5) days, failure to comply with this order, within five calendar days, will force the review panel to respect article 131 of the LPP and at the same time will ask the KRPP

to cancel the license of the procurement manager of the Contracting Authority (CA) - Municipality of Peja in accordance with article 25 paragraph 8 and 9 of the LPP.

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.

Regarding the complain't fee, it was decided in accordance with article 31, paragraph 4 and 6 of the PRB Work Regulations, in relation to article 118 of the LPP.

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 –**Municipality of Peja;**
1x1 EO – **ALFA.i, " EJONA " SH.P.K.;**
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.