

PROCUREMENT REVIEW BODY

According to Article 109 of Law No.04/L-042 on Public Procurement of the Republic of Kosovo, amended and supplemented with the law No. 04/L-237, law No. 05/L-068 and law No.05/L-092

A complaint against the: **KOSOVO ENERGY CORPORATION J.S.C., Rr. Nënë Tereza, 36, 10 000 Prishtinë**

For the procurement activity No. of PA: **KEK-26-449-5-1-1**

Regarding the tender for **Replacement of pipes in the SBT1-B1 and SMT-B2 substations and the carrier pipes of the SHT substation for units B1 and B2.**

COMPLAINT

1. Complainant's* identification

Write full name of your company	EFOR ENDÜSTRİYEL TESISLER MONTAJ İMALAT VE İNSAAT ANONİM ŞİRKETİ
NUI	142633
Address	SEGMENTLER MAH. CUMHURİYET CAD. NO: 74 B GÖLBASI/ ANKARA
Place	Türkiye
Postal Code	06909
Phone number	+90 312 640 13 86
Full name of the representative of your company	Kasim Yüksel
Electronic address	bilgiefor@outlook.com
Date of submission of the complaint	04/07/2026

**Complainant shall mean an interested party filing a complaint.*

2. Lawyers identification

The complainant may file a complaint by himself or by his Lawyer. If the complaint is filed by his Lawyer, then the authorisation of the representative must be attached with the PROCURE.

Write information as follows:

Name of lawyer

Full address
Phone number
Fax number
Electronic address

3. Information on procurement activity

Write a short description regarding the date and place where the “Contract Notice” or “Design Contest Notice” has been published and, if applicable, “Contract Award Notice”, “Design Contest Results Notice, or “Cancellation Notice for the Procurement Activity”, deadline for tender submission, date and time of commencement of Tender Opening process, and contract award criteria.

The complaint concerns the following groups:

Replacement of pipes in the SBT1-B1 and SMT-B2 substations and the carrier pipes of the SHT substation for units B1 and B2.

Name: Replacement of pipes in the SBT1-B1 and SMT-B2 substations and the carrier pipes of the SHT substation for units B1 and B2.

Document type*: B54 Standard Template for correction of errors in Published Notices

Contract type: 5 Works

Procedure type: 1 Open Procedure

Est. val.: 8,291,415.00

Time limit for receipt of tenders / applications: 07/04/2026 13:00

B05 Contract Notice: 24/02/2026 00:00

Opening: 07/04/2026 15:01

Notice on the decision of the CA: 16/06/2026 14:08

Submission of the Request for Review – 20.06.2026

Response to the Request for Review – 24.06.2026

4. Process of Tender Opening, if applicable

Have you participated in the process of Tender Opening? If yes, specify briefly the process of Tender Opening.

Yes

No

The bids were opened electronically on 07.04.2026 through the E-Procurement platform. No physical bid opening session was held, as the entire process was conducted online.

5. Notification to Eliminated Tenderers, if applicable

Have you been notified in writing regarding your elimination from further competition in the procurement activity?

Yes

No

6. Preliminary settlement of disputes

Have you addressed request for review to CA regarding the reasons of your elimination?

Yes

No

If yes, provide details on this fact and attach a copy of the decision adopted by the CA during the preliminary settlement of disputes in accordance with Article 108A of the PPL **On 20.06.2026, through the E-Procurement platform, we submitted a Request for Review on behalf of the Group of Economic Operators EFOR ENDÜSTRIYEL TESISLER MONTAJ IMALAT VE INSAAT ANONIM SIRKETI and Bahri Asllani B.I - N.T.SH Ekoinvest to the Contracting Authority – KOSOVO ENERGY CORPORATION J.S.C. On 24.06.2026, through the E-Procurement platform, we received the Contracting Authority's decision, by which our Request for Review was considered unfounded.**

7. Violated provisions by Contracting Authority

Specify provision or provisions of the PPL that have allegedly been violated by the Contracting Authority from the moment of Contract/Design Contest Notice publication, and if applicable until the conclusion of this procurement activity with the Publication of Contract Award Notice or Design Contest Result Notice or Cancellation Notice.

Side note:

LIST OF ABBREVIATIONS

PPL - Public Procurement Law

CA - Contracting Authority

PRB - Procurement Review Body

By the challenged acts, the CA has violated, inter alia, the following provisions:

1. Article 1 of the PPL, because the procedure was not conducted in a manner ensuring the economic, efficient and transparent use of public funds.
2. Article 6 of the PPL, because the CA used annulment as an instrument of late planning, producing delay and loss of competition.
3. Article 7 of the PPL, because after disclosure of prices the conditions and contractual approach were indirectly changed, to the detriment of the tenderers who competed according to the published dossier.
4. Article 22 and Article 27 of the PPL, because planning, need, deadlines and the tender dossier are prior responsibilities of the CA and cannot be transformed, after the opening of tenders, into reasons for annulment.
5. Article 59 of the PPL, because the CA did not conduct a complete examination, evaluation, comparison and ranking of tenders according to the published criteria.
6. Article 60 of the PPL, because the award criterion “responsive tender with the lowest price” was not applied.

7. Article 62 of the PPL, because none of the exhaustive bases for termination of the activity without award of contract was fulfilled.
8. Article 108/A and Article 115 of the PPL, because the decision on the request for reconsideration did not provide full, clear and lawful reasoning for rejection of the Complainant's allegations.
9. Article 111 and Article 112 of the PPL, due to the need for the complaint to be handled effectively and for the suspensive effect of the legal remedy to be preserved.
10. Article 40.2 of Regulation No. 001/2022, because the tenders were not evaluated only according to the requirements and criteria published in the notice and dossier, but according to a subsequent re-evaluation of the feasibility of the dossier.
11. Article 40.3 of Regulation No. 001/2022, because the CA's decision was issued far beyond the 30-day deadline from the opening of tenders, without valid reasoning for an exceptional extension.
12. Article 40.8 of Regulation No. 001/2022, because the CA did not use the clarification mechanism allowed by law for matters of evaluation, but proceeded directly to annulment.
13. Article 43.1 of Regulation No. 001/2022, because B58 did not provide an accurate legal basis and factual reasons that fall within Article 62 of the PPL.
14. Article 43.5, 43.7 and 43.8 of Regulation No. 001/2022, because annulment after the opening of tenders cannot be based on circumstances of internal planning, on the exceeding of deadlines by the CA or on the subsequent wish for division into lots.
15. Article 44.2 of Regulation No. 001/2022, because this article regulates standard forms and does not create substantive competence for annulment of the activity.

*** According to the Article 118 of the PPL, PRB shall reimburse your fee if the complaint is approved as grounded. The PRB may require an additional penalty of up to 5,000 Euro in cases where the PRB determines that all or whichever of allegations set forth in such complaint was frivolous, false or misleading.*

8. Detailed declaration on the facts and arguments

Describe factual circumstances that provide allegation for violation of the PPL provisions. Provide clear and detailed declaration for the facts and arguments that invoke each base of your complaint.

I. Pursuant to Article 109 of Law No. 04/L-042 on Public Procurement of the Republic of Kosovo, as amended and supplemented, in conjunction with Article 108/A of the same law, as well as pursuant to the relevant provisions of Regulation No. 001/2022 on Public Procurement, this complaint is submitted by the complaining economic operator, as an interested party and participant in the procurement activity.

We contest in entirety the lawfulness of the annulment of the procurement activity by the Contracting Authority, because the annulment was made **after the opening of tenders and after the disclosure of prices**, on grounds that do not constitute a legal basis under Article 62 of the PPL and Article 43 of Regulation No. 001/2022 on Public Procurement. In substance, the Contracting Authority has not established a specific violation of law that cannot be corrected; has not established that all responsive tenders exceed the budget; and has not proven any objective, external, unforeseeable event outside its control, which

under the law could justify termination of the activity.

On the contrary, the CA's reasoning is based on a late reassessment of deadlines, on general assumptions about the market, on the time that the CA itself lost during evaluation, as well as on a subsequent preference for dividing the contract into lots. **These reasons are matters of planning and internal management of the CA; they are not reasons for annulment after the opening of tenders.**

Therefore, the only proportional, lawful measure in accordance with the consolidated practice of the PRB is: **annulment of the annulment** and return of the activity for re-evaluation / continuation of the procedure from the stage after the opening of tenders, with the obligation that the CA examine, evaluate, compare and rank the tenders according to the published criteria.

The prior procedure for resolution of the dispute has been followed. We submitted a request for reconsideration on 20.06.2026, while the Contracting Authority, by the Decision dated 24.06.2026, protocol no. 4585, rejected it as unfounded. This complaint is submitted within the statutory ten-day deadline after the decision of the Contracting Authority, in accordance with Article 109 of the PPL and the procedural rules of the PRB.

II.

II.1. KOSOVO ENERGY CORPORATION J.S.C. conducted the procurement activity titled "Replacement of the tubes in the SBT1-B1 superheaters and the SMT-B2 superheaters and of the supporting tubes of the SHT superheater, Unit B1 AND B2", with procurement no. KEK-26-449-5-1-1 and internal no. KEKC-26-021-511. The activity was announced as a works contract, open procedure, with an estimated value of EUR 8,291,415.00 and with the award criterion "responsive tender with the lowest price".

The Contract Notice and the Tender Dossier determined that the contract **is not divided into lots**. In the same documents, the CA determined the technical scope for both units, B1 and B2, and provided for the general implementation period from 08.04.2026 until 15.11.2027. For B1, a period of 170 days was provided within the period 08.04.2026 – 09.12.2026, while for B2, a period of 170 days was provided within the period 08.04.2027 – 15.11.2027.

These conditions were not proposed by the tenderers. They were drafted, approved and published by the CA itself. Therefore, at the stage after the opening of tenders, the CA cannot use its own published conditions as a reason to interrupt the activity, unless it proves a clear and exhaustive basis under Article 62 of the PPL.

II.2. The tenders were opened on 07.04.2026 through the E-Procurement platform. According to the minutes of tender opening, four tenders were received. The tender of the Group of Economic Operators composed of EFOR ENDÜSTRİYEL TESİSLER MONTAJ İMALAT VE İNSAAT ANONİM

SIRKETI and Bahri Asllani offered the price of EUR 5,806,526.51 excluding VAT, respectively EUR 6,851,701.28 including VAT.

This price is **below the estimated contract value** and, according to the tender opening minutes, is the lowest offered price. Likewise, another tender also results below the estimated contract value. For this reason, the legal condition that “all responsive tenders exceed the budget” cannot be a basis for annulment; the CA has neither established such a thing nor conducted an assessment of the responsiveness of each tender before annulment.

II.3. *The evaluation report dated 09.06.2026 does not fulfill its legal function as a report of examination, evaluation, comparison and ranking of tenders. From its content it results that the Evaluation Commission did not conduct a complete individual analysis for each tender, did not provide clear findings on the responsiveness or non-responsiveness of each tenderer and did not recommend the award of the contract to the highest-ranked tenderer. Instead, the report was transformed into reasoning for annulment, by returning back to the conditions of the tender dossier itself.*

On 16.06.2026, the CA issued B58 – Notice on the Decision of the Contracting Authority, annulling the activity. In B58, the CA relied on Articles 43.7 and 44.2 of the Regulation and the Operational Guide for Public Procurement. The main reasoning was that the deadline for production and delivery of materials, especially for unit B1 until 30.06.2026, is “objectively unachievable”; that the total quantity of materials exceeds 420 tons; that the deadline and delivery criterion should be reviewed; and that, in case of re-initiation, the procedure should be harmonized with the actual planning of overhauls and possibly divided into lots.

These reasons are not reasons under Article 62 of the PPL. They do not demonstrate an uncorrectable violation of law; they do not demonstrate exceeding the budget by all responsive tenders; and they are not external objective events before the opening of tenders. They are, at best for the CA, a late review of technical planning, work dynamics and contract structure, which should have been done before publication of the dossier or before expiry of the deadline for submission of tenders.

II.4. *On 20.06.2026, the Complainant submitted a request for reconsideration, challenging B58 precisely because of the absence of a legal basis for annulment, the failure to evaluate tenders, the erroneous application of Article 43.7 and Article 44.2 of the Regulation, as well as because the CA had used its own delay during evaluation as a reason for termination of the procedure.*

By the Decision dated 24.06.2026, protocol no. 4585, the CA rejected the request for reconsideration as unfounded. This decision did not correct the legal defect of B58. On the contrary, it repeated the same reasoning, added an erroneous interpretation that the evaluation period begins from the formation of the Evaluation Commission and not from

the opening of tenders, and belatedly mentioned that the tender of the Complainant's Group "does not meet all requirements for the proposed staff", without individualizing it, without reasoning it and without using this allegation as a regular decision on the responsiveness of the tender.

This last element is particularly important: **the CA cannot keep in force the annulment of the entire activity by inserting, in the decision on reconsideration, a new and unreasoned remark concerning the Complainant's staff.** If the CA considers that a tender does not meet any requirement, the law obliges it to evaluate that tender individually according to the published criteria, to reason the finding and, where allowed, to request clarifications. This is not a basis for annulling the entire procedure.

III.

III.1. Termination of a procurement activity without award of contract, especially after tenders have been opened and prices have become known, is an exceptional measure. It infringes competition, exposes the commercial strategies of tenderers and creates a real risk that re-tendering will be conducted with prices manipulated by the market, because the prices are already known.

For this reason, Article 62 of the PPL must be interpreted narrowly. It does not give the CA open discretion to annul the procedure whenever, after the opening of tenders, it assesses that it would have been better to plan the deadlines, quantities, division into lots or contract structure differently. **The law allows annulment only when an exhaustive, verifiable and clearly reasoned cause has been proven.**

In this case no such cause exists. B58 and the decision dated 24.06.2026 do not identify specific violations of the PPL in the procedure that cannot be corrected; do not establish that all responsive tenders exceed the budget; and do not describe any objective, external and unforeseeable event before the opening of tenders. On the contrary, the reasoning is based on the tender dossier itself and on the CA's planning.

III.2. In B58, the CA relied on Articles 43.7 and 44.2 of the Regulation. This basis is erroneous. Article 43.7, in essence, links annulment after the opening of tenders with the case where all responsive tenders exceed the CA's budget. This condition has not been met. The Complainant's tender is EUR 6,851,701.28 including VAT, therefore clearly below the estimated value of EUR 8,291,415.00. Another tender also results below the estimated value.

Furthermore, the CA did not conduct any assessment of the responsiveness of each tender before reaching the conclusion for annulment. Without this step, the CA cannot rely on the standard "all responsive tenders". In the absence of individual evaluation, it is not known which tenders are responsive and which are not; therefore, the legal conclusion required by Article 43.7 cannot be produced.

Article 44.2 is not a substantive basis for annulment. It concerns the use and content of standard forms. **The form does not create competence for annulment; the competence for annulment derives only from substantive law, respectively from Article 62 of the PPL and Article 43 of the Regulation.** By using Article 44.2 as support, the CA replaced the substantive basis with a formal-procedural rule that does not allow termination of the activity.

***III.3.** The CA claims that the production, processing, testing and transport of materials for B1 until 30.06.2026 is not objectively achievable. However, this claim remains general. The CA has not presented an independent technical report, market study, communications with qualified manufacturers, confirmation from suppliers, analysis of the dynamic plans of tenderers, or any verifiable evidence that would make performance legally impossible.*

Such a conclusion cannot be drawn only from the volume of materials. The volume of works was known to the CA before publication of the dossier. It was determined by the CA itself in the technical specifications. The economic operators competed by accepting these conditions and undertaking implementation according to the published deadlines. If the CA had doubts about the dynamic plan, methodology, production, transport or engagement of capacities, the law provided it with the instrument of clarification, not the instrument of annulment.

Article 40.8 of the Regulation allows requesting written clarifications, without allowing any change to the price or to the material conditions of the tender. The CA did not use this mechanism to verify concretely the plan of the Complainant or of other tenderers. Consequently, **the CA replaced the evaluation of tenders with an abstract prejudice that the market cannot perform the contract.** This standard is not recognized by the PPL.

***III.4.** A central part of the CA's reasoning relates to the time that elapsed from publication, opening of tenders and the evaluation process. This is legally unacceptable. The tenders were opened on 07.04.2026, while B58 was issued on 16.06.2026, around seventy days later. Regulation No. 001/2022 requires that the examination, evaluation, comparison of tenders and issuance of the notice on the CA's decision be carried out within the shortest possible period and not more than 30 days from the opening of tenders; in exceptional and reasoned cases, there may be an additional extension of 20 days.*

In the decision dated 24.06.2026, the CA claims that the period should be calculated from the date of formation of the Evaluation Commission. This interpretation conflicts with the very text and purpose of Article 40.3 of the Regulation. The period does not start when the CA decides to organize itself administratively; the period starts from the opening of tenders. The delayed formation of the commission, delay in review, lack of internal coordination or administrative procedures of the CA cannot be used against economic operators.

A delay caused by the CA cannot be transformed into a reason for annulment. If such a standard were accepted, every contracting authority could delay the evaluation until

the technical deadlines become difficult, then annul the procedure by relying precisely on its own delay. This result would render Article 40.3 ineffective and would infringe the principle of legal certainty.

III.5. The PPL and the Regulation oblige the CA to examine, evaluate and compare the tenders submitted on time according to the published criteria. This implies an individual evaluation of each tender for the administrative, professional, technical and financial aspects, then ranking according to the award criterion. In this activity, the criterion was the lowest price of the responsive tender.

The evaluation report does not meet this standard. It does not clearly identify the tenderer recommended for award of contract, does not provide full reasoning for each tender, does not clarify whether the Complainant's tender is responsive or not according to the published requirements, and does not link any finding to any concrete evidence from the Complainant's tender. The report shifts the focus from "evaluation of bids" to "evaluation of the tender dossier".

This is an essential violation. At the stage after the opening of tenders, the CA cannot change the nature of the process from evaluation of tenders to review of planning. If the dossier had to be changed, this should have occurred before the opening of tenders, by amending the dossier and extending the deadline for submission of tenders. After the opening of tenders, the legal route is evaluation, not re-planning.

III.6. B05 and the Tender Dossier expressly determined that the activity is not divided into lots. The tenderers, including the Complainant, drafted their offers on the basis of this contractual structure. Only after the opening of tenders did the CA assess that B1 and B2 should have been treated as lots or separate contracts.

This approach is impermissible. Division or non-division into lots is a decision of the planning and drafting stage of the tender dossier. The PPL and the Regulation allow the CA, before the deadline for submission of offers, to amend the dossier and extend deadlines. They do not allow the CA, after disclosure of prices, to say that the contract structure should have been different and, for this reason, the entire procedure should be annulled.

The belated wish for division into lots is a change of strategy, not a violation of law. It may be a subject for a future procedure only if this activity is lawfully completed; but it cannot be a basis for terminating this activity contrary to Article 62 of the PPL.

III.7. In the decision on the request for reconsideration, the CA for the first time mentions that the tender of the Complainant's Group does not meet all the requirements of the tender dossier regarding the proposed staff. This allegation was not addressed in B58 as a reason for elimination of the Complainant, was not reasoned with any concrete fact, does not mention

which document, which requirement, which engineer, which welder or which certificate it considers unfulfilled, and does not explain why clarification could not possibly be requested pursuant to Article 40.8 of the Regulation.

This allegation cannot save the annulment. It confirms the opposite: the CA annulled the activity without carrying out the full individual evaluation. If the CA thinks that an offer has deficiencies, then it must establish this in the evaluation report and in B58, with precise, reviewable reasoning linked to the published criteria. A general allegation concerning staff cannot be used, at the reconsideration stage, as subsequent reasoning for the annulment of the entire activity.

Moreover, an alleged issue concerning a specific tender does not create a basis for annulment of the entire procedure. The legal remedy, if a tender is truly non-responsive, is rejection of that tender after regular evaluation and continuation of the evaluation with the other tenders. Annulment of the entire activity is not proportional and is not supported by law.

III.8. *In the decision dated 24.06.2026, the CA emphasizes that the “impossibility” of delivery was not contested or proven otherwise by the Complainant. This is an erroneous reversal of the burden of proof. In the public procurement procedure, when the CA decides to annul the activity after the opening of tenders, the CA bears the burden to prove that the legal basis for annulment exists. The economic operator cannot be required to prove a negative fact, namely that objective impossibility does not exist, as long as it submitted an offer and undertook the published conditions.*

We did not request a change of the deadline, did not withdraw the offer and did not declare impossibility of performance. On the contrary, by submitting a tender, we accepted the deadlines, technical conditions, requirements for a dynamic plan and contractual obligations, including performance security. If the CA seriously doubted the real ability of performance, it should have requested specific clarification and evaluated the tender evidence; not annulled the procedure on a general assumption.

III.9. *Economic operators have the right to expect that an open procedure, after offers are submitted and prices become public, will continue according to the rules of the PPL and the published criteria. Annulment after the opening of tenders, on grounds of late planning, infringes the legitimate expectations of tenderers and turns the procedure into an unpredictable process.*

If the CA can annul the activity whenever, after disclosure of prices, it assesses that the deadline is difficult, that the contract should have been divided into lots, or that it should be better harmonized with internal planning, then economic operators have no certainty that competition will end with real evaluation. This conflicts with the

fundamental principles of the PPL: equality, transparency, proportionality, efficiency and effective competition.

III.10. The constitutional and Convention standards also require that administrative decisions affecting the rights and economic interests of parties be reasoned, reviewable and based on law. Article 31 of the Constitution and Article 6 of the ECHR, in terms of the guarantees of due process and a reasoned decision, require the decision-making body to address the essential allegations of the parties. Articles 32 and 54 of the Constitution, as well as Article 13 of the ECHR, require an effective legal remedy.

In this case, the decision dated 24.06.2026 does not meet this standard. It does not effectively respond to the Complainant's main allegation: that Article 43.7 is not applicable because the Complainant's tender is below the budget and that Article 44.2 is not a basis for annulment. Likewise, it does not provide concrete evidence for the objective impossibility of performance and does not explain why clarifications, individual evaluation or ranking according to the published criteria would not be sufficient means. Such a decision is not reasoned in the substantive meaning of the word.

IV.

The unlawful annulment of the activity causes the Complainant direct procedural and material damage. The Complainant spent time, funds and professional capacities for preparation of the offer, securing technical documentation, mobilization of staff, calculation of the price, participation in the competition and maintaining readiness of capacities in a project of high value and high technical complexity.

The procedural damage is even more evident: the Complainant's price has already been publicly disclosed. If re-tendering without legal basis is allowed, the Complainant will enter a distorted market, where competitors know its price and can use it for subsequent bidding strategies. This harms competition and places the Complainant in an unfair position.

For this reason, the fair remedy is not subsequent compensation for damage, but restoration of the procedure to the legal course: evaluation of tenders, ranking and issuance of a new decision according to the PPL.

For all the above-mentioned reasons, the Complainant requests the Review Panel of the PRB to issue this:

DECISION

1. To approve in full as well-founded the complaint of the economic operator EFOR ENDÜSTRİYEL TESİSLER MONTAJ İMALAT VE İNŞAAT ANONİM ŞİRKETİ.
2. To annul B58 – Notice on the Decision of the Contracting Authority dated 16.06.2026, for the procurement activity “Replacement of the tubes in the SBT1-B1 superheaters and the SMT-B2 superheaters and of the supporting tubes of the SHT superheater, Unit B1 AND B2”, procurement no. KEK-26-449-5-1-1, internal no. KEKC-26-021-511.
4. To order the Contracting Authority to return the procurement activity to re-evaluation /

continuation of the procedure from the stage after the opening of tenders, by examining, evaluating, comparing and ranking all tenders according to the criteria published in the Contract Notice and in the Tender Dossier.

9. Material damages

Describe the manner how alleged violation has caused, or threatens to cause material damage to the complainant, if claims for compensation are included

The material damages are currently undetermined but include administrative, technical, and other associated costs arising from the procurement procedure.

10.. List of attached documents (proofs)

If applicable, attach to the Complaint the documents listed below:

- a) a copy of the publication for the “Contract Notice” or “Design Contest Notice”*
- b) a copy of the publication for the “Contract Award Notice” or “Design Contest Result Notice” or “Cancellation Notice”.*
- c) a copy of the letter of the elimination of the tenderer/candidate/ letter to unsuccessful tenderer/ letter of non-qualification.*
- d) a copy of the minutes of the public tender opening, iff applicable,*
- e) attach a copy of the decision adopted by CA during the previous dispute settlement in accordance with Article 108A of the PPL*
- f) proof of payment of the appeal fee in accordance with Article 118 of the PPL, and*
- g) all your correspondences with the contracting authority including e-mails and every written information in relation to this procurement activity, and with every allegation submitted in the complaint.*

****According to section 111.2 of PPL, the complainant, shall file the original of the complaint to the PRB and simultaneously, a copy to the Contracting Authority by the most rapid means possible.*