



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

Psh. No.0341/25

The Review Panel, appointed by the Acting President of the Procurement Review Body (PRB), pursuant to Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosovo (LPP) composed of Kimete Gashi Brajshori, Isa Hasani Member and Vedat Poterqoi Member, deciding on the complaint of the Economic Operator (EO) Diamanti SH.P.K. against the notification of the decision of the Contracting Authority “Regional Water Supply Company Gjakova SH.A.” in the capacity of Contracting Authority (CA) regarding the procurement activity “Installation of the Gjakova III water supply for the villages of Lugbunar, Osek Hile and Skivjan of the Municipality of Gjakova” with procurement number: KRUGJA-24-9965-5-1-1, on the 21/07/2025, has issued this:

DECISION

1. Approved, as partly grounded the complaint of “Diamanti SH.P.K” submitted to the Procurement Review Body on 06/05/2025 (with protocol number 0341/2025) regarding the procurement activity Installation of the Gjakova III water supply for the villages Lugbunar, Osek Hile and Skivjan of the Municipality of Gjakova with procurement number KRUGJA- 24-9965-5-1-1, initiated by the Contracting Authority, Regional Water Supply Company Gjakova SH.A.
2. **Cancelled**, B58 Notice on the decision of the Contracting Authority to cancel the procurement activity, regarding the procurement activity Installation of the Gjakova III water supply for the villages of Lugbunar, Osek Hile and Skivjan of the Municipality of Gjakova with procurement number KRUGJA-24-9965-5-1-1, initiated by the Contracting Authority Regional Water Supply Company Gjakova J.A., while the above-mentioned procurement activity is returned for re-evaluation.
3. This appeal is considered a res judicata case since the claims in this appeal are the same as in Decision PSH 2024/1264 where the subject matter of the dispute and the parties are the same, therefore this case is considered a res judicata case.
4. Since the complaint of the complaining economic operator is approved, the fee paid upon filing the complaint shall be returned to the same. The complaining economic operator is

obliged, in accordance with Article 33, point 6 of the PRB's Rules of Procedure, to request the return of the complaint security within sixty (60) days, otherwise the deposit shall be confiscated and these funds shall be transferred to the Budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances

On the: 06/05/2025, EO Diamanti SH.P.K. has repeated the complaint at the PRB against the notification for cancellation of the procurement activity: Installation of the Gjakova III water supply for the villages of Lugbunar, Osek Hile and Skivjan of the Municipality of Gjakova with procurement number KRUGJA-24-9965-5-1-1 initiated by the Contracting Authority, Regional Water Supply Company Gjakova SH.A.

The contracting authority has implemented an open procedure, type of work contract, estimated value of the contract: 750,000.00 €.

-Evaluation and administration of evidence –

The PRB has engaged the procurement review expert to, in accordance with Article 113 of the LPP, conduct an initial review of the file and the complaint claims, who in the report dated 20/05/2025 has recommended that:

To approve the complaint of the complaining EO, as well as

- This issue, according to the expert, is a rebuttable claim

Response to the complaint claims of Diamanti SH.P.K.

The complaint has been repeated and for this procurement activity a decision has already been taken with no. PRB: 2024/1264, dated 12.03.2025. On 06.05.2025, the Economic Operator "DIAMANTI" SH.P.K and has submitted a complaint to the Procurement Review Body (PRB), as a dissatisfied party with the decision of the Contracting Authority - Regional Water Supply Company GJAKOVA SH.A.

In accordance with Law No. 04/L-042 on Public Procurement in the Republic of Kosovo, as amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092, the review expert clarifies the following: we clarify that based on Regulation No. 01/2020 of the Procurement Review Body, Article 16 (Unified Cases) par. 2) and 3), the same complaint claims have been repeated for the parties in the procedure regarding these complaint claims, where the object of the dispute and the parties are the same, for cases that have been reviewed previously, as cases judged "res judicata", according to Article 105.2.16 of the LPP, therefore they have not been treated by the review expert, since the decisions of the PSH-OHSP cannot be commented on or interpreted by the review expert.

It is hereby notified that regarding the complaints, there is already a decision of the PRB with no.

2024/1264, dated 12.03.2025.

Based on the electronic platform and the new evaluation report, the CA has not requested additional clarifications and the examination and evaluation of the bids is the responsibility of the Contracting Authority, respectively the Evaluation Commission appointed by the Contracting Authority, in accordance with Article 59 and Article 60 of the Law No. 04/L-042 on Public Procurement of the Republic of Kosovo, as amended and supplemented. The Evaluation Commission is responsible for reviewing, examining, evaluating and comparing the submitted bids, ensuring that each evaluation is in accordance with the criteria set out in the tender dossier and the principles of transparency, equality and competition.

In accordance with Article 130 of the Law No. 04/L-042 on Public Procurement of the Republic of Kosovo, the decision of the Procurement Review Body (PRB) is binding on the Contracting Authority. The Contracting Authority is obliged to implement the PRB's decision without delay and in full, otherwise, according to Article 131 of this Law, any such non-compliance constitutes a legal violation and may entail disciplinary and administrative consequences for the responsible persons.

RECOMMENDATION OF THE REVIEW EXPERT

Based on the above-mentioned clarifications, the review expert proposes to the review panel that the case be treated as a case adjudicated according to the previous decisions of the PRB and be returned for re-evaluation.

The Panel found that there are no elements for preventing conflict of interest, as required in the sense of Article 11 of the PRB Rules of Procedure, in connection with paragraph 1.75, Article 4 of the LPP, and at the same time analyzed all the documents of this case, including all the acts and actions of the parties, and considered that there is no need to convene a hearing with the parties, since the submissions of the parties and their actions constitute a sufficient basis to decide on the merits as provided for in paragraph 1, Article 24 of the PRB Rules of Procedure, and that there is no need to request the contracting authority and/or the complainant to provide additional information and/or explanations, in the sense of paragraph 3, Article 116 of the LPP.

-Finding of the Review Panel –

The Review Panel, after reviewing and analyzing all documentation on the e-procurement platform, complaint claims, and responses provided by the expert on the matter engaged by the PRB, considers that the expert reports contain a priori the essential elements of such a document as provided for in the provision of Article 113 in conjunction with Article 114 of the LPP, according to which the provision requires the expert to review all procurement documentation, including all complaint claims, and to provide the panel and all parties with an independent and professional assessment of the procurement activity and the validity of the complaint claims.

However, it should be noted that the expert report is not binding on the Review Panel and that any such report is assessed and/or analyzed in the overall context of the case files, the alleged facts and any other evidence, taking into account the nature of the possible violations, the course, nature and purpose of the procurement activity. Therefore, the fact in which cases and for what,

the Panel relies or not, on any report and/or any of the recommendations, is a matter of his/her independent and professional judgment, as these responsibilities are addressed within the meaning of Article 98, 99 in conjunction with Article 105 of the LPP.

The review panel clarifies that, the complaining EO in the complaint submitted to the PRB has raised complaint claims which were previously treated and considered as grounded through decision PSH 2024/1264, and according to the decisions of the PRB, the CA was requested to return the procurement activity for re-evaluation and to cancel the notice for cancellation of the procurement activity. The findings for approval of the complaint claims as grounded are as in the expertise with no. 1264/2024 and in the decisions of the Review Panel with no. 1264/2024 issued on 12.03.2025. Since the decisions resulted in reassessment, it means that the complaint claims were well-founded and the CA had the obligation to avoid the violations found in the expertise report and in the decisions of the Public Procurement Agency and to correct them through reassessment, but the CA did not change the result in the case of reassessment, although in terms of Article 29 paragraph 3 of the PRB Rules of Procedure, the Contracting Authority had the obligation to notify the PRB of the result of the reassessment process within 15 days from the date of receipt of the decision. Based on Article 16 of the PRB Rules of Procedure No. 01/2022 paragraph 2, when it is established that the complaint claims are the same as those previously reviewed by the Review Panel, the case is treated as “Res Judicata”.

Based on the above-mentioned clarifications, the review panel assesses the complaint of the complaining EO Diamanti SH.P.K. as well-founded. In repeated cases with the same complaint claims, when the object of the dispute and the parties are the same, for cases that have been reviewed previously, the Chairman of the review panel should treat as a matter of res judicata.

Therefore, the review panel, in accordance with the Law on Public Procurement (LPP) and its fundamental principles, the Contracting Authority (CA) has the duty to ensure that the procurement process is efficient, transparent and fair, by treating all economic operators in an equal and non-discriminatory manner. This also includes the obligation to guarantee the economic and effective use of public funds, by not contributing to and prolonging this procurement activity. Finally, based on the above clarifications, it results for this panel that the CA, the examination, evaluation and comparison of tenders was not carried out in full compliance with the legal provisions of Article 59 of the LPP.

The Review Panel has decided in accordance with the legal competences within the meaning of Article 104, paragraph 1, in conjunction with Article 103, Article 105 and Article 117 of the LPP to implement the procurement review procedure in a prompt, fair, non-discriminatory manner, with the aim of resolving the case legally and effectively. Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations that may arise during a procurement activity.

-Conclusion-

Based on the competences of the PRB provided for in Article 105, in conjunction with Article 106 of the LPP, the Review Panel noted, inter alia, and Article 103 of the cited Law, that all interested parties shall have equal rights in procurement procedures and legal remedies and that

no decision of the PRB shall be taken or made to discriminate or harm another person in the process or a person or enterprise.

The PRB starts from the fact that each CA (at every level) enjoys full knowledge in the exercise of competences and the determination of needs in harmony with the budget capacity. Therefore, starting from the above and carefully administering all the evidence attached to the documents of this case, the Review Panel has stood as in the provision of the decision taken, convinced that it has applied the appropriate solution in accordance with the impact on and the nature of the issue in the concrete case, considering it also fair and reasonable to allow the funds deposited in the name of the appeal fees.

The review panel in this decision-making has also taken into consideration the requirements of Article 104, paragraphs 1 and 4 of the LPP, according to which the PRB must act as soon as possible, act in a manner proportional to the alleged violation or the issue for which the complaint was filed, and take into account the possible consequences of the actions or measures on all interests that may be harmed, including the public interest. The Review Panel has decided in accordance with the legal powers in the sense of Article 104 paragraph 1 in connection with Article 103, Article 105 and Article 117 of the LPP to implement the procurement review procedure in a prompt, fair, non-discriminatory manner, with the aim of resolving the case legally and effectively.

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

President of the Review Panel

Mrs. Kimete Gashi Brajshori

Legal advice:

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

Decision to be submitted to:

1x1 CA – **Regional Water Supply Company Gjakova SH.A.;**

1x1EO–“ **Diamanti SH.P.K**”;

1x1 Archive of the PRB;