

**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. Blerim DINA – President, deciding on the complaint lodged by the Economic operator: “Ejona” - Pejë, against the contract award notice, regarding with the procurement activity with title: “Maintenance and servicing of elevators”, with procurement no: 70030-20-1109-2-3-6, initiated by the Contracting authority/General Hospital Peja, on the 09.06.2020 has issued this:

## **DECISION**

**I. APPROVED**, as partly grounded the complaint of the Economic operator: “Ejona” - Pejë, regarding with the procurement activity with title: “Maintenance and servicing of elevators”, with procurement no: 70030-20-1109-2-3-6, initiated by the Contracting authority/General Hospital Peja.

**II. CANCELLED** the contract award notice, regarding with the procurement activity with title: “Maintenance and servicing of elevators”, with procurement no: 70030-20-1109-2-3-6, initiated by the Contracting authority/General Hospital Peja.

**III.** Contracting authority within 15 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 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 “Ejona” - Pejë, 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 31 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

Complaining economic operator “Ejona” - Peja, as a dissatisfied party has filed a complaint in the PRB, on the 07.05.2020 with procurement no. 282/20, against the notification for contract award regarding the procurement activity with title: “Maintenance and servicing of elevators” with procurement no. of the proc: 70030-20-1109-2-3-6, initiated by the contracting authority / CA / General Hospital Peja, claiming that:

- The contracting authority has acted in contradiction with article 108 / A of the Law on Public Procurement of the Republic of Kosova, as well as article 41.8, 41.10, 43.3 of ROGPP.

Procurement Review Body, conform article 113 and 114 of the LPP on the 12.05.2020, has authorized the procurement review expert to review the validity of all claims of the complaining party.

Procurement review expert in the report of the 20.05.2020, regarding the complaining claim of the complaining EO explains as follows:

Regarding the claim of the complaining EO, that EO declared winner has arithmetic errors in the submitted pre-measurement which surprisingly CA has not noticed, in positions 29, 30 EO declared winner in the unit price has set the price per unit with VAT 59.00 euro, while at Total with VAT it has set the price 708.00. While at position 31, the price per unit with VAT has set the value 23.60 Euros, while at the total 283.20 Euros. In these three positions the unit is (where x1 should always be calculated), and not as CA has done where it has multiplied by 12, the review expert has this opinion.

In the form as created the table for the description of prices in the tender dossier has left the possibility of completing it in two ways for positions no. 29, 30 and 31. Even as completed by the complaining EO, does not present arithmetic errors in its total.

In the table of bids of the winning EO, there is no arithmetic error in calculating prices for any of the positions in question, as emphasized by the complaining EO. The bid of the winning EO reflects the exact financial situation in its total according to mathematical calculations in all three positions.

There is no arithmetic error in calculating the bid of the winning EO for positions 29, 30 and 31 because the price per unit in these positions is given with VAT, while the total is calculated for 12 months, this requirement of the tender dossier. The important thing is that the unit price is correct in each position and also the total price for 12 months for all three positions is correct. There is no excess of 2% of the value of the financial offer as claimed. Therefore, in the opinion of the review expert this complaining claim is unfounded.

Regarding the other claim of the complaining EO of the contracting authority has acted contrary to article 108 / A, as has not respected the legal deadlines for filing a complaint in the PRB, and has published the contract award notice in the E-Procurement system, now the activity in question appears "WITH CONTRACT", the review expert has this opinion.

The Contracting Authority has notified the contract award before the deadline for complaints to the PRB by economic operators. In this case the CA has not respected the provisions of article 108 / A for the deadline for submission of complaints. However the

complaining EO has complained to the PRB and this complaint has been accepted as valid for treatment. Also, CA has canceled the contract award notice which is published on the electronic platform of the PPRC. From this action of the CA has not been damaged the complaining EO. However, the complaining claim is grounded.

Review expert's opinion: Based on the above clarifications, review expert Proposes the review panel that the complaint of the complaining EO "Ejona" - Peja, to be approved partially grounded, and to remain in force the notification for contract award regarding the procurement activity "Maintenance and servicing of elevators" with procurement no. of proc: 70030-20-1109-2-3-6, initiated by the Contracting Authority / CA / General Hospital Peja.

Contracting authority, on the 21.05.2020 through memo, has notified the PRB, that agrees with the opinion of the review expert.

Economic Operator, on the 20.05.2020 through memo, has notified the PRB, that does not agree with the opinion of the review expert.

The hearing session was held on: 09.06.2020, without the presence of the parties conform article 24.1 of the Regulation of the PRB, where the case files were reviewed by checking and analyzing the documentation for the procurement procedure which consists of: authorization of initiating the procurement activity, contract notice, minutes on the opening of bids, decision on the establishment of the bid evaluation commission, bid evaluation report, contract award notice, complaint of the economic operator, report of the procurement review expert, and all memos of the parties to the proceedings.

Regarding the claim of the complaining EO "Ejona" - Peja that EO declared winner has arithmetic errors in the submitted measurement which surprisingly CA has not noticed, in positions 29, 30 EO declared winner in the unit price has set the price per unit with VAT 59.00 euros, while the total with VAT has set the price 708.00 euros. While at position 31, the price per unit with VAT has set the value at 23.60 Euros, while at the total 283.20 Euros. In all three positions the unit is a lump sum (where x1 must always be calculated), and not as CA did where it multiplied by 12.

Review panel clarifies that the claim of the complaining EO where he emphasizes that "should always be calculated x 1" while EO recommended for contract from the unit price to position 31 has given the price of 26.30 euro, while the total with VAT 283.20 euro, for the review panel is meaningless because point "a" of article 41.9 of RRUOPP has determined that the unit price prevails, which states: "The tenderer will be informed in writing immediately for such corrections. Errors in the calculation of the price will be corrected by the CA in this way:

a. In case there is a discrepancy between the unit price and the total price obtained by multiplying the unit price and the quantity, the unit price prevails and the total price will be corrected.

So, for the Review Panel it is not clear how CA has done the evaluation of tenders when the unit price has been calculated with 12 months. Consequently, the above provision has determined that the unit price must be multiplied by the quantity, while in this case it has been multiplied by months.

Regarding the other claim of the complaining EO "Ejona" - Peja of the contracting authority has acted contrary to Article 108 / A, as has not respected the legal deadlines

for filing a complaint in the PRB, and has published the contract award notice and in the system of E-Procurement, now the activity in question appears "By Contract".

Review panel conform review expert clarifies that contracting authority has made the notification for contract award before the deadline for complaints to the PRB by the economic operators. In this case the CA has not respected the provisions of article 108 / A for the deadline for submission of complaints. However the complaining EO has complained to the PRB and this complaint has been accepted as valid for treatment. Also, CA has canceled the contract award notice which is published on the electronic platform of the PPRC. From this action of the CA has not been damaged the complaining EO. However, the complaint is well founded.

Review panel after reviewing the case file, clarifies that contracting authority during the evaluation and comparison of tenders must confirm the claims of the complaining EO by evaluating and examining the tenders in accordance with the requirements set out in the tender dossier and contract notice.

Review panel conform article 117 of the LPP, and based on the evidence presented 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. Blerim DINA

Decision to be submitted to:

1x1 CA – General Hospital

1x1 EO – “Ejona” Peja

1x1 Archive of the PRB

1x1 For publication on the website of the PRB.