



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

Psh. No.972/23

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) in the composition of; Isa Hasani- President, Vedat Poterqoi-Member and Vjosa Gradinaj-Mexhuani- Member, deciding according to the complaint of (EO) “Internat Security Association” Sh.P.K, against the decision to contract award or a design competition of the "Ministry of Industry, Entrepreneurship and Trade" in the capacity of the Contracting Authority (CA) related to the procurement activity “Physical security of facilities for the needs of MINT” with no. of procurement: "204-23-7170-2-1-1, on the 13/02/2024 has issued this:

### **DECISION**

1. Approved as partly grounded the complaint of EO “Internat Security Association” Sh.P.K with no. 2023/972, dated 04/12/2023, against the decision of the CA “Ministry of Industry, Entrepreneurship and Trade” related to the procurement activity: “Physical security of facilities for the needs of MINT” with no. of procurement: "204-23-7170-2-1-1.
2. Remains in force, "Notice on the Decision of the Contracting Authority" dated 17.11.2023, for contract award related to the procurement activity "Physical security of facilities for the needs of MINT" with no. of procurement: "204-23-7170-2-1-1" of the Ministry of Industry, Enterprise and Trade.
3. Since the complaint of the complaining EO is approved as partially grounded, the complaint fee is returned to the amount deposited when the complaint was submitted. The complaining EO is obliged to, in accordance with Article 31 point 6 of the Rules of Procedure of the PRB, within a period of sixty (60) days, make a request for the return of the insurance of the complaint, otherwise the deposit will be confiscated, and these funds will go to the Budget of the Republic of Kosova.

## REASONING

### *- Procedural facts and circumstances –*

On the 13.07.2023, the Ministry of Industry, Entrepreneurship and Trade in the capacity of the Contracting Authority has published the Contract Notice B05 related to the procurement activity with "Physical security of facilities for the needs of MINT" with procurement no: "204-23-7170-2-1-1". While on the 17.11.2023 B58 published the Notice on the decision of the Contracting Authority where it awarded with the contract to EO "Rojet e Nderit" Sh.P.K."

This procurement activity was developed through an open procedure with a service contract type and with an estimated contract value of 380,000.00 €.

On the 21.11.2023, EO "Internat Security Association" SH.P.K submitted a request for reconsideration against the aforementioned decision of CA. On 29.11.2023, the Contracting Authority rejected the request for reconsideration as unfounded.

On the 04/12/2023, PRB has received the complaint from EO "Internat Security Association" LLC with no. 972/23 regarding the activity "Physical security of facilities for the needs of MINT" with no. of procurement: "204-23-7170-2-1-1" .

### *-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.

*The claims of the complaining economic operator "Internat Security Association" Sh.P.K. are presented as follows:*

The first claim (I): The complainant claims: "Considering that we, as EO parties with an interest in this PA, have bid according to the CA's requirements for this PA, we are surprised how the CA has announced the winner of a company which is financially irresponsible, why are we mentioning this, we will offer you the arguments as follows: 1. The tender file and its requirements in Annex 1 for the salaries of workers and the number of workers determined by the CA itself, according to these requirements we have also offered with our offer where we have calculated the salaries correctly and some rights derived from the labor law of the Republic of Kosovo, for which we claim we will offer the calculation and the questions asked by the CA against us. The CA has requested that the number of workers be 28 workers for the performance of insurance services according to the request recorded in Annex 1 of the mandatory technical specifications (see the request of the CA as below). Clarification: 1. Distribution of workers

(guards) must be done in coordination with the contracting authority, determination of points, number, distribution of guards...etc. 2. The number of Facilities and/or the number of guards may be increased or decreased, according to the needs of the Contracting Authority that may arise during the duration of the contract. 3. The approximate number of workers (guards) will be about twenty (28) people (the EO must prove to us the employment contracts as well as the certification from TAK that pays taxes and contributions for the workers). 4. Chemical Industry Facility, Business Park in Drenas and Z.K. Bërnica e Eperme, located in "Bardhosh", Pristina, have fences that mean securing them (the perimeter) and the spaces inside them. 5. The working hours for female workers (guards) must be in accordance with the hours specified in the Labor Law (40 working hours per week). 6. In case of loss or theft of any item during the time provided by the Company, the company must respond within 10 days from the loss or theft by compensating the damage caused. The estimated quantity is only an Indicative quantity. The allowed deviation from the total indicative amount is 30%. Note: The salaries of the workers must not be lower than €350.00.00 net. "The CA has completely and unilaterally ignored this request, favoring the winning EO, even though this EO does not meet this condition at all, and because it does not meet it, we will give you a precise and clear explanation regarding this remark of ours in this appeal procedure. We have sent you a financial analysis which the CA has requested through a standard letter for clarification of the tender dated 01.11.2023, where it is requested that our clarifications be given based on the request of the tender file, respectively the request of Annex 1 for salaries. within the tender file, AK-MINT has requested that the net salary of a worker should not be lower than 350 euros, and the working hours for female workers (guards) should be in accordance with the hours specified in the Labor Law ( 40 working hours per week). therefore, based on these legal requirements specified in the tender file and in order to evaluate your offer correctly and according to the LPP, you must clarify how you calculated the hourly unit price per worker (the calculation is done only for one worker) based on the unit price offered in the part of the price description where the number of hours are included." We have sent you the financial analysis which you find attached to the complaint. As you can see, based on our analysis, which is the correct minimum price of the bidders in this case, only by calculating the required salaries, it should be at the price threshold with VAT 320855.40 euros, the price of our offer 339,009.00 euros above the threshold allowed, where the salaries and replacements for annual leave are calculated, then how is it possible that the EO announced as the winner covers your financial request, this is discriminatory and contrary to the procurement law since you have violated the conditions for participation in tender of the bidding EO, and in particular, you violated Article 7, Article 27, Article 59 of the LPP. The EO announced as the winner has an offer close to 20,000.00 euros below the salary.

Referring to the claims as above, "Internat Security Association" SH.P.K considers that the Contracting Authority has acted contrary to article 7, 27, 59 of the LPP. Therefore, we request from the PRBO that this complaint is accepted and that the AP returns to re-evaluation respecting the threshold of offers for workers' salaries in the amount of 320855.40 euros, classifying the offers from this high price.

*Response of the Contracting Authority to the Request for reconsideration, of the complaining EO "Internat Security Association" Sh.P.K.*

As Contracting Authority, the Ministry of Industry, Entrepreneurship and Trade (MINT) on 13.07.2023 tendered in the open procedure for the tender: "Physical security of facilities for the needs of MINT - MINT204-23-7170-016-2-2-1 , according to Article 40 of Law No. 05/L-068 for the amendment and completion of Law No. 04/ L-042 for Public Procurement of the Republic of Kosovo, amended and supplemented by Law No. 04/ L-237 Public Procurement amended and supplemented by Law No. 04/ L-237. In the opening process dated 07.09.2023, we received seven (7) offers from economic operators interested in this procurement activity. The evaluation committee, after evaluating and examining the offers, respectively, came to the conclusion that the operator Internat Security- Asociacion SH.P.K. is not in full compliance with all the requirements and criteria defined in the contract notice and tender dossier. On the 27.11.2023, the unsuccessful tenderers were notified, and on the same date, the decision was issued on the notification of the contracting authority for this procurement procedure through the E-procurement platform of PPRC.

On the 21.11.2023, we received the request for Reconsideration according to his request, complaint/request for reconsideration of the decision of CA-MIET from Internat Security Asociacion Sh.P.K with the claim that it was violated: Article 7 of the LPP, Article 27 of the LPP , and Article 59 of the LPP. After the suspension of this activity on 23.11.2023, according to the legal provisions of the LPP of article 108/ A, and in accordance with article 8.1.1 point (ii) of the rules for submitting complaints issued by the PPRC; The Contracting Authority has examined the points of complaint, finding that: The points of complaint related to the Articles noted above, none of these claims are valid since initially you as EO have not expressed material interest in any of the EOs participating in this procurement procedure, which are: at a cheaper price than your offer. Also, your request for reconsideration submitted on 21.11.2023 is not completed or formalized according to the LPP and OGPP.

From all that was said above, we declare that the commission has evaluated the offers in an arguably fair and correct manner, treating all participating EOs equally, carefully evaluating all the documentation submitted in fulfillment of each request and criterion in the file in accordance with the legislation in force. As it was said above that AK-MIET has evaluated the offers by examining all points of complaint submitted by Internat Security Asociacion SH.P.K, even that the process of evaluating and examining the offers was done in full accordance with the legal provisions of the LPP, UOPP and other by-laws and in full compliance with the criteria and requirements specified in the tender file. Therefore according to the legal provisions of the LPP article 108/A, and in accordance with article 8.1.1 point (ii) of the rules for submitting complaints issued by the PPRC; The Contracting Authority rejects the proposed request for review as unfounded as in the provision of this decision.

*- Administration and evaluation of evidence -*

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 05.12.2023 has authorized the review expert to conduct the initial review of the file and claims according to complaint no. 972/23, while on 06.12.2023 the report of the review expert was submitted with no. 2023/972 with the following recommendations: Based on the above-mentioned facts, clarifications and other findings in this report, the review expert proposes to the

review panel that the complaint of the complaining EO be approved as well-founded, (for the reason mentioned in the response to the claims as above) and recommends that B58- the notification on the decision of the CA (the decision to award the contract) be canceled and the matter be returned to the Reassessment.

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

Evaluation of the reviewing expert through report no. 2023/972, of the complaint claims of the complaining EO "Internat Security Association" SH.P.K, as follows;

First finding (I): "Regarding the claim in this procurement activity of the complaining economic operator, that based on our analysis, which is correct, the minimum price of the bidders in this case, only by calculating the required wages, should be at the price threshold with VAT 320855.40 euros, the price of our offer 339,009.00 euros above the allowed threshold, where the salaries and replacements for annual holidays are calculated, then how is it possible that the EO declared winner covers your financial request, this is discriminatory and in violation of the procurement law, since you have violated the conditions for participation in the tender of the bidding EO, and in particular you have violated Article 7, Article 27, Article 59 of the LPP. The EO announced as the winner has an offer close to 20,000.00 euros below the salary. The reviewing expert explains that based on the analysis of the facts/evidence documented in the e-procurement electronic platform, the flow and analysis of the procurement procedure, as well as based on the mandatory technical specifications - Annex 1 of the FDT, I am giving clarifications which you find attached to the complaint. also, the reviewing expert clarifies that based on annex 1 of the FDT, defined by the CA regarding this procurement activity, where the approximate number of workers, net salary, Labor Law, etc. are specified.. , where holidays are also foreseen

annual and medical as well as the profit that can be derived from this procurement activity, and which had to be evaluated/analyzed and ascertained in the report by the evaluation commission, therefore I consider that the CA - the evaluation commission has acted in violation of article 7 par . 2 of the LPP, where it says: "The contracting authority will not execute any aspect of the procurement activity in a way that reduces or eliminates competition between economic operators or that discriminates to the detriment or benefit of one or more operators economic", also taken on the basis that CA - ZPP in the decision on the rejection of the request for reconsideration was not issued in the claims of the complaining EO on the grounds that the complaining EO is a party without interest in this procurement activity, (therefore I consider that first it should handled by the CA) is not justified due to the fact that the CA - evaluation commission and B058 the notice on the decision of the CA / EO standard letters which is at a higher price than the EO recommended for awarding the contract has been eliminated / announced EO i without accountability, therefore it had to be dealt with by the CA The review expert explains that, based on the analysis of the facts/evidence documented in the e-procurement electronic platform, the flow and analysis of the procurement procedure, related to this procurement activity, the CA - the evaluation commission, did not comply with Article 7, 59 , 60 of the LPP, therefore it is the responsibility and at the discretion of the Contracting

Authority, respectively the evaluation commission - ZPP, that the evaluation, examination and comparison process is done in full harmony with the legal provisions of the LPP, in this activity of procurement, in order to respect the selection requirements, the technical specifications Annex 1 and in the tender file, as well as to respect the award criteria. The reviewing expert explains that the contracting authorities are obliged to ensure that public funds and public resources are used in the most economical way, simultaneously taking into consideration the purpose and subject of the procurement, as provided in Article 6 of the LPP, the contracting authority this should also be taken into consideration in Article 1 of the LPP, as it is known that the purpose of this law is to ensure the most efficient, transparent and fair way of using public funds and resources.

*- Findings of the Review Panel -*

The Work Regulations of the Public Review Body, which is published on the PRB website, with Article 20, paragraph 2 of the Regulations, defines the requirements for the Contracting Authority and the Economic Operator, that all information and notifications must be submitted and communicated through the public communication platform, if this is possible.

Based on the papers of this case, the Panel considers that regarding the issue in the present case, there is no need to convene a hearing with the parties, in the sense of Article 24 paragraph 1 of the Rules of Procedure of the PRB, taking into account the fact that the claims of the parties and their submissions, evidence as well as the review expert's report provide sufficient data to decide on the merits.

The review panel assesses that the Report of the review expert, drawn up at the request of the Panel regarding the dispute in this matter of the public procurement activity, contains the essential elements of such a document as provided by the provision of article 113 related to article 114 of the LPP, according to who is required by the expert to review all procurement documentation, including all appeal claims and provide the Panel and all disputing parties with an independent and professional assessment of the procurement activity and the validity of the appeal claims.

However, it should be emphasized the legal fact that the expert's report is not binding on the Review Panel and that each such report is evaluated and/or analyzed in the general context of the case documents, asserted facts and other eventual evidence, taking into account the nature of eventual violations, the flow, nature and purpose of the procurement activity, therefore the fact that in which cases and for what, the Panel relies or not, the expert's report and/or any of the recommendations, belongs to its independent and professional judgment/ thanks, just as these responsibilities are addressed in terms of article 98, 99 related to article 105 of the Public Procurement Law.

The review panel notes that on 13.07.2023, the Ministry of Industry, Entrepreneurship and Trade in the capacity of the Contracting Authority has published the Contract Notice B05 related to the procurement activity with "Physical security of facilities for the needs of MINT" with no. of procurement: "204-23-7170-2-1-1", while on 17.11.2023 B58 published the Notice on the

decision of the Contracting Authority where it awarded the contract to EO "Rojet e Nderit" Sh.P.K."

The review panel notes that in the Tender Dossier, eligibility requirements such as professional suitability requirements, requirements on economic and financial status, requirements on technical and/or professional capabilities, and requirements for which they were asked to be proven with evidence, have been defined by the contracting authority. The complaining economic operator "Internat Security Association" Sh.P.K., in this procurement activity, has not raised any complaints regarding the evidence and requirements of the tender file, against the economic operator recommended for contracts related to the required documentary evidence.

In his complaint, the economic operator has submitted only one complaint claim, which does not coincide with the requirements of the Tender Dossier, that the Contracting Authority has recommended for contracts an EO which has offered/applied at a lower price and cannot fulfill the contract related to with the salaries of the workers, according to the Tender File. In his report, the reviewing expert has addressed the complaining claim of EO "Internat Security Association" Sh.P.K., regarding the low price offer of the recommended operator, that the EO cannot cover the wages of the workers. The review panel assesses that in the File of tender, no Financial Analysis document was requested from the bidders regarding the calculation of workers' salaries and we consider that the complaint claim does not coincide and is contrary to the requirements of the DT and article 53 paragraph 3 of the LPP, therefore the review expert's report is inconsistent in terms of its final assessment therefore and cannot be supported by the panel.

The review panel assesses that Article 60 of the LPP, Criteria for Awarding the Contract, has determined that the Contracting Authority will award the public contract to the economic operator that submitted the responsible tender with the lowest price. The contracting authority, in point 31.1 of the Tender Dossier, has set the Responsible Tender with the Lowest Price as the Criteria for awarding the contract. Similarly, Article 56 of the LPP - General Provisions on the Selection of Participants and the Awarding of Contracts, in paragraph 3, has defined "The tenderer, during open procedures, or the candidate, during limited procedures and competitive procedures with negotiations, will not be disqualified or is excluded from such procedures on the basis of any requirement or criterion that is not mentioned in the contract notice and in the tender dossier".

The review panel notes that in the tender file in annex 1; Mandatory Technical Specifications, the Contracting Authority has requested as follows" Note: The salaries of the workers must not be lower than €350.00 net, while related to this request the recommended economic operator EO "Rojet e Nderit" Sh.P.K." in his offer, he submitted to the contracting authority a written statement dated 15.08.2023 through which he confirms the implementation of this request regarding the net salary to be paid as follows; We declare that the salaries of the workers in this project will be in accordance with your request at the level of 350 Net"

The review panel based on the document Tender dossier dated 12.07.2023 and on the Notice on the Decision of the Contracting Authority" Ministry of Industry, Entrepreneurship and Trade,

related to the procurement activity "204-23-7170-2-1-1", finds that seven (7) economic operators have bid in this procurement activity, while the contracting authority, with its decision dated 17.11.2023, has recommended to award the economic operator "Rojet e Nderit" Sh.P.K. with a contract, while the operators other economic ones have been evaluated as unsuccessful due to the failure to meet the requirements of the tender file and the contracting authority, through the B54-standard letter for the eliminated tenderer, dated 17.11.2023, has notified the complainant and the EO others for the reason of elimination.

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 appeal claims, taking into account all the documents of the case, has found that the Economic Operator's appeal is unfounded. Consequently, the Review Panel has decided regarding the procurement activity entitled "Physical security of facilities for the needs of MINT" with no. of procurement: "204-23-7170-2-1-1", the Notice for the Decision of the Contracting Authority, for awarding the contract, remains in force. The Review Panel concluded that the Contracting Authority acted in accordance with the legal provisions of the LPP, since the CA treated the participating EOs equally and non-discriminatoryly, based on the presented documentation and testimonials, and then recommended the EO with the cheapest offer priced and responsive. The Review Panel assesses that the evaluation of the tender was carried out according to the requirements specified in the notice of the contract and the tender dossier. Therefore, the Review Panel concludes that the CA rightfully awarded the recommended EO as it fulfilled all the requirements set forth in the tender dossier and was the most responsible tender with the lowest price.

The review panel implemented Article 1 and 6 of the principle of economy, as one of the main principles of the Law on Public Procurement of the Republic of Kosovo, in which case it is established in a non-controversial way that the offer of the EO recommended for contracts consists of a price with cheap in relation to the offer of the complainant, because in the description of the price it is noted that the recommended EO offered a price of 305,601.00 euros, while the complaining EO offered a price of 339,009.00 euros, and we have a significant difference of 33,408.00 euros, and that it contributes precisely to this aspect of economy in the use of the institution's budget.

The Review Panel finds that based on the data that the activity is of the type of Public framework contract - Unit price of the open procedure, and according to the tender file Mandatory technical specifications - Annex I, it has been determined that the estimated quantity is only an indicative quantity. The allowed deviation from the total indicative quantity is 30%, since we have an indicative quantity for the position of insurance services, the PSH finds that the offer of the complaining EO is higher in price than the recommended offer and the other offers of the participating EO are approximate, that create the conviction that the offer of the recommended EO has no scope for manipulations as well as the creation of difficulties in the implementation of the contract, therefore the PSH concludes that in this regard, the complaining EO has not provided evidence, arguments and concrete data that send the proof of the claim or the classification of his as based, while it remained at the discretion of the CA (according to the

provisions of the LPP) in this case, taking into account the legal instruments that can be used before and during the implementation of the contract, such as the increase in the insurance of the execution of the article 29 of the Public Procurement Regulation no. 01/2020, as well as the application of Article 63 of the LPP during the execution of the contract.

The Review Panel emphasizes that each contracting authority (at the central and local level) enjoys autonomy in procurement planning (Article 8) and in determining the needs that must be met (Article 9), of course in accordance with the budget capacity and that the CA in the specific case has have the right to also decide on the EO recommended for the award of the contract based on article 24 paragraph 2 of the LPP cited "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in compliance with complete with this law".

Based on the fact of the partial approval of the EO complaint, the review panel decided to return the complaint fee to the amount deposited by the complaining economic operator based on Article 31 par. 4 of the PRB Work Regulations.

The Review Panel has decided in accordance with the legal powers in the sense of Article 104 paragraph 1 in relation to Article 103 and Article 105 of the LPP for the implementation of the procurement review procedure in a fast, fair, non-discriminatory manner, with the aim of resolving legal and effective of the subject. 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.

The review panel in accordance with article 117 of the LPP, as well as based on the evidence presented as above 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 – **Ministry of Industry, Enterprise and Trade;**

1x1 EO – **Internat Security Association"SH.P.K;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.