



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

Psh. No.704/24

The Review Panel, appointed by the President of the Procurement Review Body (PRB), based on Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova (LPP) composed of Isa Hasani – Individual Panelist, deciding upon the complaint of EO “Ejona” SH.P.K, against the Decision to cancel the procurement procedure of the Ministry of Internal Affairs in the capacity of Contracting Authority (CA) regarding the procurement activity "Supply, installation and commissioning of new elevators in government buildings" with procurement number 214-24-1625-1-1-1, on the 30/12/2024, has issued this:

DECISION

1. Approved as partly grounded the complaint of the EO “EJONA” SH.P.K. with no.2024/0704 of the 02/08/2024, against "Notice of Cancellation of Procurement Activity", procurement titled "Supply, installation and commissioning of new elevators in government buildings" with procurement number: "214-24-1625-1-1-1" CA- Ministry of Internal Affairs.
2. Remains in force, "Notice of Cancellation of Procurement Activity" dated 16.07.2024, with procurement number: "214-24-1625-1-1-1", CA- Ministry of Internal Affairs, based on Article 26, paragraph 2 and Article 62, paragraph 1, subparagraph 1.1, of the LPP.
3. The contracting authority is ordered, pursuant to Article 30, to pay the amount determined according to the Rules of Procedure of the PRB, within sixty (60) days, as damages for compensation of procedural costs, to the complaining EO, "EJONA" SH.P.K.
4. The complaining EO is obliged, in accordance with Article 31, point 6 of the Rules of Procedure of the PRB, to make a request for the return of the complaint security within sixty (60) days, 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 07.03.2024, the Ministry of Internal Affairs in the capacity of the Contracting Authority has published the Contract Notice B05 regarding the procurement activity entitled "Supply, installation and commissioning of new elevators in government buildings" with procurement number 214-24-1625-1-1-1.

The contracting authority has implemented an open procedure, type of contract: supply, estimated contract value: 259,240.00 €.

On the 27.05.2024, the CA published the contract award notice where it awarded the contract to the economic operator "Ejona" SH.P.K., while the signing of the contract is planned to take place on the 29.05.2024.

On the 16.07.2024, the contracting authority published the notice for cancellation of the procurement procedure "Supply, installation and commissioning of new elevators in government buildings" with procurement number 214-24-1625-1-1-1, where the reason for the cancellation of the procedure is, it has been emphasized that the conditions according to the requirements of paragraph 2 of article 26 of the Public Procurement Law have not been met.

On the 02.08.2024, the PRB received the complaint from the EO "Ejona" SH.P.K with no. 2024/0704 regarding the activity "Supply, installation and commissioning of new elevators in government buildings" with procurement number 214-24-1625-1-1-1.

-On the preliminary review phase –

(a) The PRB has found that the complaint in the present case was filed in accordance with Article 109.1 of the LPP, according to which any interested party may file a complaint against any decision taken by the CA after the implementation of the preliminary procedure for the resolution of disputes, as provided for in Article 108/A of this Law. Since the complainant has the status of an interested party as defined in Article 105, paragraph 1, in conjunction with Article 4, paragraph 1.26 of the LPP, and the complaint contains the essential elements provided for in Article 111 of the cited Law, which means that it meets the conditions in terms of the cited provisions and falls under the competences of this body in terms of Article 105, of the LPP, in conjunction with Article 9, of the Regulation on the Work of the PRB. The Review Panel analyzed all the documents of this case, including all the acts and/or actions of the parties, as described above (facts and procedural circumstances) do not exist the elements for preventing conflict of interest, as required in terms of Article 11 of the Regulation on the Work of the PRB, in connection with paragraph 1.75, of Article 4 of the LPP and at the same time analyzed all the documents of this case.

(b) Based on the actions described above, the PRB has appointed the Review Panel pursuant to Article 111, paragraph 5 (ii) of the LPP and has engaged the review expert pursuant to Article 111, paragraph 5 (i) of the LPP, with the task of conducting the initial review of the file and the

complaining claims, regarding this procurement activity, within the meaning of Article 113 and 114 of the LPP in conjunction with Article 17 and 19 of the cited Regulation.

CA's response to the request for reviewing of the operator "Ejona" SHPK

The Ministry of Internal Affairs-PPO, after receiving the Request for Reconsideration, has reviewed the validity of all claims of the complaining party, the tenderer "Ejona". After analyzing the claims mentioned in the Request for Reconsideration, the CA has concluded that the claim of the tenderer Ejona is unfounded, because the CA has canceled the procurement procedure after the opening of the tenders, based on a violation of the LPP, a provision in the Public Procurement Law requires the cancellation of the procurement activity; The reason for the cancellation of the procedure is that the conditions according to the requirements of paragraph 2 of Article 26 of the Law on Public Procurement have not been met. In application of Law No. 04/L-042 on Public Procurement of the Republic of Kosovo, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/1-092 Article 108/A Preliminary Settlement of Disputes, draws this conclusion:

Conclusion:

I. Rejected, The request for reconsideration of the tenderer "Ejona", against the Notice for Cancellation of the Procurement Activity of this procurement activity, published on 17.07.2024, the request for reconsideration is rejected as unfounded.

II. The Notice for Cancellation of the procurement activity published on 17.07.2024 by the CA remains in force.

Complaining claims of "Ejona" SH.P.K in complaint No. 704/24

The CA has violated the aforementioned articles, by declaring the "Notice of Cancellation of the Activity" illegal. The chronology of events of this activity is as follows: 1) On 17.05.2024 we were declared the winner by the CA; 2) On 27.05.2024 the "Notice of Contract Award" was announced with the planned date for signing on 29.05.2024; 3) On 05.06.2024 the Draft Contract was uploaded to the system and we have approved it by both parties; 4) During this period until the cancellation notice, we have been waiting for the invitation from the CA to sign the contract, where through calls to official numbers we have been told that they are awaiting the preparation of the contract and that they will call us very soon for signing; 5) On 17.07.2024 the CA uploads to the system without any warning the "Notice of Cancellation of the Procurement Activity" with the justification: "The reason for the cancellation of the procedure is because the conditions according to the requirements of paragraph 2 of article 26 of the Public Procurement Law have not been met".

So, illegally, without any condition for cancellation being met, the CA announced the Notice for Cancellation of the Activity during the period we were waiting for the signing of the contract, where our company was preparing for the implementation of the contract. Not a single condition was met for the Cancellation of the procedure, while all the conditions for signing the contract

were met. We remind the CA that it cannot be invoked in paragraph: 1.1 a violation of the current law has occurred or will occur in the procurement procedure, which cannot be regulated or prevented through a legal amendment of the procurement conditions, including cases where a provision of this law requires the cancellation of the procurement activity. Therefore, the CA's claim for cancellation is not a violation of the law that cannot be regulated!. It can be regulated by signing the contract by the relevant officials! For this project, our company has already incurred many expenses where we have sent staff members to training at the factory and we have placed orders for the elevators for this project knowing the importance of the facilities and to avoid delays and irregularities. For this we also have evidence that we will provide during the legal proceedings for compensation for damage, in case we do not have the support of the PRB in this matter. We reiterate that: In this procedure, no condition for the cancellation of the activity has been met, and all conditions for the signing of the contract have been met. This is the most ridiculous decision we have ever seen issued by a Contracting Authority. Conclusion: We request the PRB to annul the unlawful Notice of Cancellation of the Activity and to oblige the CA to proceed with the Contract Signing according to the LPP and according to the Contract Award Notice dated 27.05.2024.

Administration and evaluation of evidence -

Based on Article 111 paragraph 5 in connection with Articles 113 and 114 of the LPP, the Review Panel on 05/08/2024 authorized the review expert to conduct the initial review of the file and claims according to the complaint with no. 0704/24, while on 13/08/2024 the review expert's report with no. 2024/0704 was submitted with the following recommendations: the complaint of the complaining EO to be approved as grounded, to cancel the notice for cancellation of the procurement activity and the CA to handle the case in accordance with paragraph 2 and paragraph 4 of Article 26 of the LPP.

Regarding the claims of EO "Ejona" SH.P.K., the review expert through report no. 2024/0704 has assessed as follows:

On date: 02.08.2024, EO "EJONA" SH.P.K."- Prishtina, has filed a complaint with no: 2024/0704, against the cancellation of the procurement activity, regarding the procurement activity: "Supply, assembly and commissioning of new elevators in government buildings" with procurement no.: "214-24-1625-1-1-1", initiated by the Contracting Authority (CA)

- Ministry of Internal Affairs.

The Contracting Authority, Ministry of Internal Affairs, has developed the Procurement Activity entitled: "Supply, installation and commissioning of new elevators in government buildings", with procurement no.: "214-24-1625-1-1-1".

o The publication of the contract notice was made on: 07.03.2024.

o The opening of the bids was made on: 18.04.2024 at 14:00:00.

The notification of the CA's decision was made on: 17.05.2024.

o The notification of the contract award was made on: 27.05.2024.

- o The notification of the cancellation of the procurement activity was made on: 16.07.2024.
- o On: 18.07.2024, the economic operator: "Ejona", has submitted a request for re-examination to the CA - Ministry of Internal Affairs.

The Ministry of Internal Affairs, on date: 23.07.2024, made a Decision to Reject the request for re-examination of EO "Ejona".

- o The economic operator, after the rejection of the request for re-examination by the CA, on date: 02.08.2024, has filed a Complaint with the Public Procurement Review Body.

- o The economic operator: EO "Ejona" in the Complaint filed with the Public Procurement Review Body, has presented its claims.

The Review Expert, after receiving the case for expertise, analyzed all the claims of the Complaining EO, and treated them carefully by referring to the legislation.

Response to the complaining claims

Unsatisfied with the decision of the CA, the complaining Economic Operator "Ejona" has submitted a request for reconsideration to the CA on 18.07.2024, a request which was rejected as unfounded. The EO claims that the CA, with the Notice for Cancellation of the Procurement Activity, has violated Article 43 and Article 62 of the LPP as well as Article 26 of Regulation No. 001/2022 on Public Procurement.

CA - Ministry of Internal Affairs, on 17.05.2024, published the notice on the CA's decision, in which the EO, "Ejona" SH.P.K. was awarded a contract in the amount of €179.7444.44. On 27.05.2024, the CA published the contract award notice and planned the signing of the contract on 29.05.2024. Subsequently, on 05.06.2024, the CA uploads the Draft contract to the e-procurement platform, which is approved by both parties. While waiting for the signing of the contract, the CA - Ministry of Internal Affairs on 17.07.2024 uploaded to the e-procurement platform, without any warning, the "Notice of Cancellation of the Procurement Activity" with the justification: "The reason for the cancellation of the procedure is because the conditions according to the requirements of paragraph 2 of article 26 of the Public Procurement Law have not been met". The complaining EO claims with this action that the CA has canceled the procurement procedure in an illegal manner and without fulfilling any conditions for cancellation.

The review expert, after examining all the documentation and reviewing the course of the tendering procedure and the claims of the complaining party, has noticed that details related to the notice on the cancellation of the procurement procedure are missing. The reason for the cancellation of the procedure in the Notice on the Cancellation of the Procurement Activity by the CA is stated to be that the conditions according to the requirements of paragraph 2 of Article 26 of the Public Procurement Law have not been met, which states as follows:

In addition to the signature of the responsible procurement officer referred to in paragraph 1. of this Article, large-value contracts of contracting authorities must also be signed on behalf of the contracting authority by the Chief Administrative Officer, as well as the Minister or other

relevant public authority. The President, the Speaker of the Assembly and the Prime Minister are exempt from this rule. The signatures specified in this Article confirm and accept the rights and obligations specified in the contract. Contracts that are not signed in accordance with paragraphs 1. and 2. of this Article are unenforceable.

Considering that the CA has not provided sufficient information on the cancellation of the procurement procedure, the review expert has sent a request for additional information to the CA, respectively the Procurement Division, from whom it has been requested to clarify which of the points of paragraph 4 of Article 26 of the LPP have not been met for the contract to be signed or any other reason, any document, related to the notification on the cancellation of the procurement procedure. In its response, the CA's OPP stated that it had received an e-mail informing it of the non-signing of the contract by the CAO and the Minister. Following the responses received from the OPP of the CA, the Review Expert clarifies that the termination (cancellation) of a Procurement Activity is provided for in Article 62 of the LPP and Article 43 of Regulation No. 001/2022 on Public Procurement.

Based on the provisions of the above-mentioned articles, the termination (cancellation) of a Procurement Activity may occur before and after the opening of Tenders for one of the reasons mentioned in the above articles and in no way at the stage in which you as the minister are, and even less for the reasons given by e-mail (Authorization from the manufacturer has not been requested or presented; As proof of the 12-month warranty required in the tender dossier) the EO statement has been presented; and At least the elevator catalog has not been requested or presented;) when it is known that the Public Procurement legislation requires that the requirements and criteria set out in the DT be as minimal as possible, not to reduce competition, not to be discriminatory and/or favorable and when it is clearly stated in paragraph 3 of Article 56 of the LPP that: "The tenderer, during open procedures, or the candidate, during restricted procedures and competitive procedures with negotiations, shall not be disqualified or excluded from such procedures on the basis of any requirement or criterion that is not specified in the contract notice and the tender dossier".

As for the signing of Contracts provided for in Article 26 of the LPP, persons authorized to sign contracts may not do so only if the following conditions are not met:

1. At least ten (10) days have elapsed from the date of publication of the contract award notice; provided that this condition does not apply to urgent procurements pursuant to Article 35.2.1 (iii). Or for a procurement activity based on Article 36. Or for contracts with a minimum value;
2. The persons have confirmed once again that the information contained in the "Declaration of Needs and Determination of Funds Availability" is still accurate;
3. The persons have not received any communication from the PRB or the court stating that the contract should not be signed.

Considering the above paragraphs, the reasoning of the CAO and the Minister has no legal basis to cancel the procedure.

The expertise report has been duly accepted by all procedural parties. The CA did not agree with the expertise report, while the EO agreed.

-Findings of the Review Panel –

The Rules of Procedure of the Public Review Body, which is published on the PRB website, with Article 20, paragraph 2 of the Rules, sets out the requirements for the Contracting Authority and the Economic Operator that all information and notices must be submitted and communicated through the public communication platform, if possible.

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

The Review Panel assesses that the expert report contains the elements as foreseen by the provision of Article 113 in conjunction with Article 114 of the LPP, according to which the expert is required to review the entire 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 supports or not, any report and/or any of the recommendations, is a matter of his/her independent and professional judgment, as these responsibilities are addressed in terms of Article 98, 99 in conjunction with Article 105 of the LPP.

In order to fully establish the factual situation, the Review Panel has administered as evidence the Report of the Review Expert, the complaint of the complaining Economic Operator "EJONA", the Notice for the cancellation of the procurement activity no. "214-24-1625-1-1-1", of the Contracting Authority, dated 16.07.2024, and the Decision of 23.07.2024 of the Contracting Authority for the rejection of the Request for review submitted by the EO "EJONA" against the cancellation of the procurement procedure by the CA.

The Review Panel, regarding the Expert Report dated 13.08.2024, notes that, Article 26 paragraph 1 and 2 - Signing of Public Contracts of the LPP, Article 62 paragraph 1 - Completion of the Procurement Activity of the LPP and Article 43.5.i, of the Public Procurement Regulation No. 01/2022, have not been interpreted on the basis of the material evidence of the CA, Notice for the cancellation of the procurement activity no. ; "214-24-1625-1-1-1", and a recommendation unfounded by the LPP law has been issued. Therefore, the Review Panel cannot

definitively take it as a given fact and does not grant credence to the evidence in this administrative matter.

Në nenin 42.4 i RRPP nr. 001/2022, e obligon AK që, citat: "Pas skadimit të afatit kohor për parashtrim dhe shqyrtim të ankesave në Njoftimin mbi Vendimin e AK(B58), Autoriteti Kontraktues obligohet të përgatit draftin e kontratës dhe nënshkruaj atë brenda 30 ditëve kalendarike", ashtu sikurse e obligon edhe neni 24, paragrafi 2 i LPP "Autoriteti kontraktues është përgjegjës për të siguruar që të gjitha aktivitetet e prokurimit të autoritetit të tillë kontraktues të ekzekutohen në përputhshmëri të plotë me këtë ligj".

The Review Panel regarding the Notice of Cancellation of the Procurement Activity, dated 16.07.2024, procurement activity no. "214-24-1625-1-1-1, notes that the CA on page three (3) of the Notice of Cancellation of the Procurement Activity, in Article IV.3 Reason for the Cancellation of the Public Procurement Procedure, has noted that "A provision in the Public Procurement Law requires the cancellation of the procurement activity".

It is also noted that the CA on page three (3) of the Notice for the cancellation of the procurement activity, in Article V.2 Additional information, has noted that "The reason for the cancellation of the procedure is because the conditions according to the requirements of paragraph 2 of Article 26 of the Law on Public Procurement have not been met.

The Review Panel assesses that the issue of the cancellation of the public procurement activity by the Contracting Authorities is regulated by primary and secondary legislation. The Law on Public Procurement, Article 26 Signing of public contracts, paragraph 1 determines "In addition to, as specified in paragraphs 2. and 3. of this Article, the responsible procurement officer of a contracting authority is the only person authorized to conclude or sign a public contract on behalf of such contracting authority. The signature documents that the contract was awarded in accordance with the current law"

Paragraph 2 of the law stipulates that "In addition to the signature of the responsible procurement officer referred to in paragraph 1 of this Article, large-value contracts of contracting authorities shall also be signed on behalf of the contracting authority by the Chief Administrative Officer, as well as the Minister or other relevant public authority. The signatures specified in this Article confirm and accept the rights and obligations specified in the contract. Contracts not signed in accordance with paragraphs 1 and 2 of this Article shall be unenforceable.

Article 62, Termination of Procurement Activity, paragraph 1 and subparagraph 1.1 of the LPP, stipulates "1. The contracting authority shall terminate that procurement activity which will not result in the award of the contract for only one of the following reasons:

1.1. a violation of the current law has occurred or will occur in the procurement procedure, which cannot be remedied or prevented through a legal amendment of the procurement conditions, including cases where a provision of this law requires the cancellation of the procurement activity.

Also with the secondary legislation, the Regulation on Public Procurement, no. 001/2022, article 43.5.i, stipulates that "The procurement procedure after the opening of bids must be canceled for

one of the following reasons: i. a violation of the law has occurred or will occur and cannot be corrected or prevented through an amendment;”

The review panel notes that the Contracting Authority justified the Notice for the cancellation of the procurement activity by citing the legal provision of the LPP, Article 62 paragraph 1 and subparagraph 1.1 “A provision in the Law on Public Procurement requires the cancellation of the procurement activity, and also provided additional information on the reason for the cancellation of the procurement activity as “The reason for the cancellation of the procedure is because the conditions according to the requirements of paragraph 2 of Article 26 of the Law on Public Procurement have not been met. A provision in the Law on Public Procurement”.

The Review Panel finally finds that the Contracting Authority has based the Notice for the cancellation of the procurement activity in accordance with the above-mentioned legal provisions, Article 26, paragraphs 1 and 2 - Signing of public contracts of the LPP, Article 62, paragraph 1 - Completion of the Procurement Activity of the LPP and Article 43.5.i, of the Public Procurement Regulation no. 01/2022, provisions which determine the rules for the cancellation of the procurement activity by the Contracting Authority.

Therefore, the Review Panel finally regarding the complaint of the Economic Operator "EJONA", filed against the "Notice of Cancellation of the Procurement Activity" dated 16.7.2024, the procurement entitled "Supply, installation and commissioning of new elevators in government buildings" with procurement number: "214-24-1625-1-1-1" and the Decision dated 23.07.2024, for the rejection of the Request for Reconsideration by the Contracting Authority- Ministry of Internal Affairs of the Republic of Kosovo, has decided that the complaint is partially approved as grounded and remains in force, the Notice of Cancellation of the Procurement Activity, received from the Ministry of Internal Affairs, based on Article 26, paragraph 2 and Article 62, paragraph 1, subparagraph 1.1 of the LPP.

Therefore, the review panel regarding this issue does not have legal authorizations at this stage and therefore cannot oblige any contracting authority to sign the contract. However, the complainant regarding these actions of the CA regarding the cancellation of the procurement activity, may address the competent Court for the protection of his/her rights.

The review panel finds that this procurement activity was initiated by the contracting authority, the Ministry of Internal Affairs, which procurement activity was also canceled by this authority itself, and that the complaining EO "EJONA" did not contribute in any way to the cancellation of this procurement activity, therefore the review panel requests from the contracting authority, the Ministry of Internal Affairs, in accordance with Article 30, on behalf of the damage, for the compensation of procedural expenses, the complaining EO, "EJONA" SH.P.K, to pay the amount determined according to the Rules of Procedure of the PRB, within a period of sixty (60) days.

The review panel, based on the fact of partial approval of the complaint of the EO ""EJONA", Sh.P.K, decided to return the complaint fee in the amount deposited by the complaining economic operator based on Article 31, paragraph 4 of the Rules of Procedure of the PRB. Therefore, acting on the basis of the basic principles of the procedures for the review of

procurement, which, among other things, are specifically sanctioned by the provision of Article 104, of the LPP and at the same time analyzing the documents of this case in relation to the facts and circumstances described above, and especially paying due attention to the nature and purpose of the complaining claims, the Review Panel took into consideration all the statements of the complainant, the acts and actions taken by the CA, the report of the review expert and carefully analyzed all the documents of this case. case and decided according to the aforementioned legal provisions, as provided in the findings of the panel.

The Review Panel has decided in accordance with the legal competences in terms 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. The Review Panel, in accordance with Article 117 of the LPP, and based on the evidence presented above, decided as in the provision of this decision.

President of the Review Panel

Mr. Isa Hasani

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 – **MINISTRY OF INTERNAL AFFAIRS;**
1x1EO–**“EJONA”SH.P.K”;**
1x1 Archive of the PRB;