



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

Psh. no.0053-0054/23

**REVIEW PANEL**, appointed by the President Pursuant to the article 105 as well article 106, and 117 of the Law on Public Procurement of the Republic of Kosova no.04/L-042, amended and supplemented by Law No. 04/L-237, Law no.05/L-068, and Law no.05/L-092, composed of: Agon Ramadani - President, Kimete Gashi- member, Vedat Poterqoi – member, deciding according to the complaint of the economic operator EO “Internat Security Association”SH.P.K., Rojet E Nderit SH.P.K., against/ regarding with the procurement activity with title: “Physical security of the buildings of the Municipality of Gjakova”, with procurement no: 632-22-6005-2-1-1, initiated by the Contracting authority –Municipality of Gjakova, on the 18.05.2023 has issued this:

## DECISION

**I. Cancelled**, the procurement activity with title: “Physical security of the buildings of the Municipality of Gjakova”, with procurement no: 632-22-6005-2-1-1, initiated by the Contracting authority –Municipality of Gjakova.

II. Contracting Authority, within 10 days, must inform the Review Panel in writing about all the actions taken in relation to this procurement activity, otherwise, for non-compliance with the decision, the PRB can take measures against the CA, as provided by the provisions of Article 131 of the Law on Public Procurement in Kosova.

III. It is allowed to return the complaint’s fee to the amount deposited at the time of filing the complaint. The complaining EO is obliged, in accordance with Article 31 point 6 of the PRB's Rules of Procedure, within sixty (60) days to make a request for the return of the complaint insurance, otherwise the deposit will be confiscated, and these funds will go to the Budget of the Republic of K

## REASONING

### *- Procedural facts and circumstances -*

On the 27.01.2023, EO “Internat Security Association” SH.P.K.- Prishtina, submitted a complaint with no: 2023/0053, while on the: 30.01.2023, EO “Rojet E Nderit SH.P.K.”- Prishtine, filed a complaint with no.: 2023/0054, against the cancellation of the procurement activity, related to the procurement activity: “Physical security of the facilities of the Municipality of Gjakova” with procurement no: “632-22-6005-2-1-1”, initiated by the Contracting Authority (CA) - MUNICIPALITY OF GJAKOVA.

The contracting authority has implemented an open procedure, type of contract: service, estimated value of the contract: 340,000 €. In accordance with Article 113, 114 of Law No. 04 / L - 042, supplemented and amended by Law 04 / L - 237, Law 05 / L - 068, and Law 05 / L - 092, the Review Expert has reviewed the complaining claims of the complaining EO. For the procurement activity in this particular case, the CA on the 12.01.2023 has published the notice on the decision of the CA which canceled the activity in its entirety on the grounds that all participating EOs have exceeded the estimated value.

### *-Administration and evaluation of evidence -*

Based on the actions described above, the PRB has engaged the evaluation expert in accordance with Article 111, paragraph 5 of the LPP, with the duty that the same in the sense of Articles 113 and 114, of the cited Law, do the initial review of the dossier and complaining claims, regarding the procurement activity described above, which on the 27 of October 2022, submitted the evaluation report with the following recommendations:

- Complaints No. 0053/2023 and 0054/2023 are dismissed as not allowed
- To cancel the procurement activity;

The review expert regarding the complaining claims presented in the complaints submitted as above in his report stated that:

We point out that the request of the tender dossier was that the net salary for one worker should be no less than 280 €, while at the same time in advance they determined that there should be 38 workers, while the duration of the contract is 24 months.

After analyzing the complaining claims, the tender dossier requirements as well as the clarifications requested by the CA for price analysis and the clarifications provided by the complaining EO, the review expert's opinion is that the total price of 325,561.61 € after the payment of VAT does not reach to cover the net wages of workers.

We further clarify that according to our calculations the estimated value of 340,000 € made it impossible to realize this contract, because the minimum value needed to cover only the net salaries of 280 € exceeds the amount of 344,000 €.

In these circumstances, any EO that offers a price even 100% according to the value provided by CA or lower will not be able to cover the wages of the workers, while any EO that offers a price

that covers the wages of the workers of 280 € net will exceed the value provided by the CA and the same can be eliminated as the CA has done with other EOs.

We estimate that the planning of this procurement and the forecasting of the value was not done in accordance with the provisions of article 17 paragraph 1 of the LPP and in our opinion made it impossible to award any EO with a contract regardless of the price it offers.

*-Public hearings-*

The Review Panel considers that regarding the issue in this particular case, there is no need to convene a hearing with the parties, in accordance with Article 24 paragraph 1 of the Rules of Procedure of the PRB, as long as the claims of the parties, the evidence, their submissions and the expertise of the review expert, provide sufficient data to decide on the merits.

*- Findings of the Review Panel -*

The review panel, after reviewing the case documents, review of the complaining claims of the complaining EO, findings, concrete analysis and recommendations of the external review expert, assesses that it relies on the expertise report which recommends the cancellation of the activity. The complaints in question, as a contested object of examination, had claims that their elimination consists of non-compliance with the estimated value, therefore, since the complaints have similarities in the dispute of the reasons for the elimination, RP finds that both complaints will be treated together as and until to the determination and final decision related to this activity, RP has reached due to the fact that the file compiled by CA, namely the requirements in it were in the contrary to the estimated value of the contract, resulting in none of the participating EOs being potential winners of the relevant contract.

The review panel took as a basis the findings of the expert that the planning of this procurement and the forecast of the value was not done in accordance with the provisions of article 17 par.1 of the LPP, which consequently made it impossible to award any EO with a contract regardless of the price that he offers, because if it were to be offered in accordance with the requirements of TD, then this would exceed the estimated value, while even bidding below the estimated value would mean that the wages and minimum expenses of the EO would not be covered, therefore ultimately taking into account all this, the RP finds that the CA has not compiled the tender dossier in accordance with the LPP, specifically Article 17 paragraph 1 which stipulates that: 1. *The estimated value of the proposed contract for services is equal to the total payment and compensable amounts to be paid by the contracting authority under the contract, throughout the duration of the contract, taking into account the provisions of this article. In determining the estimated value of a proposed contract for services, the contracting authority shall include all reasonably foreseeable elements of the final price to be paid by the contracting authority for such services and items, including any and all taxes, duties and other fees.*", while at the same time it has canceled the activity by applying article 62 of the LPP due to the fact that all offers have exceeded the estimated value.

Finally, the RP concludes that in this case the CA has not compiled the TD in accordance with the provisions of the LPP, and the actions taken have resulted in the situation that has come about, therefore through this decision, the RP issues a final remark to the MPP of the CA , that if

in the future the same or similar omissions/errors are identified, the PRB within the review panels will address the PPRC, and will ask to act in accordance with article 25, paragraph 8 of the LPP.

The decision as in point 3 of this decision was taken due to the fact that the cancellation of the activity was made as a result of the actions and omissions of the CA.

**Head of the Review Panel**

Mr. Agon Ramadani

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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 – Municipality of Gjakova;  
1x1 EO – “Internat Security Association” SH.P.K.,  
1X1 EO- “Rojet E Nderit “ SH.P.K;  
1x1 Archive of the PRB;  
1x1 For publication on the website of the PRB.