



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

Psh. No.968/23

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 (LPP) composed by Vjosa Gradinaj Mexhuani as individual panelist, deciding according to the complaint of the Economic Operator (EO) “Kompania e Sigurimeve "SCARDIAN" J.S.C, against the Decision on contract award of the ASSEMBLY OF THE MUNICIPALITY OF PRISHTINA in the capacity of the Contracting Authority (CA) related to the procurement activity “Security and technical control of vehicles of the Municipality of Prishtina and KPSH” with procurement number 616-23-5923-2-1-1, on the 23.02.2024 has issued this:

DECISION

- I. Approved, as partly grounded the complaint of “Kompania e Sigurimeve "SCARDIAN" J.S.C, with no. 2023/0968, dated 01/12/2023, whereas the decision of the ASSEMBLY OF THE MUNICIPALITY OF PRISHTINA in its capacity as a contracting authority regarding the procurement activity “Insurance and technical control of vehicles of the Municipality of Prishtina and the KPSH” with procurement number 616-23-5923-2-1- 1 is cancelled, and if CA is interested, can re-tender it.
- II. Within 10 days, the CA must inform the PRB about all the actions taken regarding this procurement activity, otherwise, the PRB has the right to take measures against the CA for non-compliance with the decision as provided by the provisions of Article 131 of LPP.
- III. The funds deposited in the name of the tariff tax for submitting the complaint to the account of the Economic Operator Insurance Company "SCARDIAN" J.S.C. are returned.

REASONING

- Procedural facts and circumstances –

The Assembly of the Municipality of Prishtina in the capacity of the Contracting Authority dated 12.06.2023 has published the Contract Notice related to the procurement activity entitled "Insurance and technical control of vehicles of the Municipality of Pristina and KPSH" with procurement number 616-23 -5923-2-1-1. This procurement activity was developed through an open procedure with the type of contract for services and with an estimated contract value of 175,000.00 €.

On the 07.11.2023, the Contracting Authority has published the Notice on Decision B58 through which it has awarded with contract the Group of Economic Operators Kompania e Sigurimere EUROSIG Sh.A., Autocon Sh.p.k.

On the 10.11.2023, the complaining economic operator submitted a request for reconsideration against the Notice on Decision B58 of the Contracting Authority. Consequently, on 22.11.2023, the Contracting Authority made a decision through which it rejected as unfounded the request for reconsideration of the complaining economic operator.

On the 01.12.2023, the complaining economic operator submitted to PRB complaint no. 2023/0968.

During the preliminary review of the complaint, the Review Panel found that both complaints contain all the elements defined through Article 111 of the LPP and as such were submitted within the legal term in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for resolution of disputes in the sense of Article 108/A of the LPP, from economic operators who are interested parties 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 these complaints according to Article 105 of the LPP and there is no procedural obstacle to proceed with reviewing the complaints in a meritorious manner.

The Review Panel has also concluded that there are no circumstances of conflict of interest in the sense of Article 11 of Regulation no. 01/2020 of the Work of the Procurement Review Body related to article 4 paragraph 1 subparagraph 75 of the LPP.

The Review Panel has assessed that the conditions to decide on this matter have been met and has scheduled a hearing with the parties in accordance with Article 24 of the PRB Work Regulations where the Contracting Authority, the Economic Operator, and the review expert were present.

- Administration and evaluation of evidence -

The claims of the complaining economic operator are presented through the complaint as follows:

The complainant first clarifies that based on the decision dated 22.11.2023 in which the CA declares our complaint as unfounded, not taking into account the expert's decision and the PRB's

decision that our complaint was partially based and that the notification on decision to be reassessed, the CA has continued with the same decision, declaring the Eurosig company the winner again. The CA in the compilation of the technical specifications has committed a violation by setting the specifications in such a way as to deviate the EO so that the Eurosig company has a lower price since it has this contract in the previous year and has all the information necessary for the calculation of vehicle prices. The Eurosig company was not based on the technical specification that we also had, but set prices in violation of the rates approved in the CBK.

The first claim (I) "Non-compliance with the Technical Specifications by the company EUROSIG Sh.a - According to the clarification in the decision taken by the CA, the TPL insurance price is the max. weight. of the allowed load (in this case, according to the specifications, the maximum allowed weight is 18000, minus the weight without load, 9600, the price for the maximum weight of the load, which in this case is 8400 - the price according to the tariff, is EUR 535.72. Comparing the description in the specification, we get in deviation because we have given the price based on the maximum weight allowed in the technical specifications as stated in the vehicle registration certificate Weight in the booklet - Refers to the description in the file Max weight allowed Vehicle weight in the booklet - It refers to the description in the file Weight without load. While the maximum weight of the allowed load we have referred to you as the maximum weight allowed, while EO Eurosig has been referred to as the maximum weight allowed minus the weight without load, which means that it is not clear the description of which you were referred to in the tender dossier and it was done to achieve the lowest price for these vehicles that have a carrying weight. For the same car, we have given a price of EUR 896.80 according to the maximum allowed weight of 18,000 in the tender file." The second claim (II) "The Contracting Authority has announced the winner of the procurement based on the clarifications received from the CBK according to the decision dated 22.11.2023. In the testimony submitted to us (email attached to this complaint), the CA has asked the CBK to forward the link to the official rates for non-life insurance companies, but has not asked whether insurance companies are obliged to respect the rates which are approved by the Central Bank. In the CBK's response, in the first sentence, it said: All Non-Life insurers are obliged to respect the MTPL auto liability rates approved by the CBK, which are published on the CBK's website. I.e. The Central Bank has clarified that for each class of auto liability insurance, the rates must be set based on the vehicle's specifications.

The contacting authority in the session held briefly stated after the complaint that before the second commission for revaluation we asked for clarifications regarding insurance and the same day they returned to us via email that all rates are unique and each price is unique in the whole of Kosovo therefore, he stands behind his/her decision and under no circumstances can the economic operator with the price offered according to his offer execute the contract in question.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, PRB on 07.12.2023 has engaged the review expert to do the initial review of the file and the complaining claims of the complaining economic operator. On 12.12.2023, the Review Expert's Report was received with the following recommendations: "the complaint of the complaining EO should be

approved as grounded, the contract notice should be canceled and if the CA is still interested, the procurement activity should be retendered." The expertise report has been duly accepted by all procedural parties. CA has stated that it does not agree with the opinion of the expert, while EO has not stated about the review expert's report.

Review expert regarding the claims of EO Kompania e Sigurime "SCARDIAN" J.S.C." through report no. 2023/0968 and in the held session he stated as follows:

The activity in question has been re-evaluated by the decision of the PRB PSH.nr: 2023/0672, and as a result, on 07.11.2023 during the re-evaluation procedure, CA publishes notice B58 with which it recommends the same EO Eurosig Sh.a, while EO declare the appellant unsuccessful. The examining expert finding herself in such a situation, since in addition to the CBK's fees there are differences in the prices offered by the recommended EO, she first requests clarification dated 11.12.2023 by email to the CBK-Insurance Department, asking you to clarify how the fee is calculated compared to the fees given by the insurance companies Eurosig sh.a and Scardian JSC in CBK. CBK dated 13.12.2023 clarified that the quote: *Trucks that are loaded are calculated for the load they can carry, therefore since the CBK tariffs are not specified for special trucks (in this case fire engines), it should be calculated by deducting the weight without load, i.e. charged only for the load that carry*".

The review expert after verifying the CBK tariffs, comparing only the positions/points attacked by the complaining EO (10,11,12,13,14,15,16,18,19,21, 23,26,27,28,29,34 and 35) considers that, the EO recommended in points 10, 21,23,27 has a tariff difference with the offer, so the examining expert has calculated according to the CBK clarification, i.e. special trucks, in this particular case fire trucks, have been verified by deducting the loaded weight from the maximum weight, but as we clarified above the above-mentioned points, the prices on offer do not coincide with the CBK rates and the comparison with the CA pre-measure, therefore, as such, the claim of the complaining EO is found to be grounded.

It is worth noting that, during the analysis of the price list for the points in the claim, we also invited a member of the commission-CA to the meeting, asking for clarification if there is any explanation regarding the prices offered by the recommended EO, where the latter after verification of the points, we conclude together that points 10, 21, 23, 27 have price differences with CBK rates. For which points since we had dilemmas, then I submitted an e-mail to the Kosovo Insurance Bureau (BKS), asking them to clarify these prices. BKS has clarified that the price list and fees for these contested points should be referred to the booklets, because the pre-measure sent cannot be verified. Further, I have asked the CA to attach the booklets, in order to compare whether the data in advance matches the booklets, and as such we notice that there is a discrepancy. In conclusion, after analyzing the case documents, the claims of the complaining EO, the clarifications from CBK, the clarifications from KSK, based on arguments and facts, I consider that this procurement activity should be canceled in accordance with Article 43.5 point b." none of the accepted tenders is responsible", due to the fact that, after we asked the CA to provide us with the booklets for the controversial points, we noticed that the CA has set a pre-measure (data) which does not completely coincide with the data in the physical booklets of the

vehicles, which information then it changes the price of the bidders in their bids, and as such it results that there are no responsive bids.

- Findings of the Review Panel -

According to the data above, the examining expert handled the claims of the complainant EO 'Scardian' in a professional and objective manner. The argumentation in the review expert's report is detailed, understandable and fully based on the relevant documents that refer to the procurement activity. Findings in the review expert's report can be confirmed through the tender file and other documents. Therefore, in the context of the facts, circumstances and evidence administered, the Review Panel has given credence to the review expert's report. In this way, it has been found that the claims of the complaining economic operator are partially founded. Since, based on the research and analysis of the review expert, a clear difference in the tariff values was observed between those published by the Central Bank of Kosovo and those offered by the Economic Operator recommended for the contract, the review expert was addressed to the Department of Insurance in CBK to request clarifications on the methodology of fee calculation, especially for the fees offered by the insurance companies "Eurosig" sha and "Scardian" JSC. The CBK's response emphasized that charging for special trucks should be done by deducting the basic weight, and not by charging for their total weight.

Also, from this report it is understood that the examining expert has requested from the CA and the vehicle booklets [taking into account the explanations of the BKS] in order to compare whether the data in the pre-measure published by the CA match the physical booklets of the vehicles and as a result found that the EO rates recommended for the contract in relation to those made public do not match. In this case, the reviewing expert briefly found that quoted: "CA has set a pre-measure (data) which does not completely coincide with the data in the physical booklets of the vehicles, which information then changes the price of the bidders in their offers and as such it turns out that there are no responsible offers" and in the following he recommended and quoted "this procurement activity should be canceled in accordance with article 43.5 point b." none of the accepted tenders is responsive.

After the public session held on the 05.02.2024, the PRB has again requested clarifications from the CA regarding the compilation of the premeasure compared to the data in the booklet, since the weight of 3700 examples in position 10 does not appear in the booklet. CA has responded, saying that the Professional Fire Brigade in Pristina has a number of vehicles in its ownership, some of them donations from abroad, and because of this they have encountered difficulties in registering them for a long time. In addition, omissions and technical errors occurred during the completion of the documentation, including problems from the Vehicle Registration Center, Technical Controls and CA. CA emphasizes that it was not intended to make any concessions, but difficulties with vehicle documentation, some of which are donations with incomplete documents, may have caused errors in some data in the booklet during the process of changing them.

- Conclusion -

The review panel independently and objectively evaluated all the evidence available in the documents of this case and considers that the contracting authority did not act in harmony with the basic principles of the LPP, as it creates the independent conviction that the CA has imposed a pre-measure (data) which do not completely coincide with the data in the physical books of vehicles, reflecting in different tariff values for bidders. Therefore, starting from the explanations as above, especially referring to the review expert's report and the fact that according to the response of the CA it is not disputed that mistakes have indeed occurred in the compilation of this provision, the Panel is convinced that this procurement activity should be canceled in accordance with article 62 and 43.5 point b. of LPP, according to which, according to the expert, it turned out that he quoted: none of the accepted tenders is responsible" However, the contracting authority has the opportunity to re-tender the activity if it considers it important to meet the needs of the institution, but always respecting the criteria and provisions of the LPP that regulate the compilation of the tender file . It is essential that the CA carefully consider the current needs of the institution and compile the tender parameters in accordance with Article 1 and Article 7, 27 and 28 of the LPP, thus ensuring a fair, efficient and transparent process for all participants because this will lead to a competitive and fair environment for each economic operator.

Consequently, after a careful analysis of all the evidence, the Review Panel has decided that the complaint of the Economic Operator is partially accepted and that the procurement activity is canceled in its entirety. This decision is based on the principles of equality and justice in public procurement, as well as the reimbursement of the appeal fee according to point two of the enacting clause of this decision, because according to the independent judgment of this panel, no one should be unfairly penalized for mistakes and/or ambiguities of applied to DT by a public contracting Authority.

The Review Panel requests from the Contracting Authority that it exercise a high degree of attention in the implementation of public procurement procedures, which includes full compliance with the instructions and norms provided for in the Law on Public Procurement and in the relevant secondary legislation that covers the sphere of public procurement guaranteeing that every action and decision taken by its capacity as the Contracting Authority ensure that procurement processes are developed not only in accordance with the cited law, but also in the fairest and most transparent way possible. Because such an approach contributes to protecting the integrity of the procurement process and strengthening the confidence of bidders and the entire public in the system.

The Review Panel, acting under the authority granted to it by the Law on Public Procurement (LPP), has used all its legal powers to ensure a procurement review procedure that is fast, fair, non-discriminatory and targeted towards finding legal and efficient solutions for the issues in question. This approach reflects a deep commitment to the principles of equality, transparency and justice in the management of public procurement processes in accordance with Article 104 paragraph 1 related to Article 103, Article 105 and Article 117 of the LPP.

For points I and II of the decision, it was decided based on article 117 of the LPP in relation to article 29 of the PRB Work Regulations.

For point III of the decision, it was decided based on article 118 of the LPP in relation to article 31 paragraph 4 and 6 of the PRB Work Regulations.

President of the Review Panel

Mrs. Vjosa Gradinaj

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 – **ASSEMBLY OF THE MUNICIPALITY OF PRISHTINA;**
- 1x1 EO – **Kompania e Sigurimeve " SCARDIAN " J.S.C;**
- 1x1 Archive of the PRB;
- 1x1 For publication on the website of the PRB.