



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

Psh. No.693/23

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 of Isa Hasani - President, Vedat Poterqoi - Member and Vjosa Gradinaj Mexhuani - Member, deciding according to the complaint of the Economic Operator (EO) "DataProgNet" SH.P.K, against the Decision to cancel the procurement procedure of the The Ministry of Internal Affairs in the capacity of the Contracting Authority (CA) related to the procurement activity "Maintenance of the Electronic Civil Status System" with procurement number 214-23-2530-2-1-1, on the 08/12/2023 has issued this:

DECISION

1. It ends the administrative proceedings started according to complaint no. 2023/0693, dated 13/09/2023, of the Economic Operator, "DataProgNet" Sh.P.K., against the "Notice on the Decision of the Contracting Authority", Ministry of Internal Affairs, regarding the cancellation of the procurement activity "Maintenance of the Electronic Civil Status System" with procurement number 214-23-2530-2-1-1, based on article 105 paragraph 2.7. of LPP.
2. The Ministry of Internal Affairs, as the contracting authority, on the 25.08.2023, has published the "Notice on the Decision of the Contracting Authority", for the cancellation of the procurement activity "Maintenance of the Electronic Civil Status System" with procurement number 214-23- 2530-2-1-1, based on article 26, paragraph 2 and 62 of the LPP.
3. It is ordered, the contracting authority in accordance with article 30, paragraph 2, point 2, that the complaining EO, in the name of compensation for the damage, pay the amount determined according to the work regulations of the PRB, within a period of sixty (60) days.
4. The return of funds deposited on behalf of the complaint fee EO "DataProgNet" SH.P.K is allowed, according to paragraph 4, 5 of article 31 of the Rules of Procedure of PRB, while the complainant has the right to, according to paragraph 6, of the cited provision, request the return of the funds within sixty (60) days from the date of acceptance of this decision, otherwise the funds are confiscated and transferred to the Budget of the Republic of Kosova.

REASONING

-On the preliminary review stage-

The Review Panel concluded that the complaint in this case was filed in accordance with Article 109.1 of the LPP, according to which against any decision taken by the CA, any interested party can submit a complaint to the PRB, after conducting a preliminary procedure for dispute resolution in accordance with Article 108/A of this law. Since the applicant has the status of the interested party in the sense of Article 4, paragraph 1.26, and the complaint contains the essential elements provided for in Article 111, of the cited Law, it means that the same meets the prerequisites in terms of the cited provisions and falls under the powers of this Body, in the sense of Article 105, of the LPP.

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 under paragraph 75 of the LPP.

Complaint claims of the economic operator "DataProgNet SH.P.K"

The complainant claims that the CA, after the contract award announcement, issued a decision to cancel the procurement activity in violation of Article 62 of the LPP. CA has published the contract notice dated 22.03.2023, regarding this procurement activity. According to the minutes of the opening of bids, a total of three bidders submitted tenders. Further, according to the announcement on the decision of the CA dated 15.06.2023, the only responsible bidder is the complaining EO (DataProgNet), which has been recommended for the contract. Since there were no complaints in the procedure, dated 30.06.2023, the CA published the contract award notice where, according to the notice, EO "DataProgNet" was awarded the contract and the planned date for signing the contract was 07.05.2023. CA on 08.08.2023 has requested from the complaining EO the extension of the validity of the tender for 60 calendar days. On the same day, the complaining EO extended the validity of the offer for 60 calendar days. CA dated 28.08.2023 has published the decision to cancel the procurement activity related to this activity with the following reasoning: "The reason for the cancellation of the procedure is because the conditions according to the requirements of paragraph 2 of article 26 of the Procurement Law have not been met Public". The complaining EO dated 31.08.2023 submitted the request for reconsideration to the CA. On 05.09.2023, the CA made a decision to reject the request for reconsideration, leaving in effect the decision to cancel the procurement activity. CA, in accordance with Article 9 of the LPP, has prepared the Declaration of Needs and Availability of Funds (DNPDF), which was signed on 08.03.2023 by the requesting unit and the Chief Administrative Official (CAO). While on 15.03.2023 it was also signed by the Chief Financial Official (CFO). In DNPDF, the CA has presented a statement on how this procurement will promote the institutional objectives of the CA: "Maintenance of the Electronic Civil Status System will increase the quality of services and the expansion of these services for citizens. Through this electronic system, all the services offered regarding civil status will be digitized." The information in DNPDF before the publication of the announcement on the decision of the

CA was reconfirmed by the CAO, the CFO and the Responsible Procurement Official (RPP), where all three signed it on the 14.06.2023.

- Administration and evaluation of evidence -

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 25/08/2023 has authorized the expert to conduct the initial review of the file and claims according to complaint no. 693/23, while on 24.09.2023 the expert's report with no. 2023/0693 with the following recommendations: "Based on the above-mentioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO be approved as grounded, the notification for the cancellation of the activity be canceled and recommends that the CA continue with the activity according to the provisions of the LPP".

The expertise's report has been duly accepted by all procedural parties. CA about the recommendations of the review expert's report, "The contracting authority, the Ministry of Internal Affairs, does not agree with the opinion of the review expert, because the cancellation was made after the requirements of paragraph 2 of article 26 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/L-092. Therefore, we request from the Review Panel, to remain in force the Notice for the cancellation of the procurement activity published on 25.08.2023 by the Ministry of Internal Affairs, regarding the procurement activity for: "Maintenance of the Electronic Civil Status System", with Procurement no: 214-23-2530-2-1-1.

While EO "I agree with the expert's recommendation. We ask the Review Panel to consider the complaint of DataProgNet SH.P.K. and the expert's recommendation to oblige the Contracting Authority to sign the contract".

The expert clarifies that the completion of a procurement activity can only be done in cases where the conditions defined in Article 62 of the LPP are met. Based on the evidence in the procedure, namely the documents uploaded in e-procurement, there is no evidence that a violation has occurred that could lead to the cancellation of the activity at this stage. Initially, the expert clarifies that for this activity the assessment of needs justifies the exercise of the procurement activity according to the signature and reconfirmation by ZKA. Furthermore, the CFO has assured and confirmed that there are financial means available for this procurement activity. Also, according to the decisions issued by the Responsible Procurement Officer in this activity, the complaining EO is the only responsible bidder and all the conditions for signing the contract have been met, as set out in the notice for awarding the contract, in which the date is also determined of signing the contract. In conclusion, the article referred to by the CA (Article 26 - Signing of contracts) clarifies the authorizations of the persons responsible for signing the contract. Any reason within the CA that is related to the non-fulfillment of the authorizations according to the relevant article cannot be qualified as a violation or event that cannot be regulated or prevented as defined in article 62 paragraph 1 and 2 of the LPP, as well as not is included in any of the conditions of Article 43.5 of the Public Procurement Regulation. Therefore, according to the above clarifications, the complaining claim is grounded.

-Findings of the Review Panel -

The review panel assesses that the expert's report contains the essential elements of such a document as provided by the provision of Article 113 in relation to Article 114 of the LPP, according to which the expert is required to review all the procurement documentation, including all appeal 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'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 possible evidence, taking into account the nature of the violations. event, the course, nature and purpose of the procurement activity.

Therefore, the fact that in which cases and for what, the Panel supports or not, any report and/or any of the recommendations, belongs to his/her independent and professional judgment, just as these responsibilities are addressed in the sense of article 98, 99 related to article 105 of the LPP.

In order to fully verify the factual situation, the Review Panel administered as evidence the Report of the Review Expert, the complaint of the complaining Economic Operator "Data ProgNet", Notice for the cancellation of the procurement activity no. 214-23-2530-2-1-1 of the Contracting Authority, dated 25.08.2023, and the Decision dated 05.09.2023 of the Contracting Authority for the rejection of the Request for reconsideration submitted by EO "Data ProgNet", against the cancellation of procurement procedure from CA.

The Review Panel related to the Expert Report dated 24.09.2023 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 CA notification for the cancellation of the procurement activity no. 214-23-2530-2-1-1, and baseless legal recommendations are issued. Therefore, the Review Panel ultimately cannot take the expert's report as a fact and does not give it any credence as evidence in this administrative matter.

In article 42.4 of RRPP no. 001/2022, obliges the CA to, quote: "After the expiration of the time limit for submission and review of complaints in the Notice on the Decision of the CA (B58), the Contracting Authority is obliged to prepare the draft of the contract and sign it within 30 calendar days". as required by article 24, paragraph 2 of the LPP "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in full compliance with this law".

The Review Panel regarding the Notice of the Contracting Authority, dated 25.08.2023, for the cancellation of procurement activity no. 214-23-2530-2-1-1, notes that the CA on page three (3) of the Notice for the cancellation of the procurement activity, in Article IV.3 Reason for the cancellation of the public procurement procedure, noted that "A provision in the Law on Public Procurement 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, 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 Public Procurement Law A provision in the Public Procurement Law.

The Review Panel assesses that the issue of cancellation of the public procurement activity by the Contracting Authorities is regulated by primary and secondary legislation. Law on Public Procurement, article 26 Signing of public contracts, paragraph 1 defines" Except, as defined 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 given in compliance with the current law"

Paragraph 2 of the law defines" In addition to the signature of the responsible procurement official mentioned in paragraph 1. of this article, contracts with large values 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 signatures determined according to this Article confirm and accept the rights and obligations defined in the contract. Contracts that are not signed in accordance with paragraph 1. and 2. of this article are unenforceable".

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

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 activity of procurement.

Likewise with the secondary legislation, Regulation on Public Procurement, no. 001/2022, article 43.5.i, defines" The procurement procedure after the opening of offers 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 Notice, for the cancellation of the procurement activity no. 214-23-2530-2-1-1, has justified it, citing the legal provision of the LPP, article 62 paragraph 1 and subsection 1.1 "A provision in the Public Procurement Law 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 requirements of paragraph 2 of Article 26 of the Law on Public Procurement, a provision in the Law on Public Procurement, have not been met".

The Review Panel finally finds that the Contracting Authority Notice for the cancellation of the procurement activity no. 214-23-2530-2-1-1, has based it in accordance with the aforementioned legal provisions, article 26 paragraph 1 and 2- The 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 Regulation on Public Procurement no. 01/2022, provisions which determine the rules for the cancellation of the procurement activity by the Contracting Authority.

Therefore, the Review Panel decided that the complaint of the Economic Operator EO "Data ProgNet", Ferizaj, submitted against the Notice, for the cancellation of the procurement activity no. 214-23-2530-2-1-1, dated 25.08.2023 and the Decision dated 05.09.2023, for the rejection of the Request for reconsideration by the Contracting Authority-Ministry of Internal Affairs of the Republic of Kosova, evaluates it as completed the administrative appeal process according to the law in article 26, paragraph 2, and 62 of the LPP.

Therefore, the review panel related to this issue does not have legal authorizations at this stage and therefore I 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, can turn to 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 canceled by this CA itself, and that the complaining EO "Data ProgNet" did not contribute in any way to the cancellation of the Panel requests from the contracting authority in accordance with article 30, paragraph 2, point 2, that the complaining EO, in the name of compensation for the damage, pay the amount determined according to the work regulations of the PRB, within a period of sixty (60) days.

Therefore, acting on the basis of the basic principles of the procurement review procedures, 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 of described as 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 review expert's report and analyzed them with takes care of all the documents of this case and considers the administrative appeal procedure of the EO, has ended according to the aforementioned legal provisions, as given in the findings of the panel.

The Review Panel has decided in accordance with the legal powers in the sense of Article 104 paragraph 1 in relation to Article 103, Article 105 and Article 117 of the LPP for the implementation of the procurement review procedure in a fast, fair, non-discriminatory manner, in order to legal and effective resolution of the case. The review panel in accordance with Article 117 of the LPP, as well as based on the evidence presented above, decided as in the provision of this decision.

President of the PRB

Mr.Isa Hasani

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 INTERNAL AFFAIRS;**

1x1 EO – **DataProgNet" SH.P.K.;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.