



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

Psh. No.46/24

The Review Panel, deciding in composition by Vjosa Gradinaj Mexhuani, based on article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova (LPP) regarding the complaint of EO “LEDI” SH.P.K., exercised against the Decision on contract award or a design competition related to the procurement activity "Lease of waste collection trucks - Re-tender- LOTO" with procurement number Vete Financim-23-12173-2-1-1, initiated by "Regional Waste Cleaning Company " SH.A. in the capacity of the Contracting Authority (CA), on the 21/02/2024 has issued this:

DECISION

1. The review procedure in this administrative case ends, due to the agreement reached between the parties, "Regional Waste Cleaning Company" SH.A. in the capacity of Contracting Authority and Economic Operator “LEDI” SH.P.K., regarding the procurement activity "Lease of trucks for waste collection - Re-tender - LOTO", with number of procurement Self Financing-23-12173-2-1-1..
2. It is allowed the return of the funds deposited in the name of the complaint’s fee, according to paragraph 4, 5 of article 31 of the Rules of Procedure of PRB, while the complainant has the right according to paragraph 6 of the cited provision to 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 02.11.2023, Regional Waste Cleaning Company" SH.A, in the capacity of the Contracting Authority, has published the Contract Notice (CN) and the tender dossier (TD), for the procurement activity "Lease of trucks for waste collection - Re-tender- LOTO" registered with procurement number Vete Financim-23-12173-2-1-1.

On the 29.12.2023, CA (with data as above, published the notice regarding his/her decision to contract award related to the procurement activity, described as in the preliminary paragraph of this rationale.

On the 03.01.2024 EO "LEDI" SHPK, in his/her capacity as a dissatisfied party with the cited decision, submitted a request for reconsideration, which was rejected by the Decision of the CA dated 04.01.2024. However, on the 15.01.2024, EO "LEDI" SH.P.K. filed a complaint at the PRB, against the above-mentioned decision of the CA, which was recorded with protocol number 0046/2024.

On the occasion of the preliminary examination, the Review Panel concluded that the complaint in the present case was exercised 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 the leadership of a preliminary procedure for resolving the dispute 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 also contains the essential elements provided for in Article 111 of the cited Law, it means that it fulfills the conditions set forth in the sense of the provisions cited and falls under the powers of this body in terms of Article 105 of the LPP.

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 Article 113 of the cited Law, make the initial review of the dossier and the complaining claims, in relation to the procurement activity described above. Regarding this, on 06.02.2024, the review expert submitted the evaluation report with the following recommendations:

- The complaint of the complaining EO should be approved as grounded.
- Cancel the contract award notice and recommend that the matter be reassessed.

It is established in advance that the expert report contains the essential elements as required by article 113, paragraph 3 of the LPP and the same has been accepted by both parties, in accordance with article 115 of the LPP in relation to article 20 of the cited Regulation. In this case, it is evident that both parties (CA and EO) are aware of the complete documents of this case as required in accordance with paragraph 2, article 20 of the Regulation on the Work of PRB and that both parties have formally declared that they are agreed with the report cited above.

Based on the above, the Panel considers that the review procedure ends at this stage, in terms of the agreement (agreement) reached by the parties and consequently the same has lost the claim, respectively the object of complaint as expressly required by the provision of Article 111 of the

LPP. On the occasion of reviewing the documents of this matter, its nature and purpose, the Review Panel considers that the parties can resolve the possibly conflicting reports between themselves in those cases where, thanks to the legislation, they freely dispose of their rights. Therefore, the review panel was not issued at all in the evaluation of the complaining claims, but only issued a decision for the end of the procedure.

The agreement reached between the parties does not fall in line with the basic principles and provisions of the Law on Public Procurement of the Republic of Kosovo and does not attack the institutional independence of its CA, to resolve the contentious issue, as the nature of the issue in the present case allows, among others in accordance with article 19 paragraph 4 of the PRB Work Regulation No. 01/2020 (amended).

However, the Panel reminds the parties that in terms of Article 19, paragraph 4, of the Regulation on the work of the PRB, it is provided that, quoted: "In the event that the contracting authority and the complainant agree with the review expert's report, the review panel issues a notice that the Contracting authority within 5 days to implement the review expert's report by notifying the parties in the procedure. In addition, the parties are informed about the implementation of Article 115.3 of the LPP and that this decision has a procedural character for the parties in the procedure and in such circumstances the findings of this report have not been subject to evaluation by the Review Panel.

Therefore, briefly based on the above, the Review Panel in accordance with article 105, 116 and 117 of the LPP decided as in the provision of this decision.

President of the Review Panel

Mr.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 – **“Regional Waste Cleaning Company” SH.A;**
1x1 EO – **LEDI SH.P.K.;**
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.