



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

Psh. No.762/23

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 (Law no. 04/L-042, supplemented and amended by Law 04/L -237, Law 05/L-068, supplemented and Law 05/L-092), as well as article 29 and 31 of the Rules of Procedure of the PRB 08. 09. 2023, composed of Vedat Poterqoi - President, Vjosa Gradinaj Mexhuani - Member and Isa Hasani - Member, deciding according to the complaint of the Economic Operator (EO) “Astraplan” SH.P.K., against the Decision on awarding a contract to the Kosova Police in the capacity of the Contracting Authority (CA) regarding the activity of procurement “Construction of North Prishtina Police Station” with procurement number 214-22-10936-5-1-1, on the 23/11/2023, has issued this:

DECISION

1. Approved, as grounded the complaint of the EO “Astraplan” SH.P.K” with no. 762/2023 of the 05/10/2023, while the decision of the CA- Kosova Police related to the procurement activity "Construction of the North Prishtina Police Station" with procurement number 214-22-10936-5-1-1 is canceled, meanwhile the procurement activity is returned to Re-evaluation.
2. Within a period of 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 the article 131 of the LPP.
3. Are returned the funds deposited in the name of the tariff tax for submitting the complaint to the account of the Economic Operator "Astraplan" SH.P.K.

REASONING

- Procedural facts and circumstances –

On the 14.10.2022, the Kosova Police, in the capacity of the Contracting Authority, published the contract notice for the procurement activity with title: “Construction of the North Prishtina Police Station” with procurement number 214-22-10936-5-1-1.

On the 15. 09. 2023, CA has published the contract award notice where it has recommended EO "Pro & Co Group" shpk.

EO “Astraplan” SH.P.K. on the 25.09.2023 submitted a request for reconsideration to the CA. On the 28.09.2023, the CA - Kosova Police by decision rejected the request for reconsideration of the complaining EO.

Dissatisfied with the decision of the CA, the complaining EO "Astraplan", on the 05.10.2023, submitted a complaint to the PRB, with protocol number 2023/0762, regarding the procurement activity described above.

-On the stage of preliminary review-

The Review Panel has concluded that the complaint contains all the elements defined through Article 111 of the LPP and as such was submitted within the legal term in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for resolving disputes in the sense of Article 108/A of the LPP, from the economic operator who is an interested party 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 this complaint according to Article 105 of the LPP and there is no procedural obstacle to proceed with reviewing the complaint in a meritorious manner.

CA responses to the request for reconsideration

- The first answer (I): CA clarifies that none of the complaining claims are valid for the following reasons: Article 105 is within the full competence of the PRB and CA has no jurisdiction over rights and obligations, this claim is unfounded. Claim 2 - CA has not violated Article 6 as CA has ensured that the public funds allocated for the procurement activity in question, ensuring that the funds will be used only for the project in question according to the purpose of this procurement activity. You have been eliminated because you have not met the administrative criteria, therefore you are considered irresponsible and the claim is ungrounded. Claim 3 - The CA has not violated Article 7 as it has not discriminated or favored any EO in any form or way due to the fact that the CA has announced an open procedure for the procurement activity and all EOs have been treated equally since they had at the same time, information and all conditions for the tender in question and all offers have been treated equally with the requirements of the tender file and contract notice, this claim is unfounded. Claim 4 CA has not violated Article 59 as all offers have been evaluated and examined based on the qualifying criteria according to the contract notice and the FDT and your offer has been eliminated as you have not met the administrative criteria, respectively the requirements on technical possibilities

and/or professional therefore you are considered irresponsible based on the data provided and your claim is ungrounded. Claim 5 - CA has not violated Article 60 and Article 69 Technical and/or Professional Ability and Article 9.1&9.2 of the TD Request on technical possibilities: The contracting authority has awarded the public contract the economic operator who submitted: 1.1 the responsible tender with the lowest price; based on the criteria of the TD and the Contract Notice. You have been eliminated for reasons given in the Notice of Decision and Standard Letters such as: The EO is irresponsible as it has not fulfilled the following points: In the notification for contracts and TDS section III.2.4) Technical and professional capacity is required: A mobile crane (Truck for carrying construction materials min. 7ton) EO has not provided it here, since EO has offered a crane truck of 5 tons, which is contrary to the contract notice and the TDS. Also, EO has offered a Towing Head with a crane and a Trailer which is not according to the contract notice and TDS III.2.4) Technical and professional capacity where requested - A truck crane (Truck for carrying construction materials min 7 tons) EO has offered a Towing vehicle with a crane and a trailer, not as requested - a truck crane (Truck for carrying construction materials min 7 tons). AK did not require a towing head with a crane and a trailer. The request of the CA was clear according to the contract notice and the TDS - A mobile crane (Truck for carrying construction materials min. 7 tons). Below we present to you the vehicle that EO has offered a tow truck with a crane with CRA Booklet) with no: 1923154 with license plate 03-524-DE, Tow truck with crane according to the weight of the book; Towing head with Crane, F Weight; 18000kg (with all the permitted carrying weight), F1 maximum weight of the permitted load; 7200Kg (72 tons), G Vehicle weight 10800kg (without load), A Booklet Trailer (CRA) with no. 1542907, license plates 03-524-XB, F Weight: 33020kg (with all permissible carrying weight), F1 maximum permissible load weight 24900kg (24.9 tons), Vehicle weight 8120kg (without load). From this it can be seen that the EO is irresponsible since the weight of the vehicle provided, the towing head with the crane, the weight allowed for carrying according to the traffic book is 7200KG or (7.2 tons) while the trailer which it has offered has an unloaded weight of 8120 KG and this is against the traffic rules since the weight allowed for carrying this towing head is allowed with the carrying weight of 7200KG or 7.2 tons, while the trailer has an unloaded weight of 8120KG and this is the overweight of the towing head. All of these are proven by the circulation booklet for the towing head and the trailer presented in the financial offer of EO Astraplan SH.P.K. the claim on this point is ungrounded. Also based on the Law on Communication. Law No. 05/L-088 on road traffic rules Assembly of the Republic of Kosova; Based on Article 65 (1) of the Constitution of the Republic of Kosova, Approves a law on road traffic rules, chapter general provisions. Article 174 Load on the vehicle 1. The vehicle in road traffic is forbidden to be loaded more than the maximum permitted mass, defined in the vehicle registration certificate, to exceed the permitted axle load or to exceed the technical possibilities of the road. EO regarding the claim that the CA did not ask for the participation documents before the recommendation, does not stand. EO claims that we did not offer access on the 21.09.2023. We have offered you full access and the only document you requested is the Evaluation Report. As for the evidence that the documents in question were requested, there is evidence in E-procurement dated September 14-15. Regarding the claim that the EO has not provided sufficient evidence on: Request 1 The economic operator must provide evidence that he has successfully concluded contracts of the same or similar nature during the last 3 (three) years

(from the date of publication of contract notice) not less than 1,000,000.00 €. The claim does not stand as the references uploaded to the system on the day of the bidding meet and exceed the required value (1,000,000.00 euros) and as proof we offer you the following reference which you claim did not exist in the offer: Reference in value 459,990.26 € and was found in the financial offer submitted by the EO recommended for contracts.

Claims of the complaining economic operator "Astraplan" SH.P.K. are presented as follows:

- Allegation After the administration and review of the case documents, against the complaining claims of the complaining EO "Astraplan" SH.P.K., we clarify that the complaining economic operator claims that the CA has acted in violation of Article 6, 7, 59, 60, 69 and 105 of LPP, as well as article 40 paragraph 40.3 of RrUOPP and article 9.1&9.2 of the tender dossier "Requirements on technical and/or professional opportunities".
- The second claim (II): the complaining EO "Astraplan SH.P.K" - Prishtina, claims against the offer of the recommended EO for the contract "Pro & Co Group SH.P.K.", where the complaining EO claims that from the access to the documents of the EO recommended, we have not been presented with documents such as: b) A certificate from the Tax Administration of your country of establishment, that you are not in arrears in paying taxes at least until the last quarter of the year before the date of publication of the Contract Notice. c) Certification from the Basic Court - Department for Economic Affairs - A document issued by the competent Court certifying that the economic operator fulfills the "Eligibility Requirements" at least until the last quarter of the year before the date of publication of the Contract Notice, d) Certification from a competent Court certifying that the directors, managers during the past ten years have not been found guilty by a competent court of committing a criminal or civil offense including corrupt practices, money laundering, bribery, advantages or similar activities.
- The third claim (III): Complainant EO "Astraplan SH.P.K." claims that the EO recommended for the contract "Pro & Co Group SH.P.K."- Prishtina does not meet the criteria on professional technical skills, i.e. does not meet the condition of 1,000,000.00 euros, that it has successfully completed work of the same or similar nature, where the same is irresponsible claims the complainant. Further, the complaining EO in the appeal states that based on the list of contracts presented by the recommended EO, the value of the contracts that should be taken into account is 629,094.53 euros, while the contracts with serial numbers 14 and 15 should not be taken into account for the complainant points out these reasons: Contract with serial number 14. With a value of 459,990.26 euros, the date of signature on 27.04.2020 by the group of EO Pro & Co Group shpk & Archi Time SHPK and N.N.T. "A B C." with a duration of 36 months, i.e. at the time when the offer that is in the appeal process was submitted, 1. This contract has not been completed and cannot be taken as a basis for this assessment; 2. The title of the contract is Maintenance of the facilities of the municipal administration in Prizren, 3. The Reference is missing, even though there is a reference with another title that matches the internal procurement number, this is contrary to the request of TD and CN. Contract with serial number 15. With a value of 322,281.50 euros, the Contract was signed on 03.08.2022 with a duration of 36 months, i.e. at the time when the offer was submitted, which is in the appeal process, this contract was not completed and could not be taken as a basis for this evaluation. The reference submitted for this

contract is invalid because, in this reference, the CA also noted that the works are partially completed, which is contrary to the request of TD and CN.

- The fourth claim (IV): Regarding the other complaint related to the contract no. with serial number 15 with a value of 322,281.50 euros, where the complainant mentions that the contract was signed on 03.08.2022 with a duration of 36 months, i.e. at the time when the offer was submitted, which is in the appeal process, this contract was not completed and cannot be taken as a basis for this evaluation. Also, the reference presented for this contract is invalid because in this reference the CA also noted that the works were partially completed, which is contrary to the request of TD and CN.
- Fifth claim (V): The complaining EO claims that the list of contracts should be considered only from 13.10.2022 to 13.10.2019 and the recommended EO contracts that meet the condition amount to 629,094.53 euros.
- Sixth claim (VI): EO complaining that the director of the procurement office Artan Fejza has acted contrary to the decision of PRB no. 373/23, where the procurement certificate will have to be revoked in accordance with article 25 par 8, further, the complaining EO states that the reasoning of the same is regrettable, camouflage and manipulation with tender evidence and tender documents for personal gain and personal grudge against their company is a criminal offense, misusing 47,680.59 euros of the budget of the Republic of Kosovo and that the same has delayed the Kosova Police for the realization of this project for more than 270 days since for a maximum of 30 days the evaluation will have to be carried out since the day of the submission of the tender more than 9 months.

On 26.10.2023, the review experts submitted the expertise report recommending that: "the complaint be approved as well-founded, the decision of the CA be annulled and the case returned for re-evaluation". The expertise report has been accepted by all procedural parties. Regarding the opinion of the expert, the CA has stated that it does not agree with the recommendation of the reviewing expert, while the EO has stated that it agrees with the opinion and recommendations of the review expert.

The Review Panel has assessed that the conditions have been met to decide on this case without a hearing in the sense of Article 24 paragraph 1 of the Rules of Procedure of the PRB, taking into account that the claims of the parties and their submissions, the evidence as well as the review expert's report provide sufficient data to decide on the merits of the case.

• *Administration and evaluation of evidence -*

In order to fully verify the factual situation, the review panel administered as evidence the expert's report, the opinions of the parties regarding the expert's report, the complainant's submissions and documents, the contracts and documents of the contracting authority, the relevant documents related to the procurement activity as and all the evidence that has been proposed by the procedural parties.

Furthermore, regarding the claims of EO "Astraplan" SH.P.K, the review expert through report no. 2023/0762 assessed as follows:

- First finding (I): Regarding the contested vehicle, the technical expert gives the following answer: The technical expert considers that based on the documents provided in the tender file regarding the request "A truck crane (truck for transporting construction materials min 7ton". In the description of the request, the CA has left the request unclear since the Autocrane machine and the truck for carrying construction materials are different as machines. The complaining EO has provided clarifications on the point of complaint. According to the clarifications given in the EO's complaint and the documents provided recommendations are also given in the tender file (see photo below). During the evaluation, the technical expert has verified all the evidence and according to these documents and evidence the complaining EO has fulfilled the request for both the crane and the transport truck, what is the CA's request (since I consider the CA's request to be ambiguous), the technical expert gives the clarification that the request of the contracting authority is considered fulfilled by the complaining EO "Astraplan". Therefore, based on the evidence below, the technical expert considers that the claim related to the machine is grounded.
- Second finding (II): The review expert clarifies that such requirements are part of the eligibility requirements and that the documents (under b, c and d) must be submitted by the winning bidder, before the publication of the award of the contract. Failure to submit one of these documents within the time limit, which means that the tenderer will be rejected, will lose the bid security guarantee and the Contracting Authority will proceed with the tenderer listed in second place. It is stated in Eligibility Requirements and Documentary Evidence Required. The reviewing expert clarifies that based on the procurement platform, she came across the CA's request dated 14.09.2023, addressed to the EO recommended for the contract "Pro & Co Group SH.P.K." - Prishtina, regarding the submission of documents according to the tender file, Article 6.4. of TD. Also, based on the procurement platform, we came across the evidence submitted by the EO recommended for contracts related to this request. Therefore, the complaining claim is ungrounded.
- Third finding (III): Regarding this request, the reviewing expert clarifies that the CA in the tender file and contract notification requested that the Economic Operator must provide evidence that it has successfully completed contracts of the same or similar nature no more less than 1,000,000.00 Euro in the last 3 (three) years, which must be proven with references or final technical acceptance reports in copies signed and sealed by the relevant authority for the works performed and accepted, which must show the procurement number or the contract, the value of the contract, the date of signing the contract, the nature of the work and the place where the work is carried out. Regarding this request, the reviewing expert clarifies that based on the documents of the subject in e-procurement, namely in the offer of the EO recommended for the contract, the same has attached to the offer the documents entitled "04. List of projects and references - Construction of Larte_PCG.pdf" and "04.1 List of projects and technical acceptances with references "Pro Co Group" pdf", where in these two documents there are contracts and references for completed works. As for the claim of the complaining EO regarding the contract with serial number 14 in the list "04. List of projects and references-Construction of Larte_PCG.pdf", The reviewing expert clarifies that the contract entitled "Renovation of Prizren

Municipal Administration facilities" signed on 27.04.2020 and completed on 02.12.2021 in the amount of 459,990.26 euros, regarding the CA Municipality of Prizren, where for this contract, the recommended EO included this contract in the list of contracts for completed works and presented the reference from the Municipality of Prizren for this contract. The reference in the name of this contract bears the title "Renovation of Prizren Municipal Administration facilities" with procurement number: 622-19-217-211, while the complaining EO claims in the complaint that the title is Maintenance of municipal administration facilities in Prizren, and that the reference is missing, even though there is a reference with a different title that matches the internal procurement number, this is contrary to the request of TD and CN.

- Fourth finding (IV): The examining expert after research and research on the e-procurement platform of this reference, researching the procurement number 622-19-217-211, we came across the contract notice published on 03.12. 2019, with the title of the procurement activity "Maintenance of Municipal Administration facilities in Prizren", internal procurement number 622-19-217-211 and procurement number 622-19-9123-2-1-1, and the contract . So, based on this contract notice published by MA Prizren, and the contract results that the title of the contract in the reference submitted by the recommended EO is not the same as the title as in the contract notice and the published contract. Therefore, the contracting authority, during the reassessment in accordance with Article 72 of the LPP, must clarify this claim of the complaining EO for this reference, asking the CA Municipality of Prizren to clarify this contract, which is contested by the complainant.

- Fifth finding (V): The reviewing expert clarifies that framework contracts can be terminated in terms of the time of completion of works and in terms of quantity when the quantity is completed. For more, refer to article 56.10 of the Rules and Operational Guide for Public Procurement. 56.10 The estimated quantity specified in the tender documents is only an indicative quantity. Whenever the contracting authority specifies the indicative quantity, the contracting authority shall specify in the tender file the value or quantity of the contract as a threshold or a ceiling and shall allow deviation from it, also stating the percentage of allowed non-compliance. The permitted discrepancy cannot be higher than plus/minus thirty percent (30%). If the purchase order exceeds the total indicative quantity or the total indicative value of the public framework contract (including + thirty percent (30%)), regardless of the original expiration date of the Public Framework Contract, the contract will be automatically terminated. Permissible discrepancy plus/minus thirty percent (30%) also applies to lots and positions/items, and in case of reaching the allowed threshold, CA cannot make other orders for that lot or position/item As for the other complaint related to the contract no. with serial number 15 with a value of 322,281.50 euros, where the complainant mentions that the contract was signed on 03.08.2022 with a duration of 36 months, i.e. at the time when the offer was submitted, which is in the appeal process, this contract was not completed and cannot be taken as a basis for this evaluation. Also, the reference presented for this contract is invalid because in this reference the CA also noted that the works were partially completed, which is contrary to the request of TD and CN.

- Sixth finding (VI): The reviewing expert clarifies that based on the request of the contracting authority, namely the requirements for technical and professional capacity, Request "1 The economic operator must provide evidence that he has successfully concluded contracts of the same or similar nature during the last 3 (three) years (from the date of publication of the contract notice) no less than 1,000,000.00 €", and the reference submitted by the EO recommended for contracts by the municipality of Prizren dated 10.11.2022, where it is stated that " The EO in question has accepted the works partially performed on the basis of the contract in the amount of 322,281.50 euros", as considering the role and functions of the Regulatory Commission for Public Procurement, an institution which is the regulator of procurement, where in the interpretation No. 10.22. 11.2022, the clarification was given that the contracts must be completed - completed (not in progress), therefore we qualify the complaint as grounded. In addition, refer to the interpretation of the PPRC.

- Seventh finding (VII): The review expert, as I explain above, the recommended EO in its offer has attached two lists of contracts, the list with the title of the document "04. List of projects and references - Construction of Larte_PCG.pdf" and the list with the title of the document "04.1 List of projects and technical acceptances with references Pro Co Group.pdf", where between these two lists, there are contracts that have been completed within the required period according to the requirement set in the tender file and the contract notice, therefore, during the re-evaluation, the CA must examine these two lists of contracts and make sure if the requirement set by the CA itself for completed contracts worth at least 1 million euros.

- Eighth finding (VIII): The review expert clarifies that the claims that the apostrophized person has a grudge against his company and did this for personal gain, the same certificate will be revoked, etc. The reviewing expert considers that this complaint claim is not related to a matter in which we can give an answer because all our assessment must be based on documents/evidence and arguments for each answer we give, but if the complaining EO has arguments or considers that it can prove these claims can be addressed to other competent bodies. It is also within the competence of the PRB, the review panel to take legal measures against the contracting authorities or any other action related to the responsible persons. As for the complaining claim that the CA has delayed this procurement activity by more than 9 months, the reviewing expert clarifies that the complaining EO's claim regarding the further extension of bid evaluation deadlines is based on the fact that even in cases where the nature of procurement activity is very complex, the CA must within 50 days (1 month and 20 days) complete the examination, evaluation and comparison of tenders according to Article 40.3 of Regulation No. 001/2022 on Public Procurement. So this legal provision has limited the evaluation of the offers and the deadline for evaluation cannot be extended more than 1 month and 20 days. And this claim I propose to be treated as judged according to Article 16, par. 3 of Regulation no. 01/2020 of the Review Body in the sense of Article 105 subsection 2.16 of the LPP, with decision Ex. no. 356, 373 and 389/2023 dated 01.08.2023. Therefore, based on what was described above, the complaint of the complaining economic operator is well founded, while the proposal of the review/technical expert for the Kosova Police - I have to return it to a new evaluation with the aim of fully applying the provisions of the LPP -that in force, specifically articles 59 and 72 of the LPP and to reflect the real situation of the offers in relation to the demands of

established by CA itself.

- Findings of the Review Panel -

According to the above, the review expert handled the claims of the complaining economic operator EO "Astraplan" SH.P.K. in a professional and objective manner. The argumentation in the review expert's report is quite 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. Consequently, the Review Panel regarding the claims of the complaining economic operator has given full confidence to the report of two professional and technical review experts. In this way, it has been found that the claims of the complaining economic operator EO are grounded.

Regarding this public procurement activity, there was also another preliminary expertise with no. 2023/0762 dated 22.06.2023, where it is also confirmed that the complaining party is responsible and the CA must fully implement the legal provisions of the LPP.

The review panel after the administration and assessment of the evidence, the complete ascertainment of the factual situation, relying on the LPP as applicable material law, after reviewing the appeal claims, taking into account all the documents of the case and the recommendations of the review expert, has found that the Economic Operator's complaint must be approved as well-founded. The Review Panel considers that the actions and acts of the CA and the evaluations of the review expert regarding the fulfillment or not of the conditions described above and the complaint statements in this case constitute a sufficient basis for the procurement activity to be re-evaluated. The return of a procurement activity based on a contested legal re-evaluation, is in harmony with Article 1 of the LPP, according to which, the purpose of this Law is, among others, quoted: "...to ensure the integrity and responsibility of public officials, civil servants and other persons who perform or are involved in a procurement activity, requesting that the decisions of such individuals and the legal and factual basis for such decisions, are not influenced by personal interests, are characterized by non-discrimination and with a high degree of transparency and, to be in accordance with the procedural and essential requirements of this law". The Review Panel considers that the course of the procurement activity is not characterized in accordance with the legal provisions, which in relation to the intended purpose of this procurement activity, from the point of view of this Panel, have been implemented with increased care and in a professional manner.

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. Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations, which may appear during a procurement activity.

For point I of the decision, it was decided based on article 117 of the LPP in relation to article 29 and paragraph 31 of the Rules of Procedure of the PRB.

For point II of the decision, it was decided based on article 31 paragraph 6 of the Rules of Procedure of the PRB in relation to article 118 of the LPP.

From what was said above, it was decided as in the provision of this decision.

President of the Review Panel

Mr. Vedat Poterqoi

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 – **KOSOVA POLICE**;
1x1 EO – “**Astraplan SH.P.K.**”;
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.