



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

Psh. No.848/23

The Review Panel, appointed by the President of the Procurement Review Body (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) in the composition of Isa Hasani - President, Vedat Poterqoi - Members and Vjosa Gradinaj-Mexhuani - Member, deciding according to the complaint of EO “Krasniqi” SH.P.K, related to the procurement activity with title: “Cleaning of the internal spaces, of the objects in the UCCK” with no. of procurement: “701-23-10641-2-1-1”, initiated by the Contracting Authority (CA) - University Clinical Center of Kosova, on the 20.12.2023 has issued this:

**DECISION**

1. It is approved as partly grounded the complaint of Economic Operator “Krasniqi” Sh.P.K, with number 848/2023, dated 29.10.2023, against the publication of the “Notice on the Decision of the Contracting Authority”, the University Clinical Center of Kosova, the procurement activity "Cleaning of the Interior Spaces of the Facilities at UCCK" with procurement number: “701-23-10641-2- 1-1”.
2. The Contracting Authority, University Clinical Center of Kosova, is obliged to remove from the Tender dossier, the technical and professional capacity of the criterion "Requirement 5", according to the findings of the Review Panel, and to extend the deadline for bidding, discriminatory criterion according to Article 7.5 of LPP.
3. 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.
4. The return of the funds deposited in the name of the appeal fee EO "Krasniqi" SH.P.K is allowed, according to paragraph 4, 5 of article 31 of the PRB Work Regulations, while the complainant has the right that 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**

### *-Procedural facts and circumstances-*

On the 04.10.2023, the University Clinical Center of Kosova, in the capacity of the Contracting Authority, has published the Contract Notice for the procurement activity entitled: "Cleaning of the Interior Spaces, of the Facilities in the UCCK" with no. of procurement: "701-23-10641-2-1-1".

EO "Krasniqi" SH.P.K., on the 23.10.2023 submitted a Request for Re-examination to the Contracting Authority/University Clinical Center of Kosova, which decides to reject as unfounded the request for reconsideration of EO "Krasniqi" SH. P.K., related to the procurement activity entitled: "Cleaning of the internal spaces, of the objects in the UCCK" with the number: "701-23-10641-2-1-1".

EO "Krasniqi" SH.P.K. dissatisfied with the decision of the CA, dated 29.10.2023, submitted a complaint to the PRB, with protocol number 848/23, against the decision of the Contracting Authority regarding the procurement activity of no.: "701-23-10641- 2-1-1".

The contracting authority implemented an open procedure, type of contract: Services, estimated value of the contract: 7,130,000.00 €.

The EO's appeal 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 an appeal to the PRB. Since the EO has also applied for reconsideration, it means that its actions also refer to Article 108/A of the cited Law. Therefore, the PRB considers that the Complaint fulfills the prerequisites in terms of the provisions now cited and the same falls under its competences in terms of Article 105 of the LPP.

### *-On the preliminary review stage-*

The EO's complaint was made in accordance with Article 109.1 of the LPP, according to which any interested party can submit a complaint to the PRB against any decision taken by the CA. Since the EO has also applied for reconsideration, it means that its actions also refer to Article 108/A of the cited Law. Therefore, the PRB considers that the Complaint fulfills the prerequisites in terms of the provisions now cited and the same falls under its competences in terms of Article 105 of the LPP.

Complaining claims of the economic operator "Krasniqi" SH.P.K.

Claim 1. Request on technical and professional ability points 9.1 and 9.21. In request no. 3AK has requested that the Economic Operator must have a professional staff as well as experience in adequate school services, at least one worker qualified for sanitation or something similar. The answer from the CA to this question was: refer to the tender dossier. Unsatisfied with the response of the CA in clarifying the questions, since we have addressed the CA with a Request for Reconsideration, where the CA in the decision dated 26.10.2023 answered that this claim of the EO is unfounded.

This request is in the contrary to Article 69 of the LPP, since the very nature of this procurement activity is the cleaning of internal spaces, and in no position is the regulation of sanitation, but only their cleaning, the priority of this activity. This is an illegal request which the CA should remove from TD and CN as it has nothing to do with the nature of this procurement activity in accordance with Article 25.6 of Regulation No. 01/2022 of the PPRC which states: All requests minimum qualifications will be directly relevant and proportional to the scope of the contract in question.

Claim 2. CA has also requested ISO standards such as Quality Management, Management System, Occupational Health and Safety management system for cleaning services, requires economic operators to have a professional management where they are connected directly with the quality service for cleaning services. hygiene, because we are dealing with the removal of medical product waste, where they are directly connected with safety at work for all workers engaged by EO, because we are dealing with the cleaning of spaces with high risk from various diseases that patients are treated in clinics.

CA's requirements are discriminatory for EOs, rather they are favorable for certain EOs, such criteria reveal a monopoly in the market and create uncertainty for the widest possible participation of interested Economic Operators. We think that these ISO standards are unnecessary, so this request is against the law and as such should be removed from the selection criteria.

Claim 3. request 5. EO is obliged to engage all the workers in the cleaning services in the last months in UCK. This request is discriminatory according to Article 7 of the LPP since the CA does not have the right to oblige (impose) the EO to hire these workers. So this request is also unnecessary and should be removed. Answer from CA: This EO claim is unfounded because all the cleaning workers were previously part of the UCK and at the time of the transfer of the cleaning service to private operators in all previous contracts with different economic operators contracted by the UCK have been engaged. This requirement has never been mandatory in previous procedures as the CA claims.

Claim 4. Even for this request, the CA has not provided clarifications in the questions submitted for additional clarifications. The response of the CA was: Refer to the tender file. In points 9.1 and 9.2 of the request for technical and professional capacities of the contract notification. So the CA must act in accordance with LPP point 4 and 4.2 of Article 69, Technical and/or Professional Ability where it is stated that: 4. In the procedures that lead to the awarding of the public contract in which the provision of services is included, the contracting authority may ask the economic

operators to provide the data proving their ability to provide these services; in particular, data may be required relating to skills, efficiency, capacity, experience and reliability. Change the requirements set by the Contracting Authority in the contract notice and in the tender dossier, and the CA will act in accordance with Article 53 of the LPP. Regarding the procurement activity: Cleaning of the internal spaces of the facilities in UCCK.

Assessments to the reviewing expert through report no. 2023/0848 regarding the complaint claims of EO "Krasniqi" SH.P.K.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel has authorized the review expert to conduct the initial review of the file and claims according to complaint no. 848/23, while on 21.11.2023 the review expert's report with recommendation was submitted; Based on the aforementioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO be partially approved as well-founded, the CA make improvements to the tender file and extend the deadline for bidding.

The review expert - claim 1, clarifies that the main complaints according to the complaint are related to the requirements of the CA placed in the tender file, which the EO claims are discriminatory and unnecessary. After analyzing the complaint, the tender file and the CA's decision on the request for reconsideration, we estimate that all the requirements, such as the requirements for a qualified sanitary worker, the requirements for ISO standards, are relevant and proportional requirements in relation to the subject of the relevant contract. These requirements, in our opinion, are proof of the commitment of the EOs to ensure a better organization and management of the company for the services they offer, especially in the specific case when we are dealing with the cleaning of high-risk spaces. Based on what was mentioned above, we estimate that the complaining claims are unfounded.

The review expert - claim 2, clarifies that the request for evidence from TAK for the financial circulation for which the EO claims is insufficient to prove the experience of the EOs, we consider that it is the right of the CA which evidence provided in the LPP choose to put in the tender file. In the specific case, CA has chosen to apply the requirements in accordance with Article 68 par.1, subpar.1.5 of the LPP, therefore we consider that the appeal claim is unfounded.

The review expert - claim 3, clarifies that the complaining EO claims that the request of the CA EO that it has an obligation to engage all the workers in the cleaning services in the last months in UCCK. This request is discriminatory according to Article 7 of the LPP since the CA does not have the right to oblige (impose) the EO to hire these workers. So this request is also unnecessary and should be removed. We believe that this appeal claim is well-founded, since according to article 7, par. 5 of the LPP, CA does not have the right to request the employment of specific persons.

Article 7 par.5: "The Contracting Authority shall not require the economic operator to hire or use any particular person or company for the execution of any aspect of a public contract, or (ii) to supply or provide, or do not provide products or services that are derived from a particular person, company or geographic region"

We understand that the purpose of the CA is to ensure that the current employees do not have their jobs at risk, however the request is illegal, and such a thing can eventually only be achieved by understanding between the EO that executes the contract and the CA of.

Based on what was mentioned above, we estimate that the complaining claim is grounded and this request should be removed from TD.

*-Findings of the review panel -*

The panel further analyzed the documents of this case, including all acts and actions of the parties and their statements, considered that there is no need to convene a public session with the parties because there is sufficient evidence and there are conditions to decide meritoriously regarding the complaint in the case specifically, as provided by paragraph 1, of article 24 of the cited Regulation.

Referring to article 104.1, of the LPP, according to which it is required that the review procedure be implemented in a fast, legal and effective manner and also analyzing in their entirety the documents of this subject in the context of this procurement process, The panel did not consider it necessary to elaborate again in detail and without need in this case each complaining claim, as long as they are specifically singled out especially in the contested decision of the contracting authority and have been analyzed and argued by this panel.

Among other things, in the challenged decision of the contracting authority and in the report of the reviewing experts, explanations were given regarding the complaining assertions. The review panel, after reviewing the case documents, reviewing the complaining claims of the complaining EO, findings, concrete analysis and recommendations of the reviewing expert, the declaration of the parties in the procedure, discussions and sifting of the evidence as a whole during the hearing for the main review, has found discriminatory elements in this CA public procurement process.

RP considers that all CAs should be extra careful so that the selection criteria will not be unfairly strict leading to discrimination and limiting competition, as well as to ensure as much competition as possible. without risking the contracting of unprofessional companies as well as with the understandable purpose of filtering and excluding unstable companies that cannot implement the specific contract, so the selection criteria must fulfill its objective and practically filter out unstable companies, in relative to the volume and complexity of the work foreseen in the activity, but not to the extent that the established criteria lead to discrimination.

The review panel notes that in the Tender dossier-Technical and Professional Capacity, Request 5., it is stated that "the EO has the obligation to engage all workers in the cleaning services in the last months in UCK" we find that this request is discriminatory according to Article 7 LPP since the CA does not have the right to oblige (impose) the EO to hire these workers. So this request is also unnecessary and should be removed. We believe that this appeal claim is well-founded, since according to article 7, par. 5 of the LPP, CA does not have the right to request the employment of specific persons. The review panel assesses that the issue of the current workers engaged in work can be resolved with understanding through negotiations with the operators that carry out the contract and the Contracting Authority.

Therefore, RP finally decided that, regarding the complaints of the complaining EO that the Contracting Authority has discriminatory criteria in the Tender File, therefore the CA must improve the Tender dossier - Technical and professional capacity, Request 5. and extend the bidding period/ tendering.

Also, the review panel evaluates the report compiled by the review expert, whose duty has been to review all complaints and his professional opinion is given in the expertise report, which the review panel supports the findings made in the expertise's report, with the recommendation that the complaint is classified as partially founded.

RP considers that all CAs should be extra careful so that the selection criteria will not be unfairly strict leading to discrimination and limiting competition, as well as to ensure as much competition as possible. without risking the contracting of unprofessional companies as well as with the understandable purpose of filtering and excluding unstable companies that cannot implement the specific contract, so the selection criteria must fulfill its objective and practically filter out unstable companies, in relative to the volume and complexity of the work foreseen in the activity, but not to the extent that the established criteria lead to discrimination.

*- Conclusion -*

The review panel considers that an appeal claim is well-founded, as explained above, while the CA did not act in accordance with the provisions of articles 7 of the LPP. The return of a procurement activity for the improvement of the Tender Dossier, with facts and evidence and/or with a legal basis, is in harmony with Article 1 of the LPP, according to which, the purpose of this Law is, among other things, cited: "...to ensure the integrity and responsibility of public officials, civil servants and other persons who perform or are involved in a procurement activity by requesting that the decisions of such individuals and the legal and factual basis for such decisions are not influenced from personal interests, to be characterized by non-discrimination and a high degree of transparency and to be in accordance with the procedural and essential requirements of this law". However, for each request placed by the CA in the Tender File, based on 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 compliance complete with this law. Likewise, according to article 51, paragraph 3 of the LPP, CA, all selection criteria as well as the required documents and information that have been established and described in this article, must be directly relevant and proportional in relation to the subject of the respective contract.

Regarding Article 105, taking into account the requirement of Article 104, paragraph 1, of the cited Law according to which, quoted: "The procurement review procedure will be implemented and carried out in a fast, fair and non-discriminatory manner, which aims at the fair, legal and effective resolution of the matter..." Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations, which may arise during a procurement activity.

Therefore, from the above, the review panel in accordance with article 117 of the LPP decided as in the provision of this decision.

**President of the Review Panel**

Mr. Isa Hasani

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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 – **UNIVERSITY CLINICAL CENTER OF KOSOVA;**

1x1 EO – **KRASNIQI"SH.P.K;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.