



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

Psh. No.869/23

The Procurement Review Body through the Review Panel composed of Vedat Poterqoi as President, Isa Hasani-member and Vjosa Gradinaj Mexhuani as a member, deciding on the complaint of the economic operator “Buqa” dated 05.11.2023 against the Notice on the Decision dated 20.10.2023 of the Contracting Authority - Kosova Police regarding the procurement activity entitled “Supply of parts for Skoda Rapid vehicles” with procurement number 214-23-1137-1 - 1-1, based on Article 105 in relation to Article 106 and Article 117 of the LPP, after consideration in the session without the presence of the parties, on the 28.12.2023 has issued this:

DECISION

1. **Refused as ungrounded** the complaint of the EO “Buqa” with number: 869/2023, of the 05.11.2023, against the Notice on the Decision dated 20.10.2023 of the Contracting Authority - Kosova Police regarding the procurement activity entitled "Supply of parts for Skoda Rapid vehicles" with procurement number 214-23-1137-1-1-1.
2. Remains in force the Notice on the Decision of the Contracting Authority dated 20.10.2023 regarding the procurement activity with the data as in point I of the provision.
3. In accordance with article 31 paragraph 5 of the Rules of Procedure of the PRB, the funds deposited in the name of the appeal fee are confiscated and the same are transferred to the Budget of the Republic of Kosova.

REASONING

The Kosova Police in the capacity of the Contracting Authority dated 03.03.2023 has published the Contract Notice B05 related to the procurement activity entitled “Supply of parts for Skoda Rapid vehicles” with procurement number 214-23-1137-1-1-1.

This procurement activity was developed through an open procedure with the type of contract for supply and with an estimated contract value of 550,000.00 €.

On the 20.10.2023, the Contracting Authority has published the Notice on Decision B58 through which it has awarded a contract to the economic operator "Ideal Shala" B.I.

On the 25.10.2023, the complaining economic operator submitted a request for reconsideration against the Notice on Decision B58 of the Contracting Authority. Consequently, on the 27.10.2023, the Contracting Authority made a decision through which it rejected as unfounded the request for reconsideration of the complaining economic operator.

On the 05.11.2023, the complaining economic operator has submitted to PRB complaint no. 2023/0869.

During the preliminary review of the complaint, the Review Panel found that the complaint contains all the elements defined through Article 111 of the LPP and as such was submitted within the legal deadline in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for resolving disputes in meaning of Article 108/A of the LPP, from the economic operator who is an interested party according to Article 4 paragraph 1 subsection 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.

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 main claims of the complaining economic operator, which are classified as such according to the review expert's report, are as follows:

The first claim (I) - "When analyzing the documentation of the EO recommended for the contract, which it presented with an offer, it can be seen that it does not meet the request of the CA, since in the list of contracts it has presented contracts that are not the same or similar to the purpose of the procurement activity itself, which has only to do with spare parts for vehicles, in the list of contracts presented by the recommended EO there are contracts and references that are not of the same nature or similar to this tender".

The second claim (II) - "The OE recommended for the contract has sent an authorization from an INTER CARS distributor, which is not known if it is authorized, considering, for example, Mercedes-Benz, VW Group do not issue authorizations for parts his own that he mentioned there".

Referring to the claims as above, the complaining economic operator considers that the Contracting Authority has acted in violation of article 1, 7, 51, 59, 60, 72 and 99.2 of the LPP. The complaining economic operator has asked the Review Panel to approve the complaint so that the matter is returned to re-evaluation.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 10.11.2023 engaged the review expert to conduct the initial review of the file and the complaining claims of the complaining economic operator. On 17.11.2023, the Review Expert's Report was received with the following recommendations: "the review expert proposes to the review panel that the complaint of the complaining EO be approved as partially founded and recommends that the matter be returned to review, placing special emphasis on the calculation or not of the debatable contract on the lack of reference and the date of its completion".

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 report of the review expert, the opinions of the parties regarding the report of the expert, the submissions and documents of the complaining economic operator, the letters and documents of the contracting authority, the relevant documents related to the activity of procurement as well as all the evidence proposed by the procedural parties.

Regarding the first claim (I) of the complaint, the reviewing expert presented in his report the findings as follows: "The expert wrote to the Contracting Authority making it clear that there is no reference or technical acceptance of the framework contract (titled Supply of spare parts and maintenance of heavy machinery - bulldozers) and that he requested clarifications on how this framework contract was evaluated or calculated and how it was taken into account considering that there is no official reference or even official technical acceptance except for the aforementioned email (where CA writes in words that this contract has gone all right), but that the expert does not have an end date for this contract available. The expert considers that based on this request of the file and the facts received by the expert and the additional information received, he considers that there are not enough facts and the expert is not in a position to take this contract as a completed contract since it is missing the final reference on its termination and that the expert in this case is not able to specify exactly when this contract ended in order to calculate whether this contract is equivalent to the conditions required in the DT for the last 3 years from the date of the notification of this contract. Therefore, it is proposed that the CA, during the reassessment of this matter, examines this position and this contract once again and properly clarifies the date of conclusion of this contract.

If we also look at the contract concluded in 2017 for their reserve and servicing for KMDK bulldozers), there is no end date either, but only the date of its signature, which is 30.01.2017, which is if we base it on the date of the announcement of the contract of the Tender dossier, which is 02.03.2023, it should be 30.01.2020 if it had been completed for 3 years from the date of signing. Also, the complaining EO attacks the CA's decision claiming that within this contract there are invoices which do not coincide with the required contracts similar to the supply of spare

parts and within it there are also invoices for welding, batteries, hydraulic pipes, repairs pipes, etc., which is true that in the files sent to some invoices such designations exist and for this reason the RP in the decision taken on this matter has submitted their comments to the CA to examine this controversial topic on supplies during the reassessment and services of this type".

Regarding the second complaining claim (II), the review expert presented in his report the findings as follows: "The expert received additional information from the CA, which confirms the written authorization from the INTERCARS company, which confirms the authenticity of the authorizations in question and that the documents submitted by EO Ideal Shala are signed and sealed by the company in question. Therefore, considering this fact, the examining expert considers that this claim is unfounded and that the claims related to the suspicions of the complaining EO about the manipulations with the authorizations cannot be taken into account by the expert in the absence of other facts and only such assumptions remain".

According to the above, the review expert handled all the claims of the complaining economic operator in a professional and objective manner. The argumentation of the reviewing expert is detailed, understandable and based on the relevant documents that refer to the procurement activity. The findings of the expert can be confirmed through the tender dossier as well as the documents with which the tenderer has bid. Moreover, the findings of the review expert are also based on the relevant provisions of the LPP and RRPP. Consequently, the Review Panel has given full confidence to the findings of the review expert.

- Findings of the Review Panel -

In this particular case, from the review expert's report, the evidence presented by the complaining economic operator, the documents of the tender file as well as from other evidence of the case, it has been found that the complaining economic operator "Buqa" has submitted a complaint earlier (specifically on 09.06 .2023 with Prot. No. 2023/0377) related to this procurement activity. Consequently, on 09.10.2023, the PRB Review Panel made decision no. 2023/0377 through which he had approved the complaint as partially founded, so that he had turned the procurement activity into a reevaluation together with concrete instructions for the contracting authority.

When analyzing the applicant's complaints, the Review Panel has found that this case was dealt with earlier in PRB according to decision 2023/0377 dated 09.10.2023. Therefore, for the Review Panel, this is a res judicata matter in the sense of Article 5, paragraph 2.16 of the LPP, as well as Article 23, paragraph 11 of the Labor Regulations in PRB.

In the aforementioned decision, the procurement activity has been re-evaluated only due to the fact that, citing the PRBO decision No. 2023/0377. "Therefore, finally, regarding this issue, the final decision was reached as detailed above, which consequently resulted in the fact that the panel considered that the activity should be reassessed and the reassessment should be done by assessing the contracts as complete contracts and not separated, accepting or not accepting the same as a whole based on the request of the DT and the legislation in force, and also in case of lack of information regarding the conclusion, reference and other information apply the regulatory provisions of articles 72 and 59 of LPP". So, the procurement activity has been re-evaluated only due to the fact that the CA did not consider the contracts as complete, but in the

first evaluation of the offers, it divided the contracts, this action which was contrary to the legal interpretation from KRPP, specifically question no. 10 "List of contracts carried out (completed) in the last three years from the date of publication of the Contract Notice", during the evaluation of tenders, should the total value of the contract be taken as a basis or should proportion? while in the answer, among other things, it is emphasized that: As a result, during the evaluation process of tenders in accordance with the above-mentioned provision, the total amount of the contract specified in the list should be taken as a basis and not prorated. So it remains at the discretion of the CA to decide on this issue because it is evident that as stated in the preliminary decision quote: "Contract "Supply of spare parts and maintenance of heavy machinery (bulldozers) with no. KMDK- 19-4022-1-1-1 in the value of €394,361.81, which can be considered as the main contract in the submitted list due to its value in relation to other contracts, in case this contract is not considered by the CA of the recommended EO could be described as an irresponsible EO, due to the course of circumstances developed in relation to the evaluation of the offers by the CA regarding the same contract, it is evidenced that the CA requested clarifications from the EO recommended regarding the reference, as well as regarding the termination of the same, in which case the complaining EO presented the sales invoices for the services and supplies of this contract, as well as a communication from the CA of that contract that "the same has been completed in order".

As for the second complaint claim, from the evidence provided by the reviewing expert, it was found that the complaining economic operator did not manage to present convincing arguments according to which it could be proven that the authorization submitted by the recommended tenderer is not an authorization with the content of exactly as alleged in the complaint. Therefore, the Review Panel considers this claim to be unfounded and fully agrees with the finding of the review expert, which states that "claims related to suspicions of manipulations with authorizations cannot be taken into account by the expert in the absence of other facts and only such assumptions remain". But whatever the contracting authority may be in accordance with Article 52.7 of the LPP, if it deems it reasonable and suspicious, it can exercise an effective control. But other parties can also address you to the competent bodies.

Therefore, consequently, the review panel decides to give the right to the CA and to leave in force the decision of the CA, this decision which was issued by an evaluation commission which is supposed to be professional. The Review Panel emphasizes that each contracting authority (at the central and local level) enjoys autonomy in procurement planning (Article 8) and in determining the needs that must be met (Article 9), of course in accordance with the budget capacity and that the CA in the specific case has have the right to also decide on the EO recommended for the award of the contract based on article 24 paragraph 2 of the LPP quoted "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in compliance with complete with this law".

The return of a procurement activity without a contested legal basis for re-evaluation, and the prolongation of the procurement activity to infinity, is not 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 requiring that the decisions of such individuals and the legal and factual basis for such decisions, not to be influenced by 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".

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 papers of this matter and considers that the complaining assertion of the complaining EO is unfounded and rejected, as they are given in the findings of the panel.

In making this decision, the review panel also took into consideration the requirements of Article 104, paragraph 4 of the LPP, according to the PRB, it must act as quickly as possible, act proportionally to the alleged violation or the matter for which the complaint is filed, and take as a basis the possible consequences of the actions or measures on all interests that may be harmed, including the public interest.

At the same time, the review panel implemented articles 1 and 6 of the principle of economy, as one of the main principles of article 104 of the Law on Public Procurement of the Republic of Kosovo, in which case it is established in a non-controversial way that the offer of the EO recommended for contracts consists at a cheaper price compared to the complainant's offer.

Therefore, acting in accordance with the powers cited above and Article 104 paragraph 4 in relation to paragraph 1, according to which the procurement review procedure will be implemented and carried out in a fast, fair and non-discriminatory manner, which has aimed at the legal and effective resolution of the case, as well as referring to Article 117 of the LPP, and in the evidence presented above, the Review Panel 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 – **“Dyqani i Pavarur Tregtar Autopjesë ” Buqa”**;

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.