



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

Psh. No.647/23

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 (LPP) in the composition of Isa Hasani - President, Vedat Poterqoi - Members and Vjosa Gradinaj-Mexhuani - Member, deciding according to the complaint of EO “BE NEW ” L.L.C.”- Prishtina, against the decision to contract award, the Ministry of Infrastructure in the capacity of the Contracting Authority (CA) regarding the procurement activity "Mobile center for technical control of vehicles on the road” with procurement number: "205-23-6058-1-1-1, on the 12.12.2023 has issued this:

DECISION

1. Approved as ungrounded, the complaint of EO “BE NEW “ L.L.C”- Prishtina”, with no. 2023/0647, against "Notice on the Decision of the Contracting Authority", Ministry of Infrastructure, for the contract award for the procurement activity: "Mobile center for technical control of vehicles on the road” with procurement number: "205-23-6058-1-1-1.
2. Canceled, "Notice on the Decision of the Contracting Authority", Ministry of Infrastructure, dated 21.10.2023, for contract award for the procurement activity "Mobile Center for Technical Control of Road Vehicles" procurement no.: "205-23 - 6058-1-1-1".
3. It is allowed the return of funds deposited in the name of the appeal fee EO "BE NEW" L.L.C.- Prishtina, according to paragraph 4, 5 of article 31 of the Rules of Procedure of PRB, while the complainant has the right that according to paragraph 6, of the provision of cited, 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-

The Ministry of Infrastructure, in the capacity of the contracting authority on the 13.06.2023, published the Contract Notice, the deadline for the submission of tenders was dated: 28.07.2023. On the 21.10.2023, B58 published the Notice on the Decision of the Contracting Authority, for the contract award for the procurement activity with title: “Mobile Center for Technical Control of Road Vehicles” with procurement no: 205-23-6058-1-1-1, where the Group of economic operators “Traffiks VA SH.P.K; Autoinstrument dooel Skopje” has been recommended for the contract.

On the 22.08.2023, the complaining EO made a Request for reconsideration, while on 29.08.2023, the CA Ministry of Infrastructure rejected as unfounded the Request for reconsideration of EO "BE NEW" L.L.C.- Prishtina", for the procurement activity above marked.

The complainant dissatisfied with the decision of the CA, regarding the Request for reconsideration, EO "BE NEW" L.L.C. based in Prishtina, in accordance with Article 108/A, has submitted a complaint to PRBO with protocol number 0647/2023,

The contracting authority has implemented an open procedure, type of contract: work, estimated value of the contract: 500,000.00 €.

The Procurement Review Body has notified the parties on the: 25.09.2023 with the expertise's report. On the 29.09.2023, the CA Ministry of Infrastructure has stated that it does not agree with the review expert's opinion, meanwhile, EO "BE NEW" L.L.C." with the date 01.10.2023, has declared that he agrees with the opinion of the review Expert.

-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 fall 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.

Complaining claims of the economic operator "BE NEW L.L.C" .

1. The complaining EO has filed a complaint against the decision to contract award, with the claim that the CA did not respect the bid evaluation procedures. The contracting authority, after completing the evaluation of the offers, has notified the complaining EO with the result of the evaluation, which it eliminates on the grounds that "the CV of the project manager is not signed by the engineer, which was a request of the tender dossier and the other reason for the elimination of the complaining EO is the same according to the CA that it has interfered with the standard forms approved by the PPRC, where the complaining EO named the declaration of establishment of the group which it submitted as annex 6, which according to the CA - that it is part of the criteria for awarding the contract". 2. The complaining EO claims that it was eliminated for that reason because it only named the document as ANNEX 6 - Declaration of the establishment of the group and it cannot be considered an intervention in the PPRC form .3. EO complaining the claim that the CA has recommended an irresponsible EO for contracts, that the member of the consortium has submitted some evidence that is in contrary to Article 13 of the LPP, because he has submitted translated but not have the seal of the official translator4. The complaining EO claims that the recommended EO did not submit the contracts and references as requested in the tender file, on the grounds that the consortium member submitted no references at all. 5. The complaining EO claims that the EO recommended for contracts has debts to TAK. 6. He claims that the winning EO has not presented the detailed project that contains all the equipment, what a mobile center looks like and how it will work, but has only presented the dimensions of the mobile control and some photos of the controller and this document does not have has nothing to do with the detailed project, since in this document no details of only the installed equipment and the operation of the equipment are presented. 7. EO claims that the winning EO has not proven any document or declaration of confirmation (CE) for the equipment that has offered i.e. has not presented any document that confirms that the offered equipment is in accordance with the EU rules as requested by the CA in the last clarification. 8, EO claims that the winning EO lacks the presentation of the Certificate without supporting statements confirming that the equipment offered will be calibrated by an accredited laboratory, it is not sufficient and convincing for CA that the offered equipment will be calibrated only through the presentation of the accreditation certificate for equipment calibration. 9. The EO claimed, the winning EO presented the Calibration Certificate for its company as a certification body, which is contrary to international standards and is a conflict of interest since you cannot be a supplier and at the same time an accredited calibration body for the equipment it offers .

- Administration and evaluation of evidence -

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel has authorized the expert to do the initial review of the file and claims according to complaint no. 647/23, while on 25.09.2023 the expert's report with no. 2023/0647.

The review expert, for point 1 of the complaint, clarifies that the complaining EO in its offer submitted the unsigned CV of the Manager and for the same evidence the CA requested in the Tender File that it be signed. The reviewing expert estimates that the CA was able to clarify based on Article 72 of the LPP, due to the fact that the signature certifies only the notary of that document, while the other evidence presented in the CV fulfills the request of the CA.

The review expert, for point 2 of the complaint, clarifies that after analyzing the evidence submitted by the complaining EO, he estimates that it cannot be eliminated for that reason because he only named the document as ANNEX 6 - Declaration of the establishment of the group and it cannot be considered interference in the PPRC form.

The review expert, for point 3, of the complaint clarifies that the submitted evidence is translated into English, i.e. according to Article 13 of the LPP, while regarding the lack of the stamp of the official translator, the reviewing expert estimates that it cannot be eliminated because there is no was a request of the tender dossier, therefore, this claim is unfounded.

The review expert, for point 4 of the complaint, clarifies that, after analyzing the documents of the case, he noticed that only the leader of the consortium submitted contracts and references worth more than 700,000.00 euros, where the request for the tender file was: List of completed contracts and completed for the past three-year period 2020, 2021 and 2023, not less than 700,000.00 euros, therefore, therefore, this claim is ungrounded.

The reviewing expert, for point 5 of the complaint, clarifies that the person recommended for contracts has an agreement with TAK, for the repayment of debts, therefore and on the basis of PRB's practices to date, it is not possible to eliminate an EO which has an agreement for the repayment of debts. this claim is unfounded.

The technical expert, for point 6 of the complaint, clarifies that the complaining claim is grounded because the winning EO has not provided the detailed Project according to the request of the tender dossier " 4. Evidence 4.- The EO must present a detailed project of how this will work mobile center for the realization of the goal of this project".

The technical expert, for point 7 of the complaint, explains based on the Declaration of Conformity requested by the CA in the documents - Clarifications in the questions posed by the EO, given to the CA that "For us, the declaration of conformity that ensures the required quality is sufficient. According to Law no. 05/L/132 For vehicles, the certificate of conformity must be according to the requirements of the European Union. So, the product that has a certificate of conformity (products dedicated to EU member countries) meets the conditions required according to this tender.

The technical expert, for point 8 of the complaint, estimates that the complainant is unfounded because no supporting document was requested for verification of equipment calibration in the requirements of the technical specification.

The technical expert, for point 9, assesses this complaint claim is unfounded, because the EO recommended for the contract is in a consortium in this procurement activity with the AUTOINSTRUMENT DOOEL Laboratory, which is accredited MKS EN ISO/IEC 17025: 2018 by the Accreditation Institute in the Republic of North Macedonia.

The expertise report has been duly accepted by all procedural parties. EO "I agree with the expert's recommendation that the matter be reassessed, but in some points we disagree with the expert's reasoning regarding our complaints since he considered that they were not understood correctly?" For the objections of these points, we ask the PRB Panel to allow participation in the

session, in order to clarify in detail the reasons for the objection or, more precisely, the complaint claims that we have given in the complaint. CA "I do not agree with the recommendation of the review expert's report".

Based on the above-mentioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO be approved as well-founded, the contract award notice be canceled and recommends that the matter be returned for re-evaluation.

- Findings of the Review Panel-

The panel found that there are no elements to prevent the conflict of interest, as required in the sense of Article 11 of the Regulation on the Work of PRB, related to paragraph 1.75, Article 4 of the LPP and at the same time analyzed all the documents of this subject, including all the acts and actions of the parties and considered that there is no need to convene a hearing with the parties, as long as the submissions of the parties and their actions constitute a sufficient basis to decide on the merits as provided for in paragraph 1 of Article 24 of the Work Regulations of PRB, and that there is no need to request the contracting authority and/or the complainant to provide additional information and/or explanations, in the sense of paragraph 3, article 116 of the LPP.

The review panel finds that the evaluations of the expert's report can be confirmed through the tender file and the documents with which the appellant offered, therefore it gives full confidence to the expert's report, with the findings that the Contracting Authority did not act in accordance with the legal provisions of LPP, related to the publication "Notice on the Decision of the Contracting Authority", Ministry of Infrastructure, dated 21.10.2023, for awarding the contract for the procurement activity "Mobile Center for Technical Control of Road Vehicles" procurement no.: 205-23-6058-1-1-1".

The review panel regarding the claim as based by the review expert for unsigned CV" the review expert assessed that the CA was able to clarify based on Article 72 of the LPP", the Panel finds that the required documentary evidence, Evidence 1 - The CV signed by the engineer, was not in the tender file according to the request, but that the complainant in the tender file had a work contract that was signed, therefore it is considered a small deviation that can be overcome so that the contracting authority can require the economic operators to submit, complete, clarify or complete the appropriate information or documentation within, provided that such requests are made in full accordance with the principles of equal treatment and transparency, therefore the review panel finds that the complaining claim is grounded.

The review panel regarding the claim as based by the review expert as a reason for the elimination of the complaining EO, the review expert from the analysis of the evidence submitted by the complaining EO, estimates that it cannot be eliminated for that reason because he only named the document as ANNEX 6 - the statement of the establishment of the group and it cannot be considered an intervention in the KRPP form, therefore the Review Panel finds it as a well-founded claim.

The review panel related to the assessment of the technical expert, for the appeal claim point 6 "the complaining claim is grounded because the winning EO has not provided the detailed Project according to the request of the tender dossier 4. Evidence 4.- The EO must present a detailed project that how will this mobile center function for the realization of the purpose of this project". The panel finds that the technical expert assesses that the winning EO in the project presented only described the operation and gave the dimensions of the mobile center for the technical control of vehicles on the road, but it did not describe in detail the devices that are located inside the mobile center as requested in the TD, therefore the Panel finds it the claim to be grounded.

The review panel finds that the complaining Economic Operator in this case has offered arguments that would change the Decision of the CA, as well as the recommendation of the review experts, therefore, based on all that was said above, it has been decided that the complaint of the complaining EO be approved as based, while canceling the decision of the CA, "Notice on the Decision of the Contracting Authority", Ministry of Infrastructure, for awarding the contract for the procurement activity "Mobile Center for Technical Control of Road Vehicles" procurement no.: "205 -23- 6058-1-1-1" and the matter is returned to Reassessment.

The review panel evaluating the main features of the LPP, which are the economy, efficiency and savings of the state budget based on all the facts, reasons and the factual situation that was described as above, of the documents of the DT and the documents of the Authority contractor, notes that the recommended EO has a higher bid price of 29,900 euros, than the complaining EO. Therefore, the SHP requests that, based on the above findings, the CA after their reevaluation, according to its legal discretion, takes a decision in accordance with the legal provisions of the LPP.

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 case and considers that the complaining assertions of the complaining EO are unsustainable as they were given in the panel's findings.

Therefore, acting in accordance with the powers cited above and article 104 paragraph 1 and 4 of the LPP, according to which the procurement review procedure will be implemented and carried out in a fast, fair and non-discriminatory manner, that aims 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 enacting clause of this decision.

Regarding the complaint's fee, the Review Panel decided in accordance with article 31 point 5 of the PRB Work Regulations, in relation to article 118 of the LPP.

President of the Review Panel

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 INFRASTRUCTURE;**

1x1 EO – **BE NEW " L.L.C., " Profitech " SH.P.K.;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.