



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

Psh. no.39/23

REVIEW PANEL, appointed by the President Pursuant to the article 105 as well article 106, and 117 of the Law on Public Procurement of the Republic of Kosova no.04/L-042, amended and supplemented by Law No. 04/L-237, Law no.05/L-068, and Law no.05/L-092, composed of: Vedat Poterqoi - President, Vjosa Gradinaj Mexhuani- member, Agon Ramadani – member, deciding according to the complaint of the economic operator EO “Graniti Sh.p.k., with protocol number 39/23, against the contract award notice related to the procurement activity with title: “Supply of inventory for courtrooms and clerk’s office for Courts and SKGJK”, with procurement no: 328-22-12042-1-1-1; internal no.: 33300/022/038/111, initiated by the Contracting authority – Judicial Council of Kosova, on the 19.04.2023 has issued this:

DECISION

1. **Refused**, as ungrounded the complaint submitted by the economic operator “Graniti Sh.p.k.”,, with protocol number 39/23, for the procurement activity with title: “Supply of inventory for courtrooms and clerk’s office for Courts and SKGJK”, with procurement no: 328-22-12042-1-1-1; internal no.: 33300/022/038/111, initiated by the Contracting authority – Judicial Council of Kosova.

2. **Remains in force**, the decision of the Contracting Authority, regarding with the procurement activity with title: “Supply of inventory for courtrooms and clerk’s office for Courts and SKGJK”, with procurement no: 328-22-12042-1-1-1; internal no.: 33300/022/038/111, initiated by the Contracting authority – Judicial Council of Kosova.

III. Since the complaint of the Economic Operator “Graniti Sh.p.k.”,, is rejected as ungrounded, the complaint’s fee is confiscated in the amount deposited when the complaint is submitted, while the funds go to the budget of Republic of Kosova.

REASONING

- Procedural facts and circumstances -

On the 02.12.2022, the CA- Judicial Council of Kosova, in the capacity of the Contracting Authority, published the Contract Notice for the procurement activity with title: “Supply of inventory for courtrooms and clerk’s office for Courts and SKGJK”, with procurement no: 328-22-12042-1-1-1; internal no.: 33300/022/038/111.

Date of opening of the offers: 13.12.2022, Notice on the decision of the CA: 29.12.2022, Request for reconsideration: 04.01.2023. Decision to reject the request for reconsideration: 05.01.2023.

On the occasion of the preliminary review, 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 only after leading 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 the complaint fulfills the conditions foreseen in terms of the provisions of cited and the same falls under his powers in the sense of article 105 of the LPP.

-Administration and evaluation of evidence -

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, do the initial review of the dossier and complaining claims, regarding the procurement activity described above, which on the 24.01.2023, the review expert submitted the evaluation report with the following recommendations:

- the complaint to be refused as ungrounded.
- To remain in force the decision of the CA for contract award.

Answers to Claim no.1

The EO recommended for contracts is irresponsible for the fact that it has NOT presented a catalog and technical specification in accordance with the request of the tender dossier. The EO recommended for contracts presented only photos and copied those photos together with the specifications from the tender file, so it placed photos taken from the tender dossier. Therefore, this fact clearly shows that the EO recommended for contracts does not meet the aforementioned requirement due to the fact that it did not present the catalog in accordance with the request of the tender file, but copied the photos from the tender dossier, where this fact is proven very easily if analyzed EO's offer recommended for contracts, but CA has openly favored.

The answer to claim 1

In the complaining claim of the complaining company “Graniti shpk” that the CA-Judicial Council of Kosova has recommended the company “Mobelland shpk” without fulfilling the evaluation criteria defined in the tender dossier. The review expert after analyzing the evaluation criteria announced in the tender dossier: Request-Inventory to be evidenced with photographs for each item (except for courtrooms and clerks' offices) states that the request-criteria for evaluation of the tender has not requested a hard catalog or manufacturer's catalog but it has been requested to submit photos of the inventory that was requested in the tender file for each item, based on the facts that we have analyzed, the company recommended for the contract has met the criteria required by the CA. The request of the tender dossier requested that photos of the inventory be submitted for the items and the company recommended for the contract submitted photos of the inventory as requested in the tender dossier.

Therefore, based on article 59 of the LP, it is at the discretion of the CA that all the documents requested and placed in the tender file must be directly relevant and proportional in relation to the evaluation criteria, and for this the company recommended for contracts, the documents submitted in the bid are proportional to the evaluation criteria.

Also, the company recommended for the contract has submitted the statement of technical specifications where it has stated that the goods it will supply will be in accordance with the technical specification required in the tender file, with this the reviewing expert finds that the complaint claim is unfounded, the CA - related to this claim has fully complied with Article 59 of the LPP.

As for the information of the review panel, I as an expert think that the submitted testimony - the catalog that is the complaining claim of the complaining company is approximately the same of the two recommended companies and the complaining company, only the complaining company has it in color. However, I ask the review panel to confirm and compare it myself, since the catalog of the two companies is printed as a catalog.

Complaining claim 2 EO recommended for contract has offered at abnormally low prices, while for some products it has offered prices much higher than the market prices, therefore it turns out that this EO has offered with manipulative prices.

The answer to claim 2

The items that are collected in a table and are scored by percentage cannot be qualified as manipulative prices since the percentage of (45% of the points in the table of price lists) scored approximates the competitive price of the market and the law does not recognize this procedure as manipulative prices, since the CA has scored the tables of the articles the largest or the smallest percentage depending on where the CA has the interest to get more favorable prices in the interest of the CA.

So the greater the value of an article when it is proportional to 45% the discount in price is greater.

According to PPRC article 17.35 CA of the contract with prices per unit, the CA must determine the weights based on the importance of each category of items or group of items in such a way that the CA can determine which is the offer with the lowest price based on the points and based on this, the CA acted in accordance with the LPP and equalized all EOs.

Also, based on Article 61 of the LPP, for abnormally low prices, it is within the competence of the CA and has the right to decide to clarify abnormally low prices with the EO, when he foresees that the prices are very low and there is a risk of not fulfilling the contract. Abnormally low tenders refers to tenders that for the contracting authority at first glance appear to be unreliable if compared to the object of the contract and accordingly, and which is likely to have a negative impact on the performance of the implementation of the contract, we in this case, for the CA, the prices have been reliable.

The EO recommended for contract “Mobelland shpk” in this case is as a producer EO and the prices of a producer for the goods that he produces and sells himself, every time he tries to enter the market with more favorable prices than the prices of commercial goods or goods that are imported from abroad. This is known in economics as a price policy that local producers want to prevail over commercial prices.

For this reason, the CA has foreseen, for this reason, buried the articles and weighed them so as not to manipulate the prices, and based on the compared facts, the review expert finds that the complaining claim is ungrounded.

Claim 3

In article 9.1&9.2 of the TDS, it is requested “The bidder must provide evidence that there are contracts or completed contracts for the supply of inventory in the past three years from the date of publication of the Contract Notice, the total monetary value of the supplies for the economic operator or the group of economic operators not less than: six hundred thousand Euros; 600,000.00 €, while as documentary evidence "List of executed contracts together with references" is requested. Or the acceptance report from the commission where the report states that the contract has been concluded in the third from the date of entry into force until the date of completion in a duration of Years, Months, Days.

EO has not presented contracts for the references provided, while the contracts are for the years 2018 and 2019, while the references are for the year 2021 therefore these testimonies cannot and should not be taken into account, CA should NOT favor an EO.

The answer to claim 3

Based on the list of references submitted by the company recommended for the contract, it is clear that the request for the tender file requested in point 9.1/9.2 of the FTD has been met. Based on Article 69 of the LPP, the contracting authority must ask the economic operators to provide evidence to show that they possess the required minimum qualifications and these minimum requirements must be specified in the tender file and in the contract notice. During the establishment of this request by the contracting authority for the EO, then the EO is obliged to

meet the required minimum requirements and these minimum requirements have been met by the EO recommended for the contract according to the review expert. See for yourself, these three fulfill the required condition.

Inventory of the Dean's Office of the Faculty of Medicine and other units of the University of Prishtina	University of Prishtina	22.11.2019 22.11.202.	242-19-8174-111	412,402.51 euro
Supply of inventory in the library and other spaces of the UMIB Facility	University of Mitrovica	25.03.2020 24.06.2020	97900-19-7261-121	123,450.32 euro
Inventory supply for pre-university schools.	Ministry of Education	09.07.2020	208-19-7223-111	528,000.00 euro

Based on these facts and evidence in the EO's offer recommended for contracts, the review expert finds that the claims of the complaining company "Graniti shpk" are unfounded.

Claim 4

Based on all the evidence and facts mentioned above, we conclude that the examination, evaluation and comparison of the tenders is not always in harmony with Article 59 of the LPP, because it was recommended for contracts to the EO who did not fulfill all the requirements of the tender file and the contract notice, and at the same time the main criterion for awarding the contract, which was the responsible tender with the lowest weighted price, was not respected, so the main criterion for contract award was not respected according to Article 60 of LPP.

The answer to claim 4

Based on the report of the opening of bids, it can be seen that the recommended company has the lowest price, but this has also been confirmed by the evaluation commission, which, in accordance with article 59 of the LPP, has evaluated the bids and recommended the company for contracts. at a lower price. Based on this, the examining expert concludes that the complaint claim that Article 59 and Article 60 of the LPP was not respected is unfounded.

Claim 5

Also, the EO recommended for contracts is irresponsible due to the fact that it has not submitted the certification from the Tax Administration of Kosovo, while in article 6.4 of the FDT it is requested - The certification of TAK must be original with bar code, the document is submitted to CA - that before the announcement of the CA's decision. In case of failure to deliver this document, the tender (offer) in question shall be rejected”

The answer to claim 5

Based on LPP article 68, the Tax Certification must be from the last quarter that was requested in this case, the Tax Certification must be no older than Q3, so the EO can submit it to TAK - Q3, while regarding the Court Certification this certificate must not be older than six (6) months. Based on the documents submitted by the EO recommended for contracts, these documents meet the required criteria and the complaining claim is ungrounded.

Also, the CA has not respected article 7 of the LPP, because it has discriminated against us by not declaring us the winner even though we have met all the requirements of the TDS and the contract notification. Paragraph 1 of Article 7 of the LPP clearly foresees that "The contracting authority will treat the economic operators in an equal and non-discriminatory manner and will act in a transparent manner", but you have not adhered to this legal provision either.

The answer to claim 6

During the analysis of the Evaluation Report of the offers and the entire Procurement activity, the reviewing expert thinks that the Evaluation of the offers was done in accordance with the LPP exactly article 7 and no competitive company was discriminated against, nor was the complaining company that claimed to have been discriminated by the commission evaluation of offers. Also, the review expert finds that the complaining company did not mention in the complaint any evidence/facts about where you were discriminated against, it only claims that it was the responsible company that should have been recommended for the contract in this tender. According to the evaluation report and B58 - Standard letters, the complaining EO "Graniti shpk" is considered an unsuccessful EO and the CA acted in accordance with the LPP that the company recommended for contracts has the lowest competitive price observed that the CA has respected article 1, 6 that the complaining company "Graniti shpk" has as a complaint claim in the complaint and based on the facts and evidence, I find as a review expert that the complaining claim is unfounded.

The Procurement Review Body has notified the parties on January 24, 2023 with the expertise report.

The complaining economic operator "Graniti" has informed the PRB that it does not agree with the review expert's opinion.

- *Findings of the Review Panel* -

Based on the documents of this case and the primary purpose of the complaint, the Panel considered that regarding the issue in the present case, 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 in terms of meritorious. In this case, the Review Panel based its findings mainly on the relevant provisions of the LPP, which foresee and regulate such situations, which may arise during a procurement activity, such as the complaint in this case.

The first claim of the EO is for the recommended EO emphasizing that the same has not presented a catalog and technical specification in addition to the request for the tender file, while the review panel states that the Request - Inventory must be proven with photographs for each item (except for the courtrooms and clerk's office) has been completed because no hard catalog or manufacturer's catalog has been requested, but it has been requested to submit photos of the inventory according to the tender file for each item and the recommended EO has fulfilled this request because the request was to submit photos of the inventory for the items and the company recommended for the contract has submitted photos of the inventory as specified.

The review panel regarding the claim that the EO recommended for the contract has offered abnormally low prices, because for some products it has offered much higher prices than the market prices, bidding with manipulative prices, assesses that this claim does not hold, because the items are scored with a percentage and almost all the offers contain prices which are sometimes higher and sometimes lower, so in this case PSH supports the decision of the CA and finds that the responsibility of implementation, management and evaluation of prices (especially manipulative if evidenced) rests on the full responsibility of the CA.

According to Article 17.35 of the ROGPP, the CA of the contracts with price per unit must determine the weights based on the importance of each category of items or group of items in such a way that the CA determines which is the offer with the lowest price in basis of scoring. The committee for examination, comparison and evaluation of the offers according to the documents did not classify them as normally low prices, this probably happened because the complaining EO also contains prices in its offer which are not market prices. Determining the market price for this category is very difficult because the EO can be a local producer and the prices of a producer for the goods that he produces and sells himself, every time he tries to enter the market with more favorable prices than the prices of commercial goods or goods imported from abroad.

Regarding the complaining claim that the recommended EO has not presented contracts for the references provided, while the contracts are for the years 2018 and 2019, while the references are for the year 2021, the review panel clarifies that in article 9.1&9.2 of the TDS it is required "The tenderer I must provide proof that there are contracts or completed inventory supply contracts in the past three years from the date of publication of the contract notice, the total monetary value of the supplies for the economic operator or group of economic operators is not less than: six percent thousand (600,000.00 €). By comparing the request of the tender file, and the documentation provided by the recommended EO (presented in tabular form by the review expert), the review panel correctly assesses that this request has been fulfilled because of three (3) the contracts offered by EO "Mobelland" 412K+ 123K+ 528K, the value is over one (1) million, therefore the claim is ungrounded.

The review panel also assesses that the claim for violation of Article 59 of the LPP is unsustainable, because in the specific case in the evaluation of this procurement procedure, the evaluation commission of the CA has recommended for the contract the economic operator who is technically and economically more favorable, acting in compliance with the criterion of the tender file to recommend a tender that is administratively and technically responsible and economically favorable.

The complaining economic operator in the complaint has claimed that the EO recommended for contracts is irresponsible also due to the fact that it has not submitted the certification from the Tax Administration of Kosovo, while in article 6.4 of the TDS it is requested - The certification of TAK must be original with barcode. The review panel, based on the opinion given by the review expert, clarifies that based on Article 68 of the LPP, the tax certification must be for the last quarter, so the EO can submit it to TAK-TM3, while regarding the court certification this certificate must not be older than six (6) months. The review panel, based on the finding of the

review expert, emphasizes that based on the documents submitted by the EO recommended for contracts, these documents meet the required criteria and the complaining claim is unsustainable.

The review panel also assesses the claim for violation of Article 7 of the LPP and, in accordance with the review expert's opinion, emphasizes that no competitive company was discriminated against, nor was the complaining company that claimed to have been discriminated against by the bid evaluation commission. Also, the complaining EO did not mention in the complaint any evidence/facts about where you were discriminated.

- *Conclusion* -

Therefore, based on the facts and circumstances briefly explained above, the Panel considers that the CA did not act in violation of Article 7 of the LPP, because in the documents of this case there is no evidence that the CA applied any criterion or action that discriminates, reduces or eliminates competition between economic operators. The complainant emphasized the following that quoted: "this action constitutes a complete violation of articles 1 and 6 of the LPP by attempting to make inefficient and non-transparent use of public money and by attempting to use the financial means in the most uneconomical way possible". However, from the review of the documents of this case and the procurement process, the Panel did not find any evidence according to which the intention of the CA for inefficient and non-transparent use of public money can be ascertained. The complainant further asserted that the CA violated Article 10 (Means for promoting Transparency) of the LPP, but even in this case, based on the preliminary documents of this case, the Panel considers that there is no violation in the cited provision, without the need for it to repeat the explanations as above.

Although the opinion of the expert is not binding, the Panel, according to its independent opinion, supported the expert's report in the specific case, based on the principle that its probative value is always given in relation to the evaluation, comparison and administration of all other evidence and the nature of an issue in the concrete case.

Therefore referring to article 104 of the LPP, and also analyzing in their entirety the papers of this case in the context of this procurement process, the Panel did not consider it necessary to elaborate again in detail and unnecessarily in this case each claim appellant, as long as the same are specifically singled out especially in the challenged decision of the contracting authority. Likewise, the review panel finds that even if the complaint were approved as well-founded, it would still come to the same situation where the complainant's offer would have to be rejected due to the prices offered.

The review panel considers that the decision taken in this case is based on the administration of all the evidence available in this case and that in making decisions it always takes into account Article 1 of the LPP, where the purpose of this law is to ensure the way more efficient, more transparent and fairer use of public funds, public resources as well as all other funds and resources of the contracting authorities. The Review Panel always starts from the fact that the contracting authorities exercise their institutional independence in the public procurement process, but it remains their explicit obligation to respect legality in the procurement process.

The review panel in accordance with Article 117 of the LPP, based on the evidence presented above, decided as in the provision of this decision.

Head 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;
1x1 EO – “Graniti”;
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.