



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

Psh. No.798/23

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) in the composition of Vjosa Gradinaj Mexhuani-President, Isa Hasani-Referent and Vedat Poterqoi-Member, deciding according to the complaint of EO "Petrol Company" SH. P.K, for Lot 2 against the contract award notice related to the procurement activity: “Supply of fuel - Wood and Pellets LOT 1- Supply of fuel - Wood LOT 2- Supply of fuel - Pellets” with procurement no.: 635-23-8135-1-1-1, initiated by the contracting authority (CA) – MA of PEJA, on the 16/11/2023 has issued this:

DECISION

1. The review procedure in this administrative matter ends, due to the agreement reached between the parties, “MA of PEJA” as the contracting authority and the Economic Operator “Petrol Company” SH.P.K for Lot 2, related to the procurement activity: “Supply of fuel - Wood and Pellets LOT 1- Supply of fuel - Wood LOT 2- Supply of fuel - Pellets” with procurement no.: 635-23-8135-1-1-1.
2. The return of funds deposited in the name of the complaint’s fee is allowed according to paragraph 4, 5, of Article 31 of the Rules of Procedure of the PRB, while the complainant has the right to request the return of the funds within the term of sixty (60) days from the day of acceptance of this decision, otherwise the funds are confiscated and transferred to the Budget of the Republic of Kosova.

REASONING

On the 02.08.2023, "MA of PEJA" in the capacity of the Contracting Authority, published the Contract Notice (CN) and the tender dossier (TD), for the procurement activity: Supply of fuel - Wood and Pellets LOT 1- Supply of fuel - Wood LOT 2- Supply of fuel - Pellets" with procurement no.: 635-23-8135-1-1-1.

On the 05.10.2023, CA (with data as above, has published the announcement regarding his/her decision for the EO to recommend the award of the contract (EO Wood Company SH.P.K" for Lot 2, related to the procurement activity, described as in the preliminary paragraph of this reasoning.

On the 10.10.2023 OE "Petrol Company" SH.P.K, in its capacity as a party dissatisfied with the cited decision, submitted a request for reconsideration, which was rejected by the Decision of the CA dated 10.10.2023. However, on the 16.10.2023, "Petrol Company" SH.P.K filed a complaint at the PRB, against the above-mentioned decision of the CA, which was recorded with protocol number 798/23.

On the occasion of the preliminary examination, the Review Panel concluded that the appeal 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 after the leadership of 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 it fulfills the conditions set forth in the sense of the provisions cited and fall under the powers of this body in terms of Article 105 of the LPP.

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, make the initial examination of the file and the complaint claims, in relation to the procurement activity described above. In this regard, on 09.11.2023, the reviewing expert submitted the evaluation report with the following recommendations:

- The complaint is approved as grounded;
- Cancel the contract award notice and recommend that the matter be reassessed.

It is established in advance that the expert report contains the essential elements as required by article 113, paragraph 3 of the LPP and the same has been accepted by both parties, in accordance with article 115 of the LPP in relation to article 20 of the cited Regulation. In this case, it is evident that both parties (CA and EO) are aware of the complete documents of this matter as required in accordance with paragraph 2, Article 20 of the Regulation on the Work of PRB and that both parties have formally declared the CA- 14.11.2023, whereas the Complainant on 13.11.2023 agreed with the report cited above.

Based on the above, the Panel considers that the review procedure ends at this stage, in terms of the agreement (agreement) reached by the parties and consequently the same has lost the claim, respectively the object of appeal as expressly required by the provision of Article 111 of the LPP. On the occasion of examining the documents of this matter, its nature and purpose, the Review Panel considers that the parties can resolve the possibly conflicting reports between themselves in those cases where, thanks to the legislation, they freely dispose of their rights.

The agreement reached between the parties does not fall in line with the basic principles and provisions of the Law on Public Procurement of the Republic of Kosova and does not attack the institutional independence of its CA, to resolve the contentious issue, as the nature of the issue in the present case allows, among others in accordance with article 19 paragraph 4 of the PRB Work Regulation No. 01/2020 (amended).

However, the Panel reminds the parties that in terms of Article 19, paragraph 4, of the Regulation on the work of PRB, it is provided that, quoted: "In the event that the contracting authority and the complainant agree with the review expert's report, the review panel issues a notice that the authority contractor within 5 days to implement the review expert's report by notifying the parties in the procedure. Moreover, the parties are informed that this decision has a procedural character for the parties in the procedure and in such circumstances the findings of this report have not been subject to evaluation by the Review Panel.

Therefore, briefly based on the above, the Review Panel in accordance with article 105, 116 and 117 of the LPP decided as in the provision of this decision.

President of the PRB

Mrs. Vjosa Gradinaj

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 –**MUNICIPALITY OF PEJA**;
1x1 EO – **Petrol Company - SH.P.K**;
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.