



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

Psh. No.818/23

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, completed and Law 05/L-092) in the composition of Isa Hasani - President, Vedat Poterqoi - Member, Vjosa Gradinaj - Member deciding according to the complaint of EO “TALI” SH.P.K., against the contract notice or tender documents related to the procurement activity: “Winter maintenance of roads in Gjilan” with procurement no. 651-23-10479-2-1-1, initiated by the contracting authority (CA)- Municipal Assembly of Gjilan, on the 27/11/2023 has issued this:

DECISION

1. The review procedure in this administrative matter ends, due to the agreement reached between the parties, “Municipal Assembly of Gjilan” as the contracting authority and the Economic Operator “TALI” SH.P.K. regarding to the procurement activity: “Winter maintenance of roads in Gjilan” with procurement no. 651-23-10479-2-1-1.
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 09.10.2023, “Municipality of Gjilan” in the capacity of the Contracting Authority, published the Contract Notice (CN) and the tender dossier (TD), for the procurement activity: “Winter maintenance of roads in Gjilan” with procurement no. 651-23-10479-2-1-1.

On the 18.10.2023 EO "TALI" 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 26.10.2023. However, on the 27.10.2023, "TALI" SH.P.K. filed a complaint at the PRB, against the above-mentioned decision of the CA, which was recorded with protocol number 845/23.

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 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 falls under the powers of this body in terms of Article 105 of the LPP.

Based on the actions described above, PRB has engaged the evaluation expert in accordance with Article 111, paragraph 5 of the LPP, with the duty that the same, in accordance with Article 113 of the cited Law, conducts the initial review of the file and complaints, in relation to the procurement activity described above. In this regard, on the 12.11.2023, the review expert submitted the evaluation report with the following recommendations:

The complaint is approved as grounded;

Make improvements according to the clarifications given above and act in accordance with article 53.7 of the LPP.

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 case 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 on the 13.11.2023 and the Complainant on the 24.11.2023 that they agreed with the report cited above.

Based on the above, the Panel considers that the review procedure ends at this stage with the assumption that it has been withdrawn from the complaint, in the sense of the agreement

(agreement) reached by the parties and consequently the same has lost the claim, respectively the object of the complaint 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. Therefore, the review panel was not issued at all in the evaluation of the complaining claims, but only issued a decision for the end of the procedure.

The agreement reached between the parties does not conflict 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, since the nature of the issue in the present case allows it, 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.

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 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 –**MUNICIPAL ASSEMBLY OF GJILAN**;
1x1 EO – **“TALI” SH.P.K**;
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.