



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

Psh. no.0581/2023

Review Panel, appointed by the President of the Procurement Review Body (PRB), pursuant to the article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova, composed of: Vedat Poterqoi - President, Vjosa Gradinaj Mexhuani- member, Agon Ramadani – member, deciding on the complaint lodged by the Economic operator: “Arad94” SH.P.K.&”Condor” SH.P.K, filed against the decision for contract award regarding with the procurement activity: “The construction of the Isa Boletini economic secondary school”, recorded with procurement number: 615-23-3422-5-1-1 and initiated by the Municipality of Podujeva, in the capacity of Contracting Authority (CA), on the 03.11.2023 has issued this:

DECISION

1. Approved, as grounded, the complaint of the economic operator “Arad94” SH.P.K.&”Condor” SH.P.K, filed at the PRB on the 14.08.2023 with protocol no. 2023/0581, whereas the decision of the CA for contract award, regarding with the procurement activity: “The construction of the Isa Boletini economic secondary school”, recorded with procurement number: 615-23-3422-5-1-1 and initiated by the Municipality of Podujeva, in the capacity of Contracting Authority is cancelled, while the case returns for re-evaluation.
2. It is allowed to return the complaint’s fee to the amount deposited at the time of filing the complaint. The complaining economic operator is obliged, in accordance with Article 31 point 6 of the PRB work regulation, within sixty (60) days to make a request for the return of the complaint insurance, otherwise the deposit will be confiscated and these funds will be transferred to The budget of the Republic of Kosova.

REASONING

On the 25.04.2023, the Municipality of Podujeva, in the capacity of the Contracting Authority, has published the Contract Notice (CN) and the tender dossier (TD), for the procurement activity "The construction of the Isa Boletini economic secondary school", recorded with procurement number: 615-23-3422-5-1-1.

On the 26.07.2023, CA (with data as above, has published the notice regarding his/her decision for the EO to recommend the contract award to (GEO "Konstruktori Ing 1969" SH.P.K. "Flori eng"SH.P.K."), related to the procurement activity, described as in the preliminary paragraph of this reasoning.

On the 31.07.2023, EO "Arad 94" SH.P.K. in his/her capacity as a dissatisfied party with the cited decision, submitted a request for reconsideration, which was rejected by the Decision of the CA dated 03.08.2023. Meanwhile, on the 14.08.2023, "Arad94" SH.P.K. & "Condor" SH.P.K. filed a complaint at the PRB, against the above-mentioned decision of the CA, which was recorded with protocol number 581/23.

On the occasion of the preliminary examination, 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 the sense of the provisions of cited and falls under his powers 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, will do the initial review of the dossier and complaining claims, in relation to the procurement activity described as above above. In this regard, on the 25.08.2023, the review experts submitted the evaluation report with the following recommendations:

- To be approved the complaint as grounded.
- Cancel the contract award notice and recommend that the case returnsto re-evaluation.

Part of this decision is the expertise's report no. 2023/0581, dated 25.08.2023, which is published on the website of PRB and which has been sent to the parties in the procedure.

Findings of the review panel

In fact (of course, regardless of the recommendations) the Panel notes that the procurement procedure that was applied in this case is presented in detail in the expertise's report of the review expert, explaining all the stages of the process and the actions taken by the parties in the comparative context with the acts in force, especially with the Public Procurement Rules.

Therefore, referring to article 104.1, of the LPP, according to which it is required that the review procedure be implemented in a fast, legal and effective manner and also analyzing in their entirety the documents of this subject 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 complaining claim, while the same are specifically singled out especially in the contested decision of the contracting authority. Among other things, in the contested decision of the contracting authority and in the review expert's report, explanations were given regarding the complaining statements. The panel notes that the reasons given in the expert's report are professional and well argued with material evidence, without the need to describe them again. Therefore, the Panel supports the explanations that the public procurement activity should be re-evaluated and supports the reasonableness of the responses to claims except claim no. 4 listed in the expertise's report, where for the CA review panel in the re-evaluation phase, it must consult with an engineer and a specialist in the appropriate field on what is considered high- construction and what is considered low- construction, then make an adequate and fair assessment and in accordance with Article 59 of the LPP, since this claim is classified as determining the responsibility of the complaining EO.

- Conclusion -

Based on the above, the Review Panel considers that the CA has acted contrary to the provisions of Article 59, 60 and 72 of the LPP, cited in the Complaint. The Review Panel considers that the actions and acts of the CA, and the evaluations of the review expert regarding the fulfillment or not of the conditions described above and the complaint's statement in this case constitute a sufficient basis for the procurement activity to be re-evaluated again because in the opposite will contradict the scope of the LPP and the argumentative basis of the complaining claims, which the Panel evaluates according to its independent assessment in the sense of Article 104 in relation to Article 105 of the LPP. The return for re-evaluation of a procurement activity on a legal contentious basis is in harmony with Article 1 of the LPP, according to which, the purpose of this Law is, among others, quoted: "...to ensure the integrity and responsibility of public officials, civil servants and other persons who perform or are involved in a procurement activity, requesting that the decisions of such individuals and the legal and factual basis for such decisions, are not influenced by personal interests, are characterized by non-discrimination and with a high degree of transparency and, to be in accordance with the procedural and essential requirements of this law".

Regarding Article 105, taking into account the requirement of Article 104, paragraph 1, of the cited Law according to which, quoted: "The procurement review procedure will be implemented and carried out in a fast, fair and non-discriminatory manner, which aims at the fair, legal and effective resolution of the matter..." Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations, which may arise during a procurement activity.

Therefore, from the above, the review panel in accordance with article 117 of the LPP 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 – **MUNICIPALITY OF PODUJEVA;**
- 1x1 EO – **“ARAD94” SH.P.K.;**
- 1x1 Archive of the PRB;
- 1x1 For publication on the website of the PRB.