



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

Psh. no.475/23

Review Panel, deciding on the composition of Vedat Poterqoi-President, based on article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova (LPP) regarding the complaint of the Economic Operator OE “NNT BINI” sh.p.k., against the contract award notice regarding with the procurement activity: “Construction of sewers according to lot I to III”, with procurement no: VU644-23-2787-5-1-1, initiated by the Municipal Assembly of Vushtrri in the capacity of Contracting Authority (CA), on the 09/08/2023 has issued this:

DECISION

1. The reviewing procedure in this administrative matter ends, due to the agreement reached between the parties, Municipal Assembly of Vushtrri as the contracting authority and the Economic Operator “NNT BINI” sh.p.k., regarding the procurement activity: “Construction of sewers according to lot I to III”, with procurement no: VU644-23-2787-5-1-1.
2. It is allowed the return of funds deposited in the name of the complaint’s insurance fee, in accordance with article 31 point 4 of the PRB Work Regulations. However, the complainant has the right to submit a request for the return of the funds within sixty (60) days from the day of acceptance of this Decision, otherwise the funds will be confiscated and transferred to the Budget of the Republic of Kosova.

REASONING

On the 27.03.2023, Municipal Assembly of Vushtrri, in the capacity of the Contracting Authority, has published the contract notice (CN) and the tender dossier (TD) for the procurement activity: "Construction of sewers according to lot I to III", with procurement no: VU644-23-2787-5-1-1. The opening of offers was done on the 12.05.2023, while the Notice on the decision of the Contracting Authority was done on the 20.06.2023.

On the 23.06.2023, EO "NNT BINI" sh.p.k., in its capacity as a dissatisfied party with the cited decision, submitted a request for reconsideration, which was rejected on the Decision of the CA dated 03.07.2023. However, on the 11.07.2023, "NNT BINI" sh.p.k filed a complaint at the PRB, against the above-mentioned decision of the CA, which was recorded with protocol number 475/23.

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 conducting 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, 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 review of the dossier and the complaining claims, in relation to the procurement activity described above. In this regard, on the 27.07.2023, the review expert submitted the evaluation report with the following recommendations:

The complaint of the complaining EO "NNT BINI" sh.p.k is approved as partly grounded;

Cancel the contract award notice and the case to be re-evaluated.

It is established in advance that the expert's 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: Municipality of Vushtrri dated 28.07.2023 Agrees with the expert's recommendation, also the Complainant dated 28.07.2023 also agrees 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 claim of the complaint as expressly required by the provision of Article 11 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 conflict with the basic principles and provisions of the Law on Public Procurement of the Republic of Kosovo 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 Contracting authority 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 provisions 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 –Municipal Assembly of Vushtrri;

1x1 EO – “NNT BINI” sh.p.k.”;

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.