



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

Psh. No.554/23

Review Panel, appointed by the President of the PRB, Pursuant to the article 105, article 106, and 117 of the Law on Public Procurement of the Republic of Kosovo (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: Isa Hasani-President, Vedat Poterqoi-member and Vjosa Gradinaj-Mexhuani, member, deciding according to the complaint of EO "Ejona" Sh.P.K., against the Decision to contract award related to the procurement activity “Maintenance of elevators for facilities of the Municipality of Prishtina and Maintenance of elevators for collective housing facilities”, initiated by the contracting authority (CA) –Municipal Assembly of Prishtina, on the 24/11/2023, has issued this:

DECISION

1. Approved, as grounded the complaint of the EO “Ejona” Sh.P.K”, with no. 554/2023 of the 07/08/2023, while the decision of the CA Municipality of Prishtina regarding the procurement activity "Maintenance of elevators for the facilities of the Municipality of Prishtina and Maintenance of elevators for collective housing facilities” with procurement number "616-23-4207-2-1-1" , LOT 1, is cancelled, while the procurement activity returns to Re-evaluation.
2. Within 10 days, the CA must inform the PRB about all the actions taken regarding this procurement activity, otherwise, the PRB has the right to take measures against the CA for non-compliance with the decision as provided by the provisions of Article 131 of LPP.
3. The return of the 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 PRB, while the complainant has the right according to paragraph 6 of the cited provision. request the return of the funds within sixty (60) days from the date of acceptance of this decision, otherwise the funds are confiscated and transferred to the Budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances –

On the 28.04.2023 The Municipal Assembly of Prishtina in the capacity of the Contracting Authority has published the Contract Notice B05 related to the procurement activity with title “Maintenance of elevators for the facilities of the Municipality of Prishtina and Maintenance of elevators for collective housing facilities” with procurement number "616-23-4207-2-1-1". While on the 20.07.2023 B58 published the Notice on the decision of the Contracting Authority where it awarded with contract the " Selmans Network & Ramoy Lift “ Sh.P.K, for Lot 1.

This procurement activity was developed through an open procedure with the type of service contract and with an estimated contract value of 650,000.00 €.

On the 25.07.2023, EO "Ejona" Sh.P.K. has submitted a Request for reconsideration against the aforementioned decision of the CA. On the 26.07.2023, the Contracting Authority rejected the request for reconsideration as unfounded.

On the 07.08.2023, PRB received the complaint from EO "Ejona" Sh.P.K with no. 554/23 regarding the activity "Maintenance of elevators for facilities of the Municipality of Prishtina and Maintenance of elevators for collective housing facilities" with no. of procurement: "616-23-4207-2-1-1".

-On the stage of preliminary review-

The Review Panel has concluded that the complaint contains all the elements defined through Article 111 of the LPP and as such was submitted within the legal term in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for resolving disputes in the sense of Article 108/A of the LPP, from the economic operator who is an interested party according to article 4 paragraph 1 sub-paragraph 26 of the LPP. In this way, the Review Panel has concluded that it is competent to review this complaint according to Article 105 of the LPP and there is no procedural obstacle to proceed with reviewing the complaint in a meritorious manner.

The complaint of the economic operator "Ejona" Sh.P.K."- as follows.

The first claim (I): The recommended EO "Selmans Network & Ramoy Lift" has not fulfilled the requirements in the DT, on the professional and technical requirements according to point 2 and 3. The EO does not possess the Certificates for ISO Standards related to the nature of the maintenance activity of elevators such as; ISO 9001 2015; b) ISO 14001 2015; c) ISO OHSAS 18001,

There are also missing references related to contract management, for previous jobs in the requested field issued by employers for the electrotechnical engineer and the machine engineer”.

The second claim (II): EO Group "Selmans Network & Romay" have offered at abnormally low prices. It has offered absurdly low prices that do not even cover the costs of transportation, let alone the costs of production, minimum wages according to the LPP.

In order to fully verify the factual situation, the review panel administered as evidence the expert's report, the opinions of the parties related to the expert's report, the submissions and documents of the complainant, the letters and documents of the contracting authority, the relevant documents related to the procurement activity as and all the evidence that has been proposed by the procedural parties.

Report of the examining expert

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 04/10/2023 has authorized the expert to conduct the initial review of the file and claims according to complaint no. 554/2023, while on 17/11/2023 the expert's report was submitted as follows;

The review expert's report, after analyzing the first complaining claim regarding the ISO Standard Certificates of the Group Leader, assesses that the claim of the complaining EO stands, due to the fact that the recommended for contracts has submitted two standard ISO certificates, issued on the date of one on 28.4.2021 and the other dated 8.09.2022, in which a description of the content and their validity for the services is given, but neither of them specifically mentions the elevator maintenance service. It is worth mentioning the fact that the second member of the consortium: Romay Lift Sh.P.K., has submitted Certificates, Iso Standards, precisely for elevator maintenance. However, the review expert estimates that the CA should have verified according to Article 72 of the LPP, because the description of the ISO standard submitted by the recommender for contracts states: So, from the description given above, it is implied that the recommender for the contract is also certified for other specialized activities in construction, which can be implied to include the maintenance part of the elevators. So, the submitted certificates do not give a more detailed description that they are also for elevator maintenance. Therefore, the review expert assesses that verification is necessary. The complaining EO claims that the contract recommender does not meet the requirements of the tender dossier and the contract notice.

The CA in TD has asked for the professional staff, specifically for the electrical engineer, who must have managed contracts of a similar nature. The reviewing expert clarifies that in his CV he has not named any projects that the electrical engineer submitted in the offer of the recommended for contracts has managed any contracts of a similar nature and also in the references that EO Selmans Network itself issued them to his engineer, he did not mention that he was a manager in a similar project. Therefore, this claim of the complaining EO stands. The claim of the complaining EO also stands regarding the mechanical engineer regarding the management of similar projects as the electrical engineer has requested that the engineer in question has also managed similar projects, and from the evidence presented it does not appear that the same there is management.

The complaining EO, in his complaint, claims that the person recommended for contracts, has offered prices that are not/normally low, mentioning several positions in advance of him. The review expert estimates that based on Article 61 of the LPP, price evaluation is the right of the

contracting authority and once again clarified that the complaining EO has not provided any convincing evidence regarding the prices claimed by the CA,

Findings of the Review Panel -

The review panel independently and objectively, conscientiously and professionally evaluated all the evidence of the case. The argumentation in the expert's report is quite detailed, understandable and fully based on the relevant documents that refer to the procurement activity. The findings in the expert's report can be confirmed through the tender file as well as the documents with which the tenderers have bid. Consequently, the Review Panel regarding the claims of the complaining economic operator has forgiven the trust of the findings of the experts' report. In this way, it was found that the claims of the complaining economic operator "Ejona" Sh.P.K. are grounded.

If the contracting authority requires the submission of certificates drawn up by independent bodies certifying the economic operator's compliance with a certain number of quality assurance standards

The review panel related to the complaining statement about the lack of ISO Certificates from the recommended EO, notes that Article 26.6 of the Regulation on Public Procurement No. 01/2022, defines "Certificates for quality assurance, are mentioned in Article 70 of the LPP and have aimed at certifying the economic operator's compliance with a certain number of standards for quality assurance. If the Contracting Authority requires certificates drawn up by independent bodies that carry out certification activities to prove that the economic operator fulfills certain standards for quality assurance that are based on Kosovar, European or international standards, each member of the group will testify that they meet them relevant standards.

The panel also notes that Article 70 of the Law on Public Procurement stipulates that "If the contracting authority requires the submission of certificates drawn up by independent bodies that prove the economic operator's compliance with a certain number of standards for quality assurance, the authority The contractor will refer to quality assurance systems that: (i) are based on the relevant Kosovar, European or international standards and (ii) certified by the bodies that perform their activities in accordance with those standards for the exercise of their activities certification related to certification activities.

The review panel finds that the recommended EO has not met the requirements of point 3, Technical and professional requirements and opportunities of TD, since the recommended EO has not submitted the ISO Standards Certificates of the Group Leader, these certificates which do not coincide with the requirements of TD for elevator maintenance, which is a requirement of the cited regulation, it is also provided that each member of the group must prove the relevant standards, this requirement which is related to article 70 of the LPP and the qualities that the EO must possess, therefore, in accordance with article 26.6 of the RPP, the EO recommended for the contract has not fulfilled the requirement defined in the Tender File. This issue is also clarified in the interpretation issued by PPRC on the 22.06.2023, listed with no. order 29, and which is published on the eprocurement website.

As for the statement complaining about the lack of references related to contract management, for previous jobs in the requested field issued by the employers for the electrotechnical engineer and the machine engineer. DT has asked for 5 years of work experience after graduation, and to have managed contracts for similar work, but has not specified the number of managed contracts, a reference fulfills the request. The review panel noted that the engineers have work experience and also have references for contract management in their documents.

The Review Panel regarding the complaint assertions that the recommended EO has offered abnormally low prices based on the data of this activity, of the type of open procedure, finds that the complaining EO has not provided evidence, arguments and concrete data that send the proof of the claim or its classification as founded, while it remained at the discretion of the CA (according to the provisions of the LPP) that in this case, taking into account the legal instruments that can be used before and during the implementation of the contract, such as the increase in execution assurance, its management according to pre-defined standard criteria, and also based on the offered prices to create the conviction that the offer of the recommended EO has no room for manipulations as well as the creation of difficulties in the implementation of the contract.

The panel recalls that all public authorities, officials who perform or are involved in a procurement activity, asking such persons to bring following the principle of the most efficient, cost-effective, transparent and fair use of funds and public resources while strictly adhering to the procedures and essential conditions of the law.

Likewise, Article 6 Economy and Efficiency of the LPP defines that all contracting authorities are obliged to ensure that public funds and public resources are used in the most economical way, simultaneously taking into consideration the purpose and subject of the procurement.

The review panel after the administration and assessment of the evidence, the complete ascertainment of the factual situation, relying on the LPP as applicable material law, after reviewing the appeal claims, taking into account all the documents of the case and the recommendations of the review experts, has found that the complaint of the Economic Operator is approved as well-founded. Consequently, the Review Panel has decided regarding the procurement activity entitled "Maintenance of elevators for facilities of the Municipality of Pristina and Maintenance of elevators for collective housing facilities" with no. of procurement: "616-23-4207-2-1-1", to cancel the contract award notice and return the matter to re-evaluation and CA to act in relation to the legal provisions of the LPP and the requirements of the tender dossier and contract notice.

The Review Panel has decided in accordance with the legal powers in the sense of Article 104 paragraph 1 in relation to Article 103, Article 105 and Article 117 of the LPP for the implementation of the procurement review procedure in a fast, fair, non-discriminatory manner, in order to legal and effective resolution of the case. Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations, which may appear during a procurement activity. From what was said above, it was 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- PRISHTINA;**

1x1 EO – **“EJONA " SH.P.K”;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.