



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

Psh. No.574/23

Review Panel, appointed by the President of the Procurement Review Body (PRB), Pursuant to the article 105, article 106, and 117 of the Law on Public Procurement of the Republic of Kosova (LPP), in the composition of Isa Hasani - President, deciding according to the complaint of Economic operator (EO) “Samire Osmani”, against the Decision to contract award or a design competition of the "Municipal Assembly- Gjilan" in the capacity of the Contracting Authority (CA) related to the procurement activity “Supply of Hygienic - Sanitary material” with procurement number 651-23-394 -1-1-1, on the 01/12/2023, has issued this:

DECISION

1. Refused, as ungrounded the complaint of the EO “Samire Osmani”, with no. 574/2023 of the 14/08/2023, presented against the decision of the CA "Municipal Assembly- Gjilan" regarding the procurement activity “Supply of Hygienic - Sanitary material” with procurement number no. 651-23-394-1-1-1.
2. Remains in force the Notice on the decision of the Contracting Authority, Gjilan Municipal Assembly, dated 26.07.2023, to award the contract "Consortium offishop Group & Ntp Vlora", related to the procurement activity, “Supply of Hygienic-Sanitary material” with procurement no. 651-23-394-1-1-1.
3. The confiscation of the complaint’s fee is ordered in the amount deposited by the complaining economic operator based on article 31 par. 5 of the Rules of Procedure of the PRB, while the funds go to the budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances –

On the 30.01.2023 The Municipal Assembly - Gjilan" in the capacity of the Contracting Authority has published the Contract Notice B05 related to the procurement activity with title "Supply of Hygienic - Sanitary material" with procurement number 651-23-394-1-1-1. While on the 26.07.2023 B58 published the Notice on the decision of the Contracting Authority where it awarded with contract the "Consortium offishop Group & Ntp Vlora".

This procurement activity was developed through an open procedure with the type of contract, supply and with an estimated contract value of 126,836.80 €.

On the 30.07.2023, EO "Samire Osmani" submitted a request for reconsideration against the aforementioned decision of the CA. On the 02.08.2023, the Contracting Authority rejected the request for reconsideration as unfounded.

On the 14.08.2023, PRB received the complaint from EO "Samire Osmani" with no. 574/23 related to the activity "Supply of Hygienic-Sanitary material" with procurement number 651-23-394-1-1-1.

-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 "Samire Osmani".

The complainant claims that the CA-Municipality of Gjilan has selected to reward him an economic operator with a higher price of about 11 thousand than what we have offered and this represents a violation of the law of the LPP and did not take them into account our offer with the lowest price in the revaluation.

EO also claims that CA in the decision dated 26.07.2023 and also in the Decision for Reconsideration dated 02.08.2023 in the Reason for Refusal, I was not asked for clarifications for the position with ordinal number 30. Likewise, I have answered the requested clarifications CA dated 23.03.2023, for positions numbered 14, 15, 16 and 60, through the purchase invoices, we have proved to the CA that even though the price seemed abnormally low, we have proved to them that the profit is over 60% for every position of which is the extremely high price.

EO claims that Goe Consortium Offishop Group Shpk & Ntp Vlora, even though the price was over 11 thousand euros, with the pretense that it has been declared an illegal winner since the

member of the consortium NTP VLORA has actually entered the consortium as a trade name, while the real business is Adnan Krasniqi B.I with address Prishtina, L.Dardania -RR.Bi Martys with Unique Business Number 810468860, the owner was Adan Krasniqi, who is now deceased.

EO referring to the claims as above "Samire Osmani" considers that the Contracting Authority has decided against; Article 48 points 1, 2, 3 and 4 of the Law on Commercial Companies. Article 1 paragraph 1,2 and 3, Article 2, Article 6 paragraph 1 and 2, Article 7, Article 56, Article 59, Article 60, Article 65, Article 66 of the LPP.

-Administration and evaluation of evidence-

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 16/08/2023 has authorized the expert to do the initial review of the file and claims according to complaint no. 574/23, while on 28/08/2023 the expert's report with no. 2023/0574 with the recommendation to the review panel that the complaint of the complaining EO be approved as grounded, the contract award notice be canceled and the matter returned for re-evaluation.

The expertise's report has been duly accepted by all procedural parties. CA about the recommendations of the review expert's report, "The contracting authority does not agree, while the EO agrees with the report.

The review expert's report clarifies that the EO's main complaint claims are related to the elimination of its offer, after the process of the initial re-evaluation of the offers, namely the announcement on the result of the procurement activity published by the CA Gjilan. The CA as a justification for the elimination has determined that the complaining EO "Samire Osmani", for some of the specified positions, has bid with prices that are not normally low as defined by article 61 of the LPP. The complaining EO, through the statement in the complaint and its textual content, has mainly described verses and phrases with the character of remarks, lectures and threats about the way of development and the process of evaluation and re-evaluation of this procurement procedure and very little has been referred to the object of the dispute.

CA, according to the standard letter and the justification for the elimination of the complaining EO, it turns out that it has described positions of size and has considered those positions as Not Normally low prices without asking the complaining EO for clarification at all. Example position no. 30 of the size and before the account.

Regarding the other complaint claim against the EO recommended for the award of the contract regarding the member of the group of the EO NTP "Vlora", the complaining EO refers to the legal provisions of the Law on Commercial Companies, respectively asserts that the owner of the same business has changed his life and along with them, the business itself is extinguished. According to the business registration certificate uploaded in the offer, it turns out that we are dealing with an individual business, but the review expert does not have any evidence regarding the fact that if the owner of the same business has changed his life, but the status of the business in ARBK turns out to be the same active.

Therefore, the reviewing expert according to what was described above and in the sense of articles 59 and 72 of the LPP, assesses that this procurement process should be reassessed in such a way that the CA applies the provisions of article 61 of the LPP - that, as well as Article 41 of the RRPP, regarding prices and positions which may appear or even be as abnormally low, while in relation to the death of the individual business owner, clarification should be sought or the basis should be consulted legal if the business can be inherited as a whole, only the assets can be inherited or with the death of the owner the business itself is extinguished, specifically to seek clarification from the member of the NTP "Vlora" group, regarding the status of the business with which the same business results in ARBK to be active”.

Review session.

The panel concluded that there are no elements to prevent the conflict of interest, as required in the sense of Article 11 of the Regulation on the Work of PRB, related to paragraph 1.75, Article 4 of the LPP and at the same time analyzed all the documents of this subject, including all the acts and actions of the parties and considered that there is no need to convene a hearing with the parties, as long as the submissions of the parties and their actions constitute a sufficient basis to decide on the merits as provided for in paragraph 1 of Article 24 of the Work Regulations of PRB, and that there is no need to request the contracting authority and/or the complainant to provide additional information and/or explanations, in the sense of paragraph 3, article 116 of the LPP.

-Findings of the Review Panel-

The panel considers that the expertise reports contain a priori the essential elements of such a document as provided by the provision of article 113 in relation to article 114 of the LPP, according to which the expert is required to review all the procurement documentation, including all complaints and to provide the panel and all parties with an independent and professional assessment of the procurement activity and the validity of the complaint claims. However, it should be noted that the expert's report is not binding on the Review Panel and that each such report is evaluated and/or analyzed in the general context of the case documents, asserted facts and other possible evidence, taking into account the nature of the eventual violations, the course, nature and purpose of the procurement activity.

Therefore, the fact that in which cases and for what, the Panel supports or not, any report and/or any of the recommendations, belongs to his/her independent and professional judgment, just as these responsibilities are addressed in the sense of article 98, 99 related to article 105 of the LPP.

The review panel independently and objectively, conscientiously and professionally evaluated all the evidence of the case. In this way, it was found that the Contracting Authority has acted in accordance with the legal provisions for public procurement and the requirements of the Tender Dossier related to the procurement activity "Supply of Hygienic - Sanitary Material" with procurement number 651-23-394-1-1 -1.

The review panel related to EO's complaint assertions that the CA did not consider his complaint, noted that the CA with the decision dated 02.08.2023 examined the complaint of the

party "Samire Osmani B.I" presented on 30.7.2023, against the Notice for the decision of the CA dated July 26, 2023, related to the procurement activity "Supply of hygienic-sanitary material" procurement no. 651-23-394-1-1-1. CA, through the standard form of the PPRC, with a request for clarification of the tender, addressed to the complaining EO for clarification of some of the positions of the money, considering them as abnormally low prices and after receiving the response from the EO, made a decision for the rejection of the complaint of the complaining EO.

From the above description, the review panel finds that the CA has acted in accordance with the law, article 61 of the LPP and 41 of the Public Procurement Regulation no. 001/2022, clarified with the EO the offer with not normally low prices and then made the decision according to the discretion and factual convictions, therefore the complaining assertion of the party that the CA did not consider his complaint, is unfounded.

The review panel related to the complaint statement that the recommended EO NPT'VLORA, no. business 810468860, that its owner Adnan Krasniqi is now deceased, while Vlora Krasniqi now appears as a registered agent, this claim has been handled by the review expert and has established that the same business is active and registered in ARBK. Also, in the offer file of the recommended EO NPT "VLORA" it is noted that it is the business registration certificate in ARBK, dated 06.06.2021, therefore the complaining claims of the complaining party are unfounded.

Based on all the facts, reasons and factual situation described above, the review panel concludes that the Contracting Authority, evaluating the main features of the LPP, which are economy, efficiency and saving the state budget, has recommended for the contract, the offer of the EO, with the economic price, the offer of 81,885.37 euros, while also the CA, for this procurement activity, budgeted funds in the amount of 126,836.80 euros.

Therefore, acting on the basis of the basic principles of the procurement review procedures, which, among other things, are specifically sanctioned by the provision of Article 104 of the LPP and at the same time analyzing the documents of this case in relation to the facts and circumstances of described as above, and especially paying due attention to the nature and purpose of the complaining claims, the Review Panel took into consideration all the statements of the complainant, the acts and actions taken by the CA, the review expert's report and analyzed them with takes care of all the papers of this case and considers that the complaining assertions of the complaining EO are unsustainable as they were given in the panel's finding.

Therefore, acting in accordance with the powers cited above and Article 104 paragraph 4 in relation to paragraph 1, according to which the procurement review procedure will be implemented and carried out in a fast, fair and non-discriminatory manner, which has aimed at the legal and effective resolution of the case, as well as referring to article 117 of the LPP, and in the evidence presented above, the Review Panel decided as in the enacting clause 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- GJILAN;**

1x1 EO – **“Samire Osmani”;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.