



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

Psh. No.519/24

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 (LPP) in the composition of Vjosa Gradinaj Mexhuani- President, Batisha Ibrahim-Referent and Vedat Poterqoi -Member, deciding according to the complaint with No. 2024/0519, dated 18.06.2024 submitted by the Economic Operator EBK SH.P.K., against the decision to contract award, related to the procurement activity: “LOT 1 - Continuation of Works "Center for Assessment and Standards - QVS" - Prishtina - Phase II and LOT 2 - Continuation of Works Academy of Law Ad - Prishtina - Phase II" with procurement no: “214-23-6442-5-1-1”, initiated by the Contracting Authority - Ministry of Internal Affairs, on the 22.07.2024 has issued this:

**DECISION**

1. It is dismissed, the complaint no.2024/0519 dated 18.06.2024 of the Economic Operator (EO) EBK LLC, against the decision to contract award, related to the procurement activity: “LOT 1 - Continuation of Works "Evaluation and Standards Center - QVS" - Prishtina - Phase II and LOT 2 - Continuation of Works Law Academy Ad - Prishtina - Phase II" with procurement no: “214-23-6442-5-1-1”, initiated by the Contracting Authority - Ministry of Internal Affairs.
2. Remains in force, the decision to contract award of the CA, dated 27.05.2024, related to the procurement activity: "LOT 1 - Continuation of Works "Center for Evaluation and Standards - QVS" - Prishtina - Phase II- of and LOT 2 - Continuation of Works Academy of Law Ad - Prishtina - Phase II" With No. of Procurement: "214-23-6442-5-1-1", initiated by the Contracting Authority - Ministry of Internal Affairs.
3. In accordance with the Rules of Procedure of the PRB, the complaining economic operator EBK SH.P.K. will be refunded the complaint’s fee in the amount deposited when the complaint was submitted.

## REASONING

### -Procedural facts and circumstances -

The Ministry of Internal Affairs, in the capacity of the contracting authority, on the 23.06.2023, has published the Contract Notice, for which the deadline for the submission of tenders was dated 07.08.2023, for the procurement activity entitled: "LOT 1 - Continuation of the Works "Center for Evaluation and Standards - QVS "- Prishtina - Phase II and LOT 2 - Continuation of the Works Ad Academy of Law - Prishtina - Phase II-t" With No. of Procurement: "214-23-6442-5-1-1", initiated by the Contracting Authority - Ministry of Internal Affairs.

The contracting authority has implemented an open procedure, type of contract: Work.

On the 03.06.2024, the complaining EO EBK SH.P.K. submitted a request for reconsideration, while on the 05.06.2024, (CA) the Ministry of Internal Affairs, rejected as unfounded the request for reconsideration of the complaining Economic Operator, for the activity of procurement noted as above.

The complainant, dissatisfied with the decision of the CA, regarding the decision of the request for reconsideration, on the 18.06.2024, in accordance with Article 108/A, submitted a complaint to the PRB with protocol number: 2024/0519.

On the 08.07.2024, the Procurement Review Body notified the complaining EO EBK SH.P.K., with the expertise's report.

CA-Ministry of Internal Affairs, has stated that it agrees with the opinion of the review expert (expertise's report no. 2024/0519), meanwhile, EO EBK SH.P.K. has stated that he does not agree with the opinion of the Review Expert.

### -Evaluation and administration of evidence -

The Procurement Review Body in accordance with Article 113 of the LPP, authorized the expert procurement examiner to do the initial examination of the tender dossier, the decision to contract award and the complaining claims, with which on 07.08.2024, the review has recommended that the complaint of the complaining EO be approved as partially grounded, while the decision to contract award, remains in force.

The Review Panel considered that regarding the issue in the present case, there is no need to convene a hearing with the parties, in accordance with Article 24 paragraph 1 of the Rules of Procedure of the PRB, as long as the claims of the parties, the evidence, their submissions and expertise no. 2024/0519 of the review expert, provide sufficient data to decide on the merits.

The claims of the complaining economic operator "EBK SH.P.K." are presented as follows: The complaining Economic Operator (EO) finds that Article 1 of the Law has been violated Public Procurement (LPP) in Kosovo, arguing that the Contracting Authority (CA) has canceled their bid estimated at 106,976.85 euros, replacing it with a winning bid that is much higher than their

bid. While in claim number two, the complaining EO claims that there has been discrimination and favoritism of the other winning operator in the procurement procedure. Their complaint for reconsideration was granted, and according to them it was found that their offer was responsive.

However, the CA in its decision declared their offer as irresponsible, creating dualism and impartial assessment. In claim number three, the CA in the rejection decision declared the offer of the EO to the complainant as irresponsible, although in the requested review, this offer was found to be responsible. However, in the subsequent decision, the CA argued that it did not continue securing the tender, not requesting it from the EO group for a certain period. In the fourth claim, the CA did not request the continuation of the tender insurance from the EO group, deliberately eliminating their offer. To support this claim, they present as evidence the tender insurance policy, which is attached as evidence. While for the fifth claim, the CA has announced the winner of the EO offer, ASTRAPLAN, however, after examining and evaluating the documentation, it is found that the lack of required documentation. The complaining EO requests that the reviewing expert re-examine the documentation to verify the fulfillment of the criteria required in the tender dossier.

Answer to the request for reconsideration by CA:

The claim of the complaining tenderer Group of EO, EBK SH.P.K. & PRO ARK CONSTRUCTION Sh.P.K.& N.P.N. UNIVERS-MI, Prizren, that the CA in the evaluation of the tenders violated Article 7 of the LPP - Equality in Treatment/Non-Discrimination, because in the evaluation of the tenders, it discriminated against our company, which is unfounded. The Contracting Authority has eliminated you, since you did not submit a responsible tender. Your tender is administratively irresponsible, for the reason that during the procedure of examination, evaluation and comparison of the tenders, the re-evaluation commission has determined that you have not submitted the Insurance of the tender, in accordance with the request from the CA, where it has asked all the tenderers to continue the validity of the offers and ensure the tender. Therefore, in this case, we are not dealing with a violation of Article 7 of the LPP.

The Ministry of Internal Affairs-ZPP after accepting the Request for reconsideration, has examined the validity of all the claims of the complaining party and has come to the conclusion that the claim of the tenderer Group of EO, EBK SH.P.K. & PRO ARK CONSTRUCTION SH.P.K.& N.P.N. UNIVERS-MI, Prizren, because during the evaluation process of the bid of this tenderer the CA acted in compliance with Article 59 of the LPP, complied with and implemented Article 59 par. 4 of the LPP, we quote: "The contracting authority will consider a tender responsible only if the tender in question is in compliance with all the requirements of submitted in the contract notice and in the tender dossier.

Your tender is administratively irresponsible: You have not met the security requirements of the tender; You have not met the tender validity requirements; This request - B47 Standard letter of request for clarification of the tender (continuation of the validity and assurance of the tender), was uploaded by the CA on 02.02.2024 as follows: The response deadline was 5 days from the date of the request. In e-procurement, it can be seen that the continuation has not been submitted- uploaded the validity of the offers and the provision of the tender within the deadline requested

by the CA-MIB and also at the time of consideration of this request you do not have the validity of the offer, on the basis of this your tender has been declared irresponsible, since your offer is administratively irresponsible, the commission has not issued a further evaluation of your tender and has rightly decided to eliminate your offer.

The review expert regarding the claims of the complaining EO stated the following: The review expert, after the analysis of the documentation, concluded that the CA did not request that the economic operator continue the validity of the offer, so its elimination based on this reason cannot be legally justified. CA had eliminated the operator under review for other reasons, but then did so due to the non-continuation of the validity of the offer, which is not a regular claim of public procurement procedures. In the complaint, the economic operator has also brought claims against the other recommended economic operator, related to the non-opening of some documentation in the offer. However, the CA has returned the case for reconsideration, requesting additional clarifications, based on Article 72 of the Law on Public Procurement, before receiving a final decision. In summary, it is recommended that the decision of the CA remains in force, although the economic operator's complaint is considered partially founded. CA has eliminated the economic operator twice with the same reasoning.

#### -Finding of the Review Panel -

In the preliminary examination phase, the PRB has established that the complaint in the present case was submitted within the legal deadline as provided by Article 109 paragraph 1 and was exercised after the preliminary procedure for resolving disputes, as this is also required in the sense of Article 108/A of the LPP, however, the complaint does not contain all the essential elements foreseen with the provision of Article 111 of the LPP. In fact, according to paragraph 1.5 of Article 111, the complainant is required to prove the fact, quoted: "that he qualifies as an "interested party" as defined in Article 4 of this law". But according to article 4, paragraph 1.26. it is expressly provided that the interested party is considered the person [meaning: physical and/or legal] who, as stated, cited "can prove material interest from the result of the procurement activity implemented by the contracting authority in relation to a special public contract or..".

Therefore, the PRB, after examining and completing all the evidence and documents of the case, finds that for this procurement procedure EO "EBK" SH.P.K. was previously a complainant in a complaint to the PRB, with PRB protocol number, no. . 2023/876 dated 29.01.2024, with which the decision rejected as unfounded the complaint of the Economic Operator EBK SH.P.K., with which the complaining EO was deemed irresponsible in connection with the procurement activity and was therefore eliminated from participation.

Therefore, the PRB, after reviewing and analyzing all the documentation of the complaint and the procurement procedure in the context of the explanations as above, and especially paying due attention to the nature and purpose of the complaint claims, the parties in the procedure concluded that the complainant is qualified as a party without material legal interest, where other honors are enforced article 103 of the LPP, according to which, "The provisions of this part determine the basic and procedural rights and legal remedies available to interested parties as this term ("interested party") is defined in article 4 (of this law)". The meaning of this provision

proves quite clearly in the opinion of the PRB, legal remedies can only be initiated by the interested parties, referring in this case to the definition given in Article 4 of the LPP.

In this case, viewed in the general context of the documents of this case, the course of the procurement activity, acts and actions of the parties involved, it is not disputed that the appellant was eliminated from this procurement activity with the now challenged decision of the contracting authority. However, the appellant did not attack the above-mentioned decision of the contracting authority on the basis of the causes and reasons expressly required by paragraph 1.8. of article 111 of the LPP, according to which the complainant is required, quoted: "to describe the way in which the alleged violation has caused or threatens to cause material damage to the complainant..." Thus, in the context of explanations such as above, the PRB notes that:

- that the complainant has not filed a complaint to prove his/her material interest, as required by paragraph 1.26. of Article 4;
- did not exercise the complaint in accordance with paragraph 1.8 of article 11, according to which it is required to describe the way in which the alleged violation has caused or may cause material damage;

Analyzing all this, the PRB in this case considers that it should refer to the provision of Article 31, paragraph 2, of the Regulation on the work of the Procurement Review Body, according to which, quoted: "...the panel should consider the complaint as unfounded, even if there was no violation of the law, the complainant would have no chance of winning the tender". Therefore, in the present case, it is established that the complainant does not have the status of the interested party, which is considered condition necessary for the examination and meritorious decision in the sense of Article 105 of the LPP, according to which the PRB has competences, authority, power and responsibility, within the conditions specified in this Part IX to examine complaints from, quoted "interested parties".

From all the clarifications mentioned above, the PRB rejects the complaint submitted on 18.06.2024 with No. as not allowed. protocol 0519/2024 from EO "EBK" SH.P.K because the appeal for this procurement procedure is considered a judged case according to paragraph 2.16 of article 105 of Law on Public Procurement, which states: "In repeated cases with the same complaints, when the object of the dispute and the parties are the same, for cases that have been examined before, the chairman of the review panel must treat it as a tried case" *res judicata*", and in accordance with Article 4, 1. 26 of the law, the complaining EO "EBK" SH.P.K with the trade name is considered as a party without legal interest because by decision 876/2024, the same is considered as irresponsible cited"The Review Panel notes that no authorization was attached to his/her offer for the performance of certain legal actions of the complainant in the name and account of the technician V.G. as long as not it is also controversial that the contract of the technician V.G. not signed by V.G. but by another person instead of him. In this regard, the representative of the complaining EO in the hearing stated that the technician had only received the authorization verbally, which according to the independent judgment of this panel, CA had acted correctly when it had eliminated the complainant from this activity, because according to the same LPPs are responsible for their offer submitted to a public authority precisely in

accordance with all the requirements and required evidence. In this way, the Review Panel has found that the complaint claims of the complainant "EBK" SH.P.K. are not based on concrete facts and evidence", therefore the Appellant cannot prove that he has the status of the interested party according to provision 4, 1.26 of the LPP.

**-Conclusion -**

Briefly based on the explanations as above, PRB considers that the complainant does not have the status of a party in this matter, in the way that this is expressly regulated by the provisions cited above of the Law on Public Procurement of the Republic of Kosovo, therefore PRB is not issued in the review of the content and claims, because in this case they are considered with irrelevant character.

As for the statement of the CA regarding the non-continuation of validity by the complaining EO, the panel also clarifies that based on the Law on Public Procurement (LPP) and secondary regulations No. 001/2022, article 28, paragraph 5,7, as regards the provision of offers, the review panel clarifies that retroactive insurance cannot be applied, as interpretation no. 7 of the Public Procurement Regulatory Commission (PPRC), published on their website, although no exact deadline is determined how many days before the extension of the validity of the offer is requested, emphasizes that it is important to have a continuity between the deadlines, cited: The Responsible Procurement Officer must follow the validity of the offers with the greatest care, and in any case must ask all participating economic operators to extend the validity of the offers before the expiry date. Retroactively, the extension of the validity of the offers and/or the security of the tender cannot be requested ". Article 30.3 of the Public Procurement Regulation No. 001/2022, determines and requires that the offer be valid until the award and signing of the contract, making it clear that no public contract can be signed with expired bid validity, according to the documents of the case, the complaining EO has a disconnect with the validity of the bids, while the CA has affirmed that the same [Complainant] did not even continue securing the tender , which actually leads to the rejection of him/her as administratively irresponsible for this activity for this reason as well.

However, it remains for the Contracting Authority, from the framework of its powers in view of Article 24 of the LPP, to take care of the legality of the actions from the framework of this procurement activity in accordance with the cited provision according to which: "The contracting authority is responsible for ensure that all procurement activities of such contracting authority are executed in full compliance with this law" and continuing with his/her care in the correct implementation of the tender dossier and as required by the provision of article 59 of the LPP "to consider a tender as responsive only if the tender in question is in compliance with all the requirements set forth in the contract notice and in the tender dossier".

Since in the context of the complaints, it is observed that the complainant has attacked the decision of the contracting authority only in relation to the recommended economic operator, it does not constitute a sufficient basis to open the process of administration of evidence and/or to eventually cancel such a decision due to the fact that the complainant is not the winner of this tender. In this case, it should be remembered that the contracting authority, in its quality as a

public administration institution, has the organizational and professional capacities and the right to establish the evaluation commission which is guided by the responsibility during the tender evaluation process, as this is expressly required in paragraph 1 of article 59 of the LPP, and according to the two professional evaluation commissions of the CA, the same was found to be an irresponsible bidder, at the same time finding that the offer of the recommended EO is in accordance with all the criteria set by its quality as CA in TD.

Therefore, starting from the above, and acting on the basis of Article 102, in relation to Article 98, 99, 105 and 111 of the LPP, it was decided as in the enacting clause of this decision.

For points 1 and 2 of the decision, it was decided based on article 117 of the LPP in relation to article 29 of the PRB Work Regulations. For point 3 of the decision, it was decided based on article 118 of the LPP in relation to article 31 paragraph 4 and 6 of the PRB's Work Regulations and consistency with the previous decisions of this institution.

From what was said above, it was decided as in the provision of this decision.

**President of the Review Panel**

Mrs. Vjosa Gradinaj

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**Legal advice:**

An appeal is not allowed against this decision, but the dissatisfied party can appeal to the Commercial Court, to the Department for Administrative Affairs for annulment of the decision within 30 days from the date of acceptance of the decision.

Decision to be submitted to:

1x1 CA – **MINISTRY OF INTERIOR AFFAIRS;**

1x1 EO – **“EBK SH.P.K”;**

1x1 Archive of the PRB;