



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

Psh. no.16/23

REVIEW PANEL, appointed by the President Pursuant to the article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova composed of: Vjosa Gradinaj Mexhuani - President, Vedat Poterqoi - member, Kimete Gashi- Member, deciding on the complaint lodged by the group of Economic operator: “Invest Pro” SH.P.K & “Trasing Group” sh.p.k. with residence in Fushë Kosova, regarding the procurement activity: “Construction of the physical infrastructure of the Economic Zone in Qylaga - Phase IV”, with procurement no: 204-22-1011 1-5-1-1, initiated by the Contracting authority – Ministry of Industry, Enterprise and Trade, on the 22.03.2023 has issued this:

DECISION

- 1.Approved as grounded the complaint of the group of EO “Invest Pro” SH.P.K & “Trasing Group” sh.p.k. with residence in Fushë Kosova, lodged at the PRB on the 06.01.2023, (protocol no. 16/23) for the procurement activity “Construction of the physical infrastructure of the Economic Zone in Qylaga - Phase IV”, with procurement no: 204-22-1011 1-5-1-1, initiated by the Contracting authority – Ministry of Industry, Enterprise and Trade.
2. Within a period of 10 days, the CA must inform the PRB about all the actions undertaken in connection with this procurement activity (described as in the preliminary paragraph of the provision of this decision), otherwise the PRB has the right to take measures for non-compliance decision, as provided by the provisions of Article 131 of the LPP.
3. The return of deposited funds is allowed upon filing the complaint, while the complainant GOE "Invest Pro" LLC & "Tracing Group" LLC. has the right to submit a request for the return of the funds, in accordance with Article 31 point 6 of the PRB's Work Regulations, within sixty

(60) days from the day of acceptance of this decision, otherwise the deposit will be confiscated and the funds will be transferred to the Budget Republic of Kosova.

REASONING

- Procedural facts and circumstances -

On the 22.12.2022, the Ministry of Industry, Enterprise and Trade, in the capacity of CA, has published the Notice on the decision to contract award, for the procurement activity "Construction of the physical infrastructure of the Economic Zone in Qylage - Phase IV" with procurement number :204-22- 10111-5-1-1, according to which EO "Pro&Co Group SH.P.K." has been recommended for contract.

On the 27.12.2022, GOE "Invest Pro" LLC & "Tracing Group" LLC. submitted a Request for reconsideration which was rejected as unfounded by the decision of the CA dated 28.12.2022.

On the 06.01.2023 GOE "Invest Pro" sh.p.k & "Tracing Group" sh.p.k. has submitted a complaint to PRB (Protocol 16/2023) against the Notice on the decision of the CA to contract award, for the procurement activity described above.

Based on the acts and actions described above, it is established in advance that the Contracting Authority has implemented an open procedure, type of contract: Work. The estimated value is: 726,895.80 euro. Contract award criteria: Responsible tender with the lowest price.

In the preliminary review phase, the PRB has determined that the Complaint has been exercised in accordance with Article 109.1 of the LPP, according to which any interested party can submit a complaint to the PRB against any decision taken by the CA. Since the EO has also applied for reconsideration, it means that its actions also refer to Article 108/A of the cited Law. Since the Complainant has the status of the interested party according to paragraph 1.26, article 4 of the LPP and since the complaint fulfills the prerequisites in terms of the provisions now cited, the same falls under the powers of this Body in the sense of article 105, of the LPP.

- Administration and evaluation of evidence-

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 accordance with Article 113 of the cited Law, conducts the initial review of the dossier and complaining claims, in relation to the procurement activity described above. In this regard, on the 18.01.2023, the external review expert submitted the evaluation report with the following recommendations:

- the complaint of the complaining GEO "Invest Pro" SH.P.K & "Tracing Group" sh.p.k. to be approved as grounded.

- To cancel the Notice on the Decision of the CA dated 22.12.2022 for awarding the contract;
- The procurement activity is returned to re-evaluation.

The review expert's report was accepted by both parties, in which case the EO agreed with the review expert's opinion, while the CA did not agree with the review expert's opinion.

The Review Panel considers that regarding the issue in this particular case, there is a need to convene a hearing with the parties in accordance with Article 24, paragraph 2, of the Rules of Procedure of the PRB. The review panel, after a comprehensive review of the documents of this case, listening to the parties, their complaints and recommendations of the review expert, considers that the findings of the expert and his recommendations are acceptable, and as a result, the Panel decided that the complaint GOE "Invest Pro" sh .p.k & "Trasing Group" sh.p.k to be approved as grounded.

The review panel, in accordance with the opinion given by the review expert, notes that the CA in the tender dossier (TD) and in the contract notice (CN) specifically, in point 1 as a financial criterion, provided: Sufficient capital for the execution of the contract or access to credit from bank in the amount of at least 100,000.00 € requesting that the EO submit the original document signed and sealed by the competent bank regarding this project as evidence.

Regarding this, the reviewing expert explained that the reasoning of the CA that the document issued by the bank does not meet the criteria set forth in the DT and in the NJK is untenable, because it was requested that the document be original, signed and sealed by the banking institution and the reasons why the CA was based on the elimination of the complainant were not foreseen. The review panel assesses that the reasoning given in the rejection of the request for reconsideration by the CA is not sustainable, as long as it is the exclusive right of the CA to request additional information in such cases, since the same have a relevant character regarding the meritorious decision. Therefore, PRB considers that if the CA had dilemmas regarding the document in this particular case, it was necessary, as provided by the provision of Article 59 paragraph 2 and Article 72 of the LPP, to request information and/or from the EO, so that the comparison and evaluation of the tenders applied in a professional and transparent manner, as expressly provided by the cited provisions. The contracting authority has the right to invite the economic operators to complete or clarify the certificates and documents presented in accordance with articles 65-71 of the LPP.

Therefore, briefly based on the above and supporting the findings and recommendations of the review expert in this case, the Review Panel considers that the CA during this procurement activity did not act in harmony with the provisions of Article 59 and 72 of the LPP therefore PRB requests from the CA that in the re-evaluation process the explanations given above should be taken into consideration.

The decision as in point 3 of the enacting clause was taken in accordance with article 31, paragraph 6, of the Rules of Procedure of the Procurement Review Body.

- Conclusion-

The Review Panel asks the CA (at any level) to be attentive during the course of the procurement activity, strictly respecting the Public Procurement Law of the Republic of Kosova and the applicable rules, and also orders them to act in harmony with the recommendations of data in this decision, otherwise the Procurement Review Body from the framework of the Review Panels, has the right to request the undertaking of disciplinary measures against the responsible procurement officials.

Therefore from above mentioned, Review Panel in accordance with Article 117 of the LPP decided as in the provisions of this decision.

Head of the Review Panel

Mrs. Vjosa Gradinaj Mexhuani

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 – Ministry of Industry, Enterprise and Trade;
1x1 EO – “Invest Pro” SH.P.K & “Trasing Group” sh.p.k. with residence in Fushë Kosova;
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.