



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

Psh. no.444/23

REVIEW PANEL, appointed by the President Pursuant to the article 105 as well article 106, and 117 of the Law on Public Procurement of the Republic of Kosova no.04/L-042, amended and supplemented by Law No. 04/L-237, Law no.05/L-068, and Law no.05/L-092, composed of: Vedat Poterqoi - President, Agon Ramadani - member, Kimete Gashi - member, deciding according to the complaint of the economic operator EO “Rexha” with residence in Prishtina, for the procurement activity with title: “Construction and asphaltting of roads in Rugovë LOT 1 Construction and asphaltting of the road "Varri i Sykut - Bellopaq" phase I LOT 2 Construction and asphaltting of the road in the village "Shtype i Madh- Qafa e Broqit" LOT 3 Construction and asphaltting of the road in the village "Rekë e Allagës- Pecaj" LOT 4 Construction and asphaltting of the road "Koshutan - Gunishtë" LOT 5 Asphaltting of the road "Koshutan Pepajë" LOT 6 Construction and asphaltting of the road "Kuşisht (Bardhaj neighborhood) LOT 7 Construction and asphaltting of the road in the village of Dugaivë continued part II,” with procurement no: 635-22-1 1435-5-1-1, initiated by the Contracting authority – Municipality of Peja, on the 11.07.2023 has issued this:

DECISION

- 1. It is dismissed as not allowed**, the complaint of the “Rexha” with residence in Prishtina, filed at the Procurement Review Body on the 30.06.2023 with protocol no.444/2023), for the procurement activity: “Construction and asphaltting of roads in Rugovë LOT 1 Construction and asphaltting of the road "Varri i Sykut - Bellopaq" phase I, with procurement no: 635-22-1 1435-5-1-1, initiated by the Contracting authority – Municipality of Peja, since the complaining economic operators are considered parties without material legal interest, in accordance with article 4 paragraph 1.26 of the LPP.
- 2.** Since the complaint of the complaining economic operator is dismissed as not allowed, the same fee paid when submitting the complaint is returned to him. The complaining

economic operator is required to, in accordance with Article 33 point 6 of the PRB work regulation, within sixty (60) days, make a request for the return of the insurance of the complaint, otherwise the deposit will be confiscated and these funds will be transferred to The budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances-

On the 12.06.2023, CA - Municipality of Peja, in the capacity of the Contracting Authority, published B58 Notice on the decision of the CA - Reassessment of the procurement activity entitled: Construction and asphaltting of roads in Rugovë LOT 1 Construction and asphaltting of the road "Varri i Sykut - Bellopaq" phase I LOT 2 Construction and asphaltting of the road in the village "Shtype i Madh- Qafa e Broqit" LOT 3 Construction and asphaltting of the road in the village "Rekë e Allagës- Pecaj" LOT 4 Construction and asphaltting of the road "Koshutan - Gunishtë" LOT 5 Asphaltting of the road "Koshutan Pepajë" LOT 6 Construction and asphaltting of the road "Kuisht (Bardhaj neighborhood) LOT 7 Construction and asphaltting of the road in the village of Dugaivë continued part II," with procurement no: 635-22-1 1435-5-1-1.

Against the Decision cited above, the complaining EO dated 19.06.2023 submitted the request for reconsideration. CA - Municipality of Peja, in the capacity of the Contracting Authority on the 20.06.2023, rejected as unfounded the request for reconsideration of the complaining EO.

On the 30.06.2023, EO "Rexha" with residence in Prishtina submitted a complaint to the Public Procurement Review Body (Protocol 444/23), against B58 Notice on the decision of the CA - Reassessment dated 12.06.2023, regarding the procurement activity, with the number and date described above.

- Evaluation and administration of evidence-

Acting on the basis of the basic principles of procurement review procedures, which, among others, are specifically sanctioned by point 16 of paragraph 2 of article 105 of the LPP and at the same time analyzing the documents of this case in relation to the facts and the

circumstances described above, and especially paying due attention to the nature and purpose of the complaining claims, the parties in the procedure, the Panel found the following:

Based on the documents of this case and the primary purpose of the complaints, the Panel considered that regarding the issue in the present case, there is no need to appoint review experts nor to convene a hearing session with the parties, as long as the submissions of the parties and their actions form sufficient basis to decide on the merits. In this case, the Review Panel based its findings mainly on the relevant provisions of the LPP, which foresee and regulate such situations, which may arise during a procurement activity, such as the Complaints in this case.

The review panel, after reviewing and analyzing all the documentation of the complaint and the procurement procedure in the context of the explanations as above, qualifies the complainant as a party without material legal interest, where, among other things, the review panel implemented 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 clearly proves the opinion of this Panel that legal remedies can be initiated only by the interested parties, referring in this case to the definition given in Article 4 of the LPP.

Therefore, based on the understanding of Article 4 of the LPP, in relation to Article 103 and 111 of this Law, the Panel considers that its applicant cannot be considered an interested party and that there is no need to issue a merit assessment of the specific assertions of this Complaints, because they are irrelevant in the sense of article 111 of the LPP and for this legal issue a decision was given with no. 77/2023, with which decision the procurement activity in question was reassessed after finding that the CA acted in violation of Article 7, 59 and 60 of the LPP, because in the documents of this case it is noted that the CA did not properly implemented the provisions for public procurement in the direction of economic operators. The matter has been re-evaluated, making the EO recommended by the CA as irresponsible for this procurement activity, for the reason that the notarization of the work contract for the project manager was not made in accordance with the requirements of the Tender File and the CA

during the evaluation of this activity did not comply with the requirements specified in the tender file and in the contract notice, the CA acted contrary to the requirements it specified and contrary to the legislation in force, i.e. contrary to Article 59.4 of the LPP and contrary to with Article 40 of Regulation no. 001/2022 for public procurement, based on article 40.13, it is correctly specified that "the CA will evaluate and compare responsible tenders according to the criteria for awarding the contract defined in the contract notice/tender dossier", while for the equipment offered, as for the Ripper Luge hydraulic equipment, The group of EOs recommended for the contract have not presented any lease agreement or other document that this equipment is owned by the company and therefore no additional information can be provided.

Therefore, based on the above, it is considered that the complaining EO Rexha" based in Prishtina, is a party without material legal interest for this procurement activity, in accordance with Article 4 paragraph 1.26 of the LPP. The review panel bases its findings mainly on the relevant provisions of the LPP, which foresee and regulate such situations, which can be presented during a procurement activity such as the complaint from the EO group in this case.

After analyzing the aforementioned documents which were available to the Review Panel, such as: Complaints of the complaining EO, reports of the review expert, decision no. 77/23, it is well known that the decisions of the PRB are binding on the contracting authorities and all parties in the procedure, and that against the decisions of the PRB, the parties can appeal to the competent court within the legal term with regular legal remedies, in accordance with the legal advice given in the decision. While it remains the responsibility of the CA that the evaluation of the offers has been done in full harmony with the legal provisions in force.

- *Conclusion* -

Based on the powers of the PRB provided by Article 105, in relation to Article 106 of the LPP, the Review Panel implemented, among others, paragraph 2 point 16 of Article 105 of the cited Law and the complaint submitted by EO "Rexha" with residence in Prishtina it is dismissed as not allowed.

The review panel in accordance with article 117 of the LPP, as well as based on the evidence presented as above decided as in the provision 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 – Municipality of Peja;
1x1 EO – “Rexha” with residence in Prishtina;
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.