



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

Psh. No.716/24

The Review Panel, appointed by the A.President of the Procurement Review Body (PRB), based on Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova (Law no. 04/L-042, completed and amended by Law 04/L-237, Law 05/L-068, supplemented and Law 05/L-092), composed of Isa Hasani - President, Batisha Ibrahim and Kimete Gashi-Members, deciding according to the complaint of EO “LIMITPROJECT” SH.P.K., against the contract notice or the tender documents related to the procurement activity “99 Construction of the urban island Arberi-Palace of Youth” with procurement number 616-24-7202-5-1-1, initiated by the contracting authority (CA) - "MUNICIPALITY OF PRISHTINA", on the 20/09/2024 has issued this:

DECISION

1. **Refused**, as ungrounded the complaint of EO “LIMITPROJECT” SH.P.K., with no. 2024/0716, dated 05/08/2024, regarding the procurement activity “99 Construction of the urban island Arberi-Palace of Youth” with procurement number 616-24-7202-5-1-1, initiated by the contracting authority (CA) – Municipality of Prishtina.
2. It is verified, the Notice on the Decision of the Contracting Authority, for the contract award, the procurement activity entitled “99 Construction of the urban island Arberi-Palace of Youth” with the data as in point 1. of the provision.
3. In accordance with Article 31, paragraph 5, of the Rules of Procedure of the PRB, the complaining economic operator EO "LIMITPROJECT" SH.P.K. will have the complaint’s fee confiscated in the amount deposited when the complaint was submitted, the confiscated funds will be transferred to The budget of the Republic of Kosova.

REASONING

-Procedural facts and circumstances -

On the 19.07.2024, the Municipality of Prishtina, in the capacity of the Contracting Authority, has published the Contract Notice B05 related to the procurement activity “99 Construction of the urban island Arberi-Palace of Youth” with procurement number 616-24-7202-5-1-1.

This procurement activity was developed through an open procedure with the type of work contract and with an estimated contract value of 6,760,000.00 €.

On the 08.07.2024, EO "LIMITPROJECT" SH.P.K. submitted a request for reconsideration against the aforementioned decision of the CA. On the 02.08.2024, the Contracting Authority approved the request for reconsideration as partially based.

On the 05/08/2024, PRB has accepted the complaint from EO "LIMITPROJECT" SH.P.K. with no. 2024/0716 related to the activity "99 Construction of the urban island Arberi-Palace of Youth" with procurement number 616-24-7202-5-1-1.

-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.

CA's response to the request for reconsideration:

The economic operator "Limit Project" Sh.P.K. (hereinafter "the applicant") dated 30.07.2024 submitted a request for reconsideration against the contract notice and the tender file related to the procurement activity entitled "99 Construction of the urban island Arberi-Pallati i Rinia" with Procurement number 616-24-7202-5-1-1.

During the preliminary review of the applicant's request for reconsideration, it was found that the request is allowed and submitted within the deadline by the authorized person, and there are no other obstacles to review the applicant's request. In this way, the conditions have been met to proceed with the meritorious review of the request.

The claims of the complainant are cited as follows:

"Point 1: Requirements on technical and/or professional opportunities - Article 2. Project manager, structural engineering graduate, min. 10 years of work experience after graduation, to have proof that there is a project engineer in the field of construction, min. 8 million euro in the last three years, to present at least 3 projects with expertise in the field of construction.... Please,

how is it possible to limit the period to only 3 years for the value of 8 million works managed by the project manager, when, if a manager has managed a project with a value greater than 8 million in earlier years and the manager's experience as long as possible in terms of time, creates greater experience and expertise. Also, please explain to us what you meant by the request for expertise for at least 3 projects. How to define for us who should certify the persons for instructor, you did not define and explain in the answer for clarification?

Point 2: The leader of the workshop, who should do the certification in the field of road infrastructure. Also, is there any reason for the Construction Engineer, manager of the workshop, to be certified for the energy audit when the design engineer should have this training? • The infrastructure engineer does not need energy expertise, since the energy audit certification is not related to energy, but only in the matter of energy efficiency. Is efficiency achieved in the project?

Point 3: We have not understood why you decided on mechatronics - and why it was asked to draw up projects, if the project has already been done and it is creating confusion as to whether it is execution or design. Can mechatronics engineering be replaced by electricity or machinery?

Point 4: Graduated electrical engineer - computer with telecommunications? Which position in the first place does it require and why is it necessary to design projects? In the part of your request, you have proof in the design of the project. It is necessary to know whether the contract is for implementation or design. Therefore, the Engineer must have experience in execution.

Point 5: Mechanical engineer - traffic, why is a design reference requested when the project is execution! The design does not professionally raise the announced contract for implementation - the decision is for implementation, not design. Therefore ing must have proof in execution.

Point 6: The economic operator must present the staff list submitted to TAK for the last three years 2021, 2022 and 2023. The average strength for the three years must be min. 50 workers. Why should the report be for 3 years when the procurement law allows the possibility to make contracts in the works and the commitment of the labor force to be done only for this project. The request is strange! If the company has been solid in the previous 3 years, but in the current year it does not have the workforce, how can it win.

Point 7: Employees, according to point 12, the certification by whom should be for tiler, carpenter, etc., or it can have its own reference from the employing company! You have not specified from which institution the certifications are issued in the response for clarification or to remove the criterion.

Point 8: According to point 14, the EO must be a manufacturer or have an agreement with a manufacturer of prefabricated elements from prestressed concrete Certificate which activity, the certification for these activities, and the references of the works performed, or international certifications from which institution you did not specify in the answer for clarification. Or to remove this criterion or to the institution for certification is specified. Point 9 Requirement 17. The EO must prove that the management system of the bidder fulfills the defined criteria in the field of construction at least for these ISO Standards: - ISO 9001 2015; - QMSISO 9001-2015

(Internal Auditor); -ISO 14001-2015; -EMS ISO 14001-2015 (Internal Auditor);- ISO 45001-2018: -DS CEN TR 15128-2005; BROOD- EN SIO 1452-1 2009; -EN ISO 50001-2018:-EN ISO 39001-2012; Internal Auditor, you don't have it explained by which institution in the answer for clarification?"

Regarding the complaining claims, it should be clarified that on 31.07.2024 the CA published the Form for the Correction of Errors in Published Notices, in which case some requirements of the TD were changed and fulfilled, for which the applicant also presented his appeal claims through the request for reconsideration . In this case, the CA has also taken into account the applicant's request for reconsideration. However, the rest of the complaint claims beyond the requirements of the TD that have already been amended by the CA, as such are unfounded since the remaining requirements in the TD are necessary to achieve the intended purpose of the procurement activity. Moreover, without these requirements it is impossible to successfully implement the contract that is intended to be concluded through this procurement activity.

From what was said above, it is found that the applicant has presented solid arguments to partially support his complaining claims. His request for reconsideration is therefore granted as partially grounded.

- Claims of the complaining economic operator "LIMITPROJECT" SH.P.K. are presented as follows: the complaining claims of the complaining EO:

Detailed statement of facts and arguments

Point 1: Requirements on technical and/or professional opportunities - Article 2. Project manager - Graduated structural engineering engineer, min. 10 years of work experience after graduation, to have proof that he has managed projects in the field of construction min. 8 million euros in the last three years, to present at least 3 projects with expertise in the field of construction.... Please, how it is possible to limit the period to only 3 years for the value of 8 million works managed by the project manager, when, if a manager has managed a project with a value greater than 8 million in the earlier years and the longer the manager's experience in terms of time, creates greater experience and expertise. Also, please let us know what you mean request for expertise for at least 3 projects. How to define for us who should certify the persons for instructor, you did not define and explain in the answer for clarification? - we have not received an answer neither to the clarification nor to the request for reconsideration.

Point 2: The leader of the leader of the workshop, who should do the certification in the field of road infrastructure. Also, is there any reason for the Construction Engineer, manager of the workshop, to be certified for energy auditing when the design engineer should have this training? The infrastructure engineer does not need energy expertise, since the energy audit certification has nothing to do with energy, but only in the matter of energy efficiency. Is efficiency achieved in design?

Point 3: We have not understood why you decided on mechatronics - and why it was asked to draw up projects, if the project has already been done and it is creating confusion as to whether it is execution or design. Can mechatronics engineering be replaced by electricity or machinery?

Point 4: Graduated electrical engineer - computer with telecommunications? Which position in the first place does it require and why is it necessary to design projects? In the part of your request, you have proof in the design of the project. It is necessary to know whether the contract will be implementation or design. Therefore, the Engineer must have experience in execution.

Point 5: Mechanical engineer - traffic, why was a design reference requested when the project is execution! The design does not professionally raise the announced contract for implementation - the decision is for implementation, not design. Therefore ing must have proof in execution.

Point 6: The economic operator must present the staff list submitted to TAK for the last three years 2021, 2022 and 2023. The average strength for the three years must be min. 50 workers. Why should the report be for 3 years when the procurement law allows the possibility to make contracts in the works and the commitment of the labor force to be done only for this project. The request is strange! If the company has been solid in the previous 3 years, but in the current year it does not have the workforce, how can it win.

Point 7: Employees, according to point 12, the certification by whom should be for tile-layers, carpenters, etc., or can only have the reference from the employing company! You have not specified by whom - what institution to issue the certifications in the response for clarification, or to remove this criterion.

Point 8: According to point 14, the EO must be a producer or have an agreement with a producer of prefabricated elements from prestressed concrete. specify in the response for clarification. Either remove this criterion or specify the institution for certification.

Point 9 Requirement 17. The EO must prove that the management system of the bidder fulfills the defined criteria in the field of construction at least for these ISO Standards: - ISO 9001 2015; -QMS ISO 9001-2015 (Internal Auditor); -ISO 14001-2015; -EMS ISO 14001-2015 (Internal Auditor);- ISO 45001-2018: -DS CEN TR 15128-2005; -EN SIO 1452-1 2009; -EN ISO 50001-2018:-EN ISO 39001-2012; Intemal Auditor, you did not explain from which institution in the answer to clarification?

In all of this, we have also made a request for clarification both in the request for reconsideration and in a request for clarification where the CA has not at all deigned to clarify what these documents are and how to document them and this is discrimination. While we are attaching the request for reconsideration as well as the request for clarification.

Referring to the claims as above, the complaining economic operator considers that the Contracting Authority has acted in violation of Article 1, 2, 6, 7, 64, 66, and 69 of the Operational Rules and Guidelines for Public Procurement (ROGPP) - 39. Clarification of Tenders.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Body dated 07/08/2024 has authorized the review expert to conduct the initial review of the file and claims according to complaint no. 0716/24, while on 17/08/2024 the review expert's report with no. 2024/0716 with the following recommendations: Based on the above-mentioned clarifications, the review expert proposes to the review panel that the complaint of the

complaining EO is rejected as unfounded and the CA is allowed to continue with the procurement activity.

The expertise report has been properly accepted by all the procedural parties, the CA has agreed with the expertise report, while the EO does not agree with the expertise report.

-Administration and evaluation of evidence -

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Body dated 07/08/2024 has authorized the review expert to conduct the initial review of the file and claims according to complaint no. 0716/24, while on 17/08/2024 the review expert's report with no. 2024/0716 with the following recommendations: Based on the above-mentioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO is rejected as unfounded and the CA is allowed to continue with the procurement activity

The expertise report has been duly accepted by all the procedural parties, the CA has agreed with the expertise report, while the EO does not agree with the expertise report

-Regarding the claims of EO "LIMITPROJECT" SH.P.K. review expert through report no. 2024/0716 assessed as follows:

The Contracting Authority MUNICIPAL ASSEMBLY OF PRISHTINA has developed the Procurement Activity entitled: "99 Construction of the urban island Arbëri-Palace of Youth" with no. of procurement: "616-24-7202-5-1-1". The contract notice was published on: 19.07.2024.

Dated: 22.07.2024 economic operator: "LIMITPROJECT SHPK" - Prishtina has made a request for additional information to the CA regarding the requirements defined in the tender file and in the contract notice. The CA - ASSEMBLY OF THE MUNICIPALITY OF PRISHTINA gave answers to the questions submitted on the 29.07.2024.

Dissatisfied with the answers received, the complaining EO on 30.07.2024 submitted a request for reconsideration to the CA - ASSEMBLY OF THE MUNICIPALITY OF PRISHTINA. On 31.07.2024, the CA on the e-procurement platform has published the standard form for correcting errors in published notices, while on 02.08.2024 it has notified the economic operator "LIMITPROJECT SH.P.K." - Prishtina that the request for reconsideration has been approved as partially based.

On the 05.08.2024 EO "LIMITPROJECT SHPK", submitted a Complaint to the Review Body for Public Procurement with the claim that some of the Requirements on technical and/or professional opportunities defined by CA are not defined and are discriminatory.

Answer to Complaining Claims

EO "LIMITPROJECT SHPK", claims that CA - ASSEMBLY OF THE MUNICIPALITY OF PRISHTINA, has violated Article 1, Article 2, Article 6, Article 7, Article 64, Article 66 and

Article 69 of the LPP as well as Article 39 of the Operational Rules and Guidelines for Public Procurement (this Regulation which has been repealed by the PPRC).

According to the complaining EO, the CA did not provide sufficient clarifications/information in the request for additional information, regarding the requirements defined in the tender file and contract notice. He considers some of the technical and professional capacity requirements discriminatory.

The review expert, after analyzing the documents on the electronic e-procurement platform, regarding this procurement activity, has noticed that the CA - ASSEMBLY OF THE MUNICIPALITY OF PRISHTINA, has approved as partially based the request for reconsideration of EO "LIMITPROJECT SH.P.K."

In the decision of the CA, EO "LIMITPROJECT SH.P.K", it was also informed that the CA - ASSEMBLY OF THE MUNICIPALITY OF PRISHTINA, has published on the electronic e-procurement platform the Form for the Correction of Errors in Published Notices, through which made the correction of the requirements on the technical and professional capacity, for which the complaining EO had presented its complaining claims through the request for reconsideration.

The review expert clarified that the complaining EO did not make new claims in the complaint submitted to the PRB, against the correction made by the CA. Complaint claims presented in the Complaint addressed to the PRB, are claims that have been addressed by the CA and have been corrected in the Form for Correction of Errors in Published Notices.

-Findings of the Review Panel -

The Work Regulation of the Public Review Body, which is published on the PRB website, with article 20, paragraph 2 of the Regulation, defines the requirements for the Contracting Authority and the Economic Operator, that all information and notifications must be submitted and communicated through the public communication platform, if this is possible.

Based on the documents of this case, the Panel considers that regarding the issue in the present case, there is no need to convene a hearing with the parties, in the sense of Article 24 paragraph 1 of the Rules of Procedure of the PRB, taking into account the fact that the claims of the parties and their submissions, evidence as well as the review expert's report provide sufficient data to decide on the merits.

The review panel assesses that the report of the review expert, drawn up at the request of the Panel regarding the dispute in this matter of the public procurement activity, contains the essential elements of such a document as provided by the provision of article 113 related to article 114 of the LPP, according to who is required by the expert to review all procurement documentation, including all appeal claims and provide the Panel and all parties in disputes with an independent and professional assessment of the procurement activity and the validity of the complaining claims.

However, it should be emphasized the legal fact 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 eventual evidence, taking into account the nature of potential violations, the flow, nature and purpose of the procurement activity, therefore the fact that in which cases and for what, the Panel relies or not, the expert's report and/or any of 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 Public Procurement Law.

According to the above, the reviewing expert handled the claims of the complaining economic operator "LIMITPROJECT" SHPK in a professional and objective manner. The argumentation in the review expert's report is quite detailed, understandable and fully based on the relevant documents that refer to the procurement activity. The findings in the review expert's report can be confirmed through the tender file as well as the documents with which the tenderers have offered. The review expert's report assessed that the claims of the complaining economic operator "LIMITPROJECT" SH.P.K. are unfounded.

In this case, from the review expert's report, the evidence presented by the complaining economic operator, the documents of the tender file as well as from other evidence of the case, it was found that all the complaining claims are unfounded. Based on the factual situation established as above, the Review Panel has given full confidence to the findings and recommendations in the review expert's report. Consequently, the Review Panel has found that all the claims of the complaining economic operator are unfounded. Therefore, 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 expert, has found that the complaint of the Economic Operator should be rejected as unfounded. Consequently, the Review Panel has decided to validate the Contract Notice of the Contracting Authority, Municipality of Pristina, dated 19.07.2024 regarding the procurement activity entitled "99 Construction of the urban island Arberi-Palace of Youth" with no. of procurement: 616-24-7202-5-1-1.

Therefore, referring to article 104.1, of the LPP, according to which it is required that the review procedure be implemented in a fast, legal and effective manner and also analyzing in their entirety the documents of this subject in the context of this procurement process, the panel did not consider it necessary to elaborate again in detail and unnecessarily in this case each appeal claim, as long as they are specifically singled out especially in the contested decision of the authority contractor and have been analyzed and argued without objection by this Panel. Among other things, in the attacked decision of the contracting authority and in the reports of the reviewing expert, fair explanations were given also regarding the complaining assertions. The panel notes that the reasons given in the attacked decision of the contracting authority are professional and argued without objection with material evidence, without the need to describe them again. Therefore, the Panel supports the evaluations of the reviewing expert who have explained in his expertise report number; 2024/0716 dated 08/17/2024.

The review panel emphasizes that in accordance with articles 1 and 6 of the LPP, that contracting authorities exercise their institutional independence in the public procurement process, but it

remains within the competences and responsibilities of this body to review complaints and legality in the procurement process according to article 24, paragraph 2 of the LPP cited "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in full compliance with this law" related to article 59.1 cited "The contracting authority will establish an Evaluation Commission for the examination, evaluation and comparison of offers. All members of the Evaluation Committee take full individual responsibility for the evaluation of the offer"

Based on the fact of the rejection of the complaint of EO "LIMITPROJECT" SH.P.K, the review panel decided to confiscate the complaint's fee 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 means go to the Budget of the Republic of Kosova.

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 procedure of examination in a fast, fair, non-discriminatory manner, with the aim of 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 can be presented 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, 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 – **MUNICIPAL ASSEMBLY OF PRISHTINA;**
1x1 EO – **“LIMITPROJECT SH.P.K.;**
1x1 Archive of the PRB;