



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

Psh. no.23/23
24/23

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: Agon Ramadani - President, Vedat Poterqoi - member, Kimete Gashi - Member, deciding on the complaint lodged by the Economic operator “ER-LIS Shpk” with residence in Prishtina, as well as the complaint of the EO “BLENOR Shpk”, with residence in Prishtina regarding the procurement activity: “Demolition, cleaning and closure of the premises of the former 21 and the former Rilindja Printing House”, with procurement no: 214-22-13394-5-2-1, initiated by the Contracting authority – Ministry of Internal Affairs, on the 02.05.2023 has issued this:

DECISION

I. Approved as grounded the complaints of the economic operators “ER-LIS Shpk”, as well as EO “BLENOR Shpk”, filed at the Procurement Review Body with protocol, no 23/23 as well 24/23 on the 09.01.2023, for the procurement activity “Demolition, cleaning and closure of the premises of the former 21 and the former Rilindja Printing House”, with procurement no: 214-22-13394-5-2-1, initiated by the Contracting authority – Ministry of Internal Affairs, whereas is **Cancelled** notice on the decision of the CA for contract award of the 30.12.2022, while the procurement activity is returned for re-evaluation.

II. Within 10 days, the CA must inform the PRB review panel in writing of all actions taken in relation to this procurement activity, specified as in the preliminary paragraph of the provision of this decision. Due to the failure to comply with the decision, the PRB has the right to take action against the CA, as provided for in the provisions of Article 131 of the Law on Public Procurement of Kosova.

III. It is allowed the return of deposited funds upon filing the complaint, while the Complainant has to submit a request for the returning of the funds within 60 (days), otherwise they are confiscated and transferred to the Budget of the Republic of Kosova, in accordance with article 31, par 6 of the Work Regulation of the PRB Board.

REASONING

- Procedural facts and circumstances-

The Ministry of Internal Affairs, in the capacity of the contracting authority, on the 24.11.2022, has published the notice for the award of the contract related to the procurement activity: Demolition, cleaning and closure of the premises of the former 21 and the former Rilindja Printing House”, with procurement no: 214-22-13394-5-2-1.

The requests for reconsideration in the CA were made on the 23.12.2022 and 27.12.2022, as well as the decision on the requests for reconsideration by the CA: 30.12.2022.

On the date: 09.01.2023, EO "ER-LIS Shpk" - Prishtina, filed a complaint with no: 23/23, against the contract award notice where EO "LURN Shpk" - Fushë Kosova was recommended for the contract, regarding the procurement activity: Demolition, cleaning and closure of the premises of the former 21 and the former Rilindja Printing House”, with procurement no: 214-22-13394-5-2-1, initiated by the Contracting authority – Ministry of Internal Affairs.

The contracting authority has implemented an open procedure, the type of contract is service, the estimated value of the contract: 90,000.00 €.

- Evaluation and administration of evidence-

The PRB has engaged the external procurement review expert to, in accordance with Article 113 of the LPP, conduct the initial review of the file and complaining claims, who in the report dated 18.01.2023 has recommended that:

To approve as grounded the complaints of the complaining EO "Er-lis" shpk as well as EO "Blenor", shpk.

The case is returned for re-evaluation.

On the occasion of the preliminary review, the Review Panel concluded that the complaint in the present case was exercised in accordance with Article 109.1 of the LPP, according to which against any decision taken by the CA, any interested party can submit a complaint to the PRB only after leading a preliminary procedure for resolving the dispute in accordance with Article

108/A of this law. Since the applicant has the status of the interested party in the sense of Article 4, paragraph 1.26, and the complaint also contains the essential elements provided for in Article 111 of the cited Law, it means that the complaint fulfills the conditions foreseen in the sense of the provisions of cited and the same daughter under his powers in terms of article 105 of the LPP.

Acting on the basis of the general principles provided for in Articles 6 and 7 and the basic principles of procurement review procedures, which, among others, are sanctioned in a special way by the provision of Article 104 of the cited Law and at the same time analyzing documents of this case in relation to the facts and circumstances described above, especially paying due attention to the nature and purpose of the complaints, it is found that:

The complaining claims are against the proposal for the contract award, namely against the justifications for the elimination where CA - MIA, in the standard letter dated 21.12.2022, against the offer of EO NTG "Er-lis" based in Prishtina, textually stated: “ *1. We have not provided the Decision for the Contract Manager, as were the requirements in the contract notice and in the Tender dossier and 2. The personnel for the implementation of the project minimum 15 workers You have provided evidence for only nine of the staff who will be engaged for this project. For Request 2 in the TD has been requested*”.

While against the offer of EO "Blenor" shpk with headquarters in Prishtina, it has been emphasized: “*The staff for the realization of the project is a minimum of 15 workers. You have provided evidence for only 14 of the staff who will be committed to this project*”.

The review panel, based on the documentation attached by the complaining EO and that of the subject of the activity in question, the report of the external review expert, assesses that the complaints submitted by the two complaining EOs are classified as grounded, while the findings of the expert have found support from the review panel, therefore his reasoning is counted as the reasoning of the review panel.

Regarding the reasons for the elimination of EO "Er-lis" shpk, SHP finds that his complaint is classified as grounded and the CA's reasoning does not stand for the fact that in relation to the

staff required in its offer, the complaining EO also except 9 workers engaged with contracts in this project, has also presented the list of permanent workers of the company from TAK, which contains 7 workers, therefore, since the EO has presented this data in its offer, CA regarding additional information or clarifications can be addressed to the EO by applying Article 72 of the LPP. The other point on which the complaining EO was eliminated is based on the fact that the decision on the appointment of the manager was not presented in the offer of the complaining EO, therefore, in the offer of the complaining EO a contract was presented for the employee who, according to the provisions of the contract, is appointed as a manager of the project, therefore, taking into account this fact, the RP, in accordance with the expertise's report, finds that this request has been fulfilled, while also if the CA considers that the decision on the appointment of the EO manager should be presented as a special document, it can also be requested by applying article 72 of the LPP, therefore finally, the SP in accordance with the expert report finds that based on the CA's reasoning regarding the elimination of the complaining EO, there was no sufficient basis for the complaining EO to be eliminated on the aforementioned reasons.

Regarding the reason for the elimination of EO "Blenor" shpk, RP finds that his complaint is classified as grounded and the CA's reasoning does not stand for the fact that regarding the staff requested in its offer, the complaining EO has submitted a total of 15 workers, in which the project manager is also a part, therefore the RP concludes that since the non-inclusion of the manager as project staff is not specified before the submission of offers, also based on the expertise report, RP finds that this justification for elimination on this basis is not sustainable, due to the fact that the request of TD was that the personnel for the implementation of the project should be a minimum of 15 workers, which implies that the project manager is also included in this request, while related with the contracts that are missing from the offer, RP considers that also in this case article 72 of the LPP (clarifications/additional information) can be applied due to the fact that the list of workers is presented in the offer of the complaining EO.

When making decisions, the review panel always takes into account Article 1 of the LPP, where the purpose of this law is to ensure the most efficient, transparent and fair way of using public funds, public resources as well as all funds and resources of other contracting authorities in Kosova.

Head of the Review Panel

Mr. Agon Ramadani

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 Internal Affairs;
1x1 Complaining EO;
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.