



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

Psh. No.715/23
719/23

The Review Panel, appointed by the President of the Public Procurement Review Body (PRB), based on Article 105, 106 and 117 of the Law on Public Procurement of Kosova (LPP) composed of: Isa Hasani-President, Vedat Poterqoi-Member and Vjosa Gradinaj-Mexhuani-Member, deciding according to the complaint of the Economic Operator (EO) RUNWAY SH.P.K., Sodex Group SH.P.K., against the Decision to cancel the procurement procedure , The decision to cancel the procurement procedure of the KOSOVA POLICE, in the capacity of the Contracting Authority (CA) related to the procurement activity “Supply of uniforms for tactical taks” with procurement number 214-23-2841-1-1-1, on the05.01.2024 has issued this:

DECISION

1. Approved, as partly grounded the complaint of the EO “RUNWAY SH.P.K, with no. 715/2023 of the 21/09/2023, against the Notice on Decision B58 of the Contracting Authority" dated 29.08.2023, of the CA - KosovA Police, regarding the procurement activity "Supply of uniforms for tactical tasks" with procurement number: 214-23-2841-1-1-1.
2. Approved, as partly grounded the complaint of the EO “Sodex Group” SH.P.K., with no. 719/2023 of the 21/09/2023, against the Notice on Decision B58 of the Contracting Authority" dated 29.08.2023, of the CA - KosovA Police, regarding the procurement activity "Supply of uniforms for tactical tasks" with procurement number: 214-23-2841-1-1-1.
3. Remains in force the "Notice on Decision B58 of the Contracting Authority" dated 29.08.2023, of the Kosova Police - for the cancellation of the procurement activity no: 214-23-2841-1-1.
4. It is allowed to return of funds deposited in the name of the appeal fee EO "Runway" Sh.P.K., according to paragraph 4, 5 of article 31 of the PRB Work Regulations, while the complainant has the right to, according to paragraph 6, of the cited provision, request the return of the funds within sixty (60) days from the date of acceptance of this decision, otherwise the funds are confiscated and transferred to the Budget of the Republic of Kosova.

5. It is allowed to return the funds deposited in the name of the appeal fee EO - "Sodex Group", according to paragraph 4, 5 of article 31 of the PRB Work Regulations, while the complainant has the right that according to paragraph 6, of the cited provision , to request the return of the funds within sixty (60) days from the date of acceptance of this decision, otherwise the funds are confiscated and transferred to the Budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances -

On the 28.03.2023, the Kosova Police in the capacity of the Contracting Authority has published the Contract Notice B05 related to the procurement activity entitled "Supply of uniforms for tactical tasks" with the procurement number: 214-23-2841-1-1-1.

This procurement activity was developed through an open procedure with the type of contract for supply and with an estimated contract value of 2,809,840.00 €.

On the 29.08.2023, the CA published the Notice on Decision B58 through which it canceled the procurement activity because all the accepted offers are irresponsible as they do not meet the criteria required in the tender dossier, in the contract notice as well as the technical specifications.

On the 02.09.2023, EO "Sodex Group" LLC. has submitted a request for reconsideration against the Notice on Decision B58 of the Contracting Authority. On the 04.09.2023, EO "Runway" LLC submitted a request for reconsideration against the Notice on Decision B58 of the Contracting Authority.

On the 12.09.2023, the Contracting Authority has published a decision through which the complaints of the two Economic Operators are dismissed as unfounded and the notice on the decision of the Contracting Authority is confirmed.

On the 21/09/2023, OEA "Sodex" LLC. submitted to the PRB the complaint no. 719/23, while on 21/09/2023 EO "Runway" submitted to the PRB the complaint no. 715/23.

-On the stage of preliminary review-

During the preliminary review of the complaint, the Review Panel found that both complaints contain all the elements defined through Article 111 of the LPP and as such were submitted within the legal term in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for resolution of disputes in the sense of Article 108/A of the LPP, from economic operators who are interested parties 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 these complaints according to Article 105 of the LPP and there is no procedural obstacle to proceed with reviewing the complaints in a meritorious manner.

Taking into account the fact that both complaints are related to the same procurement activity, respectively with the notification on the same decision of the Contracting Authority related to

this procurement activity, it has been decided that complaint no. 715/23 and complaint no. 719/23 to be joined and treated as a unified case in the sense of Article 16 paragraph 1 of Regulation no. 01/2020 of the Work of the Procurement Review Body.

Answers and complaining Claims of the complaint no. 719/2023 of EO "Sodex" SH.P.K.

The first (and main) complaining claim according to complaint 719/23 is related to the reason for the elimination of the EO, where according to the CA the same has not fulfilled the request for 10K/10K, since according to the result of the certificate it appears that the jacket/material is durable / water resistance is 10K/6K.

Clarification: The letter "K" from the Latin language "Kilo" means "thousand", and every number that follows the letter "K" means that number plus three zeros (thousand) after that number.

In this case, the number 10K should be read as 10,000 (ten thousand).

First of all, we clarify that the requirement of the CA 10K/10K means the resistance to water penetration and the breathability of the material, where the first number 10K means 10000, and represents the material's resistance to water penetration in millimeters of the water column. This means that the material must withstand a pressure of 10,000 mm of water column before the water starts to penetrate.

While the second number 10K represents the ability of the material to release steam, and the number 10000 means the weight in grams of water in the form of steam, which must pass through one square meter of the fabric/material in 24 hours.

CA in this particular case mistakenly referred to the certificate provided by EO, as the part that refers to CA regarding 10K/6K, is part of the name of the material that EO provided to the laboratory for testing, which means 6K is not the result of testing by the laboratory. Moreover, that material does not indicate that it will be used for the jacket that EO has offered for this procurement activity. Regarding the certificate of the jacket, EO has provided a certificate with no. "SPC03D1593/2034" where the resistance to water penetration is made according to the EN 343:2019 standard. However, the results of this test, regarding the resistance to water penetration, are measured in pascal units and the test result is "20700 pa" (pascal). After many researches that we have done, we have found that 20700 pa (pasacal) are equivalent to 2110mm water column. This result comes from all the calculators/converters we have found online. Based on what we mentioned above, we estimate that EO has failed to prove that the offered jacket has a water resistance of 10K (10000mm water column).Proof: Offer of the complaining EO - Certificate no. SPC03D1593/2034, page 1, page 2 and page 3 OE complainant claims that 10K is equivalent to 10000pa, but we consider this not to be true for the reasons stated above. Based on what was mentioned above, we estimate that the appeal claim is unfounded.

Claim no. 2. The other claim of the complainant is related to the reason for the elimination by the CA, where according to the CA, the EO did not offer tests for color fastness to chlorine for pants, summer and winter shirts, etc. However, the CA, upon reviewing the request of the EO, has determined that the claims for resistance to chlorine are well-founded, so we will not proceed

further on this point. However, the CA in rejecting the request for reconsideration regarding the elasticity of the shirt with short sleeves affirms that the EO has provided certificates of color in the draw. We consider this conclusion of the CA to be wrong, since there is no attestation of the color in traction, and the CA mistakenly describes the color fastness result of 4.5 to the elasticity/pull test which test actually has the result of 165.3lb and 124.6lb. Based on what was mentioned above, we estimate that the complaining claim is grounded.

As for the complaint claims against EO Runway, EO claims that in addition to the reasons for elimination by CA, it adds that EO Runway also provided a sample with non-vulcanized strips. As evidence, the EO has provided photos from the samples of the EO Runway. In addition to the photo provided by the EO, as an expert, we have been to look at the samples at the CA, and we have found that as the complaining EO has presented in the photo, the strips look were made in a non-qualitative way, as it can be seen that there are air spaces/gaps along the strip. However, as an expert (regardless of our beliefs) we have no evidence and cannot give answers as to whether the strips are vulcanized or not.

Answers and complaining claims of the complaint no. 715/2023 of EO "Runway" Sh.P.K.

Claim I, pre-appeal according to complaint 715/23 is about the reason for the elimination of the EO, where according to the CA the same has not fulfilled the requirement for 10K/10K, since according to the result of the certificate it appears that the jacket/material has durability/resistance to of water is 1300mm and not 10000 (10K) as requested. Clarification: the letter "K" from the Latin language "Kilo" means "thousand", and every number that follows the letter "K" means that number plus three zeros (thousand) after that number. In the specific case, the number 10K should be read as 10,000 (ten thousand). First of all, we clarify that the requirement of the CA 10K/10K means the resistance to water penetration and the breathability of the material, where the first number 10K means 10,000, and represents the material's resistance to water penetration in millimeters of the water column. While the second number 10K represents the ability of the material to release steam, and the number 10000 means the weight in grams of water in the form of steam, which must pass through one square meter of the fabric/material in 24 hours. The EO has provided a certificate where the result of durability/water resistance is 1300 mm. Evidence: Offer of the complaining EO - Test report no. 33200/10.05.2023. The complaining EO claims in the complaint that the test proves that a resistance of 1300K (which means 1300000) has been offered, but this is not the case. In the certificate provided, it is very clear that the unit of measurement is "millimeters of water column", and the result is 1300+-10 (+ -10 means the deviation/tolerance of the test). Furthermore, after the many researches that we have done, we have not found that there is material in clothes with a resistance of 1300K (1300,000), since this would mean the resistance of the material under the pressure of 1300 meters of column of water. Based on what was mentioned above, we estimate that the appeal claim is unfounded.

Claim no. 2 The other reason for the elimination is that the sample for the jacket of the complaining EO does not have an elastic waist. The EO in the complaint parks the photo of the sample, and underlines the elastic part, but according to us this is the upper part of the back /

between the two arms and it is not the waist area. Based on what was mentioned above, we estimate that the complaining claim is unfounded.

Claim no. 3 The reason for elimination in a row was that the EO did not offer testing for fiber analysis. After analyzing the offer of the complaining EO, we found that for the outer and inner jacket it offered tests where it appears that the material is 100% polyester.

Evidence: Appellant's offer - Test report 33200/10.05.2023 Based on the above, we estimate that the appellant's claim is well-founded.

Claim no. 4 The reason for elimination is that the pants do not have an elastic waist. OE claims that it meets the request of the CA. OE provides sample photos, but the same can be seen that the elastic part is below, at the level of the pants' beaks, therefore, we consider that it is not in accordance with the requirements of the file. Based on what was mentioned above, we estimate that the complaining claim is unfounded. Evidence: Complaint of the complaining EO - Sample photo.

Claim no. 5 The reason for the elimination is that the EO does not have the Velcro part for placing the straps on the Chest. The EO claims that it meets the request and in the complaint provides a sample photo, but from the same photo it can be seen that the Velcro for placing the straps is the part of the chest. not shoulder. Based on what was mentioned above, we estimate that the appeal claim is unfounded.

Claim no. 6 The reason for the elimination is that the sample of the shirt has an opening in the upper part of the back, which is not foreseen in the tender file. OE claims that the sample is in accordance with the requirements of the file, however, after analyzing the file and the specifications, we evaluate that such a thing was not requested, and the sample is not in accordance with the requirements of the file. Based on what was mentioned above, we estimate that the complaining claim is unfounded.

Claim no. 7 The reason for the elimination of the complaining EO is that 7 stamps were requested for the shirt, while the complaining EO provided the sample with 6 stamps. We clarify that the decisive request in the file was as follows: "20 ligne (12.5mm) button type 1 in the middle of the front part of the collar, 7 in the front part, 2 functional buttons for each sleeve when folded, 2 buttons for adjustment on each sleeve, 1 spare button, Buttons type 14 ligne (8mm), 2 buttons in the hidden part under the collar; 1 spare button" From the photos of the sample presented by the complaining EO, it can be seen that the shirt has 7 buttons including the front button collar. In this particular case, we consider that the request of the CA was somewhat confusing, therefore, based on what was mentioned above, we estimate that the complaining claim is partially based and we estimate that this can be considered a small deviation in accordance with the legal provisions in force.

Claim no. 8 The reason for the elimination is that the tactical shirt with short sleeves is "Made of material that does not stick to Velcro or other abrasive surfaces — according to the sample submitted, Velcro sticks and the threads come out, the material is sensitive". we can give an

answer since we do not have the technical / professional capacity to do such a test, whether the material is attached to "Velcro".

Claim no. 9 Reason for elimination that tear testing is missing. After analyzing the offer of the complaining EO, we found the certificates where the result for the tearing was given. Proof: The certificates provided by the EO Based on what was mentioned above, we estimate that the complaining claim is grounded.

Claim no. 10 The reason for the elimination is that the EO has provided a sample of the hat which is not made of "Rip stop" material. The EO claims that the sample is in accordance with the request and refers to the attestation for the hat.

After analyzing the certificate for the hat, we estimate that in the certificate the word "rip stop" is written in the description of the sample being tested, which description is given by the client who sends the sample for testing. While the test result does not indicate that the material is rip stop.

Furthermore, as a review expert, we have visited the Kosova Police-CA and have looked at and analyzed the samples, and we estimate that the sample of the hat of the complaining EO is not from Rip Stop material.

Additional clarification: rip stop materials are materials that have an additional seam that increases the resistance to tearing, usually in the form of a quadrilateral or hexagon, and such a seam is missing from the sample of the complaining EO. Based on what was mentioned above, we estimate that the appeal claim is unfounded.

Claim no. 11 The other justification for elimination is that there is no certificate/testing of the tear for the hat. After analyzing the offer of the complaining EO, we found that the EO has offered a certificate for the hat where the tear test is also found.

Based on what was mentioned above, we estimate that the complaining claim is grounded.

Claim no. 12 - The complaining EO claims that the other participating EO did not provide the jacket with the labels indicating the weight of the material. He also claims that the pants do not have the required composition/material, that they do not have the consistency of washing at a temperature of 40 degrees Celsius as requested. After analyzing the offer of the other participating EO, we found that the same certificate has been declared as confidential information, therefore we have no right to make the data from these certificates public in this report. However, we answer that for all these requirements (claimed by the complaining EO), the other bidding EO has provided certificates in accordance with the requirements of the file, including the temperature of 40 degrees Celsius.

As for the samples, after the visit we made to the CA and viewing and analyzing the samples, we estimate that they are in accordance with the requirements of the tender file, except for the hat sample which is marked on the back "Kosovo Police", which was not requested by the technical specification. However, we consider that this constitutes a small deviation, since the sample does not lack what was requested, but the EO has "added" the words "Kosovo Police" for the purpose of identification from behind. We consider that in the event of signing a contract, it would be

easily avoidable during the execution of the contract. Based on what was mentioned above, we estimate that the complaining claim is partially founded.

- Administration and evaluation of evidence -

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 21.09.2023 has authorized the review expert to conduct the initial review of the file and claims according to complaint no. 715/23, while on 22.09.2023 the Review Panel authorized the review expert to conduct the initial review of the file and claims according to complaint no. 719/23.

Regarding complaint no. 715/23 dated 16.10.2023, the review expert's report was submitted with the following recommendations: "Based on the aforementioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO be approved as partially founded, while it remains the decision of the CA is in force.

Regarding complaint no. 719/23 dated 16.10.2023, the review expert's report was submitted 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 be partially approved and remain in force the decision of the CA."

-Review session-

The panel concluded that there are no elements to prevent the conflict of interest, as required in the sense of Article 11 of the Regulation on the Work of PRB, related to paragraph 1.75, Article 4 of the LPP and at the same time analyzed all the documents of this subject, including all the acts and actions of the parties and considered that there is no need to convene a hearing with the parties, as long as the submissions of the parties and their actions constitute a sufficient basis to decide on the merits as provided by paragraph 1, of article 24 of the Rules of Procedure of PRB, and that there is no need to request the contracting authority and/or the complainant to provide additional information and/or explanations, in the sense of paragraph 3, article 116 of the LPP.

- Findings of the Review Panel -

The panel considers that the expertise reports contain a priori the essential elements of such a document as provided by the provision of Article 113 in relation to Article 114 of the LPP, according to which the expert is required to review all the procurement documentation, including all appeal claims and to provide the panel and all parties with an independent and professional assessment of the procurement activity and the validity of the complaint claims. However, it should be noted 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 possible evidence, taking into account the nature of the violations. event, the identity, nature and purpose of the procurement activity.

Therefore, the fact that in which cases and for what, the Panel supports or not, any report and/or any of the 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 LPP.

The review panel independently and objectively, conscientiously and professionally evaluated all the evidence of the case. The review panel assesses that the review expert handled the claims of the complaining EO in a professional and objective manner; "SodexGroup&Runway" SH.P.K. The argumentation in the expert's report is quite detailed, understandable and fully based on the relevant documents that refer to the procurement activity. The findings in the expert's report can be confirmed through the tender file as well as the documents with which the tenderers have bid. Consequently, the Review Panel regarding the claims of the complaining economic operators has given full confidence to the expert's report. In this way, it has been found that the claims of the complaining economic operators are partially founded.

The review panel noted that the LPP, in Article 4, paragraph 1.36, has defined the notion of irresponsible Tenders - the tender which is not in accordance with a) the tender dossier, including technical and contractual requirements, b) the requirements of the legislation relevant of Kosova or who c) otherwise do not fulfill the requirements of the contracting authority as specified in the tender dossier.

The review panel notes that the contracting authority, Kosova Police, regarding the procurement activity "Supply of uniforms for tactical tasks" with procurement number: 214-23-2841-1-1-1, after the evaluation of tender offers dated 29.08.2023, has published the "Notice on Decision B58 of the Contracting Authority" for the cancellation of the tendering activity because all the tender offers are irresponsible, as they do not meet the tender requirements and technical specifications.

The review panel finds that Regulation 01/2022 on Public Procurement in Article 43.5 Procurement Procedure, has determined that after the opening of bids, the tender must be canceled for one of the following reasons: b. none of the accepted tenders is therefore responsible and, based on these legal provisions, CA has canceled the procurement process after evaluating the offers as irresponsible.

Also, the Review Panel finds that in this case, the Kosova Police, based on Article 54 of the LPP "Notification of Eliminated Candidates and Tenderers", through the standard letter for the eliminated tenderer, has notified both economic operators of the causes and reasons evaluating the offer as administratively irresponsible by presenting and specifying all the shortcomings of the EO in its tender offer.

The review panel finds that the complaint is partially based on the complaint of EO "Runway" SH.P.K., and EO "Sodex Group" SH.P.K., against the "Notice on Decision B58 of the Contracting Authority" dated 29.08.2023, of CA - Police of of Kosovo, related to the procurement activity "Supply of uniforms for tactical tasks" with the procurement number: 214-23-2841-1-1-1. and the decision to cancel the procurement activity no: 214-23-2841-1-1, of the CA, remains in force, according to Article 43.5 of Regulation 01/2022 on Public Procurement.

Therefore, acting on the basis of the basic principles of the procurement review procedures, which, among other things, are specifically sanctioned by the provision of Article 104 of the LPP and at the same time analyzing the documents of this case in relation to the facts and circumstances of described as above, and especially paying due attention to the nature and

purpose of the complaining claims, the Review Panel took into consideration all the statements of the complainant, the acts and actions taken by the CA, the review expert's report and analyzed them with takes care of all the papers of this case and considers that the complaining assertions of the complaining EO are unsustainable as they were given in the panel's findings.

Therefore, acting in accordance with the powers cited above and article 104 paragraph 1 and 4 of the LPP, according to which the procurement review procedure will be implemented and carried out in a fast, fair and non-discriminatory manner, that aims at the legal and effective resolution of the case, as well as referring to Article 117 of the LPP, and in the evidence presented above, the Review Panel decided as in the enacting clause of this decision.

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,
within 30 days from the date of acceptance of this decision.

Decision to be submitted to:

1x1 CA – **KOSOVA POLICE**;
1x1 EO – **“RUNWAY SH.P.K., Sodex Group SH.P.K;**
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.