



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

Psh. No.1042/23

The Procurement Review Body through the Review Panel composed of; Isa Hasani-President, Vjosa Gradinaj - Mexhuani and Vedat Poterqoi - member, deciding on the complaint of the economic operator “Instituti i Shkencës dhe Teknologjisë - INSI” Sh.P.K. dated 22.12.2023 against the Notice on the Decision of the Contracting Authority - Ministry of Culture, Youth and Sports dated 01.12.2023 regarding the procurement activity with title “Development of the master plan for the Adem Jashari Memorial Complex in Prekaz in the Municipality of Skenderaj in the Republic of Kosova” with procurement number 207-23-5283-2-1-1, on the basis of Article 105 in relation to Article 106 and Article 117 of the LPP, after consideration in the session without the presence of the parties dated, on the 09.02.2024 has issued this:

DECISION

1. **Refused**, as ungrounded the complaint of “Instituti i Shkencës dhe Teknologjisë - INSI” Sh.P.K, against the Notice on the Decision of the Contracting Authority - Ministry of Culture, Youth and Sports dated 01.12.2023 regarding the procurement activity with title “Development of the master plan for the Adem Jashari Memorial Complex in Prekaz in the Municipality of Skenderaj in the Republic of Kosova” with procurement number 207-23-5283-2-1-1.
2. Remains in force “Notice on the Decision of the Contracting Authority” dated 01.12.2023, Form B58 - Ministry of Culture, Youth and Sports, related to the procurement activity with the data as in point 1. of the provision.
3. Ordered the confiscation of the complaint’s fee is ordered 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 funds go to the budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances –

The Ministry of Culture, Youth and Sports in the capacity of the Contracting Authority has published the Contract Notice B05 related to the procurement activity entitled "Development of the master plan for the Adem Jashari Memorial Complex in Prekaz in the Municipality of Skenderaj in the Republic of Kosova" with number procurement 207-23-5283-2-1-1.

On the 01.12.2023, the Contracting Authority has published the Notice on Decision B58. On the 06.12.2023, the complaining economic operator submitted a request for reconsideration against the Notice on Decision B58 of the Contracting Authority.

On the 14.12.2023, the Contracting Authority made a decision through which it rejected as completely unfounded the request for reconsideration of the complaining economic operator. On the 22.12.2023, the complaining economic operator submitted to the PRB complaint no. 2023/1042.

- 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.

In support of Regulation 01/2020 of the Work of the Procurement Review Body, namely Article 13 Submission of Complaints, paragraph 9 of Article 13 requires that "Complaining claims must be the same as those presented to the contracting authority".

The Review Panel has also concluded that there are no circumstances of conflict of interest in the sense of Article 11 of Regulation no. 01/2020 of the Work of the Procurement Review Body, related to article 4 paragraph 1 subsection 75 of the LPP.

The claims of the complaining economic operator are presented through the complaint as follows:

The first complaining claim: "the economic operator participating in this procurement activity EO "Polis", in the contrary to article 55.24 of the ROGPP, has revealed its identity through the documents submitted to the CA".

The second complaining claim: "The proposal of the number [2606] is overvalued vis a vis the proposal of the number [1111], while the latter is deeply undervalued for the entirety of the proposals made by the Evaluation Commission. The number 2606 has given a general proposal,

superficial and without elaborated values. The concept itself is unaddressed and unarticulated in the proposal document. The concept proposed by the number 2606 is flawed, sterile and merely a superficial description. It has not been elaborated even minimally according to a required structure without managing to build a vision, without defining goals and objectives for development. Meanwhile, the proposal of the number 1111 is elaborated in detail, well defining the Vision for development, specific Goals and Objectives with the instruments through which to realize these objectives. Despite being required by the design task, the memorial complex proposed by number 2606 lacks the understanding of the master plan, lacks the vision, goals and objectives, and also lacks the principles required by the design task for design, so the assessment of his with the maximum score is strange when all these absences are taken as a basis”.

- Administration and evaluation of evidence -

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel on 26.12.2023 engaged the review expert, while on 27.12.2023, engaged the technical expert to do the initial review of the dossier and claims of the complaining economic operator. On the 05.01.2024, the Review Expert's Report was received with the following recommendations: "the review expert and the technical expert propose to the Review Panel that the complaint of the complaining EO be rejected as unfounded and that the decision of the CA remain in force”.

Evaluation of the review expert through report no. 2023/1042, of the complaining claims of the complaining EO, as follows;

Regarding the first claim (I) of the complaint, the reviewing expert presented the following findings in his report: "Initially we confirm that the identity disclosure by EO: "Polis" was also confirmed by the CA-MCYS itself through the decision on the request for reconsideration. Moreover, from the case files, we have not found any evidence that CA-MCYS at any stage disputed this claim of the complaining EO. Actually, starting from the announcement on the decision of the CA signed on the 01.12.2023, the contracting authority has made it known that the EO has revealed the identity. However, the return of the case for re-evaluation on this basis, would not change the final result for this procurement activity, because EO "Polis" is not the EO recommended for the contract. According to the announcement on the decision of the CA dated 01.12.2023, the economic operator ranked with the most points is the offer with code 2606, while EO: "Polis" is ranked last, with the least points of all participating EO, and this EO has not appealed against the announcement on the decision of the CA dated 01.12.2023, which means that it has agreed with the assessment of the CA and is not an interested party for this procurement activity.

While EO "Polis" is ranked last with points, and we have another EO which has received the highest points from all participating economic operators, which also has not revealed its identity, the return of the subject for re-evaluation will only to cause additional delays and expenses with no change in the final result. We consider that such an action would be contrary to the provisions of Article 6 of the LPP - Economy and Efficiency, as it is neither economical nor efficient to repeat or drag out procedures that lead to the same result. Based on what was mentioned above, we estimate that the complaining claim and the request of the EO that the case be returned for re-

evaluation because one of the EOs (ranked last with points) has revealed its identity is unfounded.

Regarding the second claim (II) of the complaint, the following findings are presented in the expertise report: "As a technical expert, I first consider it important to emphasize the fact that the evaluation of the projects was made by a professional commission of five members and a monitor. Within this commission, there was an architect from MCYS and MESP, a construction engineer and an anthropologist from the University of Pristina, an architect from the Association of Architects of Kosova and a procurement official from MCYS as a monitor of the evaluation process. For the examination of this subject, I was able to give the maximum in the fair, ethical and professional evaluation, taking into account the importance of the activity. Based on the review of the projects that have applied in this design competition, it can be seen that the project selected by the Professional Jury from CA with the number 2606, is significantly more meritorious compared to other competing projects, therefore I agree with the assessment of the professional jury.

The project concept presented with the number 2606 is visionary, comprehensive, integrative, incorporating within the complex the natural and human factors, the cultural landscape, the visitor's perception, the sense of pride for the past, as well as for cultural advancement in the future. As for the treatment of the physical infrastructure in the presented projects (sports fields, roads and parking lots) of the project with the number 2606, they are located in the suburbs, to provide cleanliness and tranquility in the area of the memorial complex, while the concept of the project with the number 1111 they are concentrated near the complex. The project presented with the number 2606 includes a much wider treatment area than the project with the number 1111, therefore I propose to the Review Panel that the complaint of the EO with the number 1111 be rejected as unfounded and the decision of the CA remains in force.

According to the above, the reviewing expert handled all the claims of the complaining economic operator in a professional and objective manner. The argumentation of the reviewing expert is detailed, understandable and based on the relevant documents that refer to the procurement activity. The findings of the expert can be confirmed through the tender file as well as the documents with which the tenderer has bid. Moreover, the findings of the review expert are also based on the relevant provisions of the LPP and RRPP.

- Findings of the Review Panel -

The Work Regulations of the Public Review Body, which is published on the PRB website, with Article 20, paragraph 2 of the Regulations, 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 papers of this case, the Panel considers that regarding the matter 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 and technical 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 in relation to article 114 of the LPP, according to which the expert is required to review all procurement documentation, including all appeal claims and to provide the Panel and all disputing parties 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 eventual 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 the recommendations, belongs to its independent and professional judgment/ thanks, just as these responsibilities are addressed in terms of article 98, 99 related to article 105 of the Public Procurement Law.

The Panel assesses that the Review/Technical Expert's Report has handled the claims of the complaining Economic Operator in a professional and objective manner, the report is based entirely 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 offered. The Review Panel regarding the claims of the complaining economic operator has given full confidence to the expert's report, according to which the complaining claims of the complaining economic operator have been assessed as unfounded. In this way, it was found that the Contracting Authority did not act contrary to the provisions, as claimed by the complaining economic operator.

Regarding the first complaint, the review panel noted that the disclosure of the identity by EO "Polis" was also confirmed by the contracting authority itself through the decision on the request for reconsideration, where the contracting authority informed that the EO had disclosed the identity. However, the return of the case for re-evaluation on this basis, would not change the final result for this procurement activity, due to the fact that the complaining EO "Polis" is not recommended for the contract. According to the announcement on the decision of the CA dated 01.12.2023, the economic operator ranked with the most points is the offer with code 2606, while EO "Polis" is ranked last. Therefore, the return of the case for re-evaluation would only cause additional delays and expenses with no change in the final result, therefore, based on this above-mentioned fact, the appeal claim is assessed as unfounded.

As for the second complaint, the review panel found that the evaluation of the projects was done by a professional commission of five members and a monitor. Within this commission, there was an architect from MKRS and MMPHI, a construction engineer and an anthropologist from the University of Pristina, an architect from the Association of Architects of Kosovo and a procurement official from MKRS as a monitor of the evaluation process. After evaluating the projects of this design competition, the professional Jury from the CA has selected the project with the number 2606, it is quite comprehensive and integrative, incorporating within the

complex the natural and human factors, the cultural landscape, the perception of the visitor, the sense of pride for the past, as well as for cultural advancement in the future. As for the handling of the physical infrastructure in the presented projects (sports fields, roads and parking lots) in the project with the number 2606, they are located in the suburbs, to provide cleanliness and tranquility in the area of the memorial complex, while in the concept project with the number 1111 they are concentrated near the complex. In this way, the Review Panel has found that the jury's assessment in this particular case is a fair assessment, while the complaining claim is unfounded. The panel also took into account the complaining statement regarding the bidding through e-procurement, while after the e-procurement verification, it was noticed that none of the offers, including the complaining EO's offer, is found in the e-procurement system, therefore the panel concluded that the CA acted in the sense of Article 7 of the LPP, where the treatment of all bidders from this point of view is done equally.

The review panel after the administration and evaluation 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, including the recommendation of the professional evaluation committee, the recommendations of both review and technical experts, and in the absence of any convincing argument that the recommended EO is irresponsible, has found that the Economic Operator's complaint should be rejected as unfounded. Consequently, the Review Panel has decided to validate the Notice on the Decision of the Contracting Authority - Ministry of Culture, Youth and Sports dated 01.12.2023, regarding the procurement activity entitled "Development of the master plan for the Adem Jashari Memorial Complex in Prekaz in the Municipality of Skenderaj in the Republic of Kosovo" procurement number 207-23-5283-2-1-1.

The review panel, based on the fact of the rejection of the economic operator's complaint, decides to confiscate the complaint fee in the amount deposited by the complaining EO based on article 31 par. 5 of the Rules of Procedure of the PRB while the funds go to the budget of the Republic of Kosovo.

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 examine 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" in relation to article 59.1 cited "The contracting authority shall establish an Evaluation Commission for examination, evaluation and comparison of bids. All members of the Evaluation Committee take full individual responsibility for the performed evaluation of the bid"

The Review Panel has decided in accordance with the legal powers in the sense of Article 104 paragraph 1 and paragraph 4 related to Article 103 and Article 105 of the LPP for the implementation of the procurement review procedure in a fast, fair, non-discriminatory manner, with purpose of the 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 may appear during a procurement activity.

For points 1. and 2. of the decision, it was decided based on article 117 of the LPP in relation to article 29 of the PRB Work Regulations.

For point 3. of the decision, it was decided based on article 118 of the LPP in relation to article 31 paragraph 5 of the PRB Work Regulations.

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 – **MINISTRY OF CULTURE RS AND ČJK;**

1x1 EO – **Instituti I Shkencës Dhe I Teknologjisë Insi SH.P.K;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.