



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

Psh. No.613/23

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, Vjosa Gradinaj Mexhuani – member, Vedat Poterqoi - member, deciding according to the complaint of the economic operator EO “DIAMANTI SH.P.K.”, against the Contract Notice or the tender documents related to the procurement activity: “Expansion of the water supply network in Stanoc, Dumnica, Pasome, Beqiq, Duboc, Bequk, Stroc, Zhilivod and in Prelluzha”, with procurement no: VU644-23-6530-5-1-1, initiated by the Contracting authority –Municipality of Vushtrri, on the 11/09/2023 has issued this:

DECISION

1. The review procedure in this administrative matter ends, due to the agreement reached between the parties, the Municipality of Vushtrri as the contracting authority and the Economic Operator “DIAMANTI SH.P.K.”, related to the procurement activity: “Expansion of the water supply network in Stanoc, Dumnica, Pasome, Beqiq, Duboc, Bequk, Stroc, Zhilivod and in Prelluzha”, with procurement no: VU644-23-6530-5-1-1.
2. It is allowed to return the complaint’s fee to the amount deposited at the time of filing the complaint. The complaining EO is obliged to, in accordance with Article 31 point 6 of the Rules of Procedure of the PRB, within a period of 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 go to the Budget of the Republic of Kosova.

REASONING

On the 06.07.2023, the Municipality of Vushtrri, in the capacity of the Contracting Authority, has published the Contract Notice (CN) and the tender dossier (TD), for the procurement activity: “Expansion of the water supply network in Stanoc, Dumnica, Pasome, Beqiq, Duboc, Beqok, Stroc, Zhilivod and in Prelluzha”, with procurement no: VU644-23-6530-5-1-1.

Planned date of opening of offers: 14.08.2023, related to the procurement activity, described as in the preliminary paragraph of this reasoning.

On the 08.08.2023, EO "Diamanti" Sh.P.K, in his/her capacity as a dissatisfied party with the cited decision, submitted a request for reconsideration, which was rejected by the Decision of the CA dated 14.08.2023. Meanwhile, on the 24.08.2023, "Diamanti" Sh.P.K filed a complaint at the PRB, against the above-mentioned decision of the CA, which was recorded with protocol number 613/23.

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 after the conducting of 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 it fulfills the conditions set forth in the sense of the provisions cited and falls under the powers of this body in terms of Article 105 of the LPP.

Based on the actions described above, the PRB has engaged the evaluation expert in accordance with Article 111, paragraph 5 of the LPP, with the duty that the same in the sense of Article 113 of the cited Law, make the initial review of the dossier and the complaining claims, in relation to the procurement activity described above. In this regard, on the 06.09.2023, the review expert submitted the evaluation report with the following recommendations:

- The complaint is approved as grounded;
- To cancel the contract notice and if the CA is still interested, re-tender the procurement activity.

It is established in advance that the expert report contains the essential elements as required by article 113, paragraph 3 of the LPP and the same has been accepted by both parties, in accordance with article 115 of the LPP in relation to article 20 of the cited Regulation. In this case, it is evident that both parties (CA and EO) are aware of the complete documents of this case as required in accordance with paragraph 2, Article 20 of the Work Regulation of PRB and that both parties have formally declared the CA on 9 of Septemeber 2023 and the Complainant on the 6 of September 2023 that they agreed with the report cited above.

Based on the above, the Panel considers that the review procedure ends at this stage, in terms of the agreement (agreement) reached by the parties and consequently the same has lost the claim, respectively the subject of complaint as expressly required by the provision of Article 11 of the

LPP. On the occasion of examining the documents of this matter, its nature and purpose, the Review Panel considers that the parties can resolve the possibly conflicting reports between themselves in those cases where, thanks to the legislation, they freely dispose of their rights.

The agreement reached between the parties does not fall in line with the basic principles and provisions of the Law on Public Procurement of the Republic of Kosova and does not attack the institutional independence of its CA to resolve the contentious issue, since the nature of the issue in the present case allows it, among others in accordance with article 19 paragraph 4 of the PRB Work Regulation No. 01/2020 (amended).

However, the Panel reminds the parties that in terms of Article 19, paragraph 4, of the Regulation on the work of PRB, it is provided that, quoted: “In the event that the contracting authority and the complainant agree with the review expert's report, the review panel issues a notice that the contracting authority within 5 days to implement the review expert's report by notifying the parties in the procedure”.

Therefore, from the above, the review panel in accordance with article 105, 116 and 117 of the LPP decided as in the provision of this decision.

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 – Municipality of Vushtrri;
1x1 EO – “DIAMANTI SH.P.K.”;
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.