



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

Psh. No.611/23

Review Panel, appointed by the President of the Procurement Review Body (PRB), Pursuant to the article 105, article 106, and 117 of the Law on Public Procurement of the Republic of Kosova (LPP), as well as articles 21 and 29 of the PRB Work Regulations 01/2020 amended on 09.08.2023, composed of: Agon Ramadani - President, Vjosa Gradinaj Mexhuani - Member, Vedat Poterqoi - member, deciding according to the complaint of the Economic operator (EO) “Internacional Group Base” SH.P.K. against the Decision on contract award or a design competition of the Kosova Police in the capacity of Contracting Authority (CA), regarding with the procurement activity: “Cleaning Services at KP Facilities” with procurement no: 214-23-5718-2-1-1, on the 20/10/2023 has issued this:

DECISION

1. Approved as grounded the complaint of the “Internacional Group Base” SH.P.K, with no.2023/611 on the 24/08/2023, while the decision of the CA - Kosova Police, related to the procurement activity: “Cleaning Services at KP Facilities” with procurement no: 214-23-5718-2-1-1, is cancelled, while the procurement activity is returned to re-evaluation.
2. Within 10 days, the CA must inform the PRB about all the actions undertaken in relation to this procurement activity, otherwise, the PRB has the right to take measures against the CA for non-compliance with the decision as provided by the provisions of Article 131 of the LPP.
3. Are returned the funds deposited in the name of the tariff tax for submitting the complaint to the account of the Economic Operator “Internacional Group Base” SH.P.K.

REASONING

- Procedural facts and circumstances –

The Kosova Police in the capacity of the Contracting Authority dated 12.06.2023 presented the Contract Notice B05, for the procurement activity with title: “Cleaning Services at KP Facilities” with procurement no: 214-23-5718-2-1-1.

CA on the 15. 08. 2023 published Notice B58 where it recommended for contract EO “Mobile Sanitary Services SHPK”.

On the 21.08.2023, the economic operator "International Group Base" SH.P.K. has filed a request for reconsideration against the CA Notice cited above, for which the CA has only issued a notice.

On the 24.08.2023 EO "International Group Base" SH.P.K submitted a complaint to PRB (recorded with number 611/23).

- During the preliminary review phase-

The PRB has determined that the complaints contain all the elements defined through Article 111 of the LPP and as such were submitted within the legal deadline according to 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 economic operators who are interested parties according to article 4 paragraph 1 subsection 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.

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 subparagraph 75 of the LPP. Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 29.08.2023 has authorized the review expert to conduct the initial review of the dossier and complaining claims.

Regarding complaint no. 611/23, dated 14.09.2023, the review expert's report was submitted with the following recommendations:

- The complaint of the complaining EO be approved as grounded;
- To return the case for re-evaluation

The expertise’s report has been duly accepted by all procedural parties. The Contracting Authority has stated that it agrees with the recommendations of the review expert, while the complaining economic operator, while the complaining EO has not declared. The Review Panel finds 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 under paragraph 75 of the LPP.

- Evaluation and administration of evidence –

The claims of the complaining economic operator "International Group Base" SH.P.K. are presented as follows:

- The first claim (I): "The main complaining claim according to complaint no. 611/23 is about the "Notice" of the CA-KP, through which the CA has dismissed the request for reconsideration of the complaining EO as incomplete. ...we do not have the opportunity to intervene in the system and why our data did not come out in the request for re-examination, it may be a malfunction of the system itself, but as long as they went from our user, then for CA they are announced no data.

Findings of the review expert

Regarding the claims of EO, the review expert through report no. 2023/0611 assessed as follows:

First finding (I) - CA-KP initially after accepting the request for reconsideration on 21.08.2023, after noticing that in the request in question - the document/request for reconsideration on the first page, the data of the EO, such as the name, are missing, postal address, etc..., through E-Procurement in the "Standard Documents-Letters" column, has uploaded a notification citing the provisions of Article 60.3 of Regulation 001/2022 on public procurement, which provision defines the data that must be contained in the complaint. Proof: E-Procurement-Standard letters "Notice 21.08.2023". On 23.08.2023, CA-KP dismisses the request in question as incomplete, referring to Article 61.2 of the regulation The Contracting Authority, respectively the Responsible Procurement Officer, will ask the applicant to fulfill his request within a period not longer than two (2) days from receiving the request. If the applicant does not act on the aforementioned request, the reconsideration requests will be rejected as incomplete. The complaining EO claims that it is impossible for the same to intervene in the data that appears: the "Notice" of the CA-KP, through which the CA rejected the request for reconsideration of the complaining EO as incomplete. "...we do not have the opportunity to intervene in the system and why our data did not come out in the request for re-examination, it may be a malfunction of the system itself, but as long as they went from our user (user), then for CA they are announced no data". Since from the position of PRB's review expert we are not informed of the details of how the e-procurement system works from the position of the Economic Operator, we have requested clarification from PPRC. Evidence: Our request for clarifications to PPRC and PPRC responses. In summary, we asked for clarifications on whether the CA's request for completion was made in the correct form and whether the EO has the possibility to intervene in the data that appears in the request/first page. From PPRC dated 13.09.2023, we received a response that: "The contracting authority within the procedure details - folder "Standard Documents-Letters" has the option to send any document to the EO in addition to the standard letters, including the document/request that has do it with "request for reconsideration". During the preparation of the "request for reconsideration" by the EO, in the relevant steps or in the 3rd step "Identification of the EO", the system automatically fills in the data of the EO. This part is also explained in the manual for EO about the preparation and submission of the request for reconsideration. If the data of the preparation steps of the request for reconsideration did not appear in the request for

reconsideration document created in step 9, then this is a consequence of the system during the creation of the document in the corresponding step. Also at the end of PPRC response it is stated that: However, in relation to this part or at the moment of creating the request for reconsideration, the Manual for EO on the preparation and submission of the request for reconsideration advises the EO as follows: "Request for reconsideration" should be downloaded in order to check the data noted in the preliminary steps (if the created request contains all the data in the correct form), and it is not required that the request be signed and stamped by the EO. So, only the data is checked and if all the data is correct, then it continues via the "Save and continue" button. If the EO wants to upload the signed "Request for Reconsideration" and any other supporting documents of the "Request for Reconsideration" then I can do this using the "Upload" buttons. After analyzing the complaint claims, CA notices and in particular the clarifications provided by PPRC, we give our assessments as follows: 1. Lack of EO data (name, postal address, electronic address, phone number) within first page of the document/request, it did not happen through the fault of the complaining EO, these data are automatically filled in by the system according to the clarifications of the PPRC. According to the clarification of the PPRC, the contracting authority "has the option to send any document to the EO in addition to the standard letters, including a document/request related to a "request for reconsideration". In the specific case, AK-PK did not send a "Request" to the EO for completion, and uploaded a "Notice" in the "Documents and Standard Letters" section. Article 61.2 of the regulation states, among other things, "...the Contracting Authority, respectively the Responsible Procurement Officer, will ask the applicant to fulfill his request." In the "Notice" of the CA-KP, nowhere is the applicant "requested" to "fulfill" his request. Proof: E Procurement - Standard Letters Notice 21.08.2023. In this particular case, the expert's opinion is that the CA wants to send a "request" in a clear and concise way to complete the request for reconsideration. CA in this case has not sent a "Request", nor has it requested "completion of the request", as provided by the provisions of Article 60.1 of Regulation 001/2022. In the answers/clarifications of the PPRC it is also stated that in the manual for EO, the same are "advised" to download the request to check that it contains all the data, however, neither from the clarifications of the PPRC nor from the announcements of the CA-KP there is any instructions on how to correct the data of the EO if they are incorrect, since as we understood during the review of this complaint and the responses of the PPRC, economic operators cannot interfere with this data and "the system automatically fills in the data of EO". Based on all that was mentioned above, the expert's opinion is that the conditions of Article 61.2 in relation to Article 60.3 of Regulation 001/2022 have not been met, and the complaining EO has been prevented from realizing the right to Preliminary Dispute Resolution according to Article 108 /A. On this basis, the reviewing expert assesses that there is no need to address the other claims of the complaining EO, and we recommend that the case be returned to the CA-KP for review, in order that the CA-KP in accordance with Article 108/A of the LPP respond to all claims of the complaining EO and issue a "Decision" on the request for reconsideration in accordance with the provisions of the LPP.

Findings and conclusions of the Review Panel

The panel considers that the review expert handled in a professional and objective manner all the claims of the complaining economic operator "International Group Base" SH.P.K.. The

arguments in the report cited above of the review expert are detailed, understandable and based on the documents relevant to the procurement activity. The findings in the review expert's report can be confirmed through the tender dossier as well as the documents with which the tenderers have offered. Moreover, the findings of the review expert are also based on the relevant provisions of the LPP and RRPP, and consequently the Review Panel regarding the analysis of the claims of the complainants has forgiven the trust of the report of the review expert. In this case, the Panel considers that: The complaining claims of the complainant "International Group Base" SH.P.K. are sustainable.

The Review Panel administered all the documents of this case, including the acts and actions of the CA, the submissions and evidence of the appellant and the review expert's report and by analyzing all of them in the general context of this issue, it created its independent conviction/ because the CA did not act in accordance with the provisions cited as the expert report, In this case the Panel explains that the expert report was drawn up in a professional manner and that it contains all the complaining assertions and analyzes related to them, explaining them specifically in relation to the violated provisions, as this is required at least by the provision of article 113 and 114 of the LPP. The review expert's report does not produce binding effects for any of the parties nor for the review panel, therefore the same (and of course its evidentiary values) are always analyzed in relation to all the documents of a case, with the course of the procurement process, the actions of parties, the purpose and nature of a procurement activity, which in principle aims to fulfill public needs, with the use of public funds, which have been entrusted to each CA, at any level. Therefore, the review panel after reviewing the case documents, reviewing the complaint claims of the complaining EO, the findings, concrete analysis and recommendations of the review expert, the declaration of the parties in the procedure, the discussions and the administration of the evidence as a whole, and the entire activity of the procurement of noted above, has reached the final decision that the matter should be reassessed and the complaints presented by the complainant in accordance with Article 108/a should be dealt with, while as the key circumstances that led to the decision-making as in the provision, without the need to repeat the evaluations of the expert, in which the panel found support, were the facts presented that in addition to the fact that the complaining EO was identified on the procurement platform, it was also clarified through the PPRC that the page on the identification of EOs is filled automatically by the system. According to the clarification of the PPRC, the contracting authority "has the option to send any document to the EO in addition to the standard letters, including a document/request related to a "request for reconsideration". In the specific case, CA-KP, according to the data, was not sent to EO "Request" for completion, and uploaded "Notification" in the "Documents and Standard Letters" column. Article 61.2 of the regulation states, among other things, "...the Contracting Authority, respectively the Responsible Procurement Official, will ask the applicant to fulfill his request." In the "Notice" of the CA-PK, nowhere is the applicant "requested" to "complete" his request, while in this particular case the weight of responsibility according to the panel cannot be fully assigned to the complaining EO due to the fact that according to the clarifications of the same, they also cannot intervene in the completion of that page and there is also no explanation how the situation could be improved.

Therefore, referring to the above and based on the comprehensive administration of evidence, available in the documents of this case, the Review Panel based on article 98, 99 related to article 104 and 118 of the LPP, decided as in the dispositive of this Decision.

For point I 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 III of the decision, it was decided based on article 118 of the LPP in relation to article 31 paragraph 6 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. 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 – **KOSOVA POLICE**;
1x1 EO – **INTERNACIONAL GROUP BASE SH.P.K** ;
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.