



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

Psh. No.600/23

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, deciding according to the complaint submitted by the Economic Operator (OE) “Arianit R. Bytyqi”, against the Decision to cancel the procurement procedure of the "Municipality of Podujeva" in the capacity of the Contracting Authority (CA) related to the procurement activity "Implementation of the digital platform in the teaching process" with procurement number 615-22- 11546-2-1-1, on the 06/12/2023 has issued this:

DECISION

1. Approved as partly grounded the complaint of the EO “Arianit R. Bytyqi”.with number: 600/2023, of the 21/08/2023, whereas the decision of the CA "Municipality of Podujeva" related to the procurement activity "Implementation of the digital platform in the teaching process" with procurement number 615-22-11546-2-1-1, is cancelled, meanwhile the procurement activity is returned to Re-evaluation.
2. Within a period of 10 days, the CA must inform the PRB about all the actions taken regarding 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 the article 131 of the LPP.
3. It is allowed the return of funds deposited in the name of the complaint’s fee EO “Arianit R. Bytyqi, 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, 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 20.10.2022, the "Municipality of Podujeva" as the Contracting Authority has published the Notice for Contract B05 related to the procurement activity entitled "Implementation of the digital platform in the learning process" with procurement number 615-22-11546-2-1 -1. While on 02.08.2023 B58 published the Notice on the CA's decision to cancel the procurement activity.

This procurement activity was developed through an open procedure with the service contract type and with an estimated contract value of 183,750.00 €.

On the 07.08.2023, EO "Arianit R. Bytyqi" submitted a request for reconsideration against the aforementioned decision of the CA. On the 10.08.2023, the Contracting Authority rejected the request for reconsideration as unfounded.

On the 21.08.2023, PRB received the complaint from EO "Arianit R. Bytyqi". with no. 600/23 related to the activity "Implementation of the digital platform in the teaching process" with procurement number 615-22-11546-2-1-1.

-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.

-Complaining claims of the EO "Arianit R. Bytyqi"-

The first claim (I) the complainant claims that: "We claim that this provision of the LPP has been violated as the CA- Municipality of Podujeva has not treated in principle the RROUP and the LPP including Article 72. The reason for canceling the procurement activity is contrary to these provisions since the conditions and conditions for a procurement activity to be canceled according to the LPP article 72 are not met. The decision on the cancellation dated 02.08.2023 is contrary to the legal provision LPP and RROUP and the Decision PSH PRHO 2023/0151 3 1.05.2023 . In the standard letter for the tenderer eliminated from dt. 02.08.2023 for EO Arianit R. Bytyqi " B.I. NTSH UNISOFT, Pristina as the justification for the elimination is: 1. Some points are missing from the specification.

The second complaint (II) that the document certifying the ownership of the materials is missing. We as EO Arianit R. Bytyqi B.I. NTSH UNISOFT, we presented sufficient arguments which were proven during the presentation and in the clarification requested by the CA that we as EO meet all the requirements in the tender file, the technical specification related to the requirements that the CA decided. Also, we as EO have attached the links for online verification of all claims.

User manuals and video recordings. If CA KK Podujevë was not able to evaluate the offer, or there is uncertainty about the above-mentioned points, I was able to request additional clarifications according to article 59, point 2. and article 72 of the LPP. Our e-diary platform fulfills all the requirements as follows, in addition to the requirements that were requested by AK MA Podujeve, our platform also offers additional options that were presented during the presentation on dt. 17.01.2023.

Referring to the claims as above "Arianit R. Bytyqi". considers that the Contracting Authority acted in violation of Article 1, paragraph 1, Article 7 paragraph 1,2,3,4,6, Article 59 paragraph 1,3,4, Article 62 paragraph 1,2, as well as Article 72 paragraph 1 ,2,3 of the LPP.

- During the preliminary review phase-

The Review Panel concluded that the complaint in this case was filed 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 conducting a preliminary procedure for dispute resolution 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 contains the essential elements provided for in Article 111, of the cited Law, it means that the same meets the prerequisites in terms of the cited provisions and fall under the powers of this Body, in the sense of 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 under paragraph 75 of the LPP.

Based on the actions described above, the PRB has appointed the Review Panel and has also appointed the evaluation expert, as provided by article 111, paragraph 5 of the LPP, with the duty that the same in the sense of article 113 of the cited Law, to do the initial review of the file and appeal claims, in relation to the procurement activity described above.

- Report of the Review Expert - administration and evaluation of evidence -

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 24/08/2023 has authorized the expert to conduct the initial review of the file and claims according to complaint no. 600/23, while on 03/09/2023 the expert's report with no. 2023/0600 with the following recommendation: Based on the above-mentioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO "Arianit R. Bytyqi" be approved as based, and recommends that B58 - Notice on the CA Decision be canceled and that the matter be returned to Reassessment.

The expertise's report has been duly accepted by all procedural parties. CA about the recommendations of the review expert's report, "The contracting authority does not agree. While EO agrees with the expert's recommendation.

The reviewing expert clarifies that for this procurement activity the complaint submitted to the PRB is for the second time, where the complaint was previously handled and it is the PRB's Decision no. 2023/0151. The appeal claim concerns the technical specifications.

Regarding the complaining claim of the complaining EO that it was eliminated because it did not meet the mandatory technical specifications required in the tender file, the reviewing expert clarifies that the complaining EO "Arianit R. Bytyqi" based on the documents submitted in its submitted offer dated 30/11/2022, submitted a Declaration for Technical Specification, Declaration for ownership and copyright, Declaration for maintenance and warranty, declaration for technical and professional skills (evidence for software development and production). According to the Decision of the PRB dated 31/05/2023, the matter has been re-evaluated and the Contracting Authority during the re-evaluation of the offers on 06.07.2023 through e-procurement has requested additional clarifications from the complaining Economic Operator "Arianit R. Bytyqi" by use form B47 Standard Letter of Request for clarification of the tender. The complaining Economic Operator "Arianit R. Bytyqi" on 07.07.2023 through e-procurement uploaded the clarifications requested by the Contracting Authority according to the request in the standard letter. The documents requested through the standard letter from CA, the complaining Economic Operator "Arianit R. Bytyqi" has submitted the materials of the platform, the Appendix, which has 38 pages, the declaration for the Verifier of the right of ownership, Annex 1, Technical Specifications, sealed and signed. The review expert finds that the complaining EO meets all the criteria, the technical specifications required in the tender file and that the EO's complaining claim is grounded.

The Contracting Authority has not fully respected the provisions of Article 1, 7 since the complaining EO claims that it meets all the required criteria, including the required technical specifications. The Contracting Authority has made the cancellation contrary to the provisions of Article 62 of the LPP, since according to article 62.2.1 of the LPP, the CA can terminate a procurement activity if all responsible tenders contain prices that exceed the budget of the Contracting Authority, which in this case was not a basis for cancellation.

- Findings of the Review Panel -

The review panel independently and objectively, conscientiously and professionally evaluated all the evidence of the case. In this way, it was found that the Contracting Authority did not act in accordance with the legal provisions for public procurement and the requirements of the Tender Dossier related to the procurement activity "Implementation of the digital platform in the teaching process" with procurement number 615-22-11546-2 -1-1.

The review panel notes that the CA standard letter for the eliminated tenderer EO Arianit R. Krasniqi, dated 23.6.2023, in the justification, it is noted that the specifications are missing, without describing what those deficiencies/documents are, which were DT requests, therefore the Panel finds that this way of reasoning is not in accordance with the requirements of the Law of the LPP, Article 108/A and 54, and creates difficulties in evaluating the complaints, even for the Panel itself, to evaluate the complaints of the complainant in a meritorious manner.

The review panel reminds the CA, that according to article 108/A, point 12 of the LPP, the preliminary resolution of disputes, determines the objections and the decisions approved in accordance with paragraphs 8 and 10 of this article, must be justified and communicated with in writing, in accordance with this law, to the complainant.

Likewise, Article 54, Notification of Eliminated Candidates and Tenderers, of the LPP stipulates that whenever a contracting authority eliminates a candidate or tenderer from further participation in the procurement activity, such contracting authority must immediately notify the candidate or tenderer. in writing on this fact.

Such notice must at least contain information explaining the relevant reasons in accordance with:

- 1.1. in the event of candidate elimination, the notice will explain the reasons for rejecting that candidate's request to participate.
- 1.2. in the event of the elimination of a tenderer who has been eliminated due to irregularities or otherwise inappropriate tendering, the notice shall specify the deficiencies in such tender.
- 1.3. in case of an unsuccessful tenderer, who has submitted a responsive tender, the notice will specify the relevant characteristics and advantages of the winning tender as well as the name of the winning tenderer.

Pictures refer to the expertise's report no.600/23

The review panel after the administration and assessment of the evidence, the complete ascertainment of the factual situation, relying on the LPP as applicable material law, after examining the appeal claims, especially the Decision of the CA dated 18.10.2023, the Standard Letter of the CA, dated 26.3.2023, and the review expert's report, has decided regarding the procurement activity entitled "Implementation of the digital platform in the teaching process" with procurement number 615-22-11546-2-1-1, to cancel the notification for the cancellation of the procurement activity and the matter is returned to re-evaluation.

The Review Panel has decided in accordance with the legal powers in the sense of Article 104 paragraph 1 in relation to Article 103, Article 105 and Article 117 of the LPP for the implementation of the procurement review procedure in a fast, fair, non-discriminatory manner, in order to 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 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 II of the decision, it was decided based on article 131 of the LPP in relation to article 29 paragraph 3 of the PRB Work Regulations.

For point III of the decision, it was decided based on article 31, paragraph 4 and paragraph 6 of the Rules of Procedure of the PRB in relation to article 118 of the LPP.

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 – **Municipality of Podujeva;**

1x1 EO – **“Arianit R. Bytyqi;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.