



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

Psh. No.785/23

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 (Law No. 04/L-042, supplemented and amended by Law 04 /L-237, Law 05/ L-068, and Law 05/ L-092), composed of: Isa Hasani - President, deciding according to the complaint submitted by the Economic Operator (OE) “Runway” SH.P.K., regarding with the procurement activity entitled: “Supply of civilian clothes and shoes for women – Ritender” with procurement no: 214-23-7681-1-1-1, initiated by the Contracting Authority (KA) - Kosova Police, on the 11.01.2024 has issued this:

DECISION

1. Approved as partly grounded the complaint of the Economic Operator “Runway” SH.P.K. with number: 785/2023, against the publication of the "Notice on the Decision of the Contracting Authority", for the procurement activity “Supply of civilian clothes and shoes for women – Ritender” with procurement no: 214-23-7681-1-1-1, initiated by the Contracting Authority (KA) - Kosova Police.
2. Canceled "Notice on the Decision of the Contracting Authority", of the 27.09.2023 for cancellation of the procurement activity and the case returns for re-evaluation.
3. It is allowed the return of funds deposited in the name of the complaint’s 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 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 24.05.2023, the Kosova Police, in the capacity of the Contracting Authority, published the contract notice for the procurement activity entitled: "Supply of civilian clothes and shoes for women - Retender" with no. of procurement: "214-23-7681-1-1-1". Meanwhile, on the 27.09.2023, the notice on the decision of the CA was published.

EO "Runway" Sh.P.K. on the 02.10.2023 submitted a request for reconsideration to the CA.

CA- The Kosova Police makes a decision to reject as unfounded the request for reconsideration of EO "Runway" SH.P.K. as well as to remain in force the decision on the cancellation by the CA- Kosova Police regarding the procurement activity in question, as well as the Kosova Police to continue according to the LPP regarding the procurement activity "Supply of civilian clothes and shoes for women - Retender" with procurement number: "214-23-7681-1-1-1" initiated by the Contracting Authority.

Dissatisfied with the decision of the CA, the complaining EO "Runway" Sh.P.K. on the 12.10.2023 submitted a complaint to PRB, with protocol number 785/23, against the decision of the Contracting Authority regarding the procurement activity described above.

The contracting authority has implemented an open procedure, type of contract: Supply, estimated value of the contract: 161,505.00 €.

-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.

-Evidence administration and evaluation-

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.

Complaining claims of Economic Operator "Runway" SH.P.K 2023/0785 as follows:

Claim 1. The complaining EO has claimed that: "As the first point of elimination according to the CA, it is not specified in the certificate that the offered shoe is 100% leather, it only says: natural leather. This reasoning does not hold and is completely contrary to article 59 of the LPP as they were able to clarify based on article 59.4 as the certificate was submitted with an offer

and the laboratory is accredited, the CA was able to ask the laboratory as it says in the certificate Natural leather and water resistance, also in the written test according to which method the water resistance test was done. If the CA does not trust the certificates of the accredited laboratories that are trusted institutions of the states, then I should not ask for them as criteria for the tender files. Also, the CA of the Kosovo Police was able to contact the laboratory itself and clarify whether they are resistant to water, but this clearly shows that it is written on it, and they have no reason to explain to me that they were not able to write to the laboratory when it was mentioned in the certificate, this does not require comment that this is intentional. According to this answer from the CA, you can understand that neither the evaluation commission nor the procurement manager know if the laboratory says that the leather is natural, it is understood that it is 100% leather, but the Albanian laboratory has the professional terms and for this they had to write to the laboratory whether the leather is 100%."

Claim 2 "Another point of elimination according to the CA that: "While the sample offered the rubber layer is not soft and creates noise when walking due to the hard material", we have submitted the rubber sample and the evaluation commission's finding only with visual sight - with eyes this is subjective about this assessment but for this reason they were able to send to accredited laboratories in the region and not to eliminate the company without right. To the knowledge of the procurement commission and manager who makes such amateur mistakes, nowhere in the tender file does it say "soft" rubber, but only rubber. Look at the specifications of the tender file: 0 They must not slip and make noise while walking - they must be rubber coating; The assessment committee, no one from the assessment committee is of a certain profession and they have no right to give a visual assessment of the shoe rubber as this is what the laboratories and institutes licensed for this are licensed by accredited authorities, also how is it If possible, the evaluation commission gives me a finding that the tire is not soft, this finding for our company is general and discriminatory, since soft rubber was not requested, but only rubber."

Answer to the claims of EO "Runway", the review expert through report no. 2023/0785 assessed as follows:

Regarding claim 1. that in the A-test submitted by the complaining EO, it was not mentioned whether the shoes are 100% natural leather, the examining expert clarifies that one of the mandatory technical specifications in the DT for summer shoes was for the shoes "to be 100% of leather material, to be proven by a-test and water resistance". The complaining EO has offered the A-Test, in which it is emphasized that the shoes are made of natural leather, but this test does not meet the criteria of the Tender File, where it was necessary to state what percentage of the offered shoes are leather. However, taking into account that in the A-test no higher or lower percentage was mentioned, the expert's opinion is that according to Article 72 of the Law on Public Procurement, the Contracting Authority had to request additional clarifications from the Economic Operator in order to prove that according to the submitted A-test, are the shoes 100% percent natural leather and to understand the reason why this percentage was not mentioned in the test. Therefore, we estimate that this raised claim is partially founded.

Regarding Complaint Claim 2, the rest of the claims, after analyzing the complaint claims, the Appellate Expert has requested a technical expert in the relevant field, an expert who would

examine the claims from a technical point of view in order to provide answers to the claims of raised, but taking into account that the Procurement Review Body does not have a technical expert in this relevant field and does not even possess a laboratory in which it would be possible to carry out these tests, I, as a review expert, cannot give a professional answer in these claims raised. Therefore, taking into account this situation, I, as a review expert, recommend that the matter should be re-evaluated and I appreciate that the Contracting Authority should send the received samples to an accredited laboratory in order to prove that the samples are completely in accordance with the requirements of the Tender Dossier or there is any deviation from them.

Expert recommendation; Based on the aforementioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO be approved as well-founded and the decision of the CA be annulled. The expertise report has been duly accepted by all procedural parties. The Contracting Authority has announced that it does not agree with the expert's recommendations, while the complaining Economic Operator has announced that it agrees with the review expert's recommendation.

-Findings of the review panel-

Based on the documents of this case and the primary purpose of the complaint, the Panel considered that regarding the issue in the present case, 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 in terms of meritorious. In this case, the Review Panel based its findings mainly on the relevant provisions of the LPP, which foresee and regulate such situations, which may appear during a procurement activity.

The review panel assesses that the expert's report 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 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 complaining 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 course, 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, with the aim of fully verifying the factual situation, has administered as evidence: the Review Expert's Report, the complaint of the Economic Operator "Runway" LLC, the Notice on the Decision of the Contracting Authority, dated September 27, 2023, for cancellation of the procurement activity entitled: "Supply of civilian clothes and shoes for women - New tender" with no. of procurement: "214-23-7681-1-1-1", the Tender Evaluation

Report dated 27.09.2023, for the activity of and the Decision of the Contracting Authority for the rejection of the Request for Reconsideration, dated 05.10.2023.

The review expert's report has professionally and objectively addressed the claims of the complaining Economic Operator "Runway" SH.P.K.", 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 dossier as well as the documents with which the tenderers have offered. Consequently, the Review Panel related to the claims of the complaining economic operator has given full confidence to the expert's report, according to which all the complaining claims of the Economic Operator "Runway" SH.P.K., have been found to be partially founded.

Therefore, the Panel has finally decided to approve the complaint of the Economic Operator "Runway" SH.P.K., to cancel the "Notice on the Decision of the Contracting Authority" dated 27.09.2023, for the cancellation of the procurement activity of the Contracting Authority, the Kosovo Police, related to the procurement activity no: "214-23-7681-1-1-1" and the subject, the procurement activity, is returned to Re-evaluation.

The review panel finds that the Contracting Authority has acted in accordance with the legal provisions for public procurement regarding the cancellation of the procurement activity since the Notice of cancellation is not in accordance with the legal deposits, since it did not indicate the legal basis for the cancellation, Article 43.1 of the Public Procurement Regulation determines "In case of a decision to cancel the procurement procedure, the CA will immediately prepare and publish Form B58 "Notice on the decision of the Contracting Authority" where the factual reasons and the legal basis for such cancellation are presented.

The review panel, based on the fact of approving the complaint of the Economic Operator "Runway" SH.P.K., decides to return the complaint fee to the amount deposited by the complaining EO based on Article 31 par. 4 of the PRB Work Regulations.

The Review Panel has decided in accordance with the legal powers in the sense of Article 104 paragraph 1 in relation 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 the aim of resolving legal and effective of the subject. 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.

The review panel in accordance with Article 117 of the LPP, as well as based on the evidence presented above, 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.;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.