



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

Psh. No.606/23

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 (Law no. 04/L-042, supplemented and amended by Law 04/L-237, Law 05/L-068, supplemented and Law 05/L-092), composed of: Vedat Poterqoi - President, Agon Ramadani- Member, Vjosa Gradinaj Mexhuani - member, deciding according to the complaint of the EO “Pro & Co Group SH.P.K, against the Decision on contract award or a design competition, regarding with the procurement activity: “Construction of the Basic Court building in Prizren - First Phase” with procurement no: 328-23-6245-5-1-1, initiated by the contracting authority (CA) - the Judicial Council of Kosova, on the 11/09/2023 has issued this:

DECISION

1. The agreement of the parties is approved, for the complaint of EO name no. 2023/0606, dated 22/08/2023, related to the procurement activity: “Construction of the Basic Court building in Prizren - First Phase” with procurement no: 328-23-6245-5-1-1, initiated by the contracting authority (CA) - the Judicial Council of Kosova.
2. **It is obliged**, CA - Judicial Council of Kosova that the procurement activity “Construction of the Basic Court facility in Prizren - First Phase”, with procurement number 328-23-6245-5-1-1, in accordance with the review expert's report with which CA has agreed to cancel.
3. The contracting authority shall, within 10 days, inform the Review Panel in writing of all the actions undertaken in connection with this procurement activity, in accordance with the specific paragraphs of the provision of this Decision;
4. In case of non-compliance with this Decision, the Review Panel has the right to take measures as provided for in Article 131 of the Law on Public Procurement no. 04/L-042, supplemented and amended by Law 04/L-237, Law 05/L-068, supplemented and Law 05/L-092;

5. Since the complaining EO has agreed with the cancellation of the procurement activity and according to the review expert's report the complaint is approved as grounded, the complaint's fee will be returned to the amount deposited when the complaint was submitted.

6. In accordance with Article 31, point 4, of the Rules of Procedure of the PRB, the complaining economic operator will be refunded the complaint fee in the amount deposited when the complaint was submitted. The complaining EO is obliged, in accordance with Article 31 point 6 of the PRB's Rules of Procedure, within sixty (60) days to make a request for the return of the complaint insurance, otherwise the deposit will be confiscated, and these funds will be transferred to the budget of the Republic of Kosova.

REASONING

On the 20.06.2023, the Judicial Council of Kosova, in the capacity of the Contracting Authority, has published the Contract Notice (CN) and the tender dossier (TD), for the procurement activity "Construction of the Basic Court building in Prizren - First Phase". evidenced with procurement number: 328-23-6245-5-1-1.

On the 10.08.2023, CA (with data as above, has published the notice regarding his/her decision for the EO to recommend the award of the contract (GOE"EBK"SH.P.K. "UNIQUE"SH.P.K. "PRO ARK CONSTRUCTION"SH.P.K. "BUJAR GODENTI"SH.P.K."), related to the procurement activity, described as in the preliminary paragraph of this reasoning.

On the 14.08.2023, EO "Pro&Co Group SH.P.K. & Flooring Sh.P.K. & Shkempi-Gllareve SH.P.K." in his/her capacity as a party dissatisfied with the cited decision, submitted a request for reconsideration, which was rejected by the Decision of the CA dated 14.08.2023. Meanwhile, on 22.08.2023, "Pro&Co Group SH.P.K. & Flooring Sh.P.K. & Shkempi-Gllareve SH.P.K." filed a complaint with the PRB, against the above-mentioned decision of the CA, which was registered with protocol number 606/23.

On the occasion of the preliminary examination, the Review Panel concluded that the appeal 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 leadership 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 file and the complaint claims, in relation to the

procurement activity described above. In this regard, on 05.09.2023, the review expert submitted the evaluation report with the following recommendations:

The complaint is approved as grounded;

To annul the challenged Decision of the CA and return the matter to re-evaluation;

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 matter as required in accordance with paragraph 2, Article 20 of the Regulation on the Work of PRB and that both parties have formally declared that the CA and the Complainant have agreed with the report cited above.

Based on the above, the Panel considers that the review procedure ends at this stage with the assumption that it has been withdrawn from the complaint, in terms of the agreement (agreement) reached by the parties and consequently the same has lost the claim, respectively the object of the 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 Kosovo and does not attack the institutional independence of its CA, to resolve the contentious issue, as the nature of the issue in the present case allows, 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 authority contractor within 5 days to implement the review expert's report by notifying the parties in the procedure.

Therefore, briefly based on the above, the Review Panel in accordance with article 105, 116 and 117 of the LPP decided as in the provision of this decision.

President of the Review Panel

Mr. Vedat Poterqoi

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 – **The Judicial Council of Kosova;**
- 1x1 EO – **Pro & Co Group SH.P.K.;**
- 1x1 Archive of the PRB;
- 1x1 For publication on the website of the PRB.