



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

Psh. No.789/23

The Review Panel, appointed by the President of the Procurement Review Body (PRB), based on Article 105, 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, and Law 05/L-092) in the composition of Vedat Poterqoi - President, deciding according to the complaint submitted by the Economic Operator (OE) “Med Plus” SH.P.K. related to the procurement activity with the title: “Supply of sanitary consumables and drugs for the needs of the KKMF-Prizren Lot 1” with procurement no: “622-23-5623-1-1-1”, initiated by the Contracting Authority (CA) - Municipal Assembly of Prizren, on the 22.12.2023 has issued this:

DECISION

1. **Approved**, as partly grounded, the complaint of Group of Economic Operators “Med Plus” SH.P.K submitted to the Procurement Review Body on the 13.10.2023 (with protocol number 789/23) for the procurement activity with title: “Supply of sanitary consumables and drugs for the needs of the KKMF-Prizren Lot 1” with procurement no: “622-23-5623-1-1-1”, initiated by the Contracting Authority (CA) - Municipal Assembly of Prizren.
2. Cancel the contract award notice and recommend that the matter to be reassessed Lot-1.
3. It is allowed the return of the deposited amount is allowed when the complaint is submitted, and the complaining economic operator is obliged, in accordance with Article 31 point 6 of the PRB's Work Regulations, within a period of sixty (60) days to make a request for the return of the complaint insurance, otherwise, the deposit will be confiscated and these funds will go to the Budget of the Republic of Kosova.

REASONING

-Procedural facts and circumstances-

On the 01.06.2023, the Municipality of Prizren, in the capacity of the Contracting Authority, published the contract notice for the procurement activity with title "Supply of sanitary consumables and drugs for the needs of the KKMF-Prizren Lot 1" with procurement no: "622-23-5623-1-1-1". Meanwhile, on the 02.10.2023, the notice on the CA's decision was published.

EO "Med Plus" SH.P.K on 06.10.2023 submitted a request for reconsideration to CA. CA- The Municipality of Prizren takes a decision to reject as unfounded the request for re-examination of EO "Med Plus" SH.P.K. . related to the procurement activity "Supply of sanitary consumables and drugs for the needs of the KKMF-Prizren Lot1" with procurement number: "622-23-5623-1-1-1" initiated by the Contracting Authority.

Dissatisfied with the decision of the CA, the complaining EO "Med Plus" SH.P.K on 13.10.2023 submitted a complaint to PRBO, with protocol number 789/23, against the decision of the Contracting Authority regarding the procurement activity described as above.

The contracting authority has implemented an open procedure, type of contract: supply, estimated value of the contract: 170,000.00 €.

The EO's complaint was made in accordance with Article 109.1 of the LPP, according to which any interested party can submit a complaint to the PRB against any decision taken by the CA. Since the EO has also applied for reconsideration, it means that its actions also refer to Article 108/A of the cited Law. Therefore, the PRB considers that the Complaint fulfills the prerequisites in terms of the provisions now cited and the same falls under its competences in terms of Article 105 of the LPP.

-Evaluation and administration of evidence -

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 accordance with Article 113 of the cited Law, conducts the initial review of the file and complaints, in relation to the procurement activity described above. In this regard, on 25.10.2023, the review expert submitted the evaluation report with the following recommendations:

Based on the aforementioned clarifications, the review expert proposes to the review panel that the complaint of EO" Med Plus" SH.P.K.

1. Approved, as grounded the complaint of the group of economic operators "Med Plus" SH.P.K, submitted to the Procurement Review Body on 13.10.2023 (with protocol number 789/23) for the procurement activity with title: "Supply of sanitary consumables and drugs for the needs of the KKMF-Prizren Lot1" with procurement number: "622-23-5623-1-1-1", initiated by the Contracting Authority (CA) - Municipal Assembly of Prizren.

II. Cancel the contract award notice and recommend that the matter be reassessed.

RESPONSE TO THE COMPLAINING CLAIMS OF THE COMPLAINANT EO

Introductory note,

The procurement activity entitled "Supply of sanitary consumables and drugs for the needs of the KKMF of Prizren" with the procurement number "622-23-5623-1-1-1", is presented for the second time in the PRBO. The current complaining EO "MEDPLUS shpk" was recommended for the contract the first time and is now complaining, while the recommended for the contract is EO "MADEKOS Sh.p.k".

In expertise 617/2023 dated 05.09.2023, in the final recommendation of the case, I emphasized that the complaint of the complaining EO ("MADEKOS") is approved and the case is returned for re-evaluation. The Contracting Authority and the complaining EO have agreed with the recommendation and the review panel has issued a decision for the agreement of the parties, decision no. 617/2023 of dt. 20.09.2023.

Complaining claim of the complaining EO 1

Summary of the complaining claim 1

The complaining EO states that: We have been eliminated on the grounds that we offered an abnormally low price based on the formula according to the table for calculating abnormally low prices.

According to Article 41.3 of the aforementioned regulation, when all three conditions defined in this provision are fulfilled, then clarifications are required.

The contracting authority did not prove that all three conditions were fulfilled in the case of the request for clarification. Despite this fact, even if all three conditions are met, clarifications should be sought and the inter partes procedure applied. Clarifications were requested by the CA, but in the case of elimination it was mentioned that we offered abnormally low prices according to the legal formula. When clarifications are requested and when clarifications are provided then either the clarifications must be taken into account or if they are not taken into account then concrete justifications must be given. We have provided detailed clarifications regarding the prices offered by us and have proven with concrete documents that we can complete this contract, and we have even expressed our willingness to accept an increase in the performance insurance if the CA deems it appropriate for guarantee the implementation of this contract. Given all the clarifications we have given in writing, the other evidence where we have proven that we do not have abnormally low prices and our willingness to accept the increase in the performance insurance, then it is clear that we have not bid at prices that are not abnormally low. normally low and we have argued this, therefore the reason for elimination is unstable and unfounded. When the contracting authority realized that we had justified the prices of our offer, then it made a return to the procedure where, without the requested and accepted clarifications, it returned to the table, reasoning that we offered abnormally low prices according to the legal table . From this action of the CA, it is clearly understood that the CA implicitly accepted our reasoning and could not eliminate us for this point, but returned to the price table.

Answer to Complaint Claim 1

The Reviewing Expert clarifies that the complaining EO "MEDPLUS Sh.p.k", has fulfilled all three conditions according to Article 41 paragraph 3 of the public procurement regulation for the CA to request clarifications and since the CA did not respect Article 61 of the LPP last time - and Article 41 of the regulation on public procurement, therefore I requested that: quote from expertise no. 617/23 "in the reassessment of the PA, the CA follows the inter partes procedure and acts in harmony with Article 41 paragraph 6 of the Regulation on Public procurement No. 001/2022, as well as ascertain whether the offered prices are according to the market prices", closes the quote.

In the reassessment of the Procurement Activity, the Contracting Authority on 21.09.2023 requested clarifications from EO "MEDPLUS sh.p.k", while on 25.09.2023 EO "MEDPLUS Sh.p.k" responded to the CA justifying the prices of provided as well as attaching documentary evidence such as Invoice and pro-invoice for the prices claimed as abnormally low by the CA.

The review expert clarifies that the CA did not take as a basis the evidence provided by the complaining EO, but only referred to the expertise of the review expert no. 617/23 dt. ascertain whether the offered prices are according to the market prices and CA has not provided any evidence that it has ascertained such prices.

The review expert relied on paragraph 2 of article 40 of the regulation on public procurement where, among other things, it is noted that: Quotes "A decision to re-evaluate the selection of bidders or the award of the contract does not mean a change in the initial result" closes the quote. Therefore, the recommendations of the review expert in expertise no. 617/2023 dt. 05.09.2023 did not necessarily mean a change in the initial state, but it was recommended that it be implemented in the third the provision of article 61 of the LPP as well as article 41 of the regulation on public procurement, and even more so when evidence such as invoices and pro-invoices were provided, as well as after clarifications, the CA had to consider the evidence provided.

Therefore, the review expert sees the claim of the complaining EO as based on the fact that the evidence provided as Invoices and pro-invoices are documents that prove that the products (positions) contested by the EO recommended for the contract, which last time was the complaining EO , can be offered at prices which the complaining EO has offered in this AP, and the CA for eventual security issues has been able to request an increase in the Security of Execution after first following the "Inter Partes" procedure.

While in relation to non-compliance with 108/A, where the complaining EO claims that the CA did not give an answer to the decision of the request for reconsideration, and rejected it out of hand, the reviewing expert clarifies that paragraph 9 of article 108/A of the LPP obliges CA to justify the refusal, and in this particular case, CA has rejected the request for reconsideration as unfounded, referring to: "The Evaluation Commission of CA, based on the expertise of the PRB expert and the decision of P.SH. with no. 2023/0617, re-evaluated the offers by calculating the price given by EO according to the legal formula, the price is not normally low.

During the calculation according to the legal formula based on the prices given by the economic operators, it turns out that the EO recommended by CA for the MEDPLUS contract with the price of 5.97 according to the weighted euro price has offered with the NOT NORMALLY LOW price and as such is irresponsible .

Therefore, the reviewing expert recommends that in re-evaluating the Procurement Activity, the CA fully respects the provisions of the LPP and takes into account article 1, 7 and article 60 of the LPP.

- Findings of the review panel -

The Review Panel has assessed that the conditions have been met to decide on this case without a hearing in the sense of Article 24 paragraph 1 of the Rules of Procedure of the PRB, taking into account that the claims of the parties and their submissions, the evidence as well as the review expert's report provide sufficient data to decide on the merits of the case. It is also worth noting that for this procurement activity there was also a decision of PRB with No. 2023/0617, dated 20.09.2023

In fact (of course, regardless of the recommendations) the Panel notes that the procurement procedure that was applied in this case is presented in detail in the review expert's expertise report, explaining all the stages of the process and the actions taken by the parties in the comparative context with the acts in force, especially with the Public Procurement Rules.

As for the complaining assertion of the complainant about the elimination of CA from participation due to abnormally low prices, the same expert reviewing this issue has singled out and cited that this was dealt with by the aforementioned preliminary decision, where in the preliminary case it was recommended for the contract of the present complainant. The reviewing expert has recommended to the CA that the provision of Article 61 of the LPP as well as Article 41 of the regulation on public procurement be applied in third place. Regarding this report of the CA's expertise, it was agreed that there are abnormally low prices, so the review panel issued decision No. 2023/0617 on dt. 20.09.2023, that the complaint review procedure is administratively completed due to the agreement of the parties. The review panel finds that the preliminary decision has been respected, the matter has been reassessed and additional information has been requested regarding the current offer of the appellant "MED PLUS" LLC and for this the review panel supports the review expert in his recommendation that "complainant EO as based on the fact that the evidence provided as invoices and pro-invoices are documents that prove that the products (positions) contested by the EO recommended for the contract that was the complaining EO last time, can be offered at prices that the complaining EO has offered in this PA, and the CA for possible security issues was able to request an increase in the Security of Execution after initially following the "Inter Partes" procedure. Therefore, the CA did not act in full accordance with the legal provisions by not justifying the disobedience of against the invoices and invoices provided by the complainant.

Conclusion -

Based on the above, the Review Panel considers that the CA did not act in harmony with the provisions of Article 1, 7 and 60 of the LPP, cited in the Complaint. The Review Panel considers that the actions and acts of the CA, and the evaluations of the review expert regarding the fulfillment or not of the conditions described above and the complaint statements in this case constitute a sufficient basis for the procurement activity to be re-evaluated again because in the opposite will contradict the scope of the LPP and the argumentative basis of the appeal claims, which the Panel evaluates according to its independent assessment in the sense of Article 104 in relation to Article 105 of the LPP. The return of a procurement activity based on a legal dispute in re-evaluation is in harmony with article 6 and 1 of the LPP, according to which, the purpose of this Law is, among others, cited: "...to ensure integrity and responsibility of public officials, civil servants and other persons who perform or are involved in a procurement activity requiring that the decisions of such individuals and the legal and factual basis for such decisions are not influenced by personal interests, characterized by non-discrimination and with a high degree of transparency and to be in accordance with the procedural and essential requirements of this law".

Regarding Article 105, taking into account the requirement of Article 104, paragraph 1, of the cited Law according to which, quoted: "The procurement review procedure will be implemented and carried out in a fast, fair and non-discriminatory manner, which aims at the fair, legal and effective resolution of the matter..." Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations, which may arise during a procurement activity .

Therefore, from the above, the review panel in accordance with article 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 – **MUNICIPALITY OF PRIZREN;**
1x1 EO – **MEDPLUS SH.P.K;**
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.