



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

Psh. no.50/23

REVIEW PANEL, appointed by the President Pursuant to the article 105 as well article 106, and 117 of the Law on Public Procurement of the Republic of Kosova no.04/L-042, amended and supplemented by Law No. 04/L-237, Law no.05/L-068, and Law no.05/L-092, composed of: Vjosa Gradinaj Mexhuani- President, Agon Ramadani - member, Vedat Poterqoi - Member, deciding on the complaint lodged by the Economic operator: “Albi Company” SH.P.K, me seli në Rahovec, regarding the procurement activity: “Construction of the physical education hall at the "2 Korriku" primary school in the village of Loxhë, Pejë - Continuation of the project Re-tender-II”, with procurement no: 635-22-14380-5-2-1, initiated by the Contracting authority – Municipality of Peja, on the 20.04.2023 has issued this:

DECISION

Rejected, as ungrounded the complaint of the economic operator “Albi Company” SH.P.K, me seli në Rahovec, submitted at the Procurement Review Body on the 23.01.2023, with protocol no.50/2023, and certified the decision of the CA of the 06.01.2023 for contract award, for the the procurement activity “Construction of the physical education hall at the "2 Korriku" primary school in the village of Loxhë, Pejë - Continuation of the project Re-tender-II”, with procurement no: 635-22-14380-5-2-1.

It is confiscated the complaint’s fee of the EO “Albi Company" SH.P.K. in accordance with article 31 point 5 of the PRB work regulation and the funds go to the Budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances -

On the 06.01.2023, the Municipality of Peja, in the capacity of the contracting authority, published the decision to award the contract for the procurement activity: "Construction of the physical education hall at the "2 Korriku" primary school in the village of Loxhë, Pejë - Continuation of the project Re-tender-II", with procurement no: 635-22-14380-5-2-1, while recommending for contract GEO AAG Projekt & Enggroup SH.P.K.

On the 11.01.2023, EO "Albi Company" SH.P.K has filed a Request for reconsideration of the decision cited above, which was rejected by the decision of the CA dated 13.01.2023.

On the 23.01.2023, EO "Albi Company" SH.P.K. has submitted a complaint to the PRB against the above-mentioned decision of the CA, which has been recorded with protocol number 50/23.

-Evaluation and administration of evidence-

It is preliminarily established that the Contracting Authority in relation to this procurement activity has implemented an open procedure, work, medium value, contract award criteria: responsible tender with the lowest price. Estimated value 176,639.50 euros. In the following, the PRB has engaged the procurement review expert to, in accordance with Article 113 of the LPP, conduct the initial review of the file and complaint claims, who in the report dated February 02, 2023 has recommended that:

-The complaint of "Albi Company" sh.p.k., with residence in Rahovec, is rejected as unfounded.

-The decision of the CA of 06.01.2023 (decision to contract award) remains in force.

In accordance with Article 24 paragraph 1 of the PRB Work Regulations 01/2020, dated 03.03.2022 (amended), the review panel has assessed that in the papers of this case there are sufficient arguments and evidence for the meritorious decision to be taken even without the hearing of the parties in the session.

The complainant asserts that the CA has recommended an EO for the contract, which in its offer has presented professional staff, but the same does not comply with the engagement periods according to the references issued by the EO ENG group, therefore the CA will have to act by undertaking some action - verification in TAK, because according to Article 60 of the LPP, the winning EO must first be responsible and not with the cheapest price, as the CA responded in the request for reconsideration submitted on 11.01.2023.

The examining expert clarified that the CA had requested work experience for each engineer, and as evidence it had requested the employment contract, also if the engineer has a contract to be on the payroll in the last 6 months and as evidence it had requested a reference letter or whatever other document attesting to previous experience. So the CA in the tender file had not

requested that each work experience or reference of the engineers be proven with the salary list. The review panel, in accordance with the opinion of the review expert and his explanation, assesses that this complaint claim is unsustainable.

The complainant further asserts that according to the documents submitted in the tender file, the recommended EO has submitted several references that do not confirm that he was ever the project manager. Regarding this, the expert explains that according to the documents submitted with the tender, it can be seen that in 2009 and 2010 the project manager was the project manager at the company "N&B Projekt" while from 2013 to 2016 he was the project supervisor at the company "Euro Besi" SH.P.K. as well as according to the reference it can be seen that from 2010 up to 2020 he was employed at the company "Eng Group". So related to this experience, the same has attached the qualification diploma as requested by the FDT, references as requested, the employment contract with now EO recommended for contract and the same is on the payroll for the last 6 months as is the request of the tender file.

The appellants further claim that the EO recommended for the contract AAG Projekt&Eng group SH.P.K. has engaged as a Construction Engineer, Hydrotechnical Department (Mr....), graduated on 07/10/2004, the same has not provided proof of 6 years of work experience after graduation, with References from the Employer, since the submitted References are not cover the required 6-year period after graduation. Regarding this, the examining expert in her report clarified that for this engineer, the EO recommended with the offer attached the qualification diploma dated 07.10.2004, as well as the references issued by the company "Getoari" for the years 2005 and 2006, "Getoari " for the year 2010, "Eng Group" for the years 2018 to 2020, the employment contract with the company "Eng Group" dated 06.01.2020, the same also appears in the salary list for the last 6 months of the company "Eng Group" . Therefore, as such, this claim has been described as unfounded.

The complainant claims that the EO recommended for the contract for the Mechanical Engineer presented (Mr....) the same did not prove the minimum 6 years of work experience, and at the same time submitted copies of diplomas, notarized without color. The expert clarifies that based on the documentation of the procurement activity, it can be seen that for the mentioned engineer, the EO recommended with the tender had presented the diploma of educational qualification according to the request of the FDT issued on 31.01.2008, as well as a reference issued by the company "Alping" for the period 01.02.2009 to 01.02.2010, by "ENG Group" for the years 2010-2020 and the employment contract dated 01.06.2020 issued by "ENG Group". The same also appears in the salary list for the last 6 months, while as for the point of complaint that the copy of the notarized diploma has no colors, this is not relevant.

As for the complainant's claim that the EO recommended for the contract, for the electronics engineer, presented (z) that the same in different periods engaged according to

The references issued by EO "Eng Group" are suspicious-fictitious and require that the engagement period be verified by the Tax Administration of Kosova.

So the only limitation according to the request of the tender file was that the workers who have a contract must be declared in TAK in the last 6 months, while as for the engineer of

electronics is proven to be on the payroll for the last 6 months according to the document submitted with the tender and also possesses the educational qualification according to the request of FDT issued on 30.09.1999, as well as the reference issued by "Eng Group" as the same is employed from 2006 to 2020.

- Conclusion –

The review panel analyzed the request placed in the tender file by the CA in relation to the documentary evidence related to the experience of the staff, where the CA has determined that for the workers who have contracts with the economic operator they must be in TAK stated in the list of wages in the last 6 months. Through this request it is implied that the only limitation of the declaration of the staff who have a contract with the economic operator must be declared in TAK with evidence in the payroll in the last 6 months. Therefore, the review panel during the examination of the appeal claims cannot decide outside the criteria defined in the tender file, as defined in article 56.3 of the LPP. This legal provision determines that the tenderer will not be disqualified or excluded from the procedure based on any requirement or criteria that is not mentioned in the contract notice and tender dossier.

Also, the review panel has also reviewed the prices of the tenders participating in this procurement procedure, where the EO recommended for the contract has offered at a cheaper price than the tender of the complaining EO and in this sense the CA has decided based on the criterion "the tender of responsible at a lower price" according to article 60, par.1, under par. 1.1 of the LPP.

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 high procurement activity noted , considers that the findings of the reviewing expert and his opinion are acceptable by this panel and as a result the panel decided to reject the complaint as unfounded while the decision of the contracting authority remains in force.

The Review Panel in accordance with Article 117 of the LPP decided as in the provisions of this decision.

Head of the Review Panel

Mrs. Vjosa Gradinaj Mexhuani

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 Peja;

1x1 EO – “Albi Company” sh.p.k, with residence in Rahovec;

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.