



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

Psh. No.990/23

The Review Panel, appointed by the President of 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, supplemented and Law 05/L-092) in the composition of Isa Hasani – President, deciding according to the complaint of EO “Alfa Globe” Sh.P.K, against the Decision to cancel a procurement activity of the Municipal Assembly - Rahovec in the capacity of the Contracting Authority (CA) related to the procurement activity “Supply of artificial fertilizer” with procurement no: 623-23-10579-1-1-1, on the 13/03/2024 has issued this:

DECISION

1. **Approved**, as grounded the complaint of “Alfa Globe” Sh.P.K, with no.990/2023 of the 07/12/2023, against “Notice on the Decision of the Contracting Authority” dated 29.11.2023, of the CA- Municipal Assembly - Rahovec regarding the cancellation of the procurement activity “Supply of artificial fertilizer” with procurement no: 623-23-10579-1-1-1, and the matter is returned to Re-evaluation.
2. Within a period of 10 days, the CA must inform the PRB about all the actions undertaken in relation to this procurement activity, otherwise, for non-compliance with the decision, the PRB can take measures against the CA as provided by the provisions of Article 131 of Law on Public Procurement of Kosova.
3. Since the complaint of the complaining economic operator is approved as grounded, the same fee paid when submitting the complaint is returned to him. The complaining economic operator is required to, in accordance with Article 33 point 6 of the PRB's work regulations, within sixty (60) days 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

- Procedural facts and circumstances –

On the 03.10.2023, the Municipal Assembly - Rahovec, in the capacity of the Contracting Authority, has published the Contract Notice B05 related to the procurement activity of “Supply of artificial fertilizer” with procurement no:623-23-10579-1-1-1. While on the 29.11.2023 B58 published the Notice on the decision of the Contracting Authority to cancel the procurement activity according to Article 44.6 of ROGPP.

This procurement activity was carried out through an open procedure with the type of supply contract and with an estimated contract value of 300,000.00 €.

On the 01.12.2023, EO “Alfa Globe” Sh.P.K submitted a request for reconsideration against the aforementioned decision of the CA. On the 04.12.2023, the Contracting Authority rejected the request for reconsideration as unfounded.

On the 07.12.2023, PRB received the complaint from EO "Alfa Globe" Sh.P.K. with no. 990/23 regarding the activity “Supply of artificial fertilizer” with procurement no:623-23-10579-1-1-1.

- 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.

The claims of the complaining economic operator “Alfa Globe” Sh.P.K are presented as follows:

The first claim (I): The complainant claims: "We ask the PRB RP to oblige the Contracting Authority to return the matter to Re-evaluation, and to re-evaluate the matter respecting the LPP, since it was based on the requirements of the contract notice and TDS of the tender dossier ALFA GLOBE & EOR GROUPSHPK Economic Operators Group fulfill all the requirements given with the contract notice and TDS of the tender dossier and once we are the responsible EO group with the cheapest price. All of this is confirmed by the fact that the Contracting Authority itself on 22.11.2023 announces the Notice on the Decision of the Contracting Authority where it awards with a contract the Group of Economic Operators Alfa Globe Shpk & Eor Group Shpk. We request the PRB RP to oblige the Contracting Authority to annul the decision dated 29.11.2023, which contains serious violations of the provisions of the LPP, and to return the decision dated 22.11.2023, which is a fair decision and in compliance with the requirements of the TDS and the provisions of the LPP. We ask the Contracting Authority to award the group of EOs Alfa Globe Shpk & Eor Group Shpk with a contract and cancel the decision of 29.11.2023.

Based on the Notice on the decision of the CA dated 29.11.2023, this decision of the Contracting Authority is contrary to the provisions of the LPP and the CA has violated Article 1, Article 6 par. 1, Article 7, Article 59, Article 60 and Article 62 paragraph 2 and 2.1 of the LPP Article 69 paragraph 8 and Violations of provisions - Rules and Operational Guide for Public Procurement. We ask the PRB SHP to compel the Contracting Authority to take the presented facts as a basis and to cancel the Notice on the decision dated: 29.11.2023 and to return the matter to re-evaluation where it will announce the winner of the group of EOs Alfa Globe Shpk & Eor Group Shpk according to the assessment of the first commission dated 22.11.2023, since this assessment has been correct in compliance with the requirements of the FTD of the tender file and the provisions of the LPP, without the interest of individuals or groups of individuals within the CA, and once the Group of Economic Operators Alfa Globe & Eor Group Ltd., we meet the requirements given in the TDS of the tender dossier and have the cheapest price offered with an offer that is within the budget foreseen by the Contracting Authority. Based on the aforementioned facts and Article 62 paragraph 2 and 2.1, the Contracting Authority at this stage could not stop the activity. We ask the PRB Review Panel to compel the Contracting Authority to respect the LPP and return the case to re-evaluation where our complaint will be examined in accordance with and respecting the LPP, as it was based on the requirements of the contract notice and TDS of the tender dossier and evaluation of the first commission of the Contracting Authority, we are responsible and fulfill all the requirements given with the contract notice and the tender file and once we are responsible EO and we have offered the cheapest price. Based on the facts mentioned above, we appeal to the PRB for protection of the legality of the offer given by the group of EOs Alfa Globe Shpk & E Eor Group Shpk. We request from the Public Relations Official of PRB to force the Contracting Authority to re-evaluate the matter, cancel the decision dated 29.11.2023, respecting the requirements given by the TDS of the tender dossier and based on the LPP, since it was based of the requirements of the TDS of the tender file and the standard letter of the Contracting Authority dated 22.11.2023 where the Contracting Authority assesses that the group of EOs Alfa Globe Shpk & Eor Group Shpk is responsible and positively evaluated where and announces the Notice for the decision to contract where the group of EOs Alfa Globe Shpk & E Eor Group Shpk is awarded. The group of EOs Alfa Globe Shpk & Eor Group Shpk requests to reconsider the decision on the notification on the decision of the Contracting Authority dated 29.11.2023, since it is a decision taken in violation of: Article 1, Article 6, Article 7, Article 59, Article 60 and Article 62, 69 of the LPP Based on the standard letter for the tenderer and the notice on the decision of the Contracting Authority dated 29.11.2023, we consider that it is a decision contrary to what was said in the middle of the decision dated 22.11.2023 when the Contracting Authority awarded with a contract the group of EOs Alfa Globe Shpk & Eor Group Shpk where the commission has correctly assessed the documentation based on the requirements of the TDS that the tender dossier and the decision 29.11.2023 when after the request submitted for reconsideration by an EO participating in the tender, the evaluation commission of the CA after the request for reconsideration by EO Blea Shpk, committed serious violations of the provisions of the LPP during evaluation, and when it gives the justification for the elimination in the standard letter for the eliminated tenderers for the group of EOs Alfa Globe Shpk & Eor Group Shpk does not agree with this REASONING of the CA: After the request for reconsideration of the EO bee, the Contracting Authority approves as

partially based on the request of EO Blea Shpk and returns the activity to reassessment. The revaluation commission has committed serious violations of the provisions of the LPP that we mentioned above and the reasons given by the CA with the standard letter for the eliminated tenderer do not stand. The Contracting Authority's re-evaluation commission intentionally or unintentionally refers to Regulation No. 001_22 for public procurement, 26.5, trying to Lajthite the group of EOs Alfa Globe & Eor Group Shpk, No. 001_22 for public procurement, says 26.5: whereas Article 66.2 (Authorization/License), clearly indicates that if the subject of the procurement activity is a public contract that includes the provision of professional services: The re-evaluation commission commits a serious violation when it does not respect Article 71 paragraph 4 of the LPP for the activity: Conclusion The revaluation commission intentionally or unintentionally used the provisions of the LPP incorrectly by referring to the wrong provisions for this activity, since here we are dealing with supply and for the group of EOs, Article 70 paragraph 4 should be applied. and based on this provision the group of EOs Alfa Globe & Eor Group Shpk is responsible and in compliance with the TDS requirements of the tender file and the provisions of the LPP, As for the second claim of the revaluation commission, in this case too, this commission intentionally or unintentionally violates Article 7 of the LPP. After being in the TDS of the tender dossier of the requirements of the professional suitability of Requirement 3: it is required: The group of EOs Alfa Globe & Eor Group Shpk with the offer has attached the Valid License and notarized from the original; And based on the TDS requirements of the tender dossier Professional suitability requirements 7.1 & 7.2 Required documentary evidence: Evidence 3: Valid License and Notarized Copy of the original; The group of EOs Alfa Globe & Eor Group Shpk has attached the License issued by MBPZHR-DPBT with the offer, therefore again the re-evaluation commission also in this case seriously violates Article 7 of the LPP and TDS of the tender file by requesting in opposition with the LPP the documents that were not requested in the Notice with the contract or in the TDS of the tender dossier, therefore, the Reasoning given by the revaluation commission does not stand. The revaluation commission intentionally or unintentionally used the data from the Ministry of Education and Culture which were not requested by the TDS, even worse when this data was not respected by the Contracting Authority because the group of EO Alfa Globe & Eor Group Shpk meets this requirement or criterion. Attached you will find the official e-mail from the relevant institution for the import and quality certification of artificial fertilizers. Conclusion the serious violations of the LPP committed by the re-evaluation commission raise doubts that any other participating EO is being favored. We ask the PRB SHP to compel the Contracting Authority to take the presented facts as a basis and cancel the Notice on the decision dated: 29.11.2023 and return the matter to re-evaluation where Alfa Group of EOs will be declared the winner Globe Shpk & Eor Group Shpk according to the assessment of the commission that gave the decision dated 22.11.2023, after we meet the requirements given in the FTD of the tender file and once we have the cheapest price and we are within the budget foreseen by the Contracting Authority . Taking the aforementioned facts as a basis, we suspect that with this cancellation of the decision dated 22.11.2023, an individual or a group of individuals from the Contracting Authority for personal interests or the interests of the group has intervened and influenced after the request for reconsideration of the EO Blea Shpk is not based on facts, under influence or pressure, the request for reconsideration of EO Blea Shpk, even though without any basis of the LPP, was taken as based by the CA and the members of the

new commission in the reassessment have violated the aforementioned provisions of the LPP since the group of EOs Alfa Globe Shpk & Eor Group Shpk is responsible and the cheapest price and within the budget foreseen by the CA, The CA, despite the fact that the group of EOs Alfa Globe Shpk & Eor Group Shpk is responsible, took the decision dated 29.11.2023 to cancel the tender, which is in violation of article 62 paragraph 2 and 2.1 of the LPP. As long as the evaluation commission had no influence from an individual or a group of individuals interested in this activity, EO Alfa Globe Shpk & Eor Group Shpk was assessed as a responsible group of EOs. The group of EOs Alfa Globe & Eor Group Shpk is responsible and in compliance with all the requirements given with the notice of contract and TDS of the tender dossier and has offered with the cheapest price which is a price within the budget given by Contracting Authority.

Referring to the claims as above, "Alfa Globe" Sh.P.K considers that the Contracting Authority has acted contrary to article 1, 6, 59, 60, 62, 69 of the LPP. Therefore, we request from the SP of the PRB to compel the Contracting Authority to cancel the decision of 29.11.2023 and to return the matter to re-evaluation, to take: Decision to approve based on the complaint of the group of EOs Alfa Globe & Eor Group Shpk regarding with the tender "Supply of artificial fertilizer" initiated by the Municipality of Rahovec. To cancel the decision of the Contracting Authority of the Municipality of Rahovec for the Notification on the Decision of the CA of the procurement activity and return the matter to re-evaluation. The re-evaluation should be done based on the requirements of the TDS of the tender dossier and return the correct decision of 22.11.2023, the winner was announced as the group of EOs Alfa Globe Shpk & Eor Group Shpk.

CA's response to the request for reconsideration: "We clarify that your complaining claims do not stand and are unfounded, since the evaluation of the offers was made in accordance with Law No. 04/042, Law on Public Procurement Contracting Authority: Municipality of Rahovec, has notified you as a complaining Economic Operator, according to form B42 Standard Letter for the eliminated tenderer, where we have mentioned: Your tender has been rejected for the following reasons: Professional suitability: Request 3: License for import and export of fertilizers; Required documentary evidence: Evidence 3: Valid License and Notarized Copy of the original; The clarifications are as follows: In your offer submitted as a Group of Economic Operators, the License for import and export of garbage was submitted only by ALFA GLOBE SH.P.K. and not by each member of the group individually, where Regulation No. 001_2022 for public procurement says: 26.5 Each member of the group individually must submit the Business Registration Certificate Any requirement imposed by a contracting authority under article 66.2 (Authorization/License), article 68 of the LPP, economic and financial condition and article 69 of the LPP, technical and/or professional ability, will be applied only to the group as a whole and not to individual members of the group. Also based on the technical specifications required in the Price Description and Annex 1 Mandatory Technical Specifications of the Tender File, the Economic Operator: ALFA GLOBE SH.P.K. does not possess a License for the product required by the Contracting Authority. The register of artificial fertilizers, which are allowed to be imported, circulated and used in the Republic of Kosovo, together with the companies licensed for the relevant fertilizers, issued by the Ministry of Agriculture, Forestry and Rural Development can find it in the following link: Register of artificial fertilizers registered in,

MBPZHR, 12.09.23.pdf (mbpzhrks.net) 3 From the above findings, it was decided as in the provisions of this Decision.

- Administration and evaluation of evidence -

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 26.12.2023 has authorized the review expert to conduct the initial review of the dossier and claims according to complaint no. 990/2023, while on 26.12.2023 the review expert's report with no. 2023/990 with the following recommendations: Considering this, the reviewing expert recommends to the PRB panel to approve the economic operator's complaint and return the procedure to re-evaluation.

The expertise's report has been duly accepted by all procedural parties. The CA has not agreed with the recommendations of the review expert's report, while the EO has stated that it agrees with the expert's opinion.

Evaluation of the review expert through report no. 2023/0990, of the complaint claims of EO complainant "Alfa Globe" Sh.P.K , as follows;

The first finding (I): "The Contracting Authority of the Municipality of Rahovec has canceled the procurement activity in accordance with Article 44.6 of the RRPP on the grounds that none of the bidding economic operators meet the criteria of the tender file. CA has eliminated the complaining economic operator with the following reasons set out in the standard letter for elimination. Gr.'s complaint claim of ALFA GLOBE & EOR GROUP LLC deals with the elimination due to non-fulfillment of the requirements of the Tender File, specifically Request No. 3 License for export and import of garbage. The review expert's response to Gr.'s complaint claim. to EO, ve: CA in the tender file under Professional suitability requirements point 7.1 and 7.2 is requested: Request no. 3. License for export and import of fertilizers Evidence no. 3. Valid License, and Notarized Copy of the original Based on the complaint claims of Gr. of economic operators, in the capacity of a review expert, I have analyzed the complete documentation of the offer submitted by the group of complaining economic operators and the analysis of the complaining claim. The economic operators, based on LPP Article 71 and Tender Dossier point 11.1, submitted the cooperation agreement, the consortium that proves that they act as a joint group in this procedure. Based on the consortium agreement Article 2, the parties have agreed that the leader of the group will be the economic operator ALFA GLOBE LLC with headquarters in Prishtina, in the capacity of the reviewing expert I find and assess that the agreement is drawn up and completed in accordance with LPP Article 71, RrPP Article 26 point 26.1 and Tender Dossier point 11.1. This is also clarified by Article 71 of the LPP, paragraph 4 of this article emphasizes very clearly that any request imposed by a contracting authority according to articles 66.2, 68 and 69 of this law will be applied only to the group as a whole and not to individual members of the group. Therefore, the purpose of creating the group or consortium is to complete the common documentation related to the requirements. The group of economic operators, in their offer, presented two (2) licenses: 1. License for Trading artificial fertilizers in Kosovo, No. Protocol 2148 and no. Official 38/2023 with validity until 05.06.2026 issued by the Ministry of Agriculture, Forestry and Rural Development. 2. License for the Import of artificial fertilizers in

Kosova, No. Protocol 2149 and no. Official 09/2023 with validity until 05.06.2026 issued by the Ministry of Agriculture, Forestry and Rural Development. The same also contain the notarization with no. LRPK.9191/2023 The same have been clarified and confirmed by the Veterinary and Food Agency addressed to the Group of economic operators who have attached it as evidence in their request for reconsideration. See the licenses of the group of economic operators presented in the offer documentation. Bearing this in mind as an expert, I find that the group of economic operators has presented the required licenses in the tender dossier and based on this the CA during the evaluation, comparison and examination of the offers did not comply with Article 59, 69 and Article 71 of the LPP as well as the criteria of the tender dossier and as a result of this the complaining claim of Gr. of EOs is based.

According to the above, the review expert handled the claims of the complaining economic operator "Alfa Globe" Sh.P.K. in a professional and objective manner. The argumentation in the review expert's report is quite detailed, understandable and fully based on the relevant documents that refer to the procurement activity. The findings in the expert's report can be confirmed through the tender file as well as the documents with which the tenderers have bid. Consequently, the Review Panel regarding the claims of the complaining economic operator has given full confidence to the expert's report. In this way, it has been found that the claims of the complaining economic operator "Alfa Globe" Sh.P.K. are grounded.

- Findings of the Review Panel -

The Work Regulations of the Public Review Body, which is published on the PRB website, with Article 20, paragraph 2 of the Regulations, defines the requirements for the Contracting Authority and the Economic Operator, that all information and notifications must be submitted and communicated through the public communication platform, if this is possible.

Based on the papers of this case, the Panel considers that regarding the issue in the present case, there is no need to convene a hearing with the parties, in the sense of Article 24 paragraph 1 of the Rules of Procedure of the PRB, taking into account the fact that the claims of the parties and their submissions, evidence as well as the review expert's report provide sufficient data to decide on the merits.

The review panel assesses that the Report of the review expert, drawn up at the request of the Panel regarding the dispute in this matter of the public procurement activity, contains the essential elements of such a document as provided by the provision of article 113 related to article 114 of the LPP, according to who is required by the expert to review all procurement documentation, including all complaining claims and provide the Panel and all disputing parties with an independent and professional assessment of the procurement activity and the validity of the appeal claims.

However, it should be emphasized the legal fact 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 eventual evidence, taking into account the nature of eventual violations, the flow, nature and purpose of the procurement activity, therefore the fact that in which cases and for what, the Panel relies or not, the expert's report and/or any of the

recommendations, belongs to its independent and professional judgment/ thanks, just as these responsibilities are addressed in terms of article 98, 99 related to article 105 of the Public Procurement Law.

The panel assesses that the review expert's report has dealt with the claims of the complaining Economic Operator in a professional and objective manner, 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 file as well as the documents with which the tenderers have offered. The Review Panel regarding the claims of the complaining economic operator has given full confidence to the expert's report, according to which the complaining claims of the complaining Economic Operator have been evaluated as grounded.

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 file related to the activity of "Supply of artificial fertilizer" with no. of procurement: "623-23-10579-1-1-1". The review panel assesses that the review expert handled the claims of the complaining economic operator "Alfa Globe" Sh.P.K in a professional and objective manner and that the arguments in the expert's report are quite detailed, comprehensible and based entirely on the relevant documents referred to procurement activity. The findings in the expert's report can be confirmed through the tender file as well as the documents with which the tenderers have bid. Consequently, the Review Panel regarding the claims of the complaining economic operator has given full confidence to the expert's report. In this way, it has been found that the claims of the complaining economic operator "Alfa Globe" Sh.P.K. are grounded.

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 reviewing the appeal claims, taking into account all the documents of the case and the recommendations of the review expert, has found that the complaint of the Economic Operator is approved as well-founded. Consequently, the Review Panel has decided regarding the procurement activity entitled "Supply of artificial fertilizer" with no. of procurement: "623-23-10579-1-1-1", so that the matter is returned to Reevaluation.

The Review Panel, taking into account the above mentioned description and facts and after examining the case, the complaint of the complaining economic operator, concrete analysis and documentation of the case, sees the operator's complaint as well-founded, recommending CA that the procurement activity with "Supply with artificial fertilizer" with no. of procurement: "623-23-10579-1-1-1", to be re-evaluated and the Contracting Authority Rahovec Municipality, to act according to the Findings of the Review Expert's Report, which are supported by the Review Panel, with the legal provisions of the LLP, tender dossier requirements and contract notice.

The Review Panel emphasizes that each contracting authority (at the central and local level) enjoys autonomy in procurement planning (Article 8) and in determining the needs that must be met (Article 9), of course in accordance with the budget capacity and that the CA in the specific

case has have the right to also decide on the EO recommended for the award of the contract based on article 24 paragraph 2 of the LPP cited "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in compliance with complete with this law".

The review panel, based on the fact of the approval of the EO complaint, decided to return the complaint fee to the amount deposited by the complaining economic operator 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.

For point I of the decision, it was decided based on article 117 of the LPP in relation to article 29 and paragraph 31 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 – **MUNICIPAL ASSEMBLY - RAHOVEC;**

1x1 EO – **ALFA GLOBE SH.P.K.;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.