



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

Psh. no.43/23

REVIEW PANEL, appointed by the President Pursuant to the article 105, 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: Kimete Gashi - President, Agon Ramadani - member, Vedat Poterqoi - Member, deciding on the complaint lodged by the Economic operator: “Progres L.L.C” - Çikatovë e Re, Gillogoc, with protocol no.43/23, regarding the procurement activity: “Sewerage adjustment on Naim Frashëri street”, with procurement no: 656-22-13971-5-2-1, initiated by the Contracting authority – Municipality of Ferizaj, on the 28.04.2023 has issued this:

DECISION

1. **Refused as ungrounded**, complaint of the economic operator “Progres L.L.C” - Çikatovë e Re, Gillogoc, with protocol no.43/23, regarding the procurement activity: “Sewerage adjustment on Naim Frashëri street”, with procurement no: 656-22-13971-5-2-1, initiated by the Contracting authority – Municipality of Ferizaj.
2. **Remains in force** B58- the notification on the decision of the Contracting Authority of the 05.01.2023 regarding the procurement activity: “Sewerage adjustment on Naim Frashëri street”, with procurement no: 656-22-13971-5-2-1, initiated by the Contracting authority – Municipality of Ferizaj.
3. Within a period of 10 days, the CA must inform the PRB Review Panel in writing about all the actions undertaken related to this procurement activity, specified by number and date as in the preliminary paragraphs of this decision.
4. Since the complaint of the complaining economic operator “Progres L.L.C” - Çikatovë e Re, Gillogoc is refused as ungrounded, it is confiscated the deposit and the funds go to the Budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances -

The Municipality of Ferizaj, in the capacity of the contracting authority, on the 05.01.2023, has published the contract award notice-B85 for the procurement activity “Sewerage adjustment on Naim Frashëri street”, with procurement no: 656-22-13971-5-2-1, where is recommended for contract EO “Berisha Company” SH.A.

On the 10.01.2023, the complaining EO "Progres L.L.C" - Çikatovo e Re, Gllogoc, submitted a request for reconsideration to the CA-Ferizaj Municipality. On the 12.01.2023, the CA-Municipality of Ferizaj rejected the request for reconsideration as ungrounded.

Dissatisfied with the decision of the CA regarding the request for reconsideration of the complaining EO "Progres L.L.C" - Çikatovë e Re, Gllogoc has submitted a complaint at the PRB, with protocol number 43/23.

The Contracting Authority has implemented an open procedure, type of contract - work, estimated value of the contract: 170,000.00 €, for a duration of 36 months.

On the occasion of the preliminary review, the Review Panel concluded that the complaint 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 only after leading 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 complaints also contain the essential elements provided for in Article 111 of the cited Law, it means that the complaint fulfills the conditions foreseen in terms of the provisions of cited and fall under his powers in the sense of article 105 of the LPP.

- Administration and evaluation 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 dossier and complaining claims, in relation to the procurement activity described above. In this regard, on the 02.02.2023, the review expert submitted the evaluation report with the following recommendations:

Answer to the complaining claims of the complaining EO "Progres L.L.C" - Gllogoc

Answer to complaining claim no.1

The review expert, after analyzing the documentation which is part of this procurement activity and the complaints submitted by Economic Operator Progres L.L.C Çikatovo e Re Gllogoc, related to the procurement activity “Sewage adjustment on Naim Frashëri street” with procurement no: 656-22-13971-5-2-1 of CA during the evaluation, examination and comparison of tenders did not respect the Criteria established in the Contract Notice and Tender Dossier (TDS). Requirements on technical and/or professional skills point 9.1 & 9.2 Technical and

professional capacity, with the claim that Economic Operator Progres L.L.C Çikatovo e Re Gllogoc has met the criteria set by CA in the Contract Notice and Tender dossier, I clarify the following:

The complaining economic operator, together with the offer, has submitted the list of equipment after analyzing the presented documentation (in the list of equipment no. 9 you have provided two hydraulic milling machines as a description), one taken into use with a loan agreement from Hoxha Kom SH.P.K which according to the DUD, it is a milling cutter for asphalt abrasion, which is not according to the criteria of the CA, and the other is taken on loan from "INFO METAL PLAST-AL" which, according to the DUD, is a milling cutter used without specifying for what can it do in this case.

While the asphalt milling cutter is a machine (equipment) which is not in harmony with the criteria established in the Contract Notice and Tender dossier, as such it does not meet the criteria of the CA and cannot perform the functions of each other and do not additional clarifications may be requested because the presented documents are clear and there is no reason for the CA to request clarifications. On this, I find that this complaining claim of the complaining EO PROGRES L.L.C is unsustainable and as such is rejected as ungrounded.

Answer to complaining claim no. 2

The review expert, after analyzing the documentation that is part of this procurement activity and the complaint claims submitted by the Economic Operator PROGRES L.L.C Çikatovo e Re Gllogoc, who claims that the CA has not respected the Criteria set in the Contract Notice and Tender dossier TDS Requirements on technical and/or professional skills point 9.1 & 9.2 Technical and professional capacity, with the claim that the EO recommended as winner by CA has not met the criteria, clarify the following:

The winning recommended economic operator, together with the offer, has submitted all the documentation according to the requirements of the CA:

For the geodesy engineer Mr. Florent Emini, along with the diploma, the diploma certification decision issued by the Ministry of Education, Science, Technology and Innovation dated 12/30/2012 Ref. No. 216/246, License as well as for Mr. Agim Hajredini presented the diploma in the Serbo-Croatian language of 1994, certified and recorded at that time, also for the request for an ISO 9001-2015 worker for the same was offered certified according to the request of the CA quote "A certified worker for with ISO 9001 2015" where you also received the answer from the company that issued the certificate (in this case there is no more detailed request on how the ISO 9001-2015 certificate should have been).

In the list of machinery provided by the EO announced as the winner, three Milling Machines (serial no. in the list 17, 18 and 33) are presented, of which two are owned by the winning EO, based on the documentation proven by the customs DUD and for one, an agreement was offered with Infra plus SH.P.K, which agreement is not notarized according to the submitted request: the criterion quote "hydraulic milling machine that is placed with an excavator for the erosion of the channel 2 pieces". "The agreement must be in the name of this project with the validity of the

duration of this contract, signed and sealed by both parties and notarized" which was not necessary or not relevant in this case because the EO announced as the winner has completed CA criteria, which are set in the Contract Notice and Tender dossier presenting two pieces owned by the EO and are according to the request of the CA.

On this, I find that this complaining claim of the complaining EO PROGRES L.L.C is unsustainable as such and is rejected as ungrounded.

Answer to complaining claim no. 3

The review expert, after analyzing the documentation which is part of this procurement activity and the complaining claims submitted by the complaining Economic Operator for the Economic Operator Arlindi SHPK, finds that the same has not submitted the Tender Security at all, which was a criterion set by the CA, an issue which is clarified by article 28.13 of RRPP 001/2022 "The tender security must be submitted scanned together with the bid, while the original form of the tender security will be required to be submitted by a tenderer whom the contracting authority has for in order to reward him with a contract. Failure to submit the original form of insurance of the tender leads to the implementation of Article 99.2 of the LPP" and Article 38 and 40.6 of the RRPP 001/2022. So it is an administrative request that passes/does not pass and this is a request that cannot be clarified or fulfilled through clarifications, therefore the CA does not need to analyze this offer further because in the end the result would be the same, so it will be eliminated.

On this, I find that this complaining claim of the complaining EO PROGRES L.L.C is unsustainable as such and is rejected as ungrounded.

Supported by the above-mentioned elaborations, the Contracting Authority – Municipality of Ferizaj, the evaluation commission and the PPO, has generally acted in accordance with the LPP, Article 7 Equality in Treatment/Non-discrimination, has treated all EO equally and without discrimination all bidders in full harmony with Article 59 Examination, evaluation and comparison of tenders, Article 40 of RRPP 001/2022 Examination, evaluation and comparison of tenders.

From the review of this complaint, the attached evidence, the claims of legal provisions violated, the requirements set out in the Contract Notice, the Tender Dossier, the B54 standard form for the correction of errors in notices, the report of the evaluation committee, the decisions on the Requests for Reconsideration we consider that the complaining claims of the complaining EO are unsustainable and as such are rejected as ungrounded.

Review expert's opinion

Based on the aforementioned clarifications, the review expert proposes to the review panel that - The complaint of Economic Operator PROGRES L.L.C Çikatovo e Re Ghogoc be rejected as ungrounded and

-Form B58-Notice on the Decision of the Contracting Authority dated 05.01.2023 shall remain in force.

- Public hearing session-

The Review Panel considered that regarding the issue in the present case, there is no need to convene a hearing session with the parties, in accordance with Article 24 paragraph 1 of the Rules of Procedure of the PRB, as long as the claims of the parties, the evidence, their submissions and the expertise of the reviewing expert, provide sufficient data to decide on the merits.

The review panel, after reviewing the case documents, reviewing the complaining claims of the complaining EO, findings, concrete analysis and recommendations of the review expert, discussing and analyzing the evidence as a whole, assesses that the complaint of the complaining Economic Operator should be rejected as ungrounded and remain in force B58-Notice on the Decision of the Contracting Authority dated 05.01.2023 and the Contracting Authority to continue with the procedure fully respecting the legal provisions of the LPP.

- *Conclusion-*

Acting on the basis of the basic principles of the Law on Public Procurement of the Republic of Kosovo, according to the provisions of articles 98, 99, related to articles 104 and 105, of the cited Law and at the same time analyzing the documents of this case in relation to the facts and the circumstances described above, the nature and purpose of the complaining claims, authorizations, actions and intentions of the CA, the Review Panel finds that: the review panel after reviewing the case documents, reviewing the complaining claims of the complaining EO, findings, concrete analysis and recommendations of the review expert, assesses that the complaint is unfounded and that the findings of the review expert are acceptable by the PRB review panel.

Based on the explanations as above, the Panel considers that the CA has acted in harmony with the aforementioned provisions of the LPP and has correctly applied the tender dossier as provided by paragraph 1, of article 27, according to which the contracting authority compiles the tender dossier with all relevant information including all material terms and conditions thereof, applicable procurement procedures, any applicable eligibility requirements or any selection criteria, complaint's procedures and other relevant information as required by this law or as deemed necessary by the contracting authority. The review panel assesses that the CA has acted in harmony with Article 59 of the LPP during the examination, evaluation and comparison of tenders.

Although in the expert's report all complaining claims are addressed, the Panel, according to its independent opinion, has supported the expert's report in the specific case, based on the principle that its probative value is always given in relation to the evaluation, comparison and administration of all other evidence and the nature of an issue in the specific case.

The review panel considers that the decision taken in this case is based on the administration of all the evidence available in this case and that in making decisions it always takes into account Article 1 of the LPP, where the purpose of this law is to ensure the way more efficient, more transparent and fairer use of public funds, public resources as well as all other funds and

resources of the contracting authorities. The Review Panel always starts from the fact that the contracting authorities exercise their institutional independence in the public procurement process, but it remains their explicit obligation to respect legality in the procurement process.

The Review Panel in accordance with Article 117 of the LPP, and based on the evidence presented as above decided as in the provisions of this decision.

Head of the Review Panel

Mrs. Kimete Gashi

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 Ferizah;
- 1x1 EO – “Progres L.L.C” - Çikatovë e Re, Glllogoc;
- 1x1 Archive of the PRB;
- 1x1 For publication on the website of the PRB.