



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

Psh. No.566/23

The Review Panel, appointed by the Chairperson of the Procurement Review Body (PRB), based on Article 105, 106 and 117 of the Law on Public Procurement of the Republic of Kosovo (LPP), composed of Isa Hasani-President, Vedat Poterqoi-members and Vjosa Gradinaj-Mexhuani-member, deciding according to the complaint of Economic Operators (EO) “Mendi-P”SH.P.K.&”NPN Euroing”SH.P.K.&”Fer-Petrol”SH.P.K.&”N.N.SH. World Medium”, against the Decision on awarding a contract to Glllogoc Municipality in the capacity of Contracting Authority (CA) related to the procurement activity “Expansion and construction of Fehmi and Xheve Lladrovci square, Drenas” with procurement number: 611-23-2223-5-1-1, on the 04/12/2023 has issued this:

DECISION

1. Dismissed as inadmissible, the complaint of EO “Mendi-P”SH.P.K.&”NPN Euroing”SH.P.K.&”Fer-Petrol”SH.P.K.&”N.N.SH. World Medium” filed on the 11.08.2023 with protocol no.566/23, and remains in force the decision of the Municipality of Glllogoc as the contracting authority for the procurement activity “Expansion and construction of Fehmi and Xheve Lladrovci square, Drenas” with procurement number: 611-23-2223-5-1-1.
2. The return of the complaint’s fee in the deposited amount is allowed, so that the appellant has the right to submit a request for the return of the appeal fee within the period of sixty (60) days after the acceptance of this decision, otherwise the funds are confiscated and transferred to the Budget of the Republic of Kosovo, as provided by article 31 paragraph 6 of the PRB Work Regulations in connection with article 118 of the LPP.
3. Initiate the procedure for taking disciplinary measures against the responsible procurement official in the Municipality of Glllogoc due to the violations evidenced below in the reasoning of this decision.

REASONING

-Procedural facts and circumstances-

On the 22.06.2023, the Municipality of Glogoc, in the capacity of the Contracting Authority, has published the Contract Notice related to the procurement activity entitled "Expansion and construction of Fehmi and Xheve Lladrovci square, Drenas" with procurement number: 611-23-2223-5-1-1.

While on the 26.07.2023 it published the Notice on the decision of the Contracting Authority where it awarded with the contract the Group of Economic Operators ILEAA-GR SH.P.K.: DELTA -CCD SH.P.K.: Froni 1 SH.P.K..

This procurement activity was developed through an open procedure with the type of work contract and with an estimated contract value of 4,342,660.60 €.

On the 31.07.2023, OE "MendiP" SH.P.K. & "NPN Euroing" SH.P.K. & "FerPetrol" SH.P.K. & "N.N.SH. World Medium" has submitted a Request for reconsideration against the aforementioned decision of the CA. On the 25.08.2023, the Contracting Authority rejected the request for reconsideration as unfounded.

On the 11.08.2023, PRSO received a complaint from the Group of Economic Operators, "MendiP" SH.P.K. & "NPN Euroing" SH.P.K. & "Fer-Petrol" SH.P.K. & "N.N.SH. World Medium", for the procurement activity entitled: "Expansion and construction of Fehmi and Xheve Lladrovci square, Drenas" with no. of procurement: "611-23-2223-5-1-1".

- On the preliminary review stage-

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.

- Administration and evaluation of evidence -

The claims of the group of complaining economic operators are presented as follows:

The complaining claim of the complaining EO Group that it was eliminated because it did not meet the requirements of professional suitability in the tender file and in the contract notice, Requirement 3. Risk assessment for the company by a company licensed by the competent body (MPMS).

The second claim (II). The complaining claim of the complaining EO Group that it was eliminated because it did not meet the requirements on the economic and financial situation in the tender dossier and in the contract notice. Third claim (III). The complaining claim of the

complaining EO Group that it has been eliminated because it has not met the requirements regarding the work performed, the list of contracts performed in the last three years. Fourth claim (IV). The complaining claim of the complaining EO Group that it was eliminated because it did not meet the requirements on technical and/or professional opportunities in the tender file and contract notification,

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 14/08/2023 has authorized the Expert to do the initial review of the file and claims according to complaint no. 566/23, while the report with recommendation was submitted on the 24/08/2023.

Based on the aforementioned clarifications as well as the withdrawal of two members of the Group to the EO, it is recommended to the review panel that the complaint of the Group to the EO "MENDI-P SH.P.K.; NPN EUROING SH.P.K.; FER-PETROL; N.N.SH. WORRLD MEDIUM", to be rejected as unfounded, and recommends that the Decision of the Contracting Authority remain in force.

In order to fully verify the factual situation, the review panel administered as evidence the expert's report, the opinions of the parties related to the expert's report, the submissions and documents of the complainant, the letters and documents of the contracting authority, the relevant documents related to the procurement activity as and all the evidence that has been proposed by the procedural parties.

Regarding the claims of GOE "Mendi-P"SH.P.K.&"NPN Euroing"SH.P.K.&"Fer-Petrol"SH.P.K.&"N.N.SH. World Medium", review and technical expert through report no. 2023/0566 has evaluated the complaining claims of the complaining party.

The first complaint (I). The review expert explains that the complaining Economic Operators Group, based on the documents submitted in its offer, this EO Group submitted the risk assessment, but the risk assessment is not notarized, and the company that did the risk assessment lacks a license since only the leader of the group was requested as evidence.

Referring to the criteria mentioned above and the evidence submitted by the EO Group, the review expert's opinion is that the complaining claim of the EO group is unfounded.

The second complaint (II) claim. The reviewing expert clarifies that the complaining EO Group based on the documents submitted in its offer, this EO Group and its leader have submitted evidence from the bank for financial support in the amount of 1,000,000.00 Euros, as requested in the file the tender. Referring to the evidence submitted by the Group of Economic Operators, the review expert's opinion is that the group's claim to the EO is grounded. The third complaining claim (III). The review expert explains that the complaining EO Group based on the documents submitted in its offer, this EO Group, each member of the group submitted the list of contracts. Since in the tender dossier it was requested that the group leader should cover at least 60% of the requested value, min. 5.500.000.00 And according to the list of contracts submitted by the leader, it results that the value of the executed contracts is 2.621.923.57 Euro. If the required value is calculated $5.500.000.00 \text{ Euro} \times 60\% = 3.300.000.00 \text{ Euro}$, from this it can be

seen that the leader, the leader of the group does not meet the required criteria since there are only 2.621.923.57 Euro, contracts executed according to the list of contracts . Based on the evidence submitted by the EO Group, the review expert's opinion is that the complaining claim of the EO Group is unfounded. The fourth claim (IV) of appeal. The reviewing expert clarifies that the complaining EO Group based on the documents submitted in its offer, this EO Group submitted the list of technical staff (Employees). Since a minimum of 40 employees is required in the tender file, 25 of them must be Certified for Safety and Health at Work and the group leader must cover at least 60% of the required workers. From the list of submitted workers, there are a total of 35 workers, of this number, 13 workers do not have proof of employment contract, while 22 workers have employment contracts. While of the 35 workers who are on the list of workers, 19 of them do not have safety certificates at work, while 16 workers have safety certificates at work.

The member of the group N.N.SH"World Medium (Burim Zabelaj B.I) withdrew from the group and gave up the complaint, the email sent to the PRB, on 11.8.2023, as follows.

Also H.N.SH. "VVORLD XfEDIUXI (BURDd ZABELAJ B.I.)" dated 11 08 2023 via email was addressed to the Procurement Review Body notifying and quoting "As a company: N.N.SH.WORLD MEDIUM Burim Zabelaj b. i) we are not part of any Request for Reconsideration or any other Complaint in any other institution because we do not want to be an obstacle in the procedures and implementation of this project so important for the City of Gillogoc but also for the citizens of this country. "

I also inform you that I have informed the other members of the consortium about my letter and about our decision not to deal with the Complaint. Considering that the other members of the consortium have taken into account our suggestions We inform you that I am withdrawing from this consortium and I am not part of this consortium." See the picture below

Likewise, on the 23/08/2023, the second member of the FER PETROL group withdrew from the group and gave up the complaint, as follows.



N.T FER PETROLL – Tërstenik-Drenas
NUI: 810247967
044/431/851
Date: 23.08.2023

NJOFTIM

Kompania N.T Fer Petroll ju njoftone se terfiquemi nga procedura ankimore e
MENDI-P SHPK&NPN EURO ING SHPK&FER
SHWORLD MEDIUM me te cilet kemi marrur pjese ne tenderin e
K DRENAS ne projektin me titull:

Fehmi dhe Xheve L.Ladrovi Drenas , me numër 10

N.T FER PETROLL



Referring to the evidence submitted by the EO Group, the review expert's opinion is that the complaining claim of the EO Group is unfounded.

-Finding of the Review Panel-

The panel concluded that there are no elements to prevent the conflict of interest, as required in the sense of Article 11 of the Regulation on the Work of PRB, related to paragraph 1.75, Article 4 of the LPP and at the same time analyzed all the documents of this subject, including all acts and actions of the parties and considered that there is no need to convene a hearing with the parties, as long as the submissions of the parties and their actions constitute a sufficient basis to decide on the merits as provided by paragraph 1 of article 24 of the Work Regulations of PRB, and that there is no need to request the contracting authority and/or the complainant to provide additional information and/or explanations, in the sense of paragraph 3, article 116 of the LPP.

Based on the documents of this case, in the context of the actions and acts undertaken by the parties, the Panel considers (of course from his/her point of view) that the contentious issue in the present case mainly refers to the status of the complainant, respectively the fact whether the complainant has the status of the interested party as defined by the provision of article 105, paragraph 1, related to article 4, paragraph 1.26 of the LPP. In fact, the status of the party represents a substantial issue in this appeal process, as long as it is a necessary condition (presumption) of a procedural nature on which the right to participate or not in a legal-

administrative matter depends, implying public procurement as such, in view of the basic principles of the legislation. Viewed from this aspect, it can be concluded that the complainant lacks the status of the party, while the status of the party in the present case refers to the consortium (in its complete composition) which, during the course of the procurement activity, was actually dissolved.

In this regard, it should be remembered that in the sense of Article 71, the group of economic operators, the members of the group (meaning the consortium) have the right to submit an invitation to participate or a tender, confirming this fact (according to paragraph 2 of this article) through the declaration of their joint, according to which it is implied that only as such they are presented as parties. In fact, during the administration of the papers of this matter, the panel noticed that in connection with this activity, the Group of Economic Operators "MendiP" SH.P.K.&"NPN Euroing" SH.P.K.&"TerPetro" SH.P.K.&"N.N.SH. World Medium". However, it is not disputed that during the revival of this activity on 11.08.2023, one of the members of the N.N.SH "World Medium" consortium (Burim Zabelaj B.I) withdrew, while in the meantime, respectively on 3.08.2023, the second member also withdrew from the consortium. of the FER PETROL group. On the other hand, the review panel notes that CA signed the contract during the suspension period, which is in violation of Article 112 of the LPP, according to which "...submitting a complaint obliges the contracting authority to automatically suspend the implementation of the activity of the procurement to which the said complaint is concerned".

Therefore, based on the above, the Panel considers that in this case the appeal cannot be issued in the evaluation of the claims related to the EO recommended for the award of the contract due to the fact that this decision has a priori procedural character, however, the legal responsibility on the evaluation and recommendation of the economic operator for the award of the contract during such a phase is addressed to the CA after it has assessed the responsibility of the EO recommended for awarding the contract during the time when the legal effects of the suspension were in force in terms of Article 112 of the LPP. In relation to this, it should be noted that according to article 59 paragraph 1 of the LPP it is stated that "The contracting authority will establish an Evaluation Commission for the examination, evaluation and comparison of offers. All members of the Evaluation Committee take full individual responsibility for the performed evaluation of the offer".

Therefore, based on the above, the Review Panel established the effective line of the contract related to the procurement activity in the present case, based mainly on the general principle of public interest, referring to Article 104 par. 4 point (iii) of the LPP, according to which the PRB must take as a basis the possible consequences of the actions or measures, including the public interest. However, acting on the basis of the basic principles of the procurement review procedures, which, among other things, are specifically sanctioned by the provision of article 104 paragraph 1 and 4 of the LPP and at the same time analyzing the documents of this case in relation to the facts and circumstances described above, the Panel considers that, however, the CA did not act in accordance with the requirements of Article 112 (suspension effect of complaints) and that in this case the application of punitive measures against the CA in the sense of Article 105, paragraphs (2.1; 2.2; 2.15) of the LPP according to which the PRB has powers,

authority, power and responsibility to examine complaints from interested parties related to possible violations of this law and to investigate and determine the facts that have caused such complaints, in relation to article 25, paragraph 9, of the LPP according to which "on the basis of a request from a contracting authority or PRBO, the KRPP decides whether the qualification conditions specified in Article 23 have been met or whether there have been serious violations of this law or procurement rules for a professional procurement certificate". Article 23 creates a binding effect, therefore signing a contract despite the deadline and/or the suspensive effect in the case of exercising a complaint, constitutes at least a lack of professional ethics.

Therefore, acting in accordance with the powers cited above and Article 104 paragraph 4 in relation to paragraph 1, according to which the procurement review procedure will be implemented and carried out in a fast, fair and non-discriminatory manner, which has aimed at the legal and effective resolution of the case, as well as referring to article 117 of the LPP, and in the evidence presented above, the Review Panel decided as in the enacting clause of this decision.

Regarding the complaint's fee, the Review Panel decided in accordance with article 31 point 5 of the PRB Work Regulations, in relation to article 118 of the LPP.

President of the PRB

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 – **MUNICIPALITY OF GLLOGOC**;
1x1 EO – **Mendi -P SH.P.K**;
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.