



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

Psh. no.814/22
10/23

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: Kimete Gashi - President, Agon Ramadani – Member, Vedat Poterqoi - member, deciding on the complaint lodged by the Economic operator: “Engineering Group sh.p.k. & Çeta - General Invest Group”, with no: 814/22 , as well as complaint of the EO “Vb Tofaj”& PE-VLA-KU sh.p.k, with no: 10/23, regarding the procurement activity: “Dam construction in the village of Vranoc”, with procurement no: 635-22-6769-5-2-1, initiated by the Contracting authority – Municipality of Peja, on the 28.03.2023 has issued this:

DECISION

- 1. Approved** as grounded the complaints of the OE “Engineering Group sh.p.k. & Çeta - General Invest Group”, with no: 814/22 , as well as complaint of the EO “Vb Tofaj”& PE-VLA-KU sh.p.k, with no: 10/23, for the procurement activity: “Dam construction in the village of Vranoc”, with procurement no: 635-22-6769-5-2-1, initiated by the Contracting authority – Municipality of Peja.
- 2. Cancelled** the decision of the CA for the procurement activity specified as in point I of the provision of this decision, meanwhile the procurement activity is returned to Re-evaluation.
3. Within a period of 10 days, the CA must inform the PRB about all the actions taken 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 the Law for Public Procurement of Kosova.
4. Since the complaints of the complaining EO "Engineering Group sh.p.k. & Çeta - General Invest Group", as well as the complaint of EO "Vb Tofaj" & PE-VLA-KU sh.p.k. are approved

as grounded, the refund of the complaint fee is made in the amount deposited when the complaint is submitted.

5. Complaining Economic Operators are required to, in accordance with Article 31 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 and these funds will be confiscated pass to the Budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances-

Municipal Assembly of Peja, in the capacity of the contracting authority, on 12.12.2022, has published the Notice on the Decision of the CA to award the contract for the procurement activity entitled: "Construction of the dam in the village of Vranoc", with no. of procurement: 635-22-6769-5-2-1, where the group of economic operators "Lulzim Beqiraj B.I&Fidani-Beton sh.p.k&Eae-Njaz" sh.p.k. has been recommended for the Contract.

The request for reconsideration of the complaining EO "Engineering Group sh.p.k. & Çeta - General Invest Group", dated 19.12.2022, as the decision to reject the request for reconsideration by the CA: 22.12.2022.

Dissatisfied with the decision of the CA regarding the request for reconsideration, EO "Engineering Group sh.p.k. & Çeta - General Invest Group" on 30.12.2022 has submitted a complaint to PRB with protocol number 814/22.

Also, against the decision of the CA dated 12.12.2022 for the above procurement activity, dated 04.01.2023, the Economic Operator "Vb Tofaj" & PE-VLA-KU sh.p.k. has submitted a complaint to PRB, with number protocol 10/23.

The contracting authority has implemented an open procedure - work, medium term, the criterion for awarding the contract is the responsible tender with the lowest price, the estimated value of the contract: 317,964.00 €.

EO appeals are exercised in accordance with Article 109.1 of the LPP, according to which any interested party can file an appeal with 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 PRBO considers that the Complaints meet the prerequisites in

terms of the provisions now cited and the same fall under its competences in terms of Article 105 of the LPP.

The Procurement Review Body has notified the parties on January 19, 2023 with the expertise report. The CA Municipality of Peja on January 20, 2023 has not declared whether it agrees or not with the opinion of the reviewing expert, but has only confirmed that it has accepted and read the expert's report.

On January 23, 2023 EO "Engineering Group sh.p.k. & Çeta - General Invest Group", has declared that it partially agrees with the review expert's opinion, while EO "Vb Tofaj" & PE-VLA-KU sh.p.k on January 23 has declared that it agrees with the review expert's opinion.

- Evaluation and administration of evidence –

Based on the actions described above, the PRB has engaged the review 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 19.01.2023, the internal review expert submitted the evaluation report with the following recommendations:

- the complaint to the complaining EOs, to be approved as partially grounded.
- to cancel the Notice on the Decision of the CA dated 12.12.2022 and return the matter to re-evaluation.

Answer to the complaining claims (Article 113 LPP) of the group of economic operators "Engineering Group sh.p.k. & Çeta -General Invest Group", with no., complaint with no.: 814/22 and "Vb, Tofaj& PE-VLA-KU sh.p.k. with no. complaint no: 10/23

Claim of the complaining EO "Engineering Group sh.p.k. & Ceta - General Invest Group"

Regarding the claim of the complaining EO "Engineering Group sh.p.k. & Çeta-General Invest Group", that the CA has not justified and has not addressed any of the appeal claims against the request for reconsideration dated 19.12.2022, as provided by article I08/A of the LPP.

The reviewing expert clarifies that the complaining EO dated 19.12.2022 submitted a request for reconsideration with complaining claims against the economic operator's offer recommended for the contract and violations of the contracting authority. The CA through the

decision dated 22.12.2022 against the request for reconsideration has not addressed the complaints despite the fact that the complainant has requested such a thing through the request for reconsideration dated 19.12.2022. Non-handling of appeal claims or failure to provide answers to appeal claims by the CA Municipality of Peja is contrary to Article 108/A of the LPP, namely paragraphs 8, 9 and 12 of this article. According to this legal provision, among others, the CA is obliged to respond to complaints and handle the requests/claims of the complainant. Therefore, the claim of the complaining EO is sustainable.

Claim of the complaining EO "Engineering Group sh.p.k. & Ceta-General Invest Group"

Regarding the claim of the complaining EO "Engineering Group sh.p.k. & Çeta -General Invest Group", that all EO contracts recommended for "Lulzim Beqiraj B.I&Fidani-Beton SHPK&Eae-Njaz" shpk contracts are signed by Durim Beqiraj, a person who has not submitted authorization that he has this right to signed contract and the same according to data in ARBK no

is neither a director nor an authorized representative, in any form, to make such signatures. Consequently, contracts cannot be taken as a basis as long as they are signed by an unauthorized person based on the law or notarial authorization.

The reviewing expert clarifies that the CA in the tender dossier requested: *refer to expertise's report no.814/22-10/23.

Regarding this request, the reviewing expert explains that the CA in the tender file requested that "The staff that will be engaged in this project, who are directly responsible for the execution of the works and the project in general, including the professional staff, should be presented. - The technical staff (EMPLOYEE) that will be included in the project - minimum 10 employees"

While in the requested documentary evidence he requested:

"List of workers with contracts or pre-contracts on behalf of this project, minimum 10 workers" nowhere is it required that contracts or pre-contracts related to workers must be signed by any responsible person of the company. However, based on the documents of the case, the person who signed these contracts with workers on behalf of this project as an employer is in the capacity of manager based on the documents. Proof: *refer to expertise's report no.814/22-10/23.

Joint claim EO "Engineering Group sh.p.k. & Ceta-General Invest Group", and "VB. TOFAJ; PE-VLA-KU SHPC"

Regarding the same claim of the complaining economic operators "Engineering Group sh.p.k. & Çeta--General Invest Group", and "VB. TOFAJ; PE-VLA-KU SHPK" that CA has recommended the economic operator for the contract, where the leader of the consortium Lulzim Beqiri B.I with trade name N.T.P "FIDANI-L" with business number NUI: 810215394 has extinguished the business while it was under evaluation, passing from individual business to that ltd. According to the data of the Agency for the Registration of Businesses and TAK, it turns out that the business was closed on: 24.11.2022. While on the same date, 24.11.2022, he opened a new business with NUL811990177 under the name "FIDANI L" LLC. Furthermore, the complaining economic operators add that a defunct company cannot enter into contractual relations with a public or private authority since the same does not exist as a legal entity for the needs of the Law on Commercial Companies and therefore cannot be called an economic operator according to the criteria defined by the LPP. The company with which they applied in this procedure is unable to exercise any movement, any activity from 24.11.2022. Further, the complaining EOs demand that the same and the entire consortium be blacklisted for fraud and alteration during the evaluation process.

The reviewing expert clarifies that the group of EO recommended for the contract "Lulzim Beqiraj B.I&Fidani-Beton SHPK&Eae-Njaz" shpk attached to the offer the document entitled: PENDA NE FSHATIN VRANOC PJ 2. pdf, where on page 14 there is a Memorandum of Understanding for the Establishment of the Partnership (Consortium). This agreement for the establishment of the partnership was concluded between NTP FIDANI-L (Lulzim Beqiraj B.I) as the leader and FIDANI-BETON SHPK and EAE-NJAZ SHPK. So in this agreement it is stated that the leader of the group is NTP FIDANI-L (Lulzim Beqiraj B.I).

Likewise, the group of EOs recommended for the contract "Lulzim Beqiraj B.I&Fidani-Beton SHPK&Eae-Njaz" shpk with the offer have also attached documents such as business registration certificates from ARBK.

As for the claim that according to the data of the Business Registration Agency, the leader of the consortium Lulzim Beqiri B.I closed the business on 24.11.2022, the examining expert explains that the research on the official website of ARBK shows that the member of the group /1 ideri NTP FIDANI-L (Lulzim Beqiraj B.I) with NUI 810215394 was extinguished on

24.11.2022. Below we present the part of the information from ARBK about the business NTP FIDANI-L (Lulzim Beqiraj B.I) with NUI 810215394, in which the date of termination of this business is indicated: *refer to expertise's report no.814/22-10/23.

However, to prove whether this business has been extinguished or the type of "business" has been changed

individual" in the type of business "limited liability company", the reviewing expert dated 16.01.2023 addressed the ARBK with a request to provide the necessary clarifications regarding the termination or change of the type of business. ARBK has returned a response dated 18.01.2023, where according to this response it results that the subject or the leader of the NTP group FIDANI-L (Lulzim Beqiraj B.I) with NUI 810215394 was extinguished on 24.11.2022. Below is the response of ARBK-*refer to expertise's report no.814/22-10/23.

So, taking into account the official response of ARBK and the recommended EO tender for the contract, where NTP FIDANI-L (Lulzim Beqiraj B.I) with NUI 810215394 was appointed as the leader of the consortium, while after the termination of the business and the opening of the other business "FIDANI-L SH.P.K." with unique identification number 811990177, it turns out that the leader of the group (NTP FIDANI-L (Lulzim Beqiraj B.I) with NUI 810215394) is legally non-existent. In this sense, now the group of EOs recommended for the contract do not meet the requirements of Article 66.1 of the LPP.

Likewise, the CA in the tender file, respectively, in points 7.1 & 7.2 "Requirements of professional suitability" requested as follows: *refer to expertise's report no.814/22-10/23.

As explained above, the termination of the business with which the group of economic operators was founded, now no longer meets the requirements of Article 66 of the LPP Professional Suitability, because the submission of the affidavit, the agreement on the establishment of the consortium and the certificate of ARBK, VAT, etc., were completed in the name of the individual business NTP FIDANI-L (Lulzim Beqiraj B.I) with NUI 810215394. However, during the new tender evaluation period, the leader of this group had extinguished the business and had opened a new business of Iloj SH.P.K. (Limited liability company). Therefore, we qualify the claim of the complaining EO as sustainable.

1. Joint claim EO "Engineering Group sh.p.k. & Çeta -General Invest Group", and "VB. TOFAJ; PE-VLA-KU SHPC"

Regarding the same claim of the complaining economic operators "Engineering Group sh.p.k. & Çeta -General Invest Group", and "VB. TOFAJ; PE-VLA-KU SHPK" that the EO group proposed for awarding the contract has not presented the extension of the validity of the offer and the continuation of the tender insurance as well as the completion of Form C as required in the CA letter sent on: 18 October 2022. Furthermore, the complaining EO emphasizes that this consortium may not have bid validity and uninterrupted bid assurance as required by the public procurement legislation. Therefore, we request that the Contracting Authority and PRBO verify this issue once again and ensure that there is an unbroken validity of the economic operator.

Based on the case documents, the reviewing expert clarifies that the recommended EO had submitted the extension of the validity of the offer, the continuation of the tender insurance and the completion of Form C according to the request of the Contracting Authority on October 18, 2022. Therefore, the Claim is unsustainable.

Proof:

1. Part C: Tender Submission Form

2. Declaration Confirmation dated 19.10.2022 (Continuation of validity)

Tender security policy number: 060040010086363 (continuation of the bid security) Answers to the complaints (Article 113 LPP) of the group of economic operators VB. TOFAJ; PE-VLA-Klj sh.p.k with no. complaint no: 10/23

Regarding claim 2 of EO appellant VB. TOFAJ; PE-VLA-KU SHPK which is about the validity of the "Certificate for the Quality Management System - ISO 14001 2015 - Environmental Management System". The review expert clarifies that the above-mentioned claim was judged by the Review Panel with Decision PSH.nr.381-395-398/2022 dated 23.11.2022 and this claim is "Res Judicata" according to Article 16, point 2 of Regulation No. 01/2020, of the Work of the Procurement Review Body:

2. The same technical or professional review procurement expert, if he finds that the complaining claims are the same as those previously reviewed by the review panel, notifies the review panel and the parties in the procedure in writing about these complaining claims.

Regarding the claim of 4. of the complaining EO VB. TOFAJ; PE-VLA-KU SHPC that the truck presented by EO recommended for contract with registration number 07-514-DI during the evaluation period has expired and therefore the new registration has not been presented. The reviewing expert explains that the EO recommended for the contract submitted the list of

technical equipment, with a total of four (4) trucks. The truck with serial number 4 with registration plate 07-514-DI in the case of bidding was valid for road circulation until 30.08.2022, while the opening of bids was made on 26.07.2022. The appeal claim is unsustainable. *refer to expertise's report no.814/22-10/23.

REVIEW EXPERT'S OPINION

Based on the clarifications given in this report, the review expert proposes to the review panel that the complaints of the complaining economic operators: "Engineering Group sh.p.k. & Çeta -General Invest Group" with number 814/22 and "Vb Tofaj" sh.p.k., with number 10/23, to be approved as partially based, to cancel the proposal for awarding the contract and to return the matter to Re-evaluation.

The Review Panel considered that regarding the case in this case, there is no need to convene a hearing 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 review expert, provide sufficient data to decide on the merits, therefore clarifies:

The responses of the review panel regarding the claims of the complaining EO "Engineering Group sh.p.k. & Çeta - General Invest Group"

As for the claim of the complaining EO, which claims that CA has not justified and has not addressed any of the complaining claims against the request for reconsideration dated 19.12.2022, as provided by article 108/A of the LPP, the panel The examiner assesses that this claim of the complaining EO is sustainable since the CA, through the decision dated 22.12.2022 against the request for reconsideration, did not address the complaining claims despite the fact that the complainant requested such a thing through the request for reconsideration dated 19.12. 2022. Non-handling of appeal claims or failure to provide answers to appeal claims by the CA Municipality of Peja is contrary to Article 108/A of the LPP, namely paragraphs 8, 9 and 12 of this article.

Regarding the claim of the complaining EO who claims that all the contracts of the EO recommended for the contract "Lulzim Beqiraj B.I&Fidani-Beton SHPK&Eae-Njaz" sh.p.k. are signed by Durim Beqiraj, a person who has not submitted authorization that he has this right to sign contracts and according to the data in ARBK, he is neither a director nor an authorized representative, in any form, to make such signatures, claiming that therefore

contracts cannot be taken as a basis as long as they are signed by one person unauthorized based on the law or notarial authorization, PSH supports the answer given by the expert and also clarifies that based on the documents of the case, the person who signed these contracts with workers on behalf of this project as an employer was in the capacity of manager.

The responses of the Review Panel regarding the same claim of two complaining EO "Engineering Group sh.p.k. & Çeta -General Invest Group" and "VB.TOFAJ" Sh.P.K & "PE-VLA-KU" Sh.P.K

Regarding the same claim of the complaining economic operators "Engineering Group sh.p.k. & Çeta -General Invest Group", and "VB. TOFAJ; PE-VLA-KU sh.p.k" who claim that CA has recommended the economic operator for the contract, where the leader of the consortium Lulzim Beqiri B.I with trade name N.T.P "FIDANI-L" with business number NUI:810215394 has extinguished the business at the time was in evaluation, passing from the individual business to that LLC, PSH, based on the review expert's report, clarifies that the group of EO recommended for the contract "Lulzim Beqiraj B.I&Fidani-Beton SHPK&Eae-Njaz" LLC has attached to the offer the document titled: Penda in the Village of Vranoc PJ 2.pdf, where on page 14 is the Memorandum of Understanding for the Establishment of the Partnership (Consortium). This agreement for the establishment of the partnership was concluded between NTP FIDANI-L (Lulzim Beqiraj B.I) as the leader and FIDANI-BETON LLC and EAE-NJAZ sh.p.k., so in this agreement it is stated that the leader of the group is NTP FIDANL L (Lulzim Beqiraj B.I). The group of EO recommended for the contract "Lulzim Beqiraj B.I&Fidani-Beton SHPK&Eae-Njaz" sh.p.k also attached documents such as business registration certificates from ARBK with the offer.

Regarding this claim, according to the data of the Business Registration Agency, the leader of the consortium Lulzim Beqiri B.I has closed the business on 24.11.2022, PSH based on the clarification and update made by the review expert on the official website of ARBK , it turns out that the member of the group/leader of NTP FIDANI-L (Lulzim Beqiraj B.I) with NUI 810215394 was extinguished on 24.11.2022. As well as to prove whether this business has been extinguished or the type of "individual business" has been changed to the type of business "limited liability company", PSH gives confidence to the argumentation given by the review expert who on 16.01.2023 addressed to the ARBK with a request to provide the necessary clarifications regarding the extinguishment or change of the type of business to which the

ARBK on 18.01.2023 answered this question, where according to this answer it turns out that the entity or the leader of the NTP FIDANI group -L (Lulzim Beqiraj B.I) with NUI 810215394 was extinguished on 24.11.2022.

So, taking into account the official response of ARBK and the recommended EO tender for the contract, where NTP FIDANI-L (Lulzim Beqiraj B.I) with NUI 810215394 was appointed as the leader of the consortium, while after the termination of the business and the opening of the other business "FIDANI-L SH.P.K." with unique identification number 811990177, it turns out that the leader of the group (NTP FIDANI-L (Lulzim Beqiraj B.I) with NUI 810215394) is legally non-existent. In this sense, now the group of EOs recommended for the contract do not meet the requirements of Article 66.1 of the LPP, as emphasized:

"When an economic operator seeking to participate in a procurement activity or in the fulfillment of a public contract must be registered in the professional, commercial and/or enterprise register in order to carry out the activities for which such registration is required, the contracting authority may ask the economic operator to present the document issued by the relevant public authority in the place of establishment of the economic operator which evidences the registration of the economic operator in that country.

As explained above, the termination of the business with which the group of economic operators was founded, now no longer meets the requirements of Article 66 of the LPP Professional Suitability, because the submission of the affidavit, the agreement on the establishment of the consortium and the certificate of ARBK, VAT, etc., were completed in the name of the individual business NTP FIDANLL (Lulzim Beqiraj B.I) with NUI 810215394. However, during the new evaluation of tenders, the leader of this group had extinguished the business and opened a new business of the type Sh.P.K. (Limited liability company). Therefore, we qualify the claim of the complaining EO as sustainable and as such the EO recommended for the contract is irresponsible for this procurement activity.

The responses of the review panel regarding the claims of the complaining EO "VB.TOFAJ" Sh.P.K & "PE-VLA-KU" Sh.P.K

Regarding claim 2 of the complaining EO, which is about the validity of the "Certificate for the Quality Management System - ISO 14001 2015 - Environmental Management System", SPH

clarifies that the above-mentioned claim was judged by the Review Panel Decision PSH.nr.381-395-398/2022 dated 23.11.2022 and this claim is "Res Judicata" according to article 16, point 2 of Regulation No.01/2020, of the Work of the Public Procurement Review Body.

PSH assesses the claim of the complaining EO "VB. Tofaj; PE-VLA-KU" sh.p.k. that the truck presented by EO recommended for contract with registration number 07-514-DI during the evaluation period has expired, since based on the case documents in the tender file it is clearly seen that The EO recommended for the contract submitted the list of technical equipment, with a total of four (4) trucks. The truck with serial number 4 with registration plate 07-514-DI in the case of bidding was valid for road traffic until 30.08.2022, while the opening of bids was made on 26.07.2022

The Review Panel, analyzing the documents of this case and the actions taken by the parties, the statements of the parties in the process, finds that the CA should reassess the procurement activity in question in order to fully apply the provisions and principles of the LPP in force, specifically Article 59 of the LPP and to reflect the real situation of the offers in relation to the requirements set by the CA itself.

Therefore, the PSH obliges the CA to treat economic operators in an equal and non-discriminatory manner and will act in a transparent manner and in accordance with the provisions of the LPP.

Therefore, the PS concludes that the Contracting Authority did not act in accordance with the legal provisions of the LPP and on this basis remains close to the enacting clause of this ruling, canceling the decision of the CA while turning the procurement activity into a re-evaluation.

The Review Panel in accordance with Article 117 of the LPP decided as in the provision 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 Peja;
- 1x1 EO – “Engineering Group sh.p.k. & Çeta - General Invest Group”;
- 1x1 EO – “Vb Tofaj”& PE-VLA-KU sh.p.k;
- 1x1 Archive of the PRB;
- 1x1 For publication on the website of the PRB.