



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

Psh. no.663-688/22

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: Vedat Poterqoi - President, Kimete Gashi - member, Agon Ramadani - Member, deciding on the complaint lodged by the Economic operator: “Linda” & “Euroinfrastruktura”, as well complaint of the Economic operator (EO) “Bujar Shabani” Ferizaj, regarding the procurement activity: “Asphalting of the road 14 December”, initiated by the Contracting authority – Municipality Of Shtime, on the 30.12.2022 has issued this:

DECISION

- I. Approved**, the complaint of the economic operator “Linda” & “Euroinfrastruktura”, submitted to the Procurement Review Body on 15. 11. 2022 with protocol number 663/2022, meanwhile, the complaint of the complaining economic operator “Bujar Shabani B.I” Ferizaj, submitted to PRB on the 21. 11. 2022, is rejected as ungrounded, for the procurement activity “Asphalting of the road 14 December” with no. of procurement: 617-22-11189-5-2-1 initiated by the Contracting Authority (CA) - Municipality of Shtime.
- II. Cancelled** the cancellation notice dated 31.10.2022, for the procurement activity with title: “Asphalting of the road 14 December”, with no. of procurement: 617-22-11189-5-2-1 initiated by the Contracting Authority (CA) - Municipality of Shtime and the case returns for re-evaluation.

- III. 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 the provision of this decision.
- IV. The PRB can take measures against the CA for non-compliance with the decision, as provided by the provisions of Article 131 of the Law on Public Procurement of Kosova No. 04/L-042, supplemented and amended by Law No. 04/L-237, Law No. 05/L-068, and Law 05/L-092.
- V. Since the complaint of the complaining economic operator “Bujar Shabani B.I” Ferizaj, is rejected as ungrounded, the complaint’s fee paid at the time of filing the complaint is confiscated in accordance with article 31 paragraph 5 of the LPP and these funds go to the Budget of the Republic of Kosova.
- VI. Since the complaint of the complaining economic operator “Linda & Euroinfrastruktura” is approved as grounded, the complaint’s fee is returned to the amount deposited when the complaint was submitted. The complaining economic operator is 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 will be confiscated and these funds will be transferred to The budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances -

The Municipality of Shtimje, in the capacity of the contracting authority, on the 13. 10. 2022 has published the contract notice for the related to the procurement activity “Asphalting of the road 14 December” with procurement no.: 617-22-11189-5-2-1. The CA has foreseen the opening of offers on the 24. 10. 2022. Notice on the decision to cancel the contracting authority: 08.11.2022, the request for reviewing in the CA dated 08.11.2022, as the decision for reviewing by the CA: 10.11.2022.

Dissatisfied with the decision of the CA regarding the request for reviewing, the EO filed a complaint with the PRB on November 15, 2022.

Also against the CA's decision to cancel the procurement activity, with the date of November 21, 2022, the economic operator "Bujar Shabani B.I" Ferizaj has submitted a complaint to the PRB.

The contracting authority has implemented an open procedure - work, medium value, the criterion for contract award is the responsible tender with the lowest price, the estimated value of the contract by CA is: 382,542.90 €.

- Evaluation and administration of evidence-

The PRB has engaged the external procurement review expert to, in accordance with Article 113 of the LPP, conduct the initial review of the file and complaints, who in the report dated 05.12.2022 has recommended that:

The complaint of the complaining EO "Linda & Euroinfrastruktura" should be approved as partially grounded.

- To reject as ungrounded the complaint of EO "Bujar Shabani B.I" Ferizaj, as well as;

- Cancel the notice of cancellation of the CA

Complaining claim for the Economic Operator: "Linda & Euroinfrastruktura" - Ferizaj

The main complaining claim is against the proposal on the Decision of the Contracting Authority Claim no. 1:

CA has eliminated us on the grounds that we as EO do not complete the list of equipment, specifically the booklets for two trucks are not valid, as the validity of the registration has passed according to the criteria of CA sc: CA in the criteria required by the TDS for the list of equipment has requested:

Technical and professional capacity:

Request 6. Report on the networks, facilities and technical equipment that are at your disposal for the realization of the project. Minimum Heavy truck with min. capacity. 12 tons (5 Pieces), Excavator, (3 Pieces), Leveler, (2 Pieces), Cylinder (2 Pieces), Grider (1 Piece), Self-loading Auto Mixer (1 Piece). In the case of a consortium, the group leader must fulfill 60% of the requirement for owned equipment.

Required documentary evidence:

Evidence 6. A List of tools, facilities and technical equipment available to the company, must be submitted in the original, signed and sealed, or a contract on the rental of equipment on

behalf of the project in question. For vehicles that are registered, valid registration booklets for the truck, legible customs dummies for non-registered equipment, sales contracts or invoices or equipment rental contracts for the project in question must be submitted which must be stamped and signed by both parties. Equipment rental agreements or contracts. In the case of a consortium, the Group Leader must fulfill 60% of the equipment request.

The review expert clarifies the claims of the EO, After the administration and examination of the case against the complaining claims, the economic operator "Linda" & "Euroinfrastruktura"- Ferizaj, as the complainant, we estimate that the provision of valid booklets by the complaining EO is in full compliance with the provisions of the LPP, article 72, as it is a document whose existence is fixed before the expiration of the deadline for the submission of tenders, and can be objectively verified since the last registration bears the stamp and date: 02.10.2022, of the truck with license plates : 05-178-EG and the truck with license plate: 05-263-FD has the registration date: 25.08.2022, which means that the two trucks in question were registered before the deadline for tender submission.

The CA was notified through the request for reconsideration in which the EO made it with the date: 08.11.2022 where the evidence in question was also attached.

Based on all that was mentioned above, we estimate that the complaint of the complaining EO is well-founded and based on article 59 and 72 of the LPP, we recommend that this case be returned for re-evaluation.

Complaining claim of the Economic Operator: "Bageri (Bujar Shabani B.I)"

The main appeal claim is against the proposal on the Decision of the Contracting Authority;
Claim no. 1:

The CA has eliminated us on the grounds that we, as EO, have not provided the manual for self-loading auto mixers as requested by the CA:

The CA in the criteria requested by the FDT for the list of equipment has requested:

Technical and professional capacity:

Request 6. Report on the tools, facilities and technical equipment that are at your disposal for the realization of the project. Minimum Heavy truck with min. capacity. 12 tons (5 pieces), Excavator, (3 pieces), Leveler, (2 pieces), Cylinder (2 pieces), Grider (1 piece), Self-loading auto mixer (1 piece). In the case of a consortium, the group leader must fulfill 60% of the requirement for owned equipment.

Required documentary evidence:

Evidence 6. A List of tools, facilities and technical equipment available to the company, must be submitted in the original, signed and sealed, or a contract on the rental of equipment on behalf of the project in question. For vehicles that are registered, valid registration booklets for trucks, legible customs dummies for equipment that are not registered, sales contracts or invoices or equipment rental contracts for the project in question must be submitted, which must be stamped and signed by both parties. Equipment rental agreements or contracts. In the case of a consortium, the Group Leader must fulfill 60% of the equipment request.

The reviewing expert clarifies the claims of the EO; After the administration and review of the case against the complaining claims, the economic operator "Bageri (Bujar Shabani B.I)" Ferizaj as the complainant, we estimate that the lack of providing a valid booklet for the self-loading mixer as requested by the CA in the tender file where the CA with on the date: 28.10.2022 sent the standard letter to the EO using article 72 of the LPP: Standard letter of the request for clarification of the tender where on the date: 31.11.2022 the EO Bageri (Bujar Shabani B.I) has returned a response according to the request of the CA - yes, but a valid passbook has not been proven as requested.

Clarification: During the days that I have examined this complaint, at the same time I have contacted the competent institutions such as the Center for Vehicle Registration MIA, the Customs of the Republic of Kosova and the Center for Vehicles of Kosova KAK regarding the registration of the self-loading mixer and based on the law on vehicles Law No. 05/L-132 Article 39 paragraph 3, unregistered vehicles such as motor cultivators and work tools cannot participate in road traffic. If these vehicles participate in road traffic, they must be registered and have the technically defined systems and equipment in order. All the same, based on the offers of the EO that have offered in this procurement activity, it proves that the mixer in question is registered.

Therefore, the opinion of the examining expert, after reviewing the complaint claim, evaluates the claim of the EO in question as unfounded, since the EO did not provide a valid booklet as requested by the contracting authority and the non-fulfillment of Article 69 of the LPP

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 there are sufficient arguments and

evidence in the papers of this case for the meritorious decision to be taken as well without hearing the parties at the session.

The review panel after reviewing the case documents, reviewing the complaints of the complaining EO, "Linda" & "Euroinfrastruktur", as well as the complaining EO "Bageri", findings, concrete analysis and recommendations of the external review expert, the declaration of the parties in the procedure, discussions and sifting of the evidence as a whole clarifies that it supports the report compiled by the procurement review expert, that the complaint of the complaining EO "Linda" & "Euroinfrastruktur" - Ferizaj, as the complainant, that the provision of valid booklets by the complaining EO is in full compliance with the provisions of LPP article 72, as it is a document whose existence is fixed before the deadline for the submission of tenders, and can be objectively verified since the last registration bears the stamp and date: 02.10.2022, of the truck with license plates: 05-178-EG and the truck with license plate: 05-263-FD has the registration date: 25.08.2022, which means that the two trucks in question were registered before the deadline for submitting tenders.

RP classifies as ungrounded the complaining claim of the complaining economic operator "Bujar Shabani B.I" Ferizaj, and we estimate that the lack of providing a valid booklet for the self-loading auto mixer does not meet the request of the CA placed in the tender file.

CA with the date: 28.10.2022 has sent the standard letter to the EO using article 72 of the LPP: Standard letter of the request for clarification of the tender where with the date: 31.11.2022 EO Bujar Shabani B.I has returned an answer according to the request of the CA - of, but no valid passbook has been certified as requested. Based on the request of the Tender Dossier but also the standard letter for the clarification of the tender, the new CA confirms that the auto self-loading mixer is considered a vehicle that is registered, therefore, PSH based on the submitted documentation (offer) the complaining EO has offered a concrete mixer (self-loading mixer) on the basis of the invoice and rental agreement and not the self-loading auto mixer.

The review panel in accordance with Article 117 of the LPP, as well as based on the evidence presented above, decided as in the provision of this decision.

Head of the Review Panel

Mr. Vedat Poterqoi

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 Shtime;
1x1 EO- “Linda” & “Euroinfrastruktura”;
1x1 EO – “Bujar Shabani” Ferizaj;
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.