



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

Psh. No.607/24

The Review Panel, appointed by the President of the Procurement Review Body (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 Kimete Gashi - President, Isa Hasani –member and Batisha Ibrahim - member, deciding according to the complaint by the Economic operator “RIO PLUS” SH.P.K, against the Decision on contract award or a design competition of the MINISTRY OF INTERNAL AFFAIRS" in the capacity of Contracting Authority (CA) related to the procurement activity "Hygienic maintenance in government buildings Lot - I and Lot - II" with procurement number 214-24-3205-2-1-1, on the 27/08/2024 has issued this:

DECISION

1. Approved as grounded the complaint of “RIO PLUS” SH.P.K with no. 2024/0607, dated 08/07/2024, whereas the decision of the CA "MINISTRY OF INTERNAL AFFAIRS" related to the procurement activity "Hygienic maintenance in government buildings Lot - I and Lot - II" with procurement number 214-24-3205-2-1-1.
2. Cancelled notice for contract award related to the procurement activity "Hygienic maintenance in government buildings Lot - I and Lot - II" with procurement no: 214-24-3205-2-1-1, initiated by the contracting authority (CA) - "MINISTRY OF INTERIOR AFFAIRS" and the matter is returned to Reassessment.
3. Within 10 days, the CA must inform the PRB about all the actions taken in relation to this procurement activity, otherwise, the PRB has the right to take measures against the CA for non-compliance with the decision as provided by the provisions of Article 131 of the LPP.
4. It is allowed to return the complaint's fee to the deposited amount, so that the complaining economic operators are obliged to submit a request for the return of the fee in accordance with article 31 par. 6 of the Rules of Procedure of the PRB, under the warning that if the request is not

submitted within the deadline, the deposit will be confiscated and all deposited funds will go to the budget of the Republic of Kosova.

REASONING

In this legal context, we must analyze and expand the procedural facts and circumstances related to the procurement process and review of the complaint of the economic operator "RIO PLUS" SH.P.K. to the decision of the Contracting Authority. Here is a summary and detailed analysis of the situation:

- Procedural facts and circumstances –

Publication of the Contract Notice: Date: 04.04.2024 Contracting Authority: Ministry of Internal Affairs related to Procurement Activity: Hygienic maintenance in government buildings, Lot -I and Lot - II with Procurement number: 214-24-3205-2 -I-I, Type of contract: Service, Estimated value: 537,363.54 euros

Decision of the Contracting Authority: Date: 20.06.2024 recommended EO "MSS Mobile Sanitary Services" SHPK.

The Request for Review was submitted on the 25.06.2024 by the complaining party: EO "RIO PLUS" SHPK. , The request was rejected by the Contracting Authority on the 28.06.2024 as unfounded.

Complaint Received by PRB dated 08.07.2024 with complaint number: 2024/0607

Preliminary Review Phase

The Review Panel finds that the complaint was submitted within the legal deadline and contains all the necessary elements according to the Law on Public Procurement (LPP), declaring it competent for meritorious review.

Claims of the Complaining Economic Operator "RIO PLUS" SH.P.K.

1. Requests and Claims:

o Violation of the LPP related to:

- Evaluation and determination of the lowest offer as acceptable.
- Compliance with the Labor Law and requirements for wages and expenses.
- Exclusion of elements such as annual holidays and VAT in the bid announced as the winner.
- Request to increase contract insurance from 10% to 20%.

2. Legal Basis of Claims

Article 1 (Purpose of the Law)

- o Article 6 (Economy and Efficiency)
- o Article 7 (Equality in Treatment and Non-Discrimination)
- o Article 27 (Tender dossier)
- o Article 59 (Examination, Evaluation and Comparison of Tenders)
- o Article 60 (Criteria for Contract Award)

Responses of the Contracting Authority

Answers to Claims of EO "RIO PLUS" SH.P.K.:

Article 1: CA acted in accordance with the goals of the law to ensure the most efficient and fair use of public funds.

- o Article 6: Evaluation of tenders is done in accordance with legal requirements, ensuring that public funds are used in the most economical way.
- o Article 7: There was no discrimination in the evaluation of tenders, and the tenderer who submitted the lowest and most responsible bid was declared the winner.
- o Article 27: The tender dossier is compiled and published in accordance with legal requirements.
- o Article 59: The tender announced as the winner has fulfilled all the requirements set forth in the contract notice and the tender dossier.
- o Article 60: The contract is awarded to the bidder with the lowest responsible tender.

The decision by the CA regarding the request for reconsideration -

1. Rejection of the Request for Reconsideration dated 19.07.2024, Decision: Request of EO "RIO PLUS" SH.P.K. was rejected as unfounded and the Notice on the decision of the CA remains in force. "hygienic maintenance in government buildings Lot -1 and Lot -11", with no. procurement: 214-24-3205-2-1-1., Ministry of Internal Affairs, continues with the procurement activity with Title; "Hygienic maintenance in government buildings Lot - I and Lol - 11", with procurement no: 214-24-3205-2-1-1.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Procurement Review Body on 19.07.2024 has authorized the review expert to conduct the initial review of the dossier and claims according to complaint no. 0607/2024, while on 30.07.2024 the review expert's report with no. 2024/0607 with the following recommendations:

2. The Review Expert's report was submitted on 30.07.2024

- o Recommendation: Complaint of EO "RIO PLUS" SH.P.K. to be approved as based and the subject of returned for re-evaluation.
- o CA does not agree with the expert's recommendations, while EO agrees.

The review panel has assessed that the conditions have been met to decide on this case without a hearing in the sense of Article 24 paragraph 1 of the Rules of Procedure of the PRB, taking into account that the claims of the parties and their submissions, the evidence and the review expert's report provide sufficient data to decide on the merits of the case.

-Administration and Evaluation of Evidence -

In an effort to ensure a complete and accurate verification of the factual situation, the review panel administered a large amount of important evidence. These evidences include the expert's report, the opinions of the parties involved regarding the expert's report, submissions and documents submitted by the complainant, letters and documents of the contracting authority, as well as relevant documents related to the procurement activity. Also, all the evidence proposed by the procedural parties was taken into consideration.

Claims of EO "RIO PLUS" SH.P.K.

Review expert through report no. 2024/0607 has made a detailed assessment of the claims of the economic operator (EO) "RIO PLUS" SHPK. (hereinafter the complaining EO), which had submitted the request for reconsideration to the Contracting Authority (CA) on 25.06.2024. CA, on 28.06.2024, made a decision to reject the request for reconsideration.

Complaining Claim

The complaining EO claimed that the CA acted contrary to the provisions of the Law on Public Procurement (LPP) when it recommended for the contract an EO that offered an exceptional low price and that has not presented a detailed financial analysis for the costs of this procurement activity.

Circumstances of the Case in Relation to the Complaining Claim

CA, on the 20.06.2024, has published a notice on its decision, in which it recommends EO "MSS Mobile Sanitary Services SH.P.K" for the contract for both parts of the tender. For Lot 1, the price offered by the recommended EO is 74,579.40 euros, while for Lot 2 it is 373,362.48 euros.

CA, on the 28.05.2024, through e-procurement, had sent a standard letter of request for clarification of the tender to the EO recommended for the contract, requesting that the EO provide a detailed FINANCIAL ANALYSIS for its offers (for each Lot except apart), including how it plans to perform the contracts at the prices offered and reconfirm that it stands behind the offers submitted.

In the response of the recommended EO, dated 29.05.2024, the financial analysis for Lot I and Lot II is presented:

Recommended EO Response to Request for Clarification and Pricing Analysis for Lot I

On the 29.05.2024, the recommended EO submitted a detailed response regarding the request for clarification sent by the Contracting Authority (CA). In this response, the recommended EO states that its company will provide the following information and clarifications regarding the offer made for Lot I:

According to the presented financial analysis, the recommended EO specifies that:

- The total salary for 36 months is 59,724.00 euros. This is the total amount that is planned to be spent on staff salaries during the prescribed period of the contract.
- The remaining difference from the total bid price for Lot I is 14,855.40 euros. This is the sum of the difference between the price offered and the total cost of wages, thus leaving a margin for other expenses related to the realization of the contract.

The recommended EO mentions that the price offered for Lot I cannot be considered abnormally low and there is no basis to qualify this price as such, considering that the difference between the lowest price and the fourth most expensive price in the ranking is less than 10%. This small difference in prices suggests that the offer of the recommended EO is in line with market standards and does not deviate significantly from other bidders' prices.

Price Analysis for Lot I

In the price analysis report for Lot I, the prices offered by the competitors are presented as follows:

- **MSS Sh.p.k.:** 74,579.40 euro
- **Rio Plus Sh.p.k., Guard De Capital Sh.p.k., Skyfterat-Live Sh.p.k.:** 75,325.66 euro
- **Efa Dienstleistung GmbH:** 76,372.99 euro
- **Erik Sh.p.k.:** 76,617.80 euro
- **Internacional Group Base; Internacional Security AAH Sh.p.k.:** 77,303.51 euro
- **Schafberger Jr GmbH:** 79,269.11 euro
- **Laguna Sh.p.k.:** 79,904.88 euro

The recommended EO states that the price offered by the company is in line with the price indicators offered by competitors and that its price is competitive compared to other offers. Other participants in the tender have submitted bids that are in a similar range, and the difference between the bid of the recommended EO and other bids is minimal.

The recommended EO also confirms that it fully stands by its offer for Lot I and is ready to implement all CA requirements arising from the technical specifications of the tender file, in case the company is declared the winner of the contract.

In this way, the recommended EO has provided a complete and clear response regarding the claims raised, including sufficient details on the allocation of costs and the justification of the price offered. This response helps to clarify any possible ambiguity and to verify the compliance of the offer with the requirements specified in the tender dossier.

The Expert's Opinion regarding the complaining claim - The review expert has assessed that the CA, in accordance with the relevant paragraphs of Article 41 of the Law on Public Procurement, had requested clarifications from the recommended EO based on the price offered. The CA had designated the EO's bid price as "Extremely Abnormally Low Price". However, the recommended EO response only included the calculation of staff salaries and did not contain any other necessary elements as defined in the Regulation on Public Procurement.

In particular, the price offered for Lot 1 (with VAT) is 74,579.40 euros, while only the cost of personnel is 59,724.00 euros. The difference of 14,855.40 euros, which does not include any other details such as the value of VAT and expenses for other materials, is an important indicator for evaluating the reliability of the offer.

The expert emphasizes that the financial analysis of the recommended EO does not contain the basic elements of price breakdown that are necessary to reflect the reliability of the bidder, according to the relevant paragraphs of the Law on Public Procurement. The expert finds that the analyzes offered do not are sufficient to assess whether the prices offered are normal and in accordance with the conditions specified in the tender dossier.

The expert handled the claims of EO "RIO PLUS" Sh.P.K. in a professional and objective manner. The argumentation in the expert's report is detailed and based on the relevant documents of the procurement activity. The Review Panel has confirmed that the claims of EO "RIO PLUS" SH.P.K. are based and that the CA should request the breakdown of the costs of services and supplies in accordance with the indicators defined in the tender dossier to ensure that the prices offered are acceptable and in accordance with the relevant law and regulations.

In the response submitted on 29.05.2024, the recommended EO presented detailed clarifications for the offer made for Lot II, as follows:

Clarification of the Financial Analysis for Lot II

The recommended EO responded to the request for clarification from the Contracting Authority (CA) by providing the following information for Lot II:

1. Price Analysis for Lot II

In accordance with the requirements specified in the tender file and in accordance with the previous points in the relevant documents, the recommended EO presented the financial analysis for Lot II as follows:

The total salary for 36 months is 313,551.00 euros. This figure represents the total expenses for the salaries of the personnel engaged in the execution of the contract during the described period.

o The remaining difference from the total bid price for Lot II is 59,811.48 euros. This is the sum of the difference between the price offered and the total cost of wages, thus leaving a margin for other expenses necessary for the realization of the contract.

2. Compliance with Tender Dossier Requirements

The recommended EO mentions that the price offered for Lot II cannot be considered abnormally low and argues that:

The difference between the lowest price and the fourth most expensive price in the ranking is less than 10%, making this difference negligible compared to other offers. This suggests that the offer of the recommended EO is competitive and in line with the price indicators of other bidders.

The price offered for Lot II is as follows

- **MSS Sh.p.k.:** 373,362.48 euro
- **Efa Dienstleistung GmbH:** 392,219.65 euro
- **Rio Plus Sh.p.k., Guard De Capital Sh.p.k., Skyfterat-Live Sh.p.k.:** 394,344.00 euro
- **Internacional Group Base; Internacional Security AAH Sh.p.k.:** 411,458.46 euro
- **Laguna Sh.p.k.:** 418,573.08 euro
- **Erik Sh.p.k.:** 420,015.69 euro
- **Schafberger Jr GmbH:** 437,130.14 euro

The recommended EO states that the price offered is in line with other offers and that the difference in prices is small compared to other offers, thus making the offer entirely acceptable and competitive.

3. Fulfillment of Requirements and Confirmation of Commitment

The recommended EO confirms that it fully stands behind its offer for Lot II and is ready to comply with all the requirements of the Contracting Authority arising from the technical specifications of the tender dossier, in case the company is declared the winner of the contract

Also, the recommended EO states that it is ready to provide additional information at any time, according to further requests of the CA.

4. Technical Specifications Requirements and Requested Clarifications

The recommended EO responded in accordance with the requirements of points 9.2.4 and 10 of the tender dossier, where it is specified that:

Point 9.2.4 FDT requires the economic operator to submit a signed and stamped declaration, confirming that he will pay the basic salary for one month for a worker in the amount of not less than 395 euros gross.

o Point 10, page 37 of the tender file gives the CA the right to request additional financial information and analysis, in case there is a doubt that the economic operator does not comply with the laws and regulations in force regarding wages.

o Article 6.5.8 regulates that any offer that does not cover the threshold of expenses for workers' salaries will be declared unsuitable.

The Expert's Opinion regarding the complaining Claim - The engaged expert presented a detailed analysis regarding the appeal claims of the economic operator "RIO PLUS" SH.P.K., in the context of the submitted offer for Lot II and in accordance with the requirements of the Contracting Authority (AK). The expert's analysis includes various aspects of the review of the offer and the responses provided by the recommended EO. The main reasons and conclusions of the expert are summarized below:

1. CA Request for Clarification and Implementation Criteria

In accordance with paragraph 4 of Article 41 of the Public Procurement Regulation (PPR), CA has requested detailed clarifications from the recommended EO regarding the bid price. The CA has designated the recommended EO's bid price as "Extremely Abnormally Low Price", requiring this operator to conduct an in-depth cost analysis to justify the price offered.

The clarification submitted by the recommended EO includes only the calculation of staff salaries and does not contain any further information regarding other elements necessary for the execution of the contract, as required in paragraphs 8 and 9 of article 41 of the RrPP. This is objectionable since a complete analysis of it has not been done all costs and materials required to fulfill the contract.

2. Bid Price Considerations and Other Components

For Lot I, the recommended EO bid price (with VAT) is 74,579.40 euros. Meanwhile, only the cost of personnel for the execution of the contract is 59,724.00 euros, leaving a difference of 14,855.40 euros. The bid price includes all taxes, but the value of VAT is not broken down, and other details about the costs of materials and services required are not specified.

The tender dossier (page 30) stipulates that the contractor must provide materials for sanitary maintenance in full, including a range of items and materials, which must be of a high standard and sufficient for the contract period of 36 months. The materials include toilet paper, soap, deodorants, detergents, garbage bags, and many other elements that are necessary to perform the contract in accordance with the specified standards and requirements.

In addition, the institution included in Lot I has a significant number of employees and may have several toilets, which poses a challenge for the accurate calculation of materials and costs.

Therefore, these indicators should be taken into account by the CA during the analysis of the offers.

3. Analysis of the Credibility of the Offer

The expert points out that the analysis provided by the recommended EO does not contain the basic elements of price breakdown, which are necessary to reflect the reliability of the bidder, as required in paragraph 8 of article 40 of the RrPP. This paragraph provides that the CA must take into consideration factors such as the economy of the services offered, the particularly favorable conditions for the tenderer and the originality of the proposed services.

Due to the lack of complete and clear details in the financial analysis of the recommended EO, the expert concludes that the offer submitted for Lot I cannot be considered reliable without a further breakdown of the costs of services and supplies, according to the requirements of the tender dossier.

4. The Expert's conclusions

The expert concludes that the complaint of the economic operator "RIO PLUS" SH.P.K. is grounded and that the CA should request from the recommended EO a full breakdown of the

costs of services and supplies to assess the credibility of the offer. This includes detailed analyzes to reflect all aspects of the costs and materials required for the execution of the contract.

The expert's report is detailed, understandable and based on the relevant tender documents. The findings of the expert are supported by the tender file and the documents provided by the tenderers, making it a reliable source for examining the claims of the complaining economic operator.

In conclusion, the Review Panel has assessed that the claims of the complaining economic operator "RIO PLUS" SH.P.K. are based and has given full confidence to the expert's report. This means that during the re-evaluation of the offers, the CA must take into account the expert's requirements and provide a complete and detailed analysis of costs and materials to guarantee compliance with the standards required in the tender.

Findings of the Review Panel

The Review Panel has carefully reviewed all aspects of the review expert's report, which has been drafted in accordance with the requirements of the Panel related to the dispute in the public procurement activity. In this context, the Review Panel has reached the following conclusions:

Content and Evaluation of the Expert's Report - The review expert's report has been evaluated as a document that contains the essential elements according to the provisions of Article 113 and Article 114 of the Law on Public Procurement (LPP). This law requires the expert to review all procurement documentation, include all grievance claims, and provide an independent and professional assessment of the procurement activity and the validity of the complaining claims. The Review Panel has considered the expert's report as a valid document, but emphasizes that the expert's report is not binding on the Panel. The panel has appreciated that any such report must be analyzed in the overall context of the case documents, including the facts asserted and other possible evidence. The assessment of the report is made in accordance with the nature of possible violations, the course and purpose of the procurement activity, relying on an independent and professional judgement.

Evaluation of facts and arguments as well as documentation The Review Panel has analyzed in detail the documents of the case, the actions taken by the parties, their statements, and the evidence administered during the procurement process. The panel has assessed that the findings and assessments of the expert's report are acceptable and that the Expert's Report has complied with legal requirements and procurement procedures. In accordance with this, the Review Panel has given full confidence to the expert's report and has come to the conclusion that the claims of the economic operator "RIO PLUS" SH.P.K. are based.

Decision on the Cancellation and Reassessment of the Procurement Activity The Review Panel has assessed that the Contracting Authority (CA) has acted contrary to the legal provisions for public procurement and the requirements of the tender file related to the procurement activity for "Hygienic Maintenance in Government Buildings Lot -1 and Lot - II" with procurement number 214-24-3205-2-1-1. The panel concluded that the reviewing expert handled the claims of

the complaining economic operator in a professional and objective manner and provided a detailed and understandable argumentation, based on the relevant procurement documents.

Considering these findings, the Review Panel has decided that the complaint of the economic operator "RIO PLUS" SH.P.K. consider it as grounded and has recommended that the procurement activity be re-evaluated. The panel has decided to cancel the contract award notice and return the case to re-evaluation in accordance with the legal provisions of the LPP.

Actions of the Review Panel and Legal Powers The Review Panel, in accordance with its legal powers, as defined in article 104, paragraph 1, in relation to article 103, article 105 and article 117 of the LPP, has taken actions to ensure a quick review , fair and without discrimination of the subject. The panel has based its findings on the relevant provisions of the LPP, which regulate such situations that may arise during a procurement activity.

In accordance with this, the Review Panel has decided to return the procurement activity to re-evaluation and recommend that the Contracting Authority act in accordance with the legal provisions of the LPP, ensuring the compatibility and transparency of the procurement process in the future.

The Review Panel, in this way, has shown a full and professional commitment in handling the complaint and in re-evaluating the procurement activity, guaranteeing that all procedures are followed in accordance with the law and with the standards required for a fair and legal procurement.

President 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, to the Department for Administrative Affairs for annulment of the decision within 30 days from the date of acceptance of the decision.

Decision to be submitted to:

1x1 CA – **MINISTRY OF INTERNAL AFFAIRS;**

1x1 EO – **RIO PLUS SH.P.K.;**

1x1 Archive of the PRB;