



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

Psh. No.1011/23

The Review Panel, appointed by the President of 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) composed by Vedat Poterqoi - President, Vjosa Gradinaj Mexhuani – member, Isa Hasani – member, deciding according to the complaint of the GEO “Via Egnatia Sh.P.K.; Nnsh Vaakal; Natyra”, against the Decision on contract award regarding with the procurement activity “Summer and winter road maintenance” with procurement number 615-23-4993-2-11, of the Municipality of Podujeva as the contracting authority (CA), on the 29/01/2024 has issued this:

DECISION

1. Approved, as grounded the complaint of GEO “Via Egnatia Sh.P.K.; Nnsh Vaakal; Natyra” with no.2023/1011 of the 13/12/2023, while the decision of CA- Municipality of Podujeva regarding with the procurement activity “Summer and winter road maintenance” with procurement number 615-23-4993-2-11 is cancelled, while the procurement activity is returned to Re-evaluation.
2. Within a period of 10 days, the CA must inform the PRB about all the actions taken regarding 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 the article 131 of the LPP.
3. Are returned the funds deposited in the name of the tariff tax for the submission of the complaint to the account of the Economic Operator Via Egnatia Sh.P.K.; Nnsh Vaakal; Natyra”.
4. Since the complaint of the complaining EO is approved as grounded, the complaint’s fee is returned to the amount deposited when the appeal was submitted. The complaining EO is obliged to, in accordance with Article 31 point 6 of the Rules of Procedure of the PRB, within a period of sixty (60) days, make a request for the return of the insurance of the complaint, otherwise the deposit will be confiscated, and these funds will go to the Budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances -

On the 23.05.2023, the Municipality of Podujeva in the capacity of the Contracting Authority has published the contract notice B05 regarding with the procurement activity “Summer and winter road maintenance” with procurement number 615-23-4993-2-11.

While on the 29.11.2023 CA has published B58 Notice on the decision of the Contracting Authority where it has awarded a contract to GEO "Eing Com Sh.P.K. El Bau Shpk".

This procurement activity was developed through an open procedure with a service contract type and with an estimated contract value of 650,000.00 €.

On the 04.12.2023 GEO "Via Egnatia" Sh.P.K.; "Ms. Vaakal; "Natyra" has submitted a request for reconsideration against the aforementioned decision of the CA. On the 06.12.2023, the Contracting Authority rejected the request for reconsideration as unfounded.

On the 13.12.2023, PRB received the complaint from EO GEO “Via Egnatia Sh.P.K.; Mrs. Vaakal; Nature” with no. 1011/23 regarding the activity “Summer and winter road maintenance” with procurement no: “615-23-4993-2-11”.

-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 choosing the dispute 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 under 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.

Response to the request for reconsideration: “Response to the complaining claim 1. This claim is rejected as unfounded because the evaluation commission has evaluated fairly and in harmony with the LPP by referring to the requirements of the tender file where the criteria for reward with contract was the responsible tender with the lowest price, therefore the GO proposed for awarding the contract has met all the requirements according to the tender file by offering the price lower than the estimated value, therefore in no case has the evaluation commission violated the articles you allude to and moreover the prices offered by the GO proposed for awarding the contract are lower than the budget forecast by the requesting unit. As for the staff, we have already responded to Complaint claim 4 and we repeat to you that we have not applied additional criteria, only that we have verified the documents presented by you, for which not you but no EO can contest the verification of the documents presented to the CA.

Answer to reason 3: This elaboration is rejected as unfounded because you have delivered only one tank according to the request of the CA and that the other tanks, even though you tried to elaborate, do not stand because the photographs are the best and real evidence to convince the

CA that you do not complete this request as requested, and the fact that you have all the machines behind your parking lot as you stated in your e-mail when you confirmed the visit to the field and stated that you do not have all the machines are there because it is the work phase and they are in the field, therefore you yourself are contradictory in what you have stated and presented. Once again, we clarify that the CA has the right to verify any document that you have presented, and in no case is there any excess of competence or distortion of the truth, and that if it is considered a criminal offense, you are the one who presented the other tank truck and that it is not it is true that you have presented the booklets and license plates to the commission and that the bus is not used during the winter and that the sign in the cabin can be seen if it will be, but this is very clear your tendency to continue with the deviation of the CA.

Answer to complaining claim 2: This claim is rejected as unfounded because the evaluation commission in the case of re-evaluation of the tender file does not need to go to the field to verify the machines because all the machines presented by the GO have been clear according to evidence presented during the bidding and there is no need for on-site verification, therefore, regarding your elimination for abnormally low prices, the bid evaluation committee did not see fit to request additional clarifications regarding the price abnormally low for the reason that you have provided sufficient evidence to convince the evaluation commission that with the offered prices you cannot fulfill the contract as foreseen, where according to the notification on your elimination point 4 you have seen for yourself what You have offered prices by elaborating only some of the positions, not calculating other expenses such as operating expenses, oil, vehicle insurance, waste disposal, which are part of the implementation of the contract.

Answer to complaining claim 3: This claim is rejected as unfounded because according to Annex 3. Request for Confidentiality you have submitted filling in as secret documents Article 68 and 69 of the LPP, and you have not specified which documents you consider as business secrets therefore we have consulted with PPRC and while you as EO have not specified which documents you consider as business secrets but you have blocked them all, we have received an answer that you are allowed access, while you who have not been given access to GO's documentation proposed for the award of the contract, this fact does not hold because GO according to Annex 3. Request for Confidentiality has been submitted by filling in which documents it considers as business secret according to Article 69, therefore the CA has no tendency for favoritism.

Response to complaining claim 4: This claim is rejected as unfounded because the evaluation commission acted in accordance with the legal provisions defined under the LPP, the RRPP and the criteria required under the TDS, therefore regarding the contestation of references for staff professional, you yourself as EO have submitted a complaint to PRB complaining about the same staff, traffic and agricultural engineer and that it is the right of CA to verify every document presented by you, As for the machines - tanks has been a decisive and very clear request that: Special tank truck with a complete mechanism for washing the roads should have a volume of over 7000 liters. (The tank truck must have the mechanism for washing from the front and from the back with workers).

You have delivered only 1 tank truck according to the request of the CA, always based on the documents and evidence presented by you and the photographs from the field by the commission. As for the criterion for the loading bucket, no additional loading bucket equipment was requested, but the construction of the machine was requested to be a loading bucket, and that you know very well and have a clear understanding of the request, but now you try to distort the facts and arguments presented when you know very well that you did not provide the machines according to the request of the CA and that it has nothing to do with it as an additional request but it was a basic criterion.

Answer to Reasons 1 and 2: This elaboration is rejected as unfounded and that the same claims are mentioned and elaborated in the claims mentioned above, we inform you that the CA has in no case used or applied other criteria during the evaluation with what were part of the tender file, therefore in this particular case you have tried to distort the facts and referring to article 72 of the LPP and Operational Guide 001/2023 where in no case is there any example of how to act when the staff list is missing, you have presented the example for the list of contracts, and you have also proven yourself that you do not have the staff list attached at all, therefore you with full reason have not fulfilled the CA's request for this point and yes it is the right of the CA to ask for additional clarifications or not, and in your case it did not consider additional clarifications necessary when you did not complete many other points requested by you, therefore it was not necessary.

Answer to Reason 4: This elaboration is rejected as unfounded because no Article or point of the Procurement Law has been violated in terms of price analysis considering that the evaluation commission has only described the prices that you have set and that there is no need for additional clarifications because the clarifications were already part of the file submitted by you and for that reason the evaluation commission was formed, therefore the CA has precisely implemented all legal provisions in the case of re-evaluation of this matter.

Response to claims 6, 7, 8, 9: These claims are rejected as unfounded and as CA we have responded to the above points because you have repeatedly repeated the same claims in this request for reconsideration which have already been disputed during the review of this request . As CA, we estimate that all your complaint claims regarding the proposed GO for contract award and all your elaborations regarding your elimination are unfounded, not legal and most of them tendentious only to delay this activity, when it is known that even during the tendering phase you have prolonged the process with a complaint to the PRB and that all the criteria that were part of the tender dossier were in full harmony with the nature of the project and none of them were removed on the occasion of the decision of the PRB, and that the activity was open to all interested parties, so your accusations of adjusting the criteria of the tender file tend to lower the credibility and professionalism of the CA".

Claims of the Complaining Economic Operator EO Via Egnatia Sh.P.K; Mrs. Vaakal; Nature" are presented as follows:

- The first claim (I), the Complainant claims that: "CA has violated Article 1 and Article 6 of the LPP since during the process of evaluation of offers and administration with the procurement

procedure, it did not play an active role to ensure that the funds public are being used efficiently and economically. This has come as a result of non-compliance in a fair and objective manner with the requirements and criteria set forth in the Contract Notice as well as in the Tender Dossier. More precisely, CA without right awarded the EO Group Eing Com Sh.P.K. with a contract; El-Bau Sh.P.K. who own the higher price than our tender for 237,223.83 €, respectively for 71.82%. Based on the articles mentioned above as well as based on article 4.1.c of RRPP-001/2022, CA is obliged to play an active role in spending public money in an efficient and economic manner, respectively it must be ensured 5/15 that the contracted price is not higher than the market price. If one looks carefully at the offer of the GOE announced as the winner, more precisely position 1 of table B just presented below, it turns out that for the cleaning of 2496315.94m² (or approximately 700 km of road) in 24 hours, the winning GEO will be paid 6,240.79 €. According to the climate that reigns in the Municipality of Podujeva, it often happens that we have up to 60 days a year that we have to intervene in the cleaning of the streets, then for a year it falls to be paid 374,447.40 € (60 days x 6,240.79 €). If this is multiplied by two years, then it turns out that with this position alone, this GOE will cost the CA 748,894.80 €. According to this, it seems that the CA will remain without a budget even without completing the first winter, which is a clear indication of a great misuse of the budget. A table is attached to the complaint.

So this clearly shows that this price is extremely higher than the market price and similar to this, this GEO has almost all other prices in its tender. Based on what we said above and based on last year's prices, it is concluded that CA has completely violated Article 1 and Article 6 of the LPP as well as Article 4 of RRPP-001/2022 by not evaluating the tenders in accordance with the requirements of the tender file and not administering the procedure according to the articles mentioned above. This clearly shows that during the re-evaluation of the tenders, the CA violated articles 1 and 6 of the LPP as well as article 4 of the RRPP-001/2022”.

- The second claim (II): "CA has violated Article 7 of the LPP in the case of re-evaluation, as it has not treated the participating tenderers as equal at all." It is worth mentioning this paradox where the evaluation committee has verified the entire machine that we presented in the tender and the notarized one according to the en-minute procedure even though such verification was not defined as a possibility in the tender file giving us contested the notarial process, while the GOE, which has now declared him the winner, has not checked or verified the mechanism at all. This is considered completely unequal and discriminatory treatment of tenderers. Neve eliminates us because of abnormally low prices without developing an interparts procedure for clarifying such prices, while the GOE that declares it the winner accepts prices that are up to 7 times higher than our prices and those of the market . In previous years, CA had a budget 3 times lower for the same services, while this year it has increased it deliberately and without any market analysis, where it is clearly seen that in parallel with this increase, it has adapted the requirements of the OE EING COM tender dossier. ShPK and that from the beginning this tender has been planned so that GEO will win anyway, which after the re-evaluation has declared it the winner. In addition, we also requested access to the tender documents of the winning GEO and the CA did not even give us the cleaned version of the documents, while when this GEO requested access to our documents, the CA gave them all even though they were defined in

advance as a business secret. The very fact that he eliminates us with unfounded reasons, while the GEO that declared him the winner does not even bother to verify the equipment and machines, shows his open favoritism and deliberate discrimination against our tender. This is sufficient evidence and argument that shows that the CA has completely violated Article 7 of the LPP”.

- The third claim (III): "CA has violated Article 11 of the LPP since, without our permission and contrary to our declaration of business secrecy, it has given the tender documentation to the declared winner GOE when it requested access in our documents. Surprisingly, he did not do such an action even when we requested access to the documents of this GEO, therefore such action of the CA, in addition to contradicting article 11.3 and 11.4 of the LPP, this action also contradicts the article 7 of the LPP because here too he acted in a favorable manner towards the GEO that declared him the winner. In this case, he acted in a discriminatory manner towards us by not offering us at least the cleaned version of the documents as provided by article 11.4 of the LPP. From all this, it is clearly seen that the CA has completely violated Article 11 of the LPP, which talks about the preservation of business secrets, namely allowing access to tenderers only to the documents that the law defines as an opportunity and a permitted way”.

- The fourth claim (IV): "CA has violated Article 56 of the LPP since during the evaluation, clarification and comparison of our tender, it has applied criteria that were not defined at all in the requirements submitted in the tender dossier”. This action of the CA is strictly prohibited by paragraph 3 of this article which clearly states that: "The tenderer, during open procedures, or the candidate, during limited procedures and contracting procedures with negotiations, will not be disqualified or excluded from such procedures based on any request or criterion that is not mentioned in the cantata announcement and in the tender dossier”. The requests applied by the commission during the re-evaluation as additional requests that were not initially defined in the tender dossier are: - Disputing the references of the professional staff on the grounds that they may not have been notified in AKT when they managed or worked on the projects relevant that had been implemented by the company that issued the references; - Contesting the tanker trucks because they are not for water, even though the request of the tender dossier did not specify such a request. They were required to be a special tanker truck with a mechanism for washing the roads and as such they were offered; - Disputing the weight of the sweeper by applying the total weight with load, even though the dossier only requested: Special sweeper up to 3 tons for sweeping streets, sidewalks and city squares - without specifying what weight it is; - Disputing the loading bucket up to 7 tons on the grounds that it is allegedly located on the tractor! This was not defined anywhere in the list of equipment where the loading bucket must be installed (on a tractor, truck or excavator), so it is true that the CA has also applied this criterion as an additional criterion. The request was like this: Loader bucket up to 7 tons for loading waste and salt and so we have provided it. For more details regarding the dismissal of the findings of the CA as unfounded reasons for our elimination, you will find it in point 5. So according to this and what will be said about the claim on the violation of Article 59 of the LPP by side of the CA, we find that the latter has completely violated Article 56.3 of the LPP because for our elimination it has applied additional criteria and requirements that were not previously defined in the tender dossier”.

• The fifth claim (V): "CA has violated Article 59 of the LPP since during the re-evaluation of our tender, in addition to applying additional criteria that were not previously defined in the tender file, even those that were did not apply them properly and as they were requested by the CA itself. The reasoning of the CA for setting our tender as irresponsible by not evaluating according to the requirements of the dossier nor according to the rules of the LPP, looks like this (we are presenting each reason for the elimination and then we are giving the clarification why we claim that as a reason is not based): Claim against Reason 1 and 2 which looks like this: Justification "Your tender has been rejected for these reasons": 1. The list of staff is missing according to the request of CA where there was a decisive request c CA - List of professional staff together with diplomas, cv , employment contracts or cooperation agreements in this project, evidence of work experience. GO - you introduced as project manager Mr. Besnik Sejdiu, where according to the submitted cv, Mr. Besnik Sejdiu has been engaged since 2020 as an external employee at the company Via Egnatia, attaching the maintenance references for the time period 2020/20022 and according to the verification of the worker's declaration from the employer, according to the TAK link, it turns out that this engineer was not at all declared by the same company, and for CA the reference issued for the engineer Sejdiu by the VIA Egnatia company is unacceptable. GO - presented as an agricultural engineer Mr. Nexhat Maxhuni where, according to the submitted cv, he writes that Mr. Nexhat Maxhuni has been engaged since 2021/2022 in the company Via Egnatia, attaching also the maintenance references for the time period 2021/22 and according to the verification for the declaration of the worker from the employer, according to the TAK link, it turns out that this engineer was not declared by the same company at all, and for CA the reference issued for the engineer Maxhuni by this company is unacceptable. In conclusion, this GO failed to meet the requirements of the CA according to Guideline No. 001/2023 for public procurement, article 69 of the LPP, the cv submitted for engineers do not meet the requirements of the tender file/reject the tender without asking for further information. According to these two reasons, the CA contested the list of professional staff as well as the references of the traffic engineer and the agricultural engineer. The list of professional staff was not submitted on the grounds that there were only two persons as contracted professional staff and it is incomprehensible to make a list with only two external members when both of them had been submitted the separate decisions for engagement in such positions in the project as well as all other required evidence. In addition, according to Guideline No. 001/2023 for Public Procurement, the CA had to ask us for clarifications about the list with which we submitted all other required evidence such as the decision, diplomas, contracts, CV and references for the persons in question. This is how Guideline 001/2023 describes this action that CA was able to do: A table is attached to the complaint, namely Article 10 point 10.1. With which LPP, RRPP-001/2022 and Guideline 001/2023 do not correctly address how action must be taken in the event that the list of professional staff is missing while other required evidence has been submitted, then the CA must apply this instruction/provision as well as Article 59.4 and 72 of the LPP. So it can be seen that the Guide clearly defines that when the references related to the request are submitted and only the list is missing, then the CA must ask for additional clarifications. Likewise, according to Article 59.4 and Article 72 of the LPP, such a clarification had to be made as it does not affect any substantial change of the tender. To eliminate a tenderer because he does not have the list of professional staff, which even then would consist of only two

people, and to award another GOE with a contract at a 71.82% more expensive price, is hypocrisy and the height of the waste of public money. This is not only contrary to the LPP, but it is also completely contrary to the Law on the Administration of Public Finances. The other part of this baseless reasoning for elimination is the fact that these two people should no longer receive the references for the implemented projects because they were not notified to TAK in the case of being engaged as external collaborators in the company that issued the references. . In the requirements of the tender file, as evidence for these two engineers, the following were requested: diplomas, CVs, employment contracts or agreement for cooperation in this project, evidence of work experience. In order to fulfill the requirements, these proofs must also be provided, at least a reference letter from the employer or any other document that proves previous work and experience, as well as the decisions signed by the engineer and the company for the appointment in the required positions. On the basis of this, it is clearly seen that the request has nowhere been determined that such staff must have been notified to TAK, therefore the application of this criterion, except that it is contrary to article 59 of the LPP, is also considered the application as a criterion addition, which according to article 56.3 of the LPP is prohibited. This application as an additional criterion was made even more illegal by the fact that to be engaged in a company's project does not necessarily mean being on the payroll of that company because it is known that there are many ways of contracting to be engaged in a project as the persons in question have been engaged. The claim against Reason 3 which appears: In the list of equipment - the request of CA was a tank truck with a complete mechanism for washing roads with a volume of over 7000l (the tank truck needs this mechanism for washing from the front and back with a worker) quantity 3 pieces. For this point, GO has only offered one tank according to the request of the CA, that is, it has not been able to fulfill the request of the CA, moreover, it has misled the commission on the ground by presenting a tank that was not presented at all according to the Annex 7. According to the agreement with EO Papenburg & Adriani Kompani, 01-301-SB, 01-893-SR are not tankers according to the request of the CA, because the presented tanker is for oil transportation, while 01-853-SM does not meet the specifications the wanted. The tank according to the agreement with EO Kosova Asfalt, 05-655-EN is not according to the request of the CA because there is no mechanism for washing from the front and from the back. The machine with license plate 01-956-KB is not a tanker at all, but the same is a road sweeper. The request was a special sweeper up to 3t for sweeping the streets, sidewalks and squares of the city. For this point, GO has offered a sweeper with a weight of 3.5t, which does not meet the requirements of the CA. Another request was: loader bucket up to 7t. For the removal of waste and salt - 2 pieces. For this point, GO has only offered a loader bucket 01-824-ZM, while the equipment in annex 7 mentioned by GO turns out to be a tractor with a cab, a JCB 3CX excavator, a JCB 3CX 4X4 excavator, therefore none of the mentioned machines conform to the requirements of AK. The justification for elimination that we allegedly did not provide the tankers as requested by the CA is completely unfounded since we have provided 6 tanker trucks of which at least 3 meet the criteria required by the CA, while the other 3 we have placed only as spare equipment that the AK 9/15 does not need to deal with at all. The other reason that we allegedly led the inspection committee astray is a non-principled and non-ethical reasoning that does not hold at all because the inspectors had with them the evidence such as the registration books and the list of equipment that we submitted to the tender from where

were able to freely compare them with tables respectively with chassis numbers on each device. This finding that we allegedly did not provide them with the necessary equipment is slander and a completely unfounded accusation for which we believe that the CA will give an account before the investigative bodies that will deal with this issue. We say this because what is said is not true at all, since in reality we have given them unconditional access to all the devices by clarifying their every request and giving them every information they have asked for. In the photos that the verification commission used for evaluation, there are also devices that were not presented at all in our tender, so this, apart from showing fraud on the part of such a commission, also shows how unprofessional they were. Such a committee has deliberately photographed other equipment to manipulate during the evaluation, so this shows that this committee has misused the opportunity given by photographing various equipment with or without signs which are not part of our project and tender. On our site there are hundreds of different devices, some of which are in the process of being serviced and some of which are not yet registered, so their appearance may not be regular, even though we have not delivered them at all as devices in our tender, it is considered a violation of burden of trust and official duty for which that commission was appointed. It is worth clarifying that some machines deliberately have their signs removed from their place and placed somewhere inside the cabin and not necessarily in a visible place as during the snow removal process they are often dislodged and lost. For this action, even the traffic police does not create a problem because we already have them with us and it does not constitute any kind of violation. In order to verify such devices, the commission had to check their chassis numbers because they are the security elements that cannot be changed and show exactly which device belongs to which traffic book. This shows a lot about their unprofessionalism and naivety where precisely on the basis of this finding by these “experts”, the CA without any legal basis contested the notarial deed of the notary who checked and verified the cars one by one by verifying each one chassis number according to the en-minutes procedure. Exceeding the powers or distorting the truth through photographs, according to the KPRK, is considered a criminal offense which will be sanctioned once the truth is established by the competent bodies. The CA did not have to be based only on the photos, because in this case they are manipulated, but it had to be based on the authenticity of the chassis numbers of the equipment, which were also certified by a notary. The question arises whether the contestation of the notarial process was intentional to be used as a trigger for verification, which as a process was not provided for in the tender dossier at all? Which machines were delivered by us and which the commission presented as a distortion of reality should be clarified by the reviewing expert whom we invite to do so with the sole purpose of clarifying the entire fraud presented by the CA, respectively by the verification commission. 10/15 Even the other finding that some tanks are supposedly for transporting oil is not true at all. Despite this and the fact that the tank trucks with plates 01-301-SB, 01-893-SR and 01-853-SM sufficiently meet the criteria required by the CA and the number of tank trucks that were requested was only 3 pieces, then it shows that the reasoning of the CA for equipment that was not requested is fictional and does not coincide with reality nor with the way of evaluating the qualifying criteria since it can be seen that we have fulfilled the condition completely as it was requested in the tender file. We are sure that two other tank trucks that are on the list meet the required condition, but since such a criterion has been sufficiently met with the three tank trucks mentioned above, we are not elaborating the matter further. The PRB has all

the evidence (passbooks, agreements, photos, notarization process, etc.) in our tender with which it can be easily convinced that such trucks are fully in accordance with the requirements of the CA, but in case they find it necessary to having a real overview of the situation, the PRB can verify them at any time through a technical expert who should be a professional due to the adequate nature of the dispute. CA has similarly contested the auto sweeper because it does not have the required weight, but this does not hold because the request was to offer: Special auto sweeper up to 3 tons for sweeping the streets, sidewalks and city squares, while we have offered the sweeper with weight 1850 kg, which is seen to meet the requirements of the CA. CA has contested the loading bucket as well, giving unfounded reasons, allegedly that one of the loading buckets presented by us is a tractor. By which the request of the CA has been offered: Loading bucket up to 7 tons for loading waste and salt - and nowhere has it potentiated where the bucket should be installed, it shows that the equipment in which the CA is called fulfills sufficient condition (see device 01-371 VB). Despite this, we have also offered two other equipment on loan (on rent) which are of type JCB 3CX and JCB 3CX 4x4 with license plates TE 8642 AH and TE 2307 AB which fully meet the requirements of the tender file. According to this, it turns out that the CA's reasoning for equipment deficiencies is completely unfounded and that we meet all the criteria to be qualified as a GOE with responsible tendering. The claim against Reason 4, which is visible in the table attached to the complaint. This reasoning of the CA, with which it is seen that it contested some of our prices as abnormally low, is completely unfounded and very unprofessional. We say that it is unfounded and unprofessional since the CA has not managed to argue the finding and that in order to reach the elimination according to this criterion it was necessary to act first according to article 61 of the LPP, 41 of RRPP001/2022 as well as according to of Article 11 of Guideline No. 001/2023 For Public Procurement. He did not do this action, so it can be freely said that in addition to the violation of these articles, the CA also violated article 59 of the LPP. You find this unfounded reasoning of the CA extended to the claim related to the violation of Article 61 of the LPP. Based on all that we said above, it can be seen that in the case of evaluation, clarification and comparison of tenders, the CA and the evaluation commission have completely violated Article 59 of the LPP.

- Claim seven (VII): "CA has violated Article 61 of the LPP during the evaluation of our tender since the contestation of our prices as abnormally low prices, apart from being unfounded, was not done in accordance with article 61 of the LPP and 41 of RRPP-001/2022. We say this because the CA first had to research the market prices and then ask us for clarifications according to paragraph 2 of article 61 of the LPP, while the decision on such prices is taken only after considering our answer provided according to paragraphs 6, 7 , 8, 9 and 10 of Article 41 of RRPP-001/2022. Before we remind you what these provisions say, we want to clarify that in order to qualify our tender as an abnormally low tender, the three conditions of Article 41.3 of RRPP001/2022 as well as the three conditions of Article 11 of GUIDELINES No. 001/2023 FOR PUBLIC PROCUREMENT. None of these three conditions have been met, therefore the finding of the CA that our tender is an abnormally low tender is completely unfounded and not legal. In addition, even if only one of the prices appears to be abnormally low, then again according to article 41.4 of RRPP-001/2022, the CA must first ask us for clarification and only after our answer, take the elimination measures if it does not reach agree with our clarifications. In paragraph 2 of Article 61 of the LPP and Article 41.5 - 41.9 of RRPP001/2022, the obligation

of the CA is described. We also rely on Article 41 of RRPP-001/2022, namely points 5, 6, 7, 8, 9, 10. The CA, in addition to not having respected the provisions mentioned above, has not even managed to provide any credible argument and stable that our prices are abnormally low. CA, instead of clarifying the abnormally and extremely high prices of the GEO announced as the winner, deals with our prices which are completely real and at the same time save the budget by more than 70% compared to the GEO announced as the winner. This openly shows the favoritism of the GEO announced as the winner and raises suspicions about the secret connections as well as the personal interests that the procurement office may have together with the evaluation commission in declaring this GEO as the winner. The reasoning of the CA in rejecting the request for reconsideration is also very strange, saying that we know that the prices are abnormally low and we did not need clarification from the EO. This action is completely illegal and shows well the negligence and disregard of the procurement law by this CA respectively by the procurement office. It is worth saying that there are doubts that the CA has deliberately inflated (increased) the price in the budget forecast, then adapting the selection criteria to the GEO, which during the re-evaluation declared it the winner. Just compare the estimated value of the similar tender in the past two or three years and you will be convinced that they have correctly determined the budget they intend to spend or, rather, use it badly. Right now we are not giving a detailed explanation for the disputed prices as abnormally low, but if PRB needs to be convinced that they are normal market prices, they can ask us for clarification at any time. According to all this, it is clearly seen that CA has completely violated Article 61 of the LPP, Article 41 of RRPP-001/2022 and Article 11 of UPP-001/2023”.

- Eighth Claim (VIII): "CA violated Article 69 of the LPP as it did not respect the requirements of the tender dossier established in accordance with the needs of the project. The CA has established many criteria and requirements that were related to article 69.4 of the LPP, but none of these criteria was properly implemented during the evaluation process. He overlooked most of these criteria when the evaluation of the tender announced as the winner was in question, while he misapplied and misinterpreted the same criteria when he re-evaluated our tender. Here, apart from the fact that we are dealing with the non-application of the dossier criteria and the requirements of Article 69.4 of the LPP, we are also dealing with the favoring of GEO declared the winner and discrimination against our group as a responsible tenderer with all the evidence offered”.

- Claim nine (IX): "CA violated Article 72 of the LPP during the evaluation process because it did not ask for clarifications at all for some ambiguities that were seen in our tender, but despite this it acted arbitrarily without provided with the real situation by eliminating us for deficiencies that would have to be clarified. It is very clearly shown in article 72 of the LPP, in article 38 of RRPP001/2022 as well as in article 10 of UPP-001/2023 how to act to clarify deficiencies and ambiguities in competitive tenders. Article 72 of the LPP for clarification of tenders is attached to the complaint. From the whole preliminary process of dispute resolution, it can be seen that the CA has manipulated evidence and expressions even during the process of returning the answer to our claims submitted in the Request for Reconsideration because nowhere has it adhered to our claims during the justification of the answers. It is clearly seen that professionally the answers are lacking, CA has avoided direct answers by trying to camouflage the answers

with expressions like "we are convinced", "the commission has acted well", "the claims are repeated" etc. which shows that initially they did not properly understand the claims and then gave unprofessional but also tendentious answers. In some cases, he has referred to evidence that is not related to our tender at all and has often mixed things up trying to justify his mistakes and violations made during the re-evaluation. As we have not had access to the GEO tender announced as the winner to be convinced that it meets the requirements of the dossier to be considered responsible, we ask the review expert to evaluate his responsibility against the requirements of the tender dossier”.

Referring to the claims as above EO GEO "Via Egnatia Sh.P.K.; Mrs. Vaakal; Natyra" considers that the Contracting Authority has acted in violation of article 1, 6, 7, 11, 56, 59, 60, 61, 69, 72 of the LPP as well as article 38 of the RRPP, 10 of the UPP. Based on all the evidence and facts mentioned above, we ask the Procurement Review Body (PRB) to approve the complaint of EO "Via Egnatia Sh.P.K.; Mrs. Vaakal; Nature" related to the tender "Summer and winter road maintenance". The Notice on the Decision of the CA - Municipality of Podujeva is canceled and the matter is returned to Re-Evaluation. The re-evaluation should be done based entirely on the requirements of the tender dossier and the LPP, where then the winner would have to be declared EO "Via Egnatia Sh.P.K.; Mrs. Vaakal; Nature".

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 18.12.2023 has authorized the review expert to conduct the initial review of the file and claims according to complaint no. 1011/23, while on 27.12.2023 the report of the review expert was submitted with no. 2023/1011 with the following recommendations: Based on the above-mentioned clarifications and the above-mentioned complaining claims, the review expert for "Summer and winter road maintenance" proposes to the review panel: Based on the above-mentioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO be approved as grounded, the contract award notice be canceled and it is recommended that the matter be reassessed.

Regarding the claims of GEO "Via Egnatia Sh.P.K.; Mrs. Vaakal; Nature" review expert through report no. 2023/1011 assessed as follows:

- The first finding (I): "Regarding the claim of the complaining EO regarding the violation of articles 1 and 6 and the justification of the high price based on the size of the tender dossier position Winter maintenance position 1 Removal of snow and ice in the roads of the villages, the review expert assesses that the CA, during the response to the request for reconsideration, did not justify the rejection of the claim based on the documented evidence, but that it gave a general answer. Based on the advance for winter maintenance, the amount of 2496315.94 m2 is anticipated, while the price given is for 24 hours. In advance of the remark, it is determined that:
1. The price is calculated based on the concrete surfaces (no. cleaned), within 24 hours, even if it is necessary to intervene several times during the day. Therefore, the claim of the complaining EO regarding the calculation is not correct because it is clearly defined in advance how the billing is done, so the claim of the EO on this point is not grounded”.

• The second statement (II): "Regarding the claim of the complaining EO that is related to the verification of the equipment in the field, the reviewing expert clarifies that with the tender file Requirements on technical and/or professional opportunities 9.1 & 9.2 was requested: the Economic Operator must to possess tools, establishments and technical equipment that are necessary for the realization of the project. Mandatory equipment and mechanization according to the table in Annex 7 of the TD A list of equipment must be provided according to Annex 7 of the TD which must be notarized by the notary using the en-minutes procedure, attaching the registration booklets valid for all machines from 1 - 12, while from 13-15 can be offered with dud or invoice. In the event that the EO does not own the equipment on ownership, I must offer the agreement, the agreement must be in the name of this project with the duration of this contract, signed and sealed by both parties, must be notarized and cannot be earlier than the date of publication of the contract notice, the complaining EO submitted the list of equipment notarized by the notary according to the CA's request. CA despite the fact that in the first evaluation it had recommended the complaining EO for contracts, after the request for reconsideration by the second EO, the CA returned the tender to reevaluation. Despite the fact that the request for the tender dossier as evidence requested that the list of equipment be submitted through the "en minutes" procedure by the notary, the CA had decided to do the on-site verification for the complaining EO. According to the tender file PART A requirement 9.3 CA has the right to verify EO companies for verification purposes. Through the request for clarification, the review expert has asked the CA to provide the minutes of the commission on the ground with the findings described in the re-evaluation report and the notification for the decision, but that the CA has not provided any document or confirmed that it was held any minutes. In addition, the same questions were asked to the complaining EO, who testified that the evaluation commission only gave him a one-day deadline for the on-site visit and the verification of the equipment, despite the fact that equipment was also included in the offer of the complaining EO which have been taken into use by agreement with the neighboring country and other EOs. He had not applied such a thing to the EO recommended for the contract. In the answer given in the decision of the request for reconsideration dated 06.12.2023, the CA justified this claim that "there is no need for verification of the machines of the EO recommended for the contract because they were clear according to the evidence presented in the case of bidding". The reviewing expert assesses that the CA, during the reassessment and decision to verify only the equipment of an EO as part of the procurement activity, violated Article 7 paragraph 1 and 6 of the LPP. The review expert during the administration of the evidence (list of EO equipment recommended for the contract) in request 1 Special tank truck with complete mechanism for washing roads with a volume of over 7000 liters. (The tank truck must have the mechanism for washing from the front and from the back with workers) - 3 pieces The notary in the act of notarization has included the special tank truck with a complete mechanism for washing roads with a volume of over 7000 l with registration no. 06 792 DF SCANIA with no. 4263307 until the certificate was not submitted and the registration book was not included. The EO recommended for the contract for the same position submitted evidence for the truck with license plate 06 331 EB, which is not included in the notarial act and cannot be accepted. For request 15. Machine for grinding branches after pruning. The notary has included in the notarial act a machine for grinding branches after pruning, type RAMBO HC10-1 according to DUD-R 25870

dated 14.10.2020, for which the DUDi certificate as described above has not been submitted. It is worth noting that even in the offer of the complaining EO in the list of demands, 1 complaining EO did not provide sufficient evidence to fulfill the request according to the tender dossier. The reviewing expert also assesses that for request 6 "Special 3-ton sweeper for sweeping streets, sidewalks and city squares", the CA did not treat the evidence of "vehicle weight" submitted by the EO participating in this procurement activity in the same way. Therefore, the reviewing expert assesses that the CA did not act in accordance with article 40.2, 40.6 and 40.7 of RRPP 001/2022 and therefore assesses that the claim is grounded".

- The third statement (III): "Regarding the complaining claim of the complaining EO which is about the elimination of the complaining EO due to abnormally low prices without developing an interparts procedure for clarifying the prices, the examining expert clarifies that the CA with the announcement of the decision, one of the reasons for the elimination was due to the abnormally low prices. According to RRPP 001/2022 Article 41.3, Article 41.3 Contracting authorities will ask economic operators to explain the price offered for responsible tenders, when all the following conditions are met: i. the price offered is more than 30% lower than the average price of responsible tenders; ii. the price offered is more than 10% lower than the price or costs of the second lowest tender iii. at least 3 (three) tenders have been submitted. The review expert assesses that during the procurement activity, all the conditions as required by Article 41.3 were not met and that the treatment of the offer of the complaining EO as an abnormally low offer is in the contrary to RRPP 001/2022 and therefore the claim is grounded".

- Fourth finding (IV): "Regarding the complaining claim of the complaining EO which is related to Article 11 of the LPP on the classification of business secret information and the statement of the complaining EO that it was not given access to the offer of the recommended EO for contracts on the grounds that he has completed the request for confidentiality and that despite the fact that the complaining EO has also completed the request for confidentiality, the EO recommended for the contract in the first review phase has been given full access to the offer of the EO, now the complainant review expert clarifies that Article 11 of the LPP and Article 7 paragraph 7.5 and 7.6 of the RRPP 001/2022 regulate the issue related to the classification of secret business information. The complaining EO, despite the fact that it has completed the request for business secrets according to Article 68 and 69 of the CA on the grounds that they have consulted with the PPRC and that it has instructed them to give full access. The reviewing expert requested clarification from the CA regarding the letter of the PPRC with the answer that he was given access but that he was not offered one on the grounds that the consultation was done over the phone. The review expert estimates that the CA was obliged to provide a cleaned version of each document in accordance with Article 11 paragraph 4 of the LPP, but that it failed to do so, making it difficult for the complaining EO to articulate its claims his for appealing the decision of the CA. The same is also clarified through the Interpretation of the RRPP with No. 31 dated 24.10.2023, where at the end I quote "According to Article 7.7 of the RRPP, it is the responsibility of the CA to ensure that the parts that have been declared as business secrets have not been available to other economic operators. For this purpose, the CA must act in accordance with paragraphs 4 and 5 of Article 11 of the LPP. Therefore, the reviewing expert assesses that the complaining claim is grounded".

• Fifth finding (V): "Regarding the claim of the complaining EO that is related to the Requirements on technical and/or professional opportunities 9.1 & 9.2, the review expert clarifies that with the tender dossier it was requested: the complaining EO submitted the list of to the professional staff, where for request a) he submitted the engineer B.S. who, according to his CV, stated that from 2018 he is currently at the Bageri company. The same has also submitted references from several different EOs in accordance with the requirements of the tender file. For the position of graduate engineer of Agriculture, the complaining EO submitted the engineer N.M. who, according to his CV, stated that he worked in the company Agrounion from 2007-2016. The same has submitted two references. The reference issued by the complaining EO is of the same nature as requested in the tender dossier. The reason for the elimination of the complaining EO because the B.S. engineer did not appear in the verification list in TAK does not stand because it was requested in the tender file that "in order to meet the requirements, evidence of at least one reference letter from the employer must be provided". As for the engineer N.M., he was asked to have a reference of the same nature. The engineer submitted the reference issued by the complaining EO, for which, according to the review expert's opinion, it should be handled according to Article 72 of the LPP RRUOPP 001 /2023, Article 10.1. Therefore, the review expert assesses that the claim at this point is partially grounded".

The expertise's report has been duly accepted by all procedural parties. CA declares that it agrees with the recommendations of the review expert's report, while EO partially agrees with the report of the review expert.

- Findings of the Review Panel -

The review panel independently and objectively, conscientiously and professionally evaluated all the evidence of the case. In this way, it was found that the Contracting Authority did not act in accordance with the legal provisions for public procurement and the requirements of the tender file related to the activity "Summer and winter road maintenance" with procurement no: "615-23-4993-2-11". The argumentation in the expert's report is quite detailed, understandable and fully based on the relevant documents that refer to the procurement activity. The findings in the expert's report can be confirmed through the tender file as well as the documents with which the tenderers have bid. Consequently, the Review Panel regarding the claims of the complaining economic operator has given full confidence to the expert's report. In this way, it was found that the claims of the complaining economic operator GOE "Via Egnatia Sh.P.K; Mrs. Vaakal; Nature" are grounded.

The Review Panel, taking into account the above mentioned description and facts and after reviewing the case, the complaint of the complaining economic operator, the concrete analysis and documentation of the case, sees the operator's complaint as well-founded, recommending that the procurement activity titled "Summer Maintenance and winter roads" with no. of procurement: "615-23-4993-2-11" to be returned to the Reassessment, CA to act in relation to the legal provisions of the LPP, specifically article 59 and 72 of the LPP, as well as regarding the prices as abnormally low but even for the higher ones, the CA is obliged to conduct a market research in the re-evaluation phase in order to ascertain that the prices offered by the parties are manipulative. Only on the basis of evidence can a correct and meritorious conclusion be reached.

Therefore, briefly based on the above, the Panel considers that there is no violation of the provisions cited by the complainant, while the contested Decision of the CA must remain in force, because precisely the cancellation of the same, attacks in this case the primary goals of the sanctioned LPP with Article 1 and the general principles of this Law sanctioned with Article 6, according to which "Public funds and public resources that have been offered or that have been made available under a public contract may be used only by such contract and only for the purposes of the same" in relation to article 104 of the LPP, according to which "The procurement review procedure will be implemented and carried out in a fast, fair and non-discriminatory manner, which aims at a fair, legal and effective resolution of the case in words".

At the end of all this, the Panel decided as in the dispositive of this, based on its conviction and independent judgment that it has applied the right solution in this case. The review expert's report (internal or external), although it is not binding for the Review Panels, which in the decision-making processes exercise full independence in the implementation of powers according to Article 105 of the LPP, the same is analyzed in any case and its probative value is recognized in the general context of the documents of a subject. In any case, according to paragraph 4, of article 59, the CA will consider a tender as responsible only if the tender in question is in compliance with all the requirements set forth in the contract notice and in the tender dossier, which in the present case The panel considers that the CA has acted in harmony with this.

- Conclusion -

The panel considers that each CA (at the local or central level) exercises legal autonomy in planning needs and fulfilling them according to articles 8 and 9 and has the right to compile the tender dossier as it is allowed in the sense of article 27 of the LPP, according to to which "the contracting authority shall compile a tender dossier providing relevant information relating to the contract in question, including all material terms and conditions thereof, applicable procurement procedures, any applicable eligibility requirements or any selection criteria ..."

The review panel considers that the decision approved 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 articles 1 and 6 of the LPP, where the purpose of this law is to ensure the most efficient, transparent and fair way of using public funds, public resources as well as all other funds and resources of the contracting authorities.

For point I of the decision, it was decided based on article 117 of the LPP in relation to article 29 and paragraph 31 of the Rules of Procedure of the PRB.

For point II of the decision, it was decided based on article 131 of the LPP in relation to article 29 paragraph 3 of the PRB Work Regulations.

For point IV of the decision, it was decided based on article 31 paragraph 4 and paragraph 6 of the Rules of Procedure of the PRB in relation to article 118 of the LPP.

From what was said above, it was decided as in the provision of this decision.

President 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 PODUJEVA;**

1x1 EO – **VIA EGNATIA SH.P.K;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.