



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

Psh. No.612/24

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, Batisha Ibrahim - member, deciding according to the complaint with no.2024/0612 of the 08.07.2024 filed by the Economic operator “GEOCAD Group SH.P.K” against the contract award notice related to the procurement activity “Drafting of projects and technical consultancy (Geodesic Services)” with procurement number: "205-23-8493-2-1-1", initiated by the Contracting Authority - Ministry of Infrastructure, on the 30.08.2024 has issued this:

DECISION

1. Approved as partly grounded the complaint with no.2024/0612 of the 08.07.2024 filed by the Economic operator “GEOCAD Group SH.P.K” against the contract award notice related to the procurement activity “Drafting of projects and technical consultancy (Geodesic Services)” with procurement number: "205-23-8493-2-1-1", initiated by the Contracting Authority - Ministry of Infrastructure.
2. Remains in force notice on decision B58 for contract award of the CA, dated 21.06.2024, related to the procurement activity: “Drafting of projects and technical consultancy (Geodesic Services)” with procurement number: "205-23-8493-2-1-1", initiated by the Contracting Authority - Ministry of Infrastructure.
3. Within 10 days, the CA must inform the PRB about all the actions undertaken in relation to this procurement activity.
4. In accordance with the Rules of Procedure of the PRB, the complaining Economic Operator GEOCAD Group SH.P.K. will be refunded the complaint’s fee in the amount deposited when the complaint was submitted.

REASONING

- Procedural facts and circumstances –

This procurement activity was developed in accordance with the open procedure and for the type of contract "service", with an estimated value of 600,000.00 euros.

On the 24.06.2024, Economic Operator (EO) GEOCAD Group SHPK. has submitted a request for reconsideration regarding the procurement activity in question. This request was reviewed and on the 01.07.2024, the Contracting Authority rejected it as unfounded.

On the 07.08.2024, the Procurement Review Body (PRB) received a complaint from EO SAS SHPK, which received protocol number 2024/0612. This complaint is related to the procurement activity "Designing projects and technical consultancy (Geodesic Services)" and has the procurement number "205-23-8493-2-1-1".

- On the occasion of the preliminary review -

The Review Panel has concluded that the complaint contains all the elements required by Article 111 of the Law on Public Procurement (LPP) and was submitted within the legal term, in accordance with Article 109, paragraph 1 of the LPP, after the preliminary procedure for the resolution of disputes in the sense of Article 108/A of the LPP. The Economic Operator who is an interested party according to article 4, paragraph 1, sub-paragraph 26 of the LPP has made a proper and complete presentation.

In this way, the Review Panel has confirmed that it is competent to review this complaint in accordance with Article 105 of the LPP and has not identified any procedural obstacles to proceed with the meritorious review of the complaint.

Claims of the complainant Economic Operator GEOCAD Group SH.P.K.

Economic Operator GEOCAD Group Sh.P.K. has submitted claims regarding the winning announcement of the Group of Economic Operators N.N.SH., Vizion Project; SEED CONSULTING LLC; and MapTech SH.P.K., from the Contracting Authority. The violations alleged in the complaint are as follows:

1. The first claim submitted - "The complaining claims that the Contracting Authority has decided to eliminate the offer of GEOCAD Group SHPK due to the failure to meet the requirements for technical equipment. However, EO GEOCAD Group SHPK declares that the list of equipment submitted is identical to the one presented in the initial tender file on 10.08.2023 and that it has not made any changes to this list. According to the EO, the Contracting Authority has not specified which specific equipment is missing from their offer, causing the elimination be unreasonable".

2. The second claim submitted - "The Contracting Authority has emphasized that the prices offered by EO GEOCAD Group SH.P.K. are contrary to the Administrative Instructions of the Ministry of Environment, Planning and Infrastructure (MESP). However, EO GEOCAD Group SH.P.K. claims that the decisions cited by the CA were not valid at the time of tendering and that

they do not comply with the specifications required in the contract notice No. 12/19 has been repealed and replaced by Administrative Instruction no , which has changed the requirements for the division of parcels and the measurement of the actual situation”.

3. The third claim raised - "The awarded Economic Operator (GOE) has not submitted the Plateia road design software as clearly required in the tender technical specifications. Additionally, the equipment table submitted by GOE is incomplete, and the invoices submitted do not match the requirements for road design software. This is a clear violation of the tender specifications and, according to the established rules, should lead to the elimination of the awarded GOE from the list of eligible bidders. The lack of the required software constitutes a serious deviation from the tender requirements and affects the possibility of full and accurate fulfillment of the technical requirements of the project."

4. The third claim submitted - The GOE project manager who was declared the winner, Mr. Zakrija Elezi, graduated abroad, and did not present the certification of the diploma as required by MEST Administrative Instruction no. 12/2018. This represents a violation of the law that should lead to the elimination of the winning GOE. Nostrification is a legal requirement to ensure that diplomas awarded abroad are given an equivalent at the level required by the competent authorities in Kosovo. The lack of this documentation constitutes an important shortcoming that affects the validity of the offer and its compliance with the tender requirements.

5. The fifth claim submitted - The methodology proposed by the winning GEO is incorrect and does not comply with the technical requirements of the tender. Their offerings do not provide a detailed methodology for completing services and have problems with references and staff documentation. This type of problem suggests a marked deficiency in the planning and execution of services, which may adversely affect the quality of project completion and the fulfillment of contract requirements.

CA's response to the request for reconsideration:

As for the complaining claims related to the Economic Operator GEOCAD Group SH.P.K., it is important to note that this operator has not met the requirements of the Technical Documents (TD) and Evidence Forms (TDS), according to the standard letter on the eliminated tenderer. All bidders are aware of the process of application and submission of documentation in accordance with the tender dossier and contract notice. They have sufficient experience in this field and are constant participants in the tenders that are published in the Republic of Kosova, contributing to an honest and fair application for everyone. Each bidder is aware of the obligations and procedures of tender application, which are specified in the tender file and are made public to all potential bidders. Everyone should be guided by the principle of care in fulfilling the formal conditions in time and within the specified period Regarding the claims

complaints related to the fulfillment of the requirements of Technical Documents (DT) and Evidence Forms (FDT), it is important to note that the claims of the Operator

Economic GEOCAD Group Sh.P.K. do not stand, since the Economic Operator recommended for the contract has fulfilled all the requirements related to DT and FDT at the time of

submission of his offer. This means that the offer of this operator is valid and in accordance with the tender requirements. After reviewing the complaints, the Contracting Authority (CA) has found that the complaining claims of the Economic Operator GEOCAD Group SH.P.K. are baseless.

Relying on article 111, paragraph 5, related to articles 113 and 114 of the Law on Public Procurement (LPP), the Procurement Review Body has authorized the review expert to make the initial review of the file and claims according to complaint number 2024/0612. On 05.08.2024, the review expert's report with number 2024/0612 was submitted, which contains the following recommendations:

- Complaint of the Economic Operator GEOCAD Group Sh.P.K. is partially grounded, but this does not affect the decision of the Contracting Authority.
- The notice on the decision of the CA, dated 21.06.2024, should remain in force.

The expert's report has been duly accepted by all procedural parties. CA agreed with the recommendation of the review expert's report, while EO disagreed with the opinion of the expert.

Assessment of the Review Panel - The Review Panel has assessed that the conditions have been met to decide on this case without holding a hearing in accordance with Article 24, paragraph 1 of the Rules of Procedure of the PRB. This was done taking into account the claims of the parties and their submissions, the evidence presented, as well as the review expert's report. The panel has concluded that the data provided is sufficient to decide on the merits of the case and has decided to uphold the previous decision of the Contracting Authority.

Administration and Evaluation of Evidence

In order to fully and accurately verify the factual situation related to the procurement activity, the review panel administered and evaluated a wide number of evidence and documents. These include the expert's report, the opinions of the parties related to the expert's report, submissions and documents submitted by the complainant, as well as letters and documents of the contracting authority. Also, the relevant documents related to the procurement activity were reviewed and all the evidence proposed by the procedural parties were taken into consideration.

The expert's report related to the first complaining claim has provided general clarifications - In complaining claim I, the complaining EO has submitted two requests regarding the specifications of the tender documentation. as well as regarding the complaint claim regarding the elimination of the complaining EO, the expertise report clarifies that: "According to the claim, the complaining EO is eliminated due to lack of information in the list of tools and software. After reviewing the report by the expert, it was found that the list of tools and software has been updated and uploaded to the tender system. In this context, the complaining EO has no updated its documentation to match the new version of the file. However, the expert has assessed that this non-updating does not constitute a material shortcoming that would affect the overall evaluation of the offer." and as a conclusion, the first complaining claim is unfounded, while the complaining claim/request II is partially based.

The expert's report regarding the second complaining claim, the expert has given the answers/clarifications regarding the bidders' fees, claiming that it was unfairly eliminated:

The complaining EO claims that it was unfairly eliminated and that the tariffs offered are in accordance with the repealed administrative instructions. The expert explains that Administrative Instruction No. 12/2019 has been replaced and amended by Administrative Instruction No. 05/2023, which maintains similar fees. The complaining EO has offered fees that are in the contrary to this valid instruction, making its offer unacceptable, regarding this complaining claim, the expert's report has presented it as unfounded.

The expert's report regarding the third complaining claim, the expert has given the answers/clarification for the software delivered by EO: The complaining EO claims that the EO recommended for the contract did not deliver the required software. The expert clarifies that, although the specification of the amount of software is not clearly described in the tender documentation, the software offered by the recommended EO is acceptable and fulfills the requirements described, according to the description of the software that has been offered, in this regard The expert's report has presented the complaining claim as unfounded.

The expert's report regarding the fourth claim, the expert has given the answers/clarification for the Project Manager: The complaining EO claims that the EO recommended for the contract has not submitted the certified diploma to the Project Manager. The expert clarifies that the documentation required in the tender did not include the condition for nostrification of diplomas for staff coming from outside Kosova. This condition is not specified in the tender dossier, and the request for nostrification is invalid in this context, regarding this complaining claim, the expert's report presented it as unfounded.

The expert's report regarding the fifth complaint claim, the expert has given the answers/clarification on the Evaluation Documentation: the complaining EO claims that no evaluation and comparison reports of the offers have been received. The expert clarifies that the evaluation and comparison reports have been prepared and are in accordance with the legal provisions of the LPP. The references and documentation submitted by the EO recommended for the contract are in accordance with the requirements and have been assessed as complete and accurate, regarding this claim the expert's report has presented as unfounded.

Summary of Conclusions related to the expert's recommendations the review expert has analyzed in detail all the claims of the economic operator "GEOCAD Group SH.P.K." and has concluded that all claims are unfounded. The evaluation, examination and comparison of offers are carried out in accordance with the law and regulations in force, ensuring that all economic operators are treated equally and transparently.

In accordance with these analyzes and clarifications, the experts recommend that the complaint of the economic operator be considered unfounded and that the decision of the Contracting Authority remains in force.

- Findings of the Review Panel-

The review panel, following an independent and objective approach and guided by a professional conscience and special care, has carried out an in-depth assessment and detail of all the evidence presented in relation to the procurement activity "Designing projects and technical consultancy (Geodesic Services)" with procurement number: "205-23-8493-2-1-1".

The review panel concluded that the Contracting Authority did not act in accordance with the legal provisions for public procurement and the requirements specified in the tender dossier.

However, the review expert handled the claims of the complaining economic operator, GEOCAD Group SH.P.K., in a professional and objective manner. The expert's report has been evaluated as quite detailed, understandable and completely based on the relevant documents related to procurement activity. The findings in the expert's report are verifiable through the tender file and the documents submitted. The Review Panel has given full confidence in the expert's report, concluding that the claims of the complaining economic operator are partially based, while the notification on the decision of the contracting authority remains in force.

RP after the administration and evaluation of the evidence and the complete ascertainment of the factual situation, the review panel, relying on the Law on Public Procurement (LPP) as the material law of applicable, and after reviewing the complaint claims, case documents and the review expert's recommendations, found that the complaint of the Economic Operator GEOCAD Group SH.P.K. is partially based. In accordance with this finding, the Review Panel has decided that the decision of the contracting authority regarding the procurement activity "Designing projects and technical consultancy (Geodesic Services)" with procurement number: "205-23-8493-2-1-1" remains in force.

Legal Basis for the Decision: The Review Panel acted in accordance with its legal powers as provided for in Article 104, paragraph 1, related to Articles 103, 105 and 117 of the LPP for the implementation of the procurement review procedure in a fast manner, fair and without discrimination, to reach a legal and effective solution to the case. The Review Panel has based its decisions on the relevant provisions of the LPP, which foresee and regulate situations that may arise during a procurement activity.

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

For point III of the decision, it was decided based on article 131 of the LPP in relation to article 29, paragraph 3 of the PRB's Rules of Procedure.

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

In accordance with all these analyzes and clarifications, and in accordance with Article 117 of the LPP, the Review Panel has decided according to the provision of this decision.

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 INFRASTRUCTURE;**

1x1 EO – **“GEOCAD Group SH.P.K. “.**;

1x1 Archive of the PRB;