

PROCUREMENT REVIEW PANEL, appointed by the President Pursuant to the article 105 as well article 106 of the Law on Public Procurement of the Republic of Kosova no.04/L-042, amended and supplemented by Law No. 04/L-237, amended and supplemented Law no.05/L-068, amended and supplemented Law no.05/L-092, composed of: Mr. Nuhi Paçarizi – President , Mr. Blerim Dina –referent, Mr. Goran Milenković – member, deciding according to the complaint lodged by the Economic operator N.T.P “VOLRA” - Prishtina, against the cancellation notice of the procurement activity with title “Supply with administrative material” with procurement no.: 18/508/121, initiated by the Contracting authority –Bus Station -Prishtina, on the 20.06.2018 has issued this:

DECISION

I. REFUSED, as ungrounded the complaint of the Economic operator N.T.P “VOLRA” - Prishtina, regarding with the procurement activity with title “Supply with administrative material” with procurement no.: 18/508/121, initiated by the Contracting authority –Bus Station -Prishtina.

II. CONFIRMED the cancellation notice of the procurement activity with title “Supply with administrative material” with procurement no.: 18/508/121, initiated by the Contracting authority –Bus Station –Prishtina, and this procurement activity to re-tender.

III. Contracting authority within 10 days must inform in written the Review panel for all actions taken regarding with this procurement activity and other parties in the procedure.

IV. Non-compliance with this decision obliges the Review Panel conform with the legal provisions of article 23.9 and 131 of the Law for Public Procurement of Kosova No.04 / L-042, amended and supplemented by Law No. 04/L-237, Law no.05/L-068, Law no.05/L-092, to take action against the Contracting Authority.

V. Since the complainant of the complaining economic operator N.T.P “VOLRA” – Prishtina, is ungrounded to the same economic operator it is confiscated the insurance fee of the complaint in the amount deposited when filing complaint.

REASONING

Contract Notice regarding this procurement activity was done on the: 12.02.2018.

Bid's opening was made on the: 01.03.2018.

Date of notification with standard letter for unsuccessful bidder was done on the: 16.05.2018.

Against the notification for cancellation of the procurement activity, economic operator N.T.P "VOLRA" - Prishtina on the 21.05.2018 has made a request for reviewing at the contracting authority.

Contracting authority on the 23.05.2018 has taken the decision to refuse the request for reviewing of the EO N.T.P "VOLRA" - Prishtina, as ungrounded.

Complaining economic operator Nuhi Paçarizi as a dissatisfied party has lodged a complaint at the PRB on the 01.06.2018 with protocol no. 232/18, against the notification for cancellation of the procurement activity "Supply with administrative material" with procurement no. 18/508/121, initiated by the Contracting Authority (CA) Bus Station claiming that the provisions have been violated.

- The contracting authority has acted in violation of the article 6,7,59.2 / 59.4,60,69,72,39 of ROGPP/69 of the LPP, of the Law on Public Procurement of the Republic of Kosova as well as Article 131 Violation of law by the contracting authority.

Procurement Review Body, conform article 113 and 114 of the LPP on the 05.06.2018 has authorized the procurement review expert to review the validity of all complaining claims of the complaining party.

The professional review expert in the report dated: 12.06.2018, regarding the complaining claim of the complaining EO N.T.P "VOLRA" - Prishtina, in finalizing the review of the complaining claims of this procurement activity and based on the documentation was ascertained as following, regarding with the complaining claim of the complaining EO, that CA Bus Station violated the articles: Article 6 - Economics and Efficiency, Article 7- Equality of Treatment / Non-Discrimination, Article 59.2 / 59.4- Examination, Evaluation and Comparison of Tenders Article 60- Criteria for Contract Award Article 69- Technical and / or Professional capacity, point 2.5, Article 72- Documentation and Additional Information, Article 39 of UOPP / 69 of LPP, Article 131- Violation of the Law by the Contracting Authority, in the procurement activity "Supply with administrative material", with procurement no. 18/508/121, is ungrounded, since based on the complaint of the complaining EO N.T.P "VOLRA", and after reviewing his bid it is seen that complaining EO did not complete, the request of the contracting authority on the Notification for Contract and Tender Dossiers, Professional Technical Capacity where ISO Certificate 536, ISO 534, ISO 5627, ISO 2469, ISO 1924/1, ISO 2471 are required.

Complaining economic operator claims that the certificate provided in its bid ISO 9001: 2015 covers all other codes that were part of the Contract Notice and the Tender Dossier, however the complaining economic operator should have used the legal right for any

clarification during the tender procedure based on Article 25 Provision of additional information or clarifications and extensions of the time limits, the Rules and the Guidelines for Public Procurement, I request in writing additional clarification information on the tender documents.

After reviewing all of the case, the bid of the complaining economic operator as well as two other bidders who have applied for this procurement activity consider that none of the economic operators did not meet the requirement on professional technical requirements in the Contract Notice and Tender Dossier regarding ISO Certificates required by the Contracting Authority.

Based on the above stated finding propose to the review panel that the complaint of the complaining EO to refuse as ungrounded since the economic operator did not meet the qualifying requirements specifically the requirements for ISO certificates according to the Contract Notice and the Tender Dossier. I propose to remain in force the decision of the contracting authority, Canceling the Procurement Activity "Supply with Administrative Material", with procurement no. 18/508/121 and recommend that Contracting Authority, Bus Station in the future to fully respect the LPP, ROGPP and the requirements foreseen by this contracting authority in the Contract Notice and Tender Dossier, take into account the evaluation by the first commission of the contracting authority, which has evaluated in opposition to the LPP and the requirements foreseen in the Contract Notice and Tender Dossiers.

Based on the abovementioned explanations, the professional procurement expert proposes to the review panel that the complaint of the complaining EO to refuse as ungrounded, for the reason stated in the answer to complaining claim no.1, remains in force the decision of the Contracting Authority Bus Station, for Notification of cancellation of the procurement activity "Supply with administrative material" with procurement no.: 18/508/121, and if it is in the interest of the CA this procurement activity to re-tender.

Complaining Economic Operator through written memo of the 14.06.2018 has notified the Review Panel that does not agree with the report of the review expert.

Contracting authority through written memo of the 18.06.2018, has notified the Review Panel that agrees with the report of the review expert.

At the hearing session of the main review of the 20.06.2018 where were present the review panel, representative of the complaining EO, and review expert, were reviewed the memos of the case by checking and analyzing the documentation for the procurement procedure which consists of: authorization the notification for contract, the notification for contract award, the complaint of the EO, the report of the review expert, the memos of the parties to the proceedings.

During the presentation at the hearing session the representative of the complaining EO Mr. Krasniqi stated: As we mentioned in the email of the 14.06.2018 we disagree with the opinion of professional expert.

We remain entirely by the complaint submitted to the PRB on the 01.06.2018, CA- Bus Station during the performance of this procurement activity did not respect article 6, 7, 59.2, 59.4, 60, 69, 72 of the LPP and article 39, 69 and OGPP.

CA has unjustly canceled the procurement activity with the reasoning that none of the EO participants in the tender did not fulfill the requirement/criterion regarding the technical and / or professional skills described in article 9.1 & 9.2 of the TDS respectively ISO Certificates.

Our company has submitted the authorization from the manufacturer Elektrosoft (implementing the parking system at the bus station) and the ISO 9001: 2015 certificate issued to the Elektrosoft company for traffic systems (parking lots, traffic lights, laura etc.).

The producer in question is a leader in the region for the implementation of such projects and possesses all the certificates that the CA has requested in the TDS.

We have submitted ISO 2011: 2015 covering all other codes in the tender but if CA has doubts that the ISO provided by the manufacturer does not meet the dossier criteria could have through 59.2 article 72 of the LPP and Article 39 of the OGPP request additional evidence clarification of the documentary in question as it did in the first evaluation with the other EO.

The fact that the CA in the first evaluation has treated us as a responsive EO and now eliminates us with such unjustified reasoning shows that at any cost the purpose and tendency of the CA is that our company is not rewarded with contract.

We request from the procurement review body to make consistent decisions, considering that this same subject is reviewed, we request that the complaint be treated as a RES JUDICATA according to the article 105.2.16 of the LPP. and obliged the CA to respect the decision No. 125/18 issued by the PRB on the 10.05.2018.

We request that the complaint be approved as grounded and obliged the CA to return the case to the re-evaluation.

During the presentation at the hearing session the review expert Mrs. Balaj stated:

Although complaining EO claims that the ISO certificate fulfills the requirements, it does not coincide with the required codes from CA in the contract and tender dossier.

According to Article 25 of the ROGPP, the EO may have asked the CA whether or not this ISO is accepted, an opportunity for the EO during the pre-bidding phase.

The preliminary decision states that the provisions for filing the complaint have not been respected.

The case has returned to the re-evaluation and in my opinion during the re-evaluation CA has respected the provisions of the LPP.

In the final words the representative of the complaining EO Mr. Krasniqi stated: The manufacturer in electronic form sent us the certificate ISO 9001: 2015, and with which we have eliminated CA in this reasoning we requested from the manufacturer clarifications and sent other certificates according to the requests of the CA.

We once again propose to the panel to approve our complaint as grounded and the case returns to re-evaluation.

In the final words, the review expert Mrs. Balaj stated: I stand by the expertise's report and the findings given in the expertise.

Review panel after reviewing the memos of the case, reviewing the complaining points of the complainant, findings, concrete analysis and recommendations of the review expert, declaration of the parties in the procedure, discussion and screening of the evidence as a whole finds that the complainant's claims of violation do not stand of the article 6, 7, 59,

60, 69 and 72 of the LPP as well article 39,69 Rules and Operational Guidelines for Public Procurement, for the fact that the complaining EO did not fulfill the contracting authority's request in the Contract Notice and Tender Dossiers, Professional Technical Capacity required ISO Certificate 536, ISO 534, ISO 5627, ISO 2469, ISO 1924/1, ISO 2471.

Review panel ascertains that the complaining economic operator has had the opportunity, in accordance with article 25 of the LPP, to request clarification during the tender procedure based on the provision of additional information or clarifications and extensions of time limits, the Rules and the Public Procurement Guidelines to ask in writing, additional explanatory information on the tender documents, in this case the EO in question could have requested clarification from CA that the certificate offered by it is the same as the ISO certificates required by the CA, in the tender dossier and the contract notice and to clarify that this certificate meets the request of the CA.

The Review Panel concludes that the complaining EO is not accountable for the fact that the same EO did not provide the Contracting Authority with the ISO 536, ISO 534, ISO 5627, ISO 2469, ISO 1924/1, ISO 2471 but has provided another certificate ISO 9001; 2015, claiming that the same certificate covers all other bidding codes.

The review panel ascertains that none of the complaining economic operators have fulfilled the request of the CA for the certificate: Certificate ISO 536, ISO 534, ISO 5627, ISO 2469, ISO 1924/1, ISO 2471, for the procurement activity concerned starting from this fact the review panel evaluates that CA, has acted fairly in case of cancellation of this procurement activity in accordance with article 62 of the LPP.

Review panel conform article 117 of the LPP, and based on the evidence presented above decided as in the slide of this decision

Legal advice:

Aggrieved party can not appeal against this decision,
but it can file charges for damage compensation
within 30 days, after the receipt of this decision
with the lawsuit In the Basic Court In Prishtina
at the Department for Administrative Affairs.

President of the Review Panel

Mr. Nuhi Paçarizi

Decision to be submitted to:

1x1 CA – Bus Station - Prishtina

1x1 EO – N.T.P “VOLRA” Prishtina

1x1 Archive of the PRB

1x1 For publication on the website of the PRB.