

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. Blerim Dina – President, Mr. Nuhi Paçarizi – referent, Mr. Goran Milenković – member, deciding according to the Judgment of the Basic Court, Department for Administrative Affairs, A. No.569/14, dated: 06.06.2018, where is approved the appeal of the plaintiff “Fidanishtja Ibra” from Kamenca and with the same Judgment is cancelled the conclusion of the Procurement Review Body with no.174/15, of the 27.03.2014, regarding with procurement activity with title “Supply with seedlings for raising orchards” with procurement no.: 633-13-065-121, initiated by the Contracting authority (CA) – Municipality of Istog, on the 25.06.2018 has issued this:

DECISION

- I. Implemented** Decision of the Basic Court-Department for Administrative Affairs-Prishtina with A. No. 569/14, of the 06.06. 2018.
- II. Approved**, as partly grounded the complaint of the EO “Fidanishtja Ibra” from Kamenica, regarding with the procurement activity with title: “Supply with seedlings for raising orchards” with procurement no.: 633-13-065-121, initiated by the Contracting authority (CA) – Municipality of Istog.
- III. Confirmed**, the decision of the PRB PSH no.174/15 of the 27.03.2014, regarding with the procurement activity with title: “Supply with seedlings for raising orchards” with procurement no.: 633-13-065-121

REASONING

Contracting authority / Municipality of Istog, on the 03.10.2013, CA has published the notification for contract, the type of procedure applied is open procedure (service) of medium value, whereas at the opening of bids have participated in total six (6) bidder.

Contracting authority / Municipality of Istog on the 13.11.2013 publishes on the PPRC's website the contract award notice.

Against the contract award notice, on the 22.11.2013, Economic operator "Fidanishtja Ibra" from Kamenica, lodges a complaint at the PRB with complaining claims that it is not the legal provisions of the Law on Public Procurement.

Procurement Review Body has authorized the review expert to review the complaining claims, and the same on the 27.11.2013 hands over the review panel the expertise's report with recommendation to reject the complaint and remain in force the decision of the CA- the contract award notice.

Review panel on the 26.03.2014 with the conclusion number 174/14 has dismissed the complaint of the EO "Fidanishtja Ibra", with reasoning that we are dealing with the exceeding of the legal deadline for reviewing this complaint.

Against the same Conclusion EO "Fidanishtja Ibra", within the legal deadline, filed a petition with the Basic Court in Prishtina / Department for Administrative Affairs, requesting the cancellation of the conclusion of the PRB of that date. PSH. Nr. 174/15, and 27.03.2014,

Basic Court in Prishtina - Department for Administrative Issues, dated on the: 06.06.2018 Judgment with protocol no. A. No.569/14, and approves as grounded the complaining claim of the claimant "Fidanishtja Ibra" from Kamenica and the conclusion of the 26.03.2014 with no. 174/13, it annuls, until the case is returned to the Respondent to the Respondent (PRB) for resettlement.

The main reasoning of the above-mentioned Judgment is invoked in that the conclusion was made in violation of the Law on Administrative Procedure, respectively in the contrary to Article 136 of the LAD.

Procurement Review Body, upon receipt of the Judgment of the Basic Court - Department for Administrative Affairs, with procurement no.569/14, has authorized the review expert, based on the article 113 of the LPP, to prepare a chronology regarding with the concerned procurement activity, dated: 20.06.2018, the expert submitted the chronology.

At the hearing session of the main review of the 25.06.2018 which was held without the presence of the parties in conformity with Article 26 paragraph 1 of the Rules of Procedure of the Procurement Review Body no. 2/17 of the 20.03.2017, where were present members of the review panel, were reviewed the memos of the case by checking and analyzing the documentation for the procurement procedure which consists of:

Judgment A. No. 569/14, 06.06.2018, conclusion PSH. No.174 / 1415, date: dated:
26.03.2014 chronology of no. 515/16 dated:

Review panel after reviewing the case files, explanations mentioned in the expertise, memo of the contracting authority and memo of the EO, ascertained that contracting authority in the tender dossier and the contract notice has established the criterion for contract award that was: “The tender economically most favorable”, as well as pointing out the points that will be made during the bid’s evaluation, as follows:

The first criterion: the price, valued at 70% of the points.

Second criterion: Delivery of goods, estimated at 15% of points, and

Third Criteria: Professional Advice Covered by Bank Guarantee, valued at 15% of the points.

Review panel based on the ascertainments of the review expert evaluates that EO recommended for contract has scored the maximum points based on the scoring of the criteria set out in the tender dossier, the point was made in accordance with the previously used scoring formula placed in the tender dossier.

Review panel conform article 117 of the LPP, decided as in the provision of this decision and to implement the Judgment of the Constitutional Court of the Basic Court - Department for Administrative Affairs with which Judgment Approved Appeals the plaintiff and the case has been returned to the review and reinstatement of the respondent to the PRB. The review panel clarifies that even if the complaint is approved and the case is returned for re-evaluation and this procedure returns to the zero point it would have no legal effect since this activity has been completed but in conformity with the legal advice complaining EO can turn to the competent court and the court to confirm whether this EO is damaged or not.

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. Blerim DINA

Decision to be submitted to:

1x1 CA- MA of Istog

1x1 EO – “Fidanishtja Ibra” - Gjilan

1x1 Archive of the PRB

1x1 For publication on the website of the PRB.