

**PUBLIC 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. Goran Milenković – President, Nuhi Paçarizi – Referent, Mr. Blerim Dina - member, deciding on the complaint of the Economic operator “Ntp Office-Printy”- Prishtina, against the contract award notice of EO “DPT Alma” – Prizren, regarding with the procurement activity with title: “Supply with requisites for KP” with procurement no.”217/17/4087/121” initiated by the Contracting authority (CA) – Kosova Police, on the 06.12.2017 has issued this:

## **DECISION**

**I. Approved**, as partly grounded the complaint of the Economic operator “Ntp Office-Printy”- Prishtina, regarding with the procurement activity with title: “Supply with requisites for KP” with procurement no.”217/17/4087/121” initiated by the Contracting authority (CA) – Kosova Police.

**II. Cancelled**, the contract award notice, regarding with the procurement activity with title: “Supply with requisites for KP” with procurement no.”217/17/4087/121” initiated by the Contracting authority (CA) – Kosova Police, and is cancelled entirely this procurement activity, if CA has further interest to initiate this procurement activity the same may re-tender conform legal provisions of the LPP.

**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 complaint of the complaining economic operator “Ntp Office-Printy”- Prishtina, is approved as partly grounded, it is returned the insurance fee of the complaint in the amount deposited when filing a complaint.

**VI.** Obligated complaining economic operator that conform article 33 point 6 of the Rules of Procedure of the PRB, within sixty (60) days is obliged to request to take back the funds, otherwise these funds will be confiscated and will pass to the budget of the Republic of Kosova.

## REASONING

Contract Notice regarding this procurement activity was done on: 05.09.2017.

Bid's opening was done on the 02.10.2017, where three economic operators participated.

The standard letter for EO eliminated by CA was sent on the: 02.11.2017.

The contract award notice was made on the: 30.10.2017, where is recommended for contract EO "DPT Alma" - Prizren.

Against the contract award notice, EO "Ntp Office-Printy" - Prishtina, on the 06.11.2017, has submitted a request for reviewing at the contracting authority.

On the 08.11.2017 the contracting authority makes a decision for refusing the request for reviewing of the EO "Ntp Office-Printy" - Prishtina.

Complaining economic operator "Ntp Office-Printy" - Prishtina, as a dissatisfied party, has lodged a complaint at the PRB, on the 16 of November 2017 with protocol no. 363/17, against the notification for contract award, regarding the procurement activity with the title: "Supply with requisites for K", with procurement no: "217/17/4087/121", developed by the contracting authority "Kosova Police" claiming that contracting authority, regarding this procurement activity, has violated these provisions of the LPP. The contracting authority has acted in violation of the legal provisions of the LPP:

Violation of Article 6 of the Law on Public Procurement of the Republic of Kosova.

Violation of Article 28 of the Law on Public Procurement of the Republic of Kosova.

Violation of Article 59 of the Law on Public Procurement of the Republic of Kosova.

Violation of Article 72 of the Law on Public Procurement of the Republic of Kosova.

Procurement Review Body, conform article 113 and 114 of the LPP on the 16.11.2017 has authorized the procurement review expert, to review the validity of all complaining claims of the complaining party.

The Procurement Review expert in the report of the 27.11.2017 has ascertained that "complaining EO N.T.P "Office-Printy" has been qualified as an eliminated bidder from CA-Kosova Police with the justification cite: In the tender dossier at the technical specifications in part 1 item 1 the tiles are required with cherry wood material, while the tile offered as a sample by the EO is of poor quality, in some parts the color is more pronounced in some parts pale which means it is not one color. Also in the tender dossier was requested the box to be suitable, while the tile box is not suitable and at the same time I clarify that EO N.T.P. "Office Printy". Regarding the complaining claims of the complaining EO that CA "Kosova Police", has violated the provisions of Article 6, 28 and 59 of the LPP, the review expert ascertains that these complaining claims are partly grounded since CA-Kosova Police during the evaluation of the bids did not take as a whole the technical specification of part 1 (Lot1) item 1, item 1: KP tile, review expert ascertains that this request does not meet the complaining EO but nither EO- DPT "Alma" to whom has been awarded the contract by CA-Kosova Police, since in the request of the CA the technical specification for this item was I cite:

"Dimensions of tiles 15x20x1.5cm, Material of cherry wood on decorated edges (2cm at each end of the tiles) .In the forefront of the wood part to place thin sheet of silver metal The part where the logo of the KP is to be metal with a dimension 10x15cm (1 cm at each decorated end), in the middle of the blue logo with blue logo 9x9cm, the back of the plate has a holder for the tiles to stand with the possibility of removal The box should be of velvety blue color material, suitable for placement of plaque. Dimensions of box 16.5 to 17.5 X 21.5 to 22.5 X 2.5 to 3.5 cm "The review expert analyzed the samples submitted by the two Economic Operators regarding this requirement of part 1 item 1, where after

analyzing these samples it is noticed that the tile which is requested by the CA to be of cheery wood material, do not meet the request of the CA as these tiles submitted by the Economic Operators are not of cheery wood material but are of elaborate wood material called MEDIAPAN. Regarding the box required by CA, I quote: The box should be made of blue velvet material, suitable for placement of the plaque. Review expert ascertained the complaining EO has brought the box according to the request of the CA and was suitable for placement of the plaque, the difference of the box of the complaining EO and EO to which was given the contract by CA, is that the box of the complaining EO does not have a closure that closes the box and then cannot be opened as well as the box of the complaining EO does not have a ribbon inside it, which these two qualities has the box EO that was awarded the contract by CA, but in the request of the CA these requirements (quality) were not in the technical specification. Regarding the complaining claims of the complaining EO that CA “Kosova Police” has violated the provisions of Article 72 of the LPP, review expert ascertains that this complaining claim does not stand since in the concrete case EO have submitted samples on the case of the submission of bids and as such there was no need to clarify. Review expert based on the ascertainments mentioned in the expertise thinks that contracting authority: Kosova Police for the procurement activity with the title “Supply with requisites for KP”, with procurement number: 214-17-4087-1-2-1 and internal number: 214/17/084/121, did not fully respect the provisions of the LPP. Review expert based on the findings mentioned in the expertise proposes to the review panel that the complaint of the EO to be approved as partly grounded, and the decision of the CA regarding the contract award for part 1 (Lot1) to cancel, and at the same time proposes that this procurement activity for part 1 (Lot1) is re-tendered, if further CA is interested in carrying out this activity. Also the review expert recommends to the CA that during the re-tender of this procurement activity, during the drafting of the technical specification CA should reflect the required item in the clearest way”. The contracting authority through written memo of the 29.11.2017 has notified the Review Panel that it does not agree with the report of the review expert.

Complaining economic operator on the 30.11.2017 through memo has notified the PRB that agrees with the opinion of the review expert.

At the hearing session of the main review of the 06.12.2017 where were present the review panel, representative of the contracting authority, representative of the complaining EO, PRB expert, were reviewed the case files by checking and analyzing the documentation for the procedure the procurement is composed of: authorization for initiation of the procurement activity, notification for contract, minutes on the bid’s opening, decision on establishment of the bid’s evaluation commission, bid’s evaluation report, notification on cancellation of the activity, complaint of the economic operator, report of the PRB expert, memos of the parties to the proceedings.

During the presentation at the hearing session the representative of the complaining EO Mr. Koca stated: “We have received the expertise's report of the expert and we do not agree with it but again I did not want to make a further complaint. Regarding this case the CA has made the complaint in the opinion of the expert. We have been convinced that even if we win this procurement activity, I could not proceed further because of the links between procurement and logistics in the Kosova Police. This is because even if we win the contract, the logistics will not accept the items we will offer”.

During the presentation at the hearing session representative of the CA, Mrs. Nikqi stated: “I am a member of the evaluation commission of this project, and for the concrete item the plaque color did not comply with the specification and this was the reason for

eliminating the EO, and suitability of the box. If you have the samples, you can see them too”.

During the presentation at the hearing session the procurement review expert, Mr. Sopi stated: “As already noted by the representative at the hearing session, the reason for eliminating the complaining EO is “in the tender dossier was required that the tiles to be cherry wood material”. Tile offered by EO is of poor quality in some parts the color is more pronounced in some pale, meaning it is not a one color. Also in the dossier was requested to be suitable, whereas according to CA the plaque box is not suitable. I think that as far as the tiles requested cherry Wood, this does not meet neither the complaining EO nor the EO recommended for contract as the tile is a material called Mediapan. As for the box that is quoted “the box should be of a blue colored velvet material suitable for placement of the tile”. I think the box meets all the requirements of the CA and is suitable for placement. The only difference of the box of the complaining EO and the winning one is that the box of the complaining EO does not have a closure that closes the box and does not have a ribbon inside it, which these two qualities have the box of the winning EO. However, in the request of the CA technical specifications these quality requirements have not been specified.

In the final words the representative of the complaining EO Mr. Koca stated: “I would like to see the samples and to see the panel as to whether stand the complaining claims of the CA. We propose the panel to approve our complaint as grounded”.

In the final words the representative of the CA, Mrs. Nikqi stated: “We propose to the panel to validate the decision of the CA as grounded and to reject the complaint of the complaining EO as unfounded”.

In the final words review expert Mr. Sopi stated: “I stand by the expertise's report and the findings given in the report”.

The review panel, after reviewing the memos of the case, reviewing the complaining claims of the complainant, findings, concrete analysis and recommendations of the professional review expert, declarations of the parties in the proceedings, discussing and screening the evidence as a whole during the hearing session of the main review, ascertains that the complaining economic operator for 1 (Lot1) did not fulfill the item 1, item 1: KP tile required in mandatory technical specifications. Also the same technical specification did not fulfill either the economic operator recommended for contract award for Lot 1 D.P.T “Alma”. Given the fact that the contracting authority in the technical specification for this article has requested: “Dimensions of the board 15x20x1.5cm. Material of wood with decorative edges (2cm at each end of the plate). On the forefront of the wooden part to place the thin tile of silver metal The part where the logo of the KP is placed should be a metal with a dimension 10x15cm (1 cm at each decorated end), in the middle the logo of the PK in the blue color, the dimensions of 9x9cm, behind the tile to have a holder that the tiles stand with the possibility of removal and therefore the review panel taking into account the explanations given by the review expert where he analyzed the samples submitted by the two economic operators connected with this request of part 1 item 1, and after analyzing these samples it was noted that the tiles which were requested by the CA to be of cheery woo material did not meet the request of the CA as these tiles submitted by both economic operators are not cherry wood materials but, they are of material processed wood that is called MEDIAPAN.

Review panel, considering the fact that for the procurement activity “Supply with requisites for KP”, with procurement no .: “217/17/4087/121, for Lot / Part1, have

offered only two economic operators and that: the complaining EO “Ntp Office-Printy” - Prishtina and EO recommended for contract award by the CA, EO DPT “Alma” - Prizren, and none of these two economic operators is not responsive, in accordance with article 62 of the LPP, the procurement activity should be canceled, and if the contracting authority has further interest to conduct the procurement activity in question, the same can re-tender according to the legal provisions of the LPP.

Review panel ascertains that with regard to the other point of elimination of the complaining economic operator from the contracting authority, because the economic operator concerned provided a box of tile that is not suitable, the review panel considering the fact that the contracting authority has requested: The box should be made of velvety blue color material, suitable for placement of the tile. Dimensions of Box 16.5 to 17.5 X 21.5 to 22.5 X 2.5 to 3.5 cm”, economic operators should have referred only to the requirements as specified, which in the concrete case the complaining EO has offered this box according to the specification requested by the contracting authority, the difference between the box of the complaining economic operator and the winning one is that the box of the complaining EO does not have a closure that closes the box and then cannot be opened, and the box does not have a ribbon inside it, which these two qualities contained in the box of the operator recommended for contract must be taken into account that were not specified by the contracting authority, which cannot lead to the elimination of the economic operator since these specifications have not been in the tender dossier.

The review panel considers that the contracting authority during the drafting of the technical specification in case of re-tender of this procurement activity should reflect in more details and clearer the requested article, because the word most suitable cannot be understood and it is not known how to be provided on its basis (to specify the expression most suitable for CA, to clearly specify what is most suitable for the contracting authority).

Review panel conform article 117 of the LPP, and based on that what was stated above decided as in the provision 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

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Mr. Goran MILENKOVIĆ

Decision to be submitted to:

1x1 exemplar – Complaining EO

1x1 exemplar – Contracting authority

1x1 exemplar - Archive of the PRB

1x1 exemplar - For publication on the website of the PRB.