

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. Nuhi Paçarizi – President , Mr. Blerim Dina – referent, Mr. Goran Milenković - member, deciding on the complaint of the Economic operator NTSH “XANI INEX” - Prishtina, against the contract award notice, regarding with the procurement activity with title: “Supply with supervision of complete drives for conveyor B = 1600 ”” with procurement no.”17/3252/111” initiated by the Contracting authority (CA) – Kosova Energy Corporation, on the 18 of December 2017 has issued this:

DECISION

I. APPROVED, as partly grounded the complaint of the Economic operator NTSH “XANI INEX” - Prishtina, regarding with the procurement activity with title: “Supply with supervision of complete drives for conveyor B = 1600 ”” with procurement no.”17/3252/111” initiated by the Contracting authority (CA) – Kosova Energy Corporation.

II. CANCELLED, the contract award notice of the CA – Kosova Energy Corporation, regarding with the procurement activity with title: “Supply with supervision of complete drives for conveyor B = 1600 ”” with procurement no.”17/3252/111” initiated by the Contracting authority (CA) – Kosova Energy Corporation, and the procurement activity in question is returned for **re-evaluation**.

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 NTSH “XANI INEX”- 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 the 13.07.2017
Bid's Opening was made on 28.08.2017 where three (3) nine economic operators participated.

The contract award notice by the contracting authority was done on the: 16.11.2017

Against the contract award notice, economic operator "NTSH "XANI INEX" - Prishtina on the 21.11.2017 has made a request for reviewing at the contracting authority.

On the 24.11.2017 the contracting authority has taken the decision to reject the request for reviewing of the economic operator, NTSH "XANI INEX" - Prishtina

Complaining economic operator NTSH "XANI INEX" - Prishtina as dissatisfied party has lodged a complaint at the PRB, on the 01.12.2017 with protocol no.471/17 against the notification for contract award regarding the procurement activity with title: Supply with supervision of complete drives for conveyor B = 1600 "" with procurement no."17/3252/111" initiated by the Contracting authority (CA) – Kosova Energy Corporation, claiming that the contracting authority has acted in violation of the legal provisions:

- Article 7 of the Law on Public Procurement of the Republic of Kosova.
- Article 59 of the Law on Public Procurement of the Republic of Kosova.
- Article 60 of the Law on Public Procurement of the Republic of Kosova.
- Session II TDS article 9.1 and 9.2 Documentation evidence Required point 2 Authentic Manufacturer's Documentation: Catalog / Part of Catalog or Producer's Drawings for Outputs to Be Delivered.

Procurement Review Body, conform article 113 and 114 of the LPP on the 06.12.2017, 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 13.12.2017 has ascertained that based on the documentation that is in the review ascertains that contracting authority in the procurement activity "Supply with supervision of complete drives for conveyor B = 1600 "" with procurement no."Kek-17-3252-111, initiated by the Contracting authority (CA) – Kosova Energy Corporation Sh.a.

Type of contract is public supply contract, great value. The Tender Dossier includes its terms and conditions, the applicable procurement procedure, applicable eligibility requirements and selection criteria and award criteria.

Complaining EO: N.SH.SH "XANI-INEX", has bid for the procurement activity "Supply with supervision of complete drives for conveyor B = 1600" with procurement no."Kek-17-3252-111. The evaluation commission of the CA during the examination, evaluation and comparison of the tenders has evaluated as responsive operator according to the criteria set out in the tender dossier and in the contract notice the bid price is 600.601,12E.

EO recommended for contract N.T.P "A-D-E Group" with bid price 497.960.00E.

Complaining EO has the higher price 102.641,12 than the EO recommended for contract. CA-KEC, without prior written reasoning for the offer's evaluation delay, on the 24.11.2017 through electronic mail has requested from the EO to extend the validity of the bids and to secure the bid by correctly applying the provisions of the LPP.

EO responded to the request of the CA regarding the extension of the bid's validity and the bid's security.

CA by electronic mail on the 02.10.2017 has requested clarification from the manufacturer about the electrical parts and the mechanical part, the manufacturer on the 09.10.2017 declares that we apply the same specifications that you have submitted and that you presented and the same you will be presented with the delivery of the product and the test report and sent the catalog where it does not have all the specifics, but for more you also need to refer to the drawings for all dimensions. CA has implemented the provisions of article 59 and 72 of the LPP.

Complaining claims of the complaining EO that the EO recommended for contract did not provide the guarantee on the request that in the dossier of the EO recommended for contract there is a Statement of Guarantee, lcu writes Warranty for all the equipment that the company offers is 12 months from the day they are accepted technically “ At the Authorization of the manufacturer dated 15.08.2017 writes English “Guarantee for our products is for 12 months from start equipment with normal builds conditions and with no mechanical impact” Customized in Albanian “Our warranty is for 12 months from working equipment with normal working conditions and without mechanical impact” EO recommended for contract on the 01.11.2017 by email responded to CA-KEC regarding the guarantee that writes “Guarantee 12 months after technical acceptance” The complaining claims of the complaining EO that the CA commission did not apply the requirements of the tender dossier . Section II TDS article 9.1 and 9.2 Documentary evidence required: item .2. Authentic documentation of the manufacturer as:. catalogs / parts of the catalog or drawings of the manufacturer for the products to be delivered. CA-KEC has implemented the provisions of Article 59 and 72 (Documentation and Supplementary Information) of the LPP and has requested clarification from the EO and confirmations from the producers regarding the catalogs and drawings which are filled and submitted by electronic mail. Finding no. 7 complaining EO claims that the EO recommended for contract has no dynamic delivery plan is sustainable. CA in the tender dossier of the mandatory technical specifications requested the dynamic plan of the realization of the supplies and the performance of the works corrosion protection. EO recommended for contract, on the offer has presented the dynamic plan and methodology of work for corrosion protection and dyeing, but not the dynamic supply plan, has made a declaration of delivery deadline 180 days from signing the contract. CA has not fully implemented the provisions of article 59 of the LPP. We have ascertained partly violations of the article 59 of the LPP, regarding the procurement activity: Procurement activity “Supply with supervision of complete drives for conveyor B = 1600” with procurement no.”Kek-17-3252-111.

Contracting authority, on the 13.12.2017, by memo has notified the PRB, that does not agree with the opinion of the review expert.

Complaining economic operator “NTSH “XANI INEX” - Prishtina on the 15.12.2017, by memo has notified the PRB that does not agree with the opinion of the review expert.

At the hearing session of the main review of the 18.12.2017, where were present the review panel, representative of the complaining economic operator, representatives of the EO recommended for contract award and professional review expert of PRB, were reviewed the case files by conduct and analyze the documentation for the procurement procedure which consists of: authorization of initiation of the procurement activity, contract notice, minutes on the bid's opening, decision on the establishment of the bid's

evaluation commission, bid's evaluation report, notification on award of the procurement activity, the complaint of the economic operator, the report of the professional expert of the PRB, the memos of the parties to the proceedings.

During the presentation at the hearing session representative of the complaining EO "NTSH "XANI INEX"- Prishtina stated: Firstly submit a copy of the specifications. I ask that jointly on page 20 to analyze point 2 the technical specifications, then comes point 2.5 where writes the warranty for supply, the mounting supervision for the conveyor b 1600 mm should be assumed by the manufacturer, point 2.6 the installer after assembly CA accepts works from the EO in time 2 months after the operating station of the driving station, the guarantee is valid after the date of acceptance of the works by the CA, and on the last page no. 32 CA asks EO on the bid to submit these documents: a) statement on the warranty term of supplies by the manufacturer 12 months after commissioning. Please I request from the review expert to give us 2 guaranties to the manufacturer what writes on it. The representative of the EO submits to the manufacturer a copy of the authorization: "The guarantee for our products is 12 months from the beginning of the work of the equipment with normal conditions, construction and without mechanical influence. I request that we analyze these two statements where I ask to be told by the expert where does it write 12 months after commissioning the technical acceptance, is the request of the CA? I can add the opinion of the CA assessment commissioning, which says the same opinion that the warranty is valid from the start of the equipment on condition of no mechanical damage to the device, but this means that the device must be delivered, mounted to be issued 2 months working days, to be accepted by the technical commission, what is in the contrary to what it writes, the expert says CA has asked questions and has received an answer from the EO where the warranty for our products is written is 12 months from the date when it is technically accepted, the expert conflicts when it accepts a guarantee not required by CA, also does not give the date when the request for clarification from the CA, the form of the question asked, the date when the question was asked and the date when the EO should respond, with the very fact that the question was filed on the 15.08.2017 it is 9 days deadline that is returned the answer, which nowhere is allowed and is not accepted, if we analyze the findings of the review expert and the acceptance of two statements of opposite content, are asked whether those statements are 2 variants or one variant, and contradicts article 4 point 1 section 2 tender data sheets, where the variants are not allowed, this relates to the first finding of the expert. Review expert in his finding no 4 states: that CA on the 02.10.2017 by e-mail required clarifications from the manufacturer regarding the electrical and mechanical device, in this finding does not see the content of the request for clarification of the CA is not seen deadline when is given the response, it is not possible to see the specific question of which position to the technical specifications requested clarification, the manufacturer on the 09.10.2017 states: We apply with the same specifications that you have submitted and they will be presented in the delivery of the product and report and sent the catalog after the tender was closed, where the expert himself ascertains that the technical specifications do not match the requirements.

In finding No. 6, I do not know what was meant by the review expert when it says that CA and EO have applied all the requirements in Section 2 Tender Data Sheet point 9.1 9.2, we did not conclude the claims of the CA as well as the complaining claims of the EO that did not submit documentation in his bid, we claim that the technical documentation and doc (guarantee statement) are not conform to the requirements of the CA. In our complaining claims given in our complaint, complaining claim no. 3, point

3.6 braking mechanism with restraint, and with complaining claim no. 4 item 3.8 introductory coupon, complaining claim no. 5, point 4.1 bar tightening force of 30 kv, drum for ribbon clamp, base for electromotor, mechanical braking mechanism, torque shutter and gear reducer. For these four of our complaining claims the review expert has not provided any comments or objections and we consider that they are accepted and we are requesting to proceed to the review procedure. Finally, we request the expert to remove the proposal given while you the honored panel of the operator recommended to declare it irresponsible and to recommend CA to proceed with other procurement procedures.

During the presentation at the hearing session the representative of the CA stated: "Regarding the guarantee on the offer is given the guarantee where it is stated that the warranty is valid 12 months after the start of the machine, this means that the warranty is valid 12 months after the technical acceptance at the same time EO which states that the guarantee period is 12 months after the technical acceptance of the equipment that was the decisive request of the dossier, to prove in conformity with Article 72 addressed to the EO in the request for clarification, in which it was requested to confirm that it fully complies the requirements from Annex 1 of the mandatory requirements conform to the requirements of TD, and the answer was that we will completely stick to the points in which the guaranty was given. The complaining claim of the EO that the response was delayed for 9 days is ungrounded because from EO we have received a letter is part of the case in which EO informs us that in the state of the manufacturer is an official holiday in which is attached a document that proves that the whole week has been an official holiday in the state of the producer. EO claims that here are given variants where it is not only because I was confused because the variants are given a technical specification. I have a letter that did not have any remarks from the complaining EO

During the presentation at the hearing session the representative of the EO recommended for contract award Mr. Arben Pllana who stated: complaining claims for points 3.0 and 3.8 of the technical specification it means are all technical characteristics required in TD are given as follows: $p = 320$ kv is $n1 = 1000$ spins per minute and transmission ratio $1 = 16$, gear housing material g 20 as well as material for axles and cog 18 price, regarding the point 3.3 to the electromotive in the drawing presented in the offer are given in yellow senders and heaters in written and drawn form. There is also the point of complaint 3.6 to the braking mechanism with braking mechanism and a complete solution was required for the constructive solution from the manufacturer who provided the material of the gauge 52 and provided drawings as well as complete mechanization with power. Where upon request has fulfilled the recommended EO.

During the presentation at the hearing session the professional review expert stated: At this hearing session I heard a lot of conversations or disagreements but we have to understand that the works are divided by responsibility by the authorities which the procurement official has the responsibility to prepare the tender dossier while the requesting unit keeps the requesting unit responsibility for the specifics, same time the commission should be a professional who has written a report at the same time the unsatisfied party had access to his offer where he has lodged a complaint by collecting all of them even considering that the solution the subject is not my part and my profession is also an economist. I came to the conclusion where the basis was the price where the EO is more expensive but at the same time he was entitled to the dynamic plan where the EO recommended the dynamic plan does not have but has only the deadline for delivery

where at the hearing session one of the complaining claims is as well as reached to understand the CA in technical specifications has requested the warranty from the manufacturer 12 months while the Authorization says from the beginning of the work, where at this point because I understand the difference, while EO recommended for contract says that the guarantee for all the equipment the company offers is 12 months of technical acceptance, all these have been reflected and browsed and notified the review panel where I clarified in the finding 5 where writes the guarantee for our equipment is 12 months from the startup equipment under normal conditions of shift and without impacts, this is the manufacturer while the EO in the document says 12 months after the technical receipt, this is where he says I did not do the job as it should, but only I have given in the findings, while as far as the catalogs article 72 of the LPP regulates the additional supplement.

On the question of the President of the review panel addressed to the review expert whether the complaining claims were clarified?

Review expert responds: are based on the responses of the manufacturer with which it has been found that we send the catalogs that are not well looked at and detailed the drawings but more concrete you will notice with the tests, i think that if you consider that are left aside complaining claims I apologize.

Representative of the EO recommended for contract stated: at the guaranty term we have agreement with the producer with everyone because the work is supervised by EO and the warranty 12 months after we notify the manufacturer that it is technically admitted for questions that are delayed 9 day from the CA that we have addressed a letter for the catalogs that came from the CA although it is allowed by the LPP. CA in the tender dossier has requested catalog, part of the catalog or drawings of the manufacturer it means that we provided the drawings but to prove the CA has requested additional catalog. At the introductory pair, no manufacturer can give the techniques of how they are produced because it is the entire drawing with all requirements.

In the final words the representative of the complaining EO stated: from the panel I ask the engineer to explain to the expert what is the work of the manufacturer, I tell you that the equipment 2 months is working without warranty of when accepted technical acceptance then covered and the guarantee starts, and once I say to look at the documentation as required, point 3 the technical data for the required ride, should also include the technical characteristics and technical drawings and technical drawings for the electric motor reducer, the drum base is good, the inhibitor is not good, the introductory pair has not done well. I ask the expert to remove the given opinion and return to re-evaluation.

In the final words the representative of the CA KEC stated: I consider that he has fully respected the law of the LPP and fully agrees with the expert and that the complaint is rejected ungrounded and CA continues the activity.

In the final words the review expert stated: I have given partly the complaint, the deadline remains unclear, while the rest remains the same stand by the given findings.

Review panel after reviewing the memos of the case, reviewing the complaining points of the complainant, ascertainments, concrete analysis and recommendations of the review expert, statement of the parties to the proceedings, discussion and screening of the

evidence as a whole during the hearing session of the main review concludes that the Contracting authority during the bid's re-evaluation should seek clarification and certify that EO recommended for contract has provided the guarantee for equipment according to the TDS request and the contract notice.

The review panel also obliges the contracting authority that conform article 59.2 and 72 of the LPP to request additional clarification and certify that the technical specifications provided by the EO recommended for contract fulfill the requirements of the contracting authority to the TDS and to the contract notice.

Review panel conform article 117 of the LPP, and based on the evidence presented 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

Mr. Nuhi PAÇARIZI

Decision to be submitted to:

1x1 CA- "Kosova Energy Corporation"

1x1 EO – "NTSH "XANI INEX" - Prishtina

1x1 Archive of the PRB

1x1 For publication on the website of the PRB.