

PROCUREMENT REVIEW BODY

According to Articles 109 of Law No. 04/L-042, Law on Public Procurement of the Republic of Kosovo, amended and supplemented with the law No. 04/L-237, law No. 05/L-068 and law No. 05/L-092

A complaint against the: *Kosovo Energy Corporation J.S.C.*

For the procurement activity No. of PA: *KEKO-16-114-511*

Regarding the tender for

“Modernization of Areas in the Cooling tower Unit A4”

COMPLAINT

1. Complainant's* identification

Consortium: *FANS, a.s. & NPSH ELEKTRONIC Business-PRO*

Na Květnici 17, Prague 4, Czech Republic

Prague
(Place)

140 00
(Postal Code)

+420 234 718 903
(Phone number)

+420 234 718 918
(Fax Number)

Jaromír Odstrčil
FANS, a.s.

Mehreme Demaj
NPSH ELEKTRONIC Business-PRO

(Full name of the representative of your company)

jodstrcil@fansct.com *mehreme.demaj@businesspro-ks.com*
(Electronic address)

08.02.2017

(Date of submission of the complaint)



(Signature and stamp)

(Name of lawyer)

(Full address)

(Phone number)

(Fax number)

(Electronic address)

(Date of submission of the complaint)

(Signature and stamp)

3. Information on procurement activity

[Write a short description regarding the date and place where the "Contract Notice" or "Design Contest Notice" has been published and, if applicable, "Contract Award Notice" "Design Contest Results Notice" or "Cancellation notice of the procurement activity" if applicable, deadline for tender submission, date and time of commencement of Tender Opening process, and contract award criteria.]

Contract Notice in the official website of Public Procurement Regulatory Commission was published on 04.03.2016. According to this notice, opening day of tender was on 13.04.2016, time, 13:30. But since there were additional information, opening day was postponed for 03.05.2016 at the same time, 13:30. The object of the contract is execution of the works in Modernisation of Areas in Cooling Tower, Unit A4. Contract Award Notice was published on 16.01.2017

4. Process of Tender Opening, if applicable

Have you participated in the process of Tender Opening? If yes, specify briefly the process of Tender Opening.

Yes

☐

No

☒

No, We have not participated in the process of tender opening. Minutes of opening we have received in hard copy by procurement officer in charge for this procurement activity.

5. Notification to Eliminated Tenderers, if applicable

Yes

☒

No

☐

6. Preliminary Settlement of Disputes

Have you made a request for review to the CA regarding the reasons for your elimination? and a written response with AK about this? If yes, provide brief details on this fact:

Yes

☒

No

☐

(Name of lawyer)

(Full address)

(Phone number)

(Fax number)

(Electronic address)

(Date of submission of the complaint)

(Signature and stamp)

3. Information on procurement activity

[Write a short description regarding the date and place where the "Contract Notice" or "Design Contest Notice" has been published and, if applicable, "Contract Award Notice" "Design Contest Results Notice" or "Cancellation notice of the procurement activity" if applicable, deadline for tender submission, date and time of commencement of Tender Opening process, and contract award criteria.]

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No

☐

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Have you made a request for review to the CA regarding the reasons for your elimination? and a written response with AK about this? If yes, provide brief details on this fact:

Yes

☒

No

☐

On 16.01.2017, by Procurement Officer in charge for this procurement activity we have received Standard Letter for Elimination of Tenderer. In accordance to article 108/A, within a deadline on 20.01.2017 we have submitted to CA our request for review in electronic form and 23.01.2017 we have submitted our request in physical form.

On 30.01.2017 at 4:15 PM (**after working hours**) by email, we have received CA Decision on our Request for Review Attached:

1. Our request for review (standard letter for elimination, contract award notice)
2. CA Decision

7. Violated provisions by Contracting Authority

Specify provision or provisions of the PPL that have allegedly been violated by the Contracting Authority from the moment of Contract/Design Contest Notice publication, and if applicable until the conclusion of this procurement activity with the Publication of Contract Award Notice or Design Contest Result Notice or Cancellation Notice.

Law Nr. 04 / L-042 ON PUBLIC PROCUREMENT IN THE REPUBLIC OF KOSOVO amended and supplemented by law Nr. 04 / L-237, Law no. 05 / L-068 and Law. 05 / L-092

Article 1- Purpose

Article 2-Scope

Article 7- Equality of Treatment/Non-Discrimination and Transparency

Article 59- Examination, Evaluation and Comparison of Tenders

Article 62-Termination of a Procurement Activity

RULES AND OPERATIONAL GUIDELINES FOR PUBLIC PROCUREMENT

Article 5-Procurement forecast

Article 11. Functions of the Procurement Department/Unit 11.3.(r) Sign the contracts after reconfirming that the financial information have not materially changed

Article 31-Tender Validity

Article 32 - Hardcopy tender submission

Article-39 - Clarification of the tender

Article 41 -Examination, Evaluation and Comparison of Tenders

*** According to the Article 118 of the PPL, PRB shall reimburse your fee if the complaint is approved as grounded. The PRB may require an additional penalty of up to 5,000 Euro in cases where the PRB determines that all or whichever of allegations set forth in such complaint was frivolous, false or misleading.*

8. Detailed declaration on the facts and arguments

Describe factual circumstances that provide allegation for violation of the PPL provisions. Provide clear and detailed declaration for the facts and arguments that invoke each base of your complaint.

As described above, on 30.01.2017, by CA we have received a Decision on our Request for Review. According to the CA justifications on each our complaining clause, CA has found our claim as baseless but with its decision, CA have just confirmed our claim clauses as true. We will describe CA justifications on each complaining clause and give our opinion each point.

COPY of CA Decision

Complaining clauses of Economic operator related with the extension of the offer validity

During the conduct of this procurement procedure there was required several time extension of the validity of the offers and it is true in one case is not required extension of validity before the expiry date but was an unintentional omission and in this case the economic operators are treated equally because of everyone was sent the continuing validity at the same time, Economic Operators have not done remarks at that time and have continued validity of the offer.

OUR ARGUMENTS:

According to what we can read in the CA decision about the offer validity, CA accepts its mistake by not making Written request to Economic Operators before expiry date. On other hand CA is justifying itself when is saying that you accepted our request for extension of offer validity and you did not make any remarks . **THIS IS NOT TRUE.**

EVIDENCE:

CA in its justification states that we did not react on time to the issue of the validity of the offer, which has prompted our feedback because, we reacted on time and we have requested clarification to CA, but CA with the most possible ignorance did not reacted at all, and what is even more serious-and harmful , CA continues to accuse us that "you do not reacted in our request to the validity period and you are treated equally to with other Economic Operators". CA justifies itself that when they make a law violations, in this case not by sending written request for validity extension prior to expiry date, their mistake is unintentional omission.

CA, knows very well that after expiration date that was 03.10.2016, on 11.10.2016 and 25.10.2016 we have wrote an email to the procurement officer in charge for this procurement activity and CC –to the manager of procurement department On 11.10.2016, we have sent first reaction to CA:

Email is attached (Attachmenti no.3)-NO REPLY TO UOR QUESTION

On 25.10.2016, we again have directed an email to CA.

Email is attached (Attachmenti no. 4) –AGAIN WE DO NEO HAVE ANY ANSWER

On 07.11.2016, (exactly 36 days after offer validity expatriation date) we receive form CA

Email (request) dated 07.11.2016 sent by CA is attached (attachment no. 5)

Having into the consideration fact that if we do not answer to CA request in written, according to applicable PPL, CA has a right to refuse our offer from further procurement procedures without any justification, we have replied to this email and at the same time we reacted in CA request and asked CA if his request has a legal bases because offer validity has expired on 03.10.2016.

Email is attached (attachment no. 6)-AGAIN WE DO NOT RECEIVE ANY ANSWER/REACTION BY CA

Another our justification that CA violated PPL for offer validity is:

In tender dossier in the PART A; TENDERING PROCEDURES IN THE SECTION I, Information for tenderes, point -21. **Tender Validity** it is clearly stated:

21.2 In exceptional circumstances, prior to the expiration of the tender validity period, the Contracting Authority may request tenderers to extend the period of validity of their tenders. The request and the responses shall be made in writing. If a Tender Security is requested it shall also be extended for a corresponding period. Failure to respond to the request made by the contracting authority shall lead to the rejection of the tender without forfeiting its Tender Security.

In regard to this clause in the tender dossier it comes to question, why these instructions are included in the tender dossier, and why EO have to respect these instruction and CA not?

In order to be sure that we clearly understood this paragraph in the tender dossier, since until 03.10.2016 we did not receive any request to extend offer validity, immediately after expiration of offer validity (that was 03.10.2016), on 04.10.2016 we have directed an official question to PPRC.

Email (Question) dated 04.10.2016 is attached (attachment no.7)

On 07.10.2016 we have received the answer from PPRC where clearly is clarified that the request for offer validity has to be

send in written prior to expiry date of offer validity.

Email (Answer by PPRC) dated 07.10.2016 is attached (attachment no. 8).

On 07.11.2016 at the day when we received request by CA for extension of validity, we again directed another question to PPRC for offer validation:

Email (Question) dated 07.11.2016 is attached (attachment no.9)

On 08.11.2016 we have received the answer from KRPP and one more time was confirmed that CA must send request to all EO for extension of offer validity prior to expiry date of offer validity.

Email (Answer) dated 08.11.2016 is attached (attachment no 10)

So, according to all of these evidences and facts that in regard to tender validity have already been sent to CA with the Request For Review, CA did not see reasonable to accept all these evidences, but states that we accepted their late request for extension of offer validity - after expiry date- that for CA is nothing, it is not against the law and it is unintentional omission. On other hand CA is accusing us that we did not reacted that is not true (evidences shows differently).

From 04.10.2016-07.11.2016 we have reacted twice and directed question to CA, but contrary to us, CA ignored our reaction and did not replied to us at all. Also on the date 07.11.2016, when CA sent the request for extension of offer validity and when we replied to them with the question is this their request has a legal bases, again with the most possible ignorance, CA did not replied to our email.

Hence, It comes to the question:

WHY CA DID NOT RESPECT THE GUIDANCE ON TENDER DOSIER (ITEM 21.2),?

WHY CA DID NOT ANSWER ON OUR REACTIONS DATED 11.10.2016 AND 25.10.2016?

WHY CA DID NOT ANSWER ON OUR REACTION DATED 07.11.2016?

ALL THESE FACTS SHOWS THAT CA, CAN NOT JUSTIFY THE VIOLATION OF PPL, RESPECTIVELY CA VIOLETED ARTICLE 28 OF REGULATIONS AND GUIDANCE OF PUBLIC PROCUREMENT (RGPP) THAT WAS APPLICABLE UNTIL 01.11.2016, VIOLETED ARTICLE 31 OF THE SAME REGULATION that is applicable from 01.11.2016

OUR CONCLUSION REGARDIN THE CA JUSTIFICATION:

HAVING INTO THE CONSIDERATION ALL THESE EVIDENCES, CA HAS NO LEGAL BASES AND VIOLATION OF PPL WAS INTENTIONAL ONLY TO COMPELS US NOT TO RESPOND TO THEIR REQUESTS FOR TENDER VALIDITY AND THEN REFUSE OUR OFFER WITHOUT ANY JUSTIFICATION, BECAUSE ACCORDIN TO THE LAW, FAILURE TO RESPOND ON TIME, AUTOMATICLY WILL REFUSE OUR TENDER FROM FURTHER PROCUREMENT PROCEDURES.

COPY of CA Decision

Complaining clauses of the Economic Operator related with the lengthy of this procurement activity

Related with this issue you have received the replay from PPRC – Monitoring Department as you have mentioned in the request for review.

The CA Justification with the lengthy of this procurement activity does not have any relation with PPRC –Monitoring Department. We do not understand why CA has justified itself for the lengthy of procurement activity with Monitoring Department. Our aim was to inform CA that in regard to this procurement activity we have sent the request to PPRC Monitoring Department to check all irregularities and violations of PPL. We still are waiting for written report from Monitoring Department.

OUR CONCLUSION:

THEREFORE, CA JUSTIFICATION ON THIS POINT DOES HAVE NOT ANY LEGAL BASES AT ALL AND CA DID NOT JUSTIFIED ITSELF WHY THIS PROCES WAS OVERLONG AND WE DO HAVE BASES TO SUSPECT THAT AGAIN BEHIND OF THIS OVERLONG PROCES ARE HIDDEN INTENTIONAL PURPOSES

COPY of CA Decision

Complaining clauses of the Economic Operator for the access in the documents

Regarding access to documents has been explained earlier had been a misunderstanding and enabling access to you is total and unconditional with dt.19.01.2017 within deadline.

In regard to this CA justification, we can say that of course that misunderstanding can happen, but the way how it happens makes us suspect that this misunderstanding was intentional. When we say this we have into the consideration facts and evidences. On 17.01.2017, at 08:08, based on our request for access to documentation, CA, set the term for us on date 18.01.2017 at 13:00. Just a bit before one o'clock, our representatives were in front of CA procurement offices. They have been stopped by security guard with the justification that he has an order by Procurement Manager that today no one can go inside procurement offices due to the important meeting that procurement staff have. Our representatives insisted to guard that we have an appointment and asked him to go to the procurement office and let them know that we are here, but he did not accept due to the reason that he has a strict order not to let any one inside offices. Our representatives waited for more 20 minutes and since it was impossible to go in the offices as per set term, then one of our representative insisted to be registered in the guest book as an evidence that we were on time. After registering himself in this book, he made a photo of this book and both of them returned back. At 13:37. We have received a phone call from procurement officer in charge with the request that we can come back, because there was a misunderstanding and the guard did not know. But unfortunately it was late because our representatives have already left. After, at 14:00 we have received email with the justification for misunderstanding.

We do understand that misunderstandings can happen to every one, but in this case, the behavior of procurement officer was not professional at all, because he knew that we had a term and he could inform us before we went to their offices. The phone call we have received only when they realised that our representative made a photo of guest book and we have the evidence that we were on time as per term that was set for us. This is a reason on our suspicion that again in this case the intention of procurement officer was to say to us that we did not come on time as per set term and we can not have the access to the documents because we did not respect our term. It is true that after this incident we had unlimited access to the requested documentation on 19.01.2017, but this was one day after and means that we had one day less for analysing all documents and send the request for review to CA.

Photo is attached (attachment no.11)

COPY of CA Decision

Complaining clauses related with the elimination reason

We would like to clarify that you are not eliminated because of the item mentioned in the request for the clarification but you have been eliminated because of other reasons. The reason of your elimination we have sent in the notice for elimination.

Your conclusion that the commission did not evaluate your offer remains not in its entirety and

is completely unfounded for the reason that if it were not entirely evaluated your offer then it would not be sent notification of elimination with six points of elimination where it included the technical part.

The reason why are not included at all points of elimination in the evaluation report has been that the form of the evaluation report issued by secondary legislation on website

PPRC is such that during the completion of the evaluation report for each request in stages of evaluation should be filled with YES or NO and if in an requirement tender dossier answer is "NO" not completed evaluation report following for the economic operator has not met the request of the tender dossier and in elimination notice forwarded all the reasons for elimination

Your claim that the offer has been not fully evaluate because it is not signed by

The evaluation committee is not true and has no basis. At any provision in the Public Procurement Law is foreseen that the offer should be signed by the evaluation committee. CA has become practical to offer single sign

The Commission tender form of evaluation only to SEI in which the relevant date is evaluated bid. In this case it is without making a deliberate release of the evaluation committee but who make no impact on the evaluation of offer.

Regarding this clause, where CA justifies itself that we are not eliminated only for one reason, but there are other reasons which are sent to us with the notification letter for elimination, CA justifications are not legally supported and it is baseless. CA justification that the template of evaluation report is such that during the completion of evaluation report for each request in stages should be filled with „YES“ or „NO“ and if answer is „NO“ on other pages of evaluation report will not be complete for the EO who has not met the request of the tender dossier.

THIS NOT TRUE, because it is against the evaluation report that we have received by CA. It is true that on each page of the evaluation report during the completion of the evaluation report for each tender dossier requirement, when the answer is „NO“ then the commission will not continue with filing this report for next phases. But there is a page on this report called „MINUTES OF EXAMINATION, EVALUATION AND COMPARISON OF TENDERS“. In this page (report page 7) evaluation commission for each EO who did not meet the tender dossier requirements, should range all requests that are not met and according to this, the notice for elimination has to be sent to EO. In this page the only reason for our elimination is:

Cut it from Standard elimination letter received on 16.01.2017

You have not presented the signed declaration for each member, by confirming its participation in group and that they have to take part in individual manner and/or any other group that took part in the same procedures of procurement.

This is again **NOT TRUE**, because this declaration is in our tender dossier. If, for the evaluation commission it was not clear issue regarding this declaration, according to the article 59.2 and 59.4 of PPL and article 39.4 of Regulation and Guidance of Public Procurement, can send a written request to EO for clarification of this declaration. But Commission did not see reasonable to send this question to us, while on other hand to EO Ekoinvest&REKO on 09.09.2016 was sent one question for clarification.

In the article 39 of Regulation and Guidance of Public Procurement there is a table with all documents that are requested in an EO tender dossier, for which document can make a question and for which not. This declaration is in the range of allowed clarifications. By not sending us the request for clarification and on other hand this request was sent to another participant in this tender, CA violated article 7, 59.2, 59.4, 39.4 and also article 1 of PPL. When we say article 7, we have not been treated equally with other EO and we are discriminated. CA did not respect article 59.2, 59.4 and article 39.4 and by not respecting these articles at the same time made a serious violation of article 1 of PPL.

Reason:

By not respecting article 59 and 39, CA did not give us a chance as first candidate who fulfills the main criteria of tender dossier that is „LOWEST PRICE“, to clarify this statement but immediately eliminated us, and continued with a violation by sending the question for clarification to EO who has offered a price which is **59,52%** higher than our price or it is higher than a plane budget for **320%**. It is true that according to this article, for CA it is not obligatory -THE MAY- send a question for clarification, **BUT ARTICLE 1 OF PPL IS OBLIGATORY**. By sending the question for clarification they would respect this article and after receiving the answer from us, depending from our answer they should decide if we have or not this declaration and at the same time they would respect main article of this law –**ARTICLE 1**.

The evaluation commission report is standard document that is issued by PPRC, secondary legislation and it should be filled in the same manner for all procurement activities. We have another commission evaluation report (we will submit this report in physical copy at the session) for another procurement activity that all reasons of elimination for EO who did not meet the requirement are written in this page and according to this document the letter for elimination is sent to EO. It should be the same in this evaluation report. As we mentioned above, report is standard document and it should be filled in the same way for all procurement activities. This is one more reason on our suspicion that our tender-technical part- was not evaluated at all.

Having into the consideration that evaluation report, very clearly shows that our tender dossier was not evaluated, it comes to the question: **WHO MADE THE EVALUATION OF TECHNICAL PART OF OUR TENDER DOSSIER?**

AT THIS POINT, CA JUSTIFICATION HAS NO ANY LEGAL BASES. IT IS AGAINST EVALUATION COMMISSION REPORT DATED 14.09.2016 AND JUSTIFICATION IS DISCRIMINATORY!

COMMISSION EVALUATION REPORT DATED 14.09.2016 IS ATTACHED (Attachment no. 12)

A second justification that CA gave on our claim that our tender dossier was not fully examined –technical part- it is in contradiction with CA itself, because we have claimed that our tender submission form (PART C- TENDER SUBMISSION)

FORM) is not signed by evaluation commission members in the same way as other EO forms are signed.

Please read carefully what is CA the statement about this issue:

„ AT ANY PROVISION OF PUBLIC PROCUREMENT LAW IS FOREESEN THAT THE OFFER SHOULD BE SIGNED BY THE EVALUATION COMMISSION“

CA with this its statement is just confirming that the offer has to be signed by evaluation commission members.

Our tender form is signed only by tender opening commission on 03.05.2016 and there is one another signature that is signature of one of the EO who participated on tender opening procedure and signed our offer. While in tender forms and price description of other EO who participated in this tender are signed by all members of evaluation commission.

Another very strange justification of CA regarding the signatures of members of evaluation commission is that this is not intentional and does not have any impact on offer evaluation. VERY SIMPLY, whatever mistake CA is making, this mistake is unintentional and does not have any impact, that is very unprofessional and ignorance and YES, it has a very big impact on our offer. Also it is important to be mentioned that in all of these tender forms (not our form) date when the commission made evaluation is month May 2016 that is within a deadline as per article 41.2 of RGPP, while the commission report is signed only on 14.09.2016. **It is very suspicious this gap between evaluation period and signature of evaluation commission report.**

It is reasonable for us, that technical members of evaluation commission do not know the provisions of PPL. But it was responsibility of procurement officer in charge to advise technical members how they should make a proper evaluation in accordance to the provisions of PPL.

However, According to article 40.b of RGPP, All members of the committee are strictly subject to the provisions of the PPL with regard to the protection of confidential business information, article 11 of the PPL. Each member shall sign written declaration using the standard form approved by PPRC "Declaration under Oath" declaring that he/she will honestly and faithfully conduct the evaluation task in conformity with the PPL. All members of the Evaluation Commission assume full individual responsibility for the performed bid evaluation in regard to the technical evaluation of the Tender.

Tender Submissions Forms of all EO who participated in this tender are attached (attachment no13.)

CAN CA, EXPLAIN, WHY ALL THESE UNINTENTIONAL OMISSIONS ARE ONLY IN OUR TENDER DOSSIER?

OUR CONCLUSION ON THIS POINT:

BY NOT EVALUATING OUR TENDER AS PER PPL PROVISIONS, CA, INTENTIONALLY OR UNINTENTIONALLY WITHOUT ANY LEGAL BASES, ELIMINATED US AND WE DO CONSIDER THAT THIS FACT IS INTENTIONAL AND BEHIND THIS IS HIDDEN SOMETHING ELSE AND DISCRIMINATORY

COPY of CA Decision

Complaining clauses related with budget

Since until the publication of this procurement activity is not made in the implementation of a similar project on modernization of cooling towers in Power Plant Kosovo A and B, the contracting authority has not been informed of the estimated value of the equipment and works so there is only commitment initiation.

OUR COMMENT:

FIRSTLY: CA Justification about the estimated contract value is ridiculous and absurd and without any legal bases. When we say this at the same time we ask CA, if prior to publication of the contract notice, CA did not have any experience for similar projects, why CA, prior to publication of contract notice did not make a researches or studies of similar projects and after detailed researches makes a reasonable decision about evaluation of equipments and works that have to be performed in this project.

This CA justification is non sense

SECONDLY: Since, CA was not aware about the estimated value of the equipment and works, at the time when the tender have been opened, it was very clearly visible that all offers exceeded this estimated contract value, the first one was approximately twice higher than estimated contract value while the last one is higher than estimated value for more than 3 times. In this case

since the mistake was CA mistake by not knowing what to give the estimated value of contract, why the evaluation commission at the first stage of evaluating did not cancel this contract notice with very strong reason and that is in accordance to article 62 of PPL –each offer is substantially exceeding estimated contract value, but CA continues with evaluation and is waiting approximately 10 months to publish award contract notice with the price that exceeding planned budget for 320%. Exceed of the planned budget is confirmed twice by evaluation commission members on page 6 and 8 of evaluation report dated 14.9.2016. With the information that CA had after opening tender day and knew it, what will be the approximately value for this contract, it is very clear that during this period, NOW, more than 10 months, CA could cancel this activity, re-tender it, evaluate and finish a procurement procedure for this procurement activity in transparent manner by respecting PPL and it could be finished for less than 10 months.

In this case, our claim to CA is misuse of official duty by responsible officers of CA.

Therefore, in this case again CA have violated the article 5 of RGPP –Procurement Forecast that is first step towards publishing one procurement activity and at the same time CA violated also article 11 of this regulation, respectively article 11.1 where Responsible Procurement Officer is responsible for management of all procurement activities of CA with its jurisdiction and in accordance with all provisions of PPL. Responsible Procurement Officer, in accordance to the article 11.3.r is to sign the contract after reconfirming that the financial information have not materially changed. In this procurement activity this is not the case because Responsible Procurement Officer, approved and signed the report where it is clearly visible that financial information have substantially changed.

What is important to be mentioned is that in the evaluation report, after all evaluation procedures are finished, in the page 6 Complete Standard list for ranking of tenders according to award criteria “Lowest Price” there is a table named: Identification of recommended tenderer for contract award. In the same page there is a remark made by evaluation Commission members. This remark is: Commission has made evaluation, examination and comparison of all tenders, and has concluded that EO Ekoinvest and REKO Praha, meets all tender dossier requirements. Commission have concluded that there is an exceed of planned budget. remains to Responsible Procurement Officer to approve budget.

So, according to this commission statement, Commission did not recommend to award EO. Table of recommended EO for award is empty. But in the last page of this report that is dated 30.12.2016 it is one remark with hand writing.

HAVING INTO THE CONSIDERATION THE RECOMMENDATION AND STATEMENT OF PROFESSIONAL EVALUATION COMMISSION THAT DURING THE PROCEDURE OF THIS PROCUREMENT ACTIVITY ALL PROVISIONS OF PPL AND BASED ON STATEMENT OF EXECUTIVE DIRECTOR OF TCA, MR. HAMDI GASHI DATED 20.10.2016 AND 30.10.2016 AND DECLARATION OF EXECUTIVE DIRECTOR OF TCA, MR. VERDI MURTEZI (AFTER RETIREMENT OF MR. GASHI) DATED 30.12.2016 AND AFTER DECLARATION OF ED FOR AVAILABLE FINANCIAL MEANS DATED 30.12.2016, I APPROVE THE COMMISSION RECOMMENDATION.

ACCORDING TO WHAT WE SEE IN THIS REPORT, THE REPORT WAS MADE IN VERY NON -PROFESSIONAL MANER AND COMPLETELY CONTRARY TO A LOT OF PPL PROVISIONS, AND RESPONSIBLE PROCUREMENT OFFICER IN ITS APPROVAL IS STATING THAT THE EVALUATION WAS MADE ACCORDING TO ALL PPL PROVISIONS.

This is not true and we will prove it in the session with a strong evidence that starting from the day when contract notice was published and till the end of these procedures PPL was violated, procedures were not transparent, all relevant information in regard to this activity are not transparently published

FOR AVAILABLE FINANCIAL MEANS DATED 30.12.2016, I APPROVE THE COMMISSION RECOMMENDATION. ACCORDING TO WHAT WE SEE IN THIS REPORT, THE REPORT WAS MADE IN VERY NON - PROFESSIONAL MANNER AND COMPLETELY CONTRARY TO A LOT OF PPL PROVISIONS, AND RESPONSIBLE PROCUREMENT OFFICER IN ITS APPROVAL IS STATING THAT THE EVALUATION WAS MADE ACCORDING TO ALL PPL PROVISIONS.

This is not true and we will prove it in the session with a strong evidence that starting from the day when contract notice was published and till the end of these procedures PPL was violated, procedures were not transparent, all relevant information in regard to this activity are not transparently published

Complaining clauses related with by not publishing the notification for contract award following the signing of the evaluation report

Related with complaining clauses we clarify that in the tender dossier in article 6.4 item 2 and 3 was required:

One signed statement from the Tax Administration of your country of establishment, that you are not delinquent in the payment of taxes at least till the last quarter before submission of the tender (only for EO who will win the contract)

A document issued by the competent Court which confirms that the economic operator fulfill the "Eligibility Requirements" point III.1.1.) 2.a, c, d and e. - Original or certified copy. - Required only for the winner of the tender.

After the signing of the evaluation report by the official in charge of procurement dt.30.12.2016, Economic Operator proposed contract was the delivery of documents is required by the above mentioned requirements of the tender dossier. Publication of Notice of Award is made after submission of required documents.

We already made a request to CA for clarification, WHY CA did not published contract award notice in accordance to article 22.3.0 of RGPP. Report was signed by commission on 14.09.2016 and according to this article contract award notice should be published latest on 15 or 16.09.2016 OR after the final approval by Procurement Responsible Officer on 30.12.2016 after the approval of exceeding budget, the contract award notice according to this article should be latest on 05.01.2017 (due to the year ending Holidays). What was the reason why CA did not published this notice? Again the Justification made by CA is very strange and ridiculous. We did not made any complain regarding the recommended EO if he submitted or not these verifications (tax administration and court verification). In the last page of the evaluation report we see these verifications are already submitted and we do not understand what was the aim of CA to explain us these verifications. CA justification is confused, no legal bases with which justification CA denies itself when is answering that the reason for not publishing contract award notice are these two verifications because as we said above it is already confirmed on 30.12.2016 that these documents are submitted by EO. Justification is non sense Since CA is trying to justify itself with non sense reasons, there a lot of reasons to suspect that even the last page of the report was approved in hurry and it was filled only when CA realized that we made a request to Monitoring Department on 11.01.2017. Only after this date they started to prepare the contract award notice.

Complaining clauses related with offer numbering

Regarding this point you clarify complaining that original offer is required unless a copy of the offer which has been unopened and all relevant authorities may request the opening of the bid "copy" to verify the offer documentation.

OUR COMMENTS:

We have a question here, can we know, why with the article 32 of RGPP each EO who wants to submit tender, all documents that make a tender has to be concluded and numbered. Not numbered documents in the tender dossier is

very strong reason for suspicion that with a tender document can be manipulated at any time and a copy is not enough evidence, because during this over long period of evaluation, all document can be changed (removed, or added additional documents) including here a copy as well. How we can believe that CA together with EO did not changed the content of tender dossier (it is almost 10 months period from the opening day). This is really non sense justification

Complaining clauses related with presented references from the EO "Ekoinvest & Reko"

Arguing that the economic operator proposed for the contract has not met the requirement of the tender dossier regarding the reference is completely unfounded because the references presented by EO "EKOINVEST & Reko" and meet the request of the tender dossier.

OUR COMMENTS:

WE MUST SAY THAT CA JUSTIFICATION IN REGARD TO THE PRESENTED REFERENCES ARE BASELESS. CA IS JUST CONFIRMING BUT NOT EXPLAINING CONTRARY TO OUR STATEMENT THAT THE PRESENTED REFERENCES OF EO EKOINVEST&REKO MEETS ALL REQUIREMENTS AS PER TENDER DOSSIER;

WE WILL DOCUMENT CONTRARY

AS PER TENDER DOSSIER, CA REQUEST FOR THE REFERENCES WAS:

"At least 2 (two) references in the same project realization in the modernization of cooling tower in the thermo power plants of the approximate load (150 up to 250 MW) completed in past 3 years. To evidence with reference issued by employer for performed with success of remount".

Our explanations are following:

Ekoinvest & REKO enclosed three references:

1) Overhaul of induced draught cooling towers No. 3, 5 and 6 at Prunéřov I Power Plant

The first reason why this reference does not fulfill the requirements of the tender dossier is, that Prunéřov I Power Plant there are the Blocks of 110 MW (see Attachment No. 1 – The Prunerov Power Station, Article from official web site of ČEZ Group, the owner of power plant). From the above mentioned it is clear that the cooling tower is different for each block, i.e., that it is 110 MW. The second reason is that in Confirmation of ČEZ dated 27.4.2016 is not specified, when the reconstructions are performed (Attachment No. 2). From the official web site of the company REKO is clearly written that the reconstruction of cooling tower No. 3 was in 2000, the reconstruction of cooling tower No. 5 was in 2005, the reconstruction of cooling tower No. 6 was in 2006 (Attachment No. 3). In reference lists from the REKO offer are not these reconstruction listed too (see Attachment 3a).

Having into the consideration that the works in CEZ performed by REKO are not made in 2013, 2014 or 2015, and REKO included this reference as reference for this period, this means that here is the manipulation with a document. More over In the question that was directed to REKO on 09.09.2016 for the period when the works have been performed, the answer by REKO is that the works are finalized in 2015 that is not true. You can see from REKO reference list of 2013, 2014 and 2015 that are included in tender dossier, CEZ is not in these lists and as we mentioned above the works performed by REKO to CEZ are for the period 2000-2006 and also is confirming that the power plant Prunerov is with the capacity of 5x250MW and 4x100 MW, but he did not explained that that there are two power plants Prunerov I and PrunerovII (similar to KEK, Power plant Kosova A and Kosova B) (attachment 4)

We have one question to CA: DO CA VERIFY THE TRUTHFULLY OF THE DOCUMENTS THAT ARE SUBMITTED BY EO. IF YES, THEN DID THEY CHECKED, THIS REFERNECE BECAUSE THE REFERENCE IT MIGHT BE NOT TRUE.

2) Design, supply and construction of induced draught cooling towers for the project Ultimate Heat Sink at the Nuclear Power Plant Dukovany (IT IS NOT THERMOCENTRAL)

This reference not fulfils the requirement of the tender dossier, because it is the new construction of cooling tower not the modernization (Attachment No. 5, 6 and 7).

3) Design, supply, construction of induced draught cooling tower for ENERGETIKA Třinec

This reference not fulfils the requirement of the tender dossier, because it is the new construction of cooling tower not the modernization (see Attachment No. 8). This reference does not fulfil the requirement of Power Plant 150 – 250 MW, because this cooling tower has total cooling output 7,9 MWt only and it is Ironworks (see Attachment No. 9).

Complaining clauses related with coolers offered from EO "Ekoinvest & Reko"
Arguing that the cooling provided by the EO "EKOINVEST & Reko" is completely unfounded since EO recommended with contract has provided cooling of the requests of the tender dossier.

OUR COMENTS:

NO COMENTS-JUSTIFICATION IS INCOMPREHENSIBLE. CA DID NOT TECHNICALLY JUSTIFIED REKO TECHNICAL SOLUTIONS.

FIRSTLY: Technical solution of REKo is not in accordance to the technical specification of tender dossier. As per instruction that we have in the part A of tender dossier, point 3-Mandatory technical specification;

3.1 The works must fully comply with the technical specifications set out in this Tender dossier, see Annex 1, and conform in all respects with the drawings, quantities, models, samples, measurements and other instructions. This shall be demonstrated by the submission of the documentary evidence **indicated in the TDS.**

3.2 Any specification not in compliance with the technical specifications will disqualify the tender.

When we say that REKO technical solution do not meet technical specification as per Annex 1, our evidences are as follows.

REKO in its technical offer is describing that the existing cooling tower that is Type Cross Flow will transform in the type Counter flow that is against technical specification in the tender dossier.

Moreover, As per contract notice and tender dossier in this procurement activity variants are not allowed. Recommended EO not only that did not give the offer in accordance with the technical specifications required in the tender, but he proposed variant.

Our fundamental opinion is that the modification of the type of cross flow cooling tower to counter flow type it is not its modernization. The change the cross flow to counter flow cooling tower used by company REKO is not suitable because it reduces the active surface area of the cooling tower and the cooling fills mentioned in the offer of the company REKO must increase the pressure loss at this level, which must have an impact on motor performance. The motor with an output of 75 kW, according to our calculations, is insufficient to achieve the guaranteed parameters of cooling.

We attach the thermal calculation of modernized cooling tower according to the REKO offer (see Attachment No. 10), which has been processed by our experts, indicates the air flow in one cell 400 m³/s. This quantity of air is very high at the considered 75 kW motor, which will cause the failure of guaranteed parameters.

Our second warning is that the cooling fills used by REKO (compared to our solution) is very challenging for cooling water treatment and due to clogging of cooling fills it is very difficult to the maintenance and operation in the coming years.

Among other things we must note that the REKO offer price is **overpriced by about 50-100%.**

Our experts have calculated that if we built a new tower same performance on a green meadow with a new lifetime of 30-40 years, the price would be about 0.5 mil. EUR lower than the price of REKO modernization of old cooling tower.

III) Technical solution

In FANS offer was mentioned and our opinion is:

In search of solutions to the modernization of cooling towers in TPP Kosovo FANS, a.s. looks at the existing type cooling towers. We believe that our proposed solution is optimal and reliable solution for the cross flow cooling tower, and this solution was based on our long experience.

Cross flow cooling tower, which is in TPP Kosovo A was designed for a specific parameters and cooling system, which is utilized to the maximum cooling surface. If we tried to calculate and wanted to use plastic film cooling fills, we would get into several problems, which are not confirming techno-economical investment.

As mentioned in the Response to submitted questions concerning with tender dossier dated 29.3.2016

Is mandatory to use cooling fill CHSB 21 or can be used splash or film type from other suppliers according to our thermotechnical calculation of the tower?	This is not mandatory but there is necessary to fulfill highest EU standards
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we decided especially with respect to the budget of contract (**800.000 EUR**) to maintain the existing splash system, made from fabric system which, inter alia, used increasingly throughout the wide World and also in nuclear power plants. On this type of system we conducted Thermal-technic calculation that was in our offer documented.

Our solution - **Modern splash cooling fill V-BAR**, which is placed on the **supporting FRP + galvanizing steel structure** fully

meets the condition to fulfill highest EU standards.

To leave the unchanged type of cooling fills supports the expert/prestigious manufacturer – the company ENEXIO W. Technologies too, which e- mail we attach (Attachment No. 9).

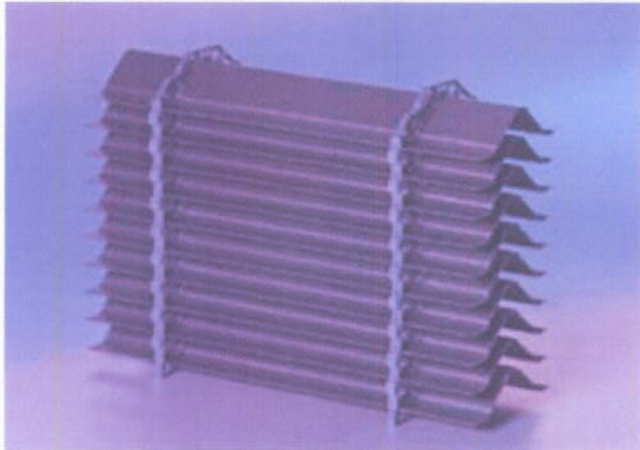
For our offer FANS technicians have compiled several design variations of the cooling tower with various types of technology used. The best option in terms of technical and economic (ie. Costs incurred for reconstruction, but also operating cost subsequent years) we went to offer options for upgrading existing cross flow cooling towers with:

- **Slow-speed engines PMT -90-180 using the frequency converter** for the speed control. Speed control allows the management performance of the cooling tower, and therefore lower own consumption.

The motors have an installed engine power of 90 kW in our bid. According to our calculation is required shaft power of 64 kW in curve point and at 91% efficiency engine will be power of 1 engine 74.95 kW only.



- **Eliminators GEA**, which have high efficiency and are suitable for this type of cross flow cooling tower.



- **Modern splash cooling fill V-BAR**, which is placed on **the supporting FRP + galvanizing steel structure**.

V-BAR fills are the draft of American engineers for this type of cooling tower. FRP material is a modern material that is used all over the world and our company has years of experience with this material. Resistance and durability of FRP materials is high. Hot dip galvanizing steel is suited to this environment and the life is more than 25 years.

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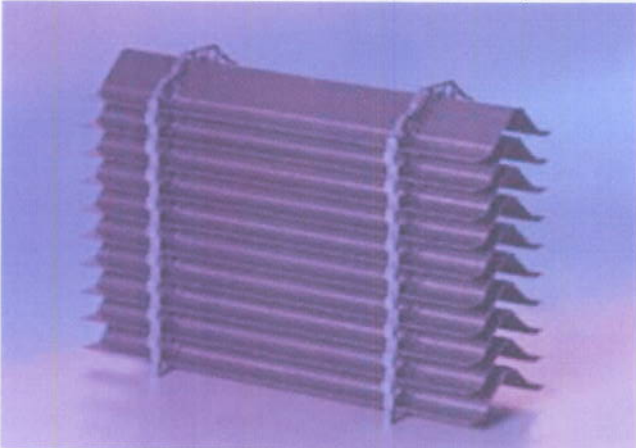
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