

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 on the complaint lodged by the group of the Economic operators: NTSH’ EKOINVEST” - Prishtinë, against the cancellation notice of the procurement activity with title: “Supply with CNC portal machines for cutting with plasma and gas” re-evaluation 08.05.2020, with procurement no.19-250-1-1-1, initiated by the Contracting authority/CA/Kosova Energy Corporation, on the 26.06.2020 has issued this:

DECISION

I. APPROVED, as partly grounded the complaint of the economic operator: NTSH’ EKOINVEST” - Prishtinë, regarding with the procurement activity with title: “Supply with CNC portal machines for cutting with plasma and gas” re-evaluation 08.05.2020, with procurement no.19-250-1-1-1, initiated by the Contracting authority/CA/Kosova Energy Corporation.

II. CERTIFIED cancellation notice regarding with the procurement activity with title: “Supply with CNC portal machines for cutting with plasma and gas” re-evaluation 08.05.2020, with procurement no.19-250-1-1-1, initiated by the Contracting authority/CA/Kosova Energy Corporation.

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

IV. Non-compliance with this decision obliges the Review Panel conform with the legal provisions of article 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 operators “NTSH’ EKOINVEST” - Prishtinë, 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 31 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

Complaining economic operator “NTSH’EKOINVEST” - Prishtina, as a dissatisfied party has filed a complaint in the PRB, on the 29.05.2020 with procurement no. 336/20, against the cancellation of the procurement activity with title: “Supply with CNC portal machine for plasma and gas cutting” Re-evaluation 08.05.2020, with procurement no. 19-250-1-1-1, initiated by the contracting authority / CA / - Kosova Energy Corporation, claiming that:

- Contracting authority has acted in contradiction with article: 1, 6, 59 and 62 of the Law on Public Procurement of the Republic of Kosova, as well as article 41.2 of ROGPP

Procurement Review Body, conform article 113 and 114 of the LPP on the 03.06.2020, has authorized the procurement review expert to review the validity of all claims of the complaining party.

Procurement review expert in the report dated: 13.06.2020 explains as follows:

The Standard Letter for the Eliminated Bidder states:

1. In Annex 1 of the DT, item 1.2.7 - is required: Pneumatic Dot-PeenPinMarkerStation, while you in your offer have provided the catalog with technical description by Optinal Dot-PenMarker from the manufacturer Mannesman Model ES 350 ER.

2. In plasma cutting, the possibility of cutting 0.5 - 80 mm is required for mild steels; for austenitic steels 3-80 mm, and for non-ferrous metals 6-80 mm, while according to the manufacturer's catalog only the maximum cut is offered, ie. 80mm.

Nowhere in the manufacturer's catalog do the required standards appear: DIN EN ISO 9013; DIN

3. EN 28206, and DIN EN ISO 12100, which standards are essential for this type of device.

4. It is not stated by the manufacturer whether it is guaranteed in relation to the construction steel for heavy work with load as required in the tender dossier.

5. In the mandatory technical specification it is required that the manufacturer adapts the dimensions of the device based on the basic data and this through the catalog we can not see exactly. This means that since it is a device which is not serial production but works to order and is very expensive, the manufacturer or provider is obliged to provide a sketch or three-dimensional drawing in addition to the catalog of serial products where based on The bid request is accompanied by equipment with accompanying departments where each department should have been marked based on the tender dossier. We are mentioning this because every serious manufacturer that produces custom-made equipment offers a three-dimensional sketch of what the custom-made device will look like with all the data, this is also a guarantee that I will do what is required.

6. The manufacturer's catalog offered is an incomplete catalog in its entirety, the ordering and underlining (is partial) of the technical characteristics according to the tender dossier has not been done.

By analyzing the above mentioned reasons for elimination, I present the following facts according to the points presented in the Standard Letter for the Eliminated Bidder:

Point 1.

I fully stand by the statement given in the expertise with no. 61/20:

CNC portal machines for plasma and gas cutting offered by EO NTSH "EKOINVEST", as consortium leader and manufacturer LOY-MAK SAN VE TIC A.S is in accordance with the technical specifications required in Annex 1 of the Tender Dossier. DaMarker Dot-Peen Model ES 350 ER and equipment fully meet all specifications required by the Contracting Authority.

Point 2.

The claim of the Contracting Authority that only the maximum cutting thickness of 80 mm is provided in the catalog. It is technically clear that a machine that can cut 80 mm thick materials to the said CNC machine can make even finer materials by choosing some cutting parameters for ordinary steels or austenitic or non-ferrous metals.

Point 3.

In the Tender Dossier, the Contracting Authority states "The manufacturer must prove that it meets the quality standards: DIN EN ISO 9013, DIN EN 28206, DIN EN ISO 12100. However, nowhere is it stated that the Standards should be entered in the manufacturer's catalog. These standards refer to:

- DIN EN ISO 9013 (This document presents the geometric product specifications and quality tolerance for the classification of thermal cuts in materials suitable for cutting fire with oxygen fuel, plasma and laser. It is applicable for fire cuts from 3 mm to 300 mm, plasma incisions from 0.5 mm to 150 mm, and laser incisions from 0.5 mm to 32 mm).
- DIN EN 28206 (Acceptance testing of oxygen cutting machines, fluid testing and working characteristics (ISO 8206: 1991); German version EN 28206: 1992)

- DIN EN ISO 12100 (MACHINERY SAFETY - GENERAL DESIGN PRINCIPLES - RISK ASSESSMENT AND RISK REDUCTION)

EO NTSH "EKOINVEST" has submitted a statement signed and stamped by the manufacturer "LOY-MAK MAKINA SAN VE TIC A.S" that the required machine Portalna CNC will be produced in accordance with the standards: DIN EN ISO 9013; DIN EN 28206, and DIN EN ISO 12100.

Point 4.

The car in question represents specific equipment that is not one of the serial products but is made to order. The dimensions and technical characteristics required by the DT represent the basis for the design of the required machine, which must be produced in accordance with the requirements of the CA. EO NTSH "EKOINVEST together with the manufacturer "LOY-MAK MAKINA SAN VE TIC A.S" has submitted a signed and stamped statement that the dimensions of the machine defined in DT will be respected. Also, in the DT it is not stated that EOs are obliged to submit three dimensional sketches in the bid submission phase, which will show the appearance of the whole machine and some of its parts. Complete technical documentation together with instructions for handling and maintenance of spare parts are submitted with the delivery of equipment-machinery. The preparation of the documentation mentioned in the bid submission phase would require significant financial resources, because it is a question of designing special equipment and not the product which is in serial production.

Point 5.

I fully stand by the findings given in the Expertise with no. 61/20. The catalog of the manufacturer which has been offered by the EO together with the offer meets the

requirements of TD because it shows that the manufacturer "LOY-MAK MAKINA SAN VE TIC A.S" produces the required type of machinery. Given that we are dealing with a machine which is specific, and which as we have pointed out, is produced to order, it is unrealistic to expect the catalog provided to contain the details of the device which is installed on the required machine.

Based on all the above mentioned the CNC portal machinery provided by the complaining EO meets all the requirements of the contracting authority presented in the tender dossier - Annex 1 - Mandatory Technical Specifications.

Opinion of the review expert: Based on the above mentioned clarifications, the technical expert proposes to the review panel that the complaint of the EO N.T.SH. "EKOINVEST" - Prishtina, to be approved as grounded, and the case to be returned for RE-EVALUATION.

Economic operator on the 06.06.2020 through official letter has been notified by the PRB regarding the opinion of the review expert, but the same has not returned a response.

Contracting authority through written memo dated 19.06.2020 has notified the PRB that does not agree with the report of the review expert.

The hearing session was held on the 26.06.2020, without the presence of the parties conform article 24.1 of the Regulation of the PRB, where the case files were reviewed by checking and analyzing the documentation for the procurement procedure which consists of: authorization of initiating the procurement activity, contract notice, minutes on the opening of bids, decision on the establishment of the bid evaluation commission, bid evaluation report, notice of cancellation of the procurement activity, complaint of the economic operator, report of the technical expert procurement and all memos of the parties in the procedure.

Regarding the claim of the complaining economic operator "NTSH'EKOINVEST" - Prishtina that CA in the Standard Letter for the Eliminated Bidder has eliminated it because in Annex 1 of the tender dossier, point 1.2.7 - is required: Pneumatic Dot-PeenPinMarkerStation, while complaining EO in his bid has provided the catalog with technical description by Optinal Dot-PenMarker from the manufacturer Mannesman Model ES 350 ER.

Review panel clarifies that CA has requested that economic operators must adhere to the tender dossier point by point by highlighting the technical requirements required by the tender dossier, while the complaining EO has not complied with this tender request, specifically the complaining EO has provided a catalog no. completed and the underlining is done in part. Also, in the catalog of the complaining EO does not appear the cutting department of the Pneumatic Dat-Pen Pin Stamp Marker Station, which is requested with the tender dossier. Therefore, this claim is unfounded.

Regarding the claim of the complaining economic operator "NTSH'EKOINVEST" - Prishtina that CA in the Standard Letter for the Eliminated Bidder has eliminated it because in Annex 1 of the tender dossier, point 1.2.7, plasma cutting is required for steels. soft cutting possibility of 0.5 - 80 mm; for austenitic steels 3-80 mm, and for non-ferrous metals 6-80 mm, while according to the manufacturer's catalog only the maximum cut is offered, it means 80mm.

Review panel clarifies that according to the tender dossier for plasma cutting is required the possibility of cutting to be for mild steel 0.5-80mm, for austenitic steels 3-80mm, for non-ferrous metals 6-80mm, while in the manufacturer's catalog is offered only 80mm cutting maximum. Also, in the explanation of the CA it is emphasized that since the equipment is special, it is required that the cuts of sheet metal with small thickness be cut precisely, therefore these values are required according to the tender dossier and if a device is offered only with the maximum cut that is in this case 80mm, the manufacturer does not guarantee for precision cutting of thin sheets as required in the tender dossier. Therefore, this claim is unfounded.

Regarding the claim of the complaining economic operator "NTSH'EKOINVEST" - Prishtina that CA in the Standard Letter for the Eliminated Bidder has eliminated it because nowhere in the catalog of the manufacturer do not appear the required standards: DIN EN ISO 9013; DIN EN 28206, and DIN EN ISO 12100, which standards are essential for this type of device.

Review panel clarifies that the contracting authority has requested that "the manufacturer must prove that it meets the quality standards: DIN EN ISO 9013, DIN EN 28206, DIN EN ISO 12100". However, it is not stated that the standards should be included in the manufacturer's catalog. Therefore, this claim is grounded.

Regarding the claim of the complaining economic operator "NTSH'EKOINVEST" - Prishtina that CA in the Standard Letter for the Eliminated Bidder has eliminated it because the manufacturer does not specify whether it is guaranteed regarding the construction steel for heavy work with load as required in the tender dossier.

Review panel clarifies that since CA has requested a very expensive equipment and which is worked according to the order, it must definitely be provided as evidence a sketch of the whole with the appropriate departments marked according to the tender dossier and this would also be a guarantee that the equipment required will work complete with all departments. Review panel clarifies that CA has given a concrete example explaining that if the bidder provided this sketch of the whole, it would symbolically appear in the Pneumatic Dat-pen Stamp Marker Station, which is required in the tender dossier, while it does not appear anywhere in the catalogs offered by the manufacturer.

Regarding the claim of the complaining economic operator "NTSH'EKOINVEST" - Prishtina that CA in the Standard Letter for the Eliminated Bidder has eliminated it because in the obligatory technical specification it is required that the manufacturer adapts the dimensions of the device based on the basic data of we cannot see this accurately through the catalog. This means that since it is a device which is not serial production but is made to order and is very expensive, the manufacturer or provider is obliged to provide a sketch or three-dimensional drawing in addition to the serial product catalog where based on of the bid request are presented equipment with accompanying departments where each department should have been marked based on the tender dossier. We are mentioning this because every serious manufacturer that produces custom-made equipment offers a three-dimensional sketch of what the custom-made device will look like with all the data, this is also a guarantee that I will do what is required.

Review panel clarifies that while this equipment is expensive and must be worked according to the technical specification set by the CA and if the manufacturer is able to produce such equipment at the request of the CA, then this equipment must have the technical data in catalog conform to the request of the CA.

Regarding the claim of the complaining economic operator “NTSH'EKOINVEST” - Prishtina that CA in the Standard Letter for the Eliminated Bidder has eliminated it because the catalog of the offered producer is an incomplete catalog, the ranking and underlining has not been done (it is partial) of technical characteristics according to the tender dossier.

Review panel regarding this claim has given the above clarification that has to do with the technical data and catalogs.

Review panel after reviewing the case file and reviewing the complaining claims, concludes that contracting authority in the case of evaluation of the bids has evaluated correctly because complaining EO does not meet the requirements of the tender dossier, specifically does not meet the technical specifications for the equipment in question as required by the contracting authority. Therefore, the cancellation of this procurement activity is done in conformity with the legal provisions of the LPP.

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. Blerim DINA

Decision to be submitted to:

1x1 CA – Kosova Energy Corporation

1x1 EO- “NTSH’ EKOINVEST” - Prishtinë

1x1 Archive of the PRB

1x1 For publication on the website of the PRB.