

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 lodged by the Economic operator: “Asseco See ” SH.P.K. Prishtinë, against the contract award notice, regarding with the procurement activity with title: “Supply and installation of ERP system software”, with procurement no: IL19-9673-1-2-1, initiated by the Contracting authority/ Ndërmarrja Hidroekonomike “Ibër Lepenc” SH.A, on the 25.06.2020 has issued this:

DECISION

I. APPROVED, as partly grounded the complaint of the Economic operator: “Asseco See ” SH.P.K. Prishtinë, regarding with the procurement activity with title: “Supply and installation of ERP system software”, with procurement no: IL19-9673-1-2-1, initiated by the Contracting authority/ Ndërmarrja Hidroekonomike “Ibër Lepenc” SH.A.

II. CANCELLED the contract award notice, regarding with the procurement activity with title: “Supply and installation of ERP system software”, with procurement no: IL19-9673-1-2-1, initiated by the Contracting authority/ Ndërmarrja Hidroekonomike “Ibër Lepenc” SH.A, and this procurement activity is canceled completely, while if the CA still has interest to continue with this procurement activity, the same can be re-tendered in accordance with the 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 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 “Asseco See ” SH.P.K. 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: "Asseco See" SH.P.K. Prishtina, as a dissatisfied party has filed a complaint in the PRB, on the 18.05.2020 with no. 315/20, against the contract award notice regarding the procurement activity with title: "Supply and installation of ERP system software" with procurement no. Procurement: IL19-9673-1-2-1, initiated by the contracting authority / CA / - Hydro-economic enterprise "Ibër Lepenc" SH.A, claiming that:

- The contracting authority has acted in contradiction with article: 28.9, 59. paragraph 2, and 108A. Paragraph 8.4 of the LPP.

Procurement Review Body, conform article 113 and 114 of the LPP on the 01.06.2020, has authorized the review expert and the technical procurement to review the validity of all claims of the complaining party

Procurement technical / review expert in the report dated: 09.06.2020, regarding the complaining claim of the complaining EO explains as follows:

After reviewing in detail the tender subject regarding this procurement activity and based on the available documentation, the review expert and the technical expert give this opinion as follows:

Finding of the technical expert for complaining claim 1, violation by the CA of article 28 paragraph 9 of the LPP:

In the standard letter for the eliminated tenderer, CA has considered that ASSECO SEE is irresponsible as it has not met the technical specifications of the tender dossier listed as in the given notice.

- a) Requirement 2.2: Considering that the system offered is a UEB platform means that the system operates in various browsers including Firefox and the mobile platform.

a) Technical review expert based on the facts 1, 5, 6 and 7 of this expertise, for the complaining claim 1 and for the parts which this complaining claim includes, declares that the complaining EO in his technical bid did not mention that the system of offered by it also works with the browser Mozilla Firefox but has mentioned the browser: "Safari, IE and Google Chrome", but I have absolutely no doubt that the same platform can not be accessed by users through the browser "Mozilla", but in the absence of any paragraph written where this is mentioned or a statement of the complaining EO where it is presented decisively that the same is accessible to users through the browser "Mozilla" I consider as partially grounded the complaining claim 1a Requirement 3.8: Our system provided is a system of which currently operates in public enterprises that have mass billing and that use the connection of payments with invoices according to the principle of "older" therefore this request is enabled through the system of in and is part of the system configuration during implementation.

Technical review expert based on references, contracts and recommendations which EO has attached in his Bid, considers that this part of the claim is grounded and the manner of linking payments with invoices is configurable during implementation.

- b) Requirement 2.10: Automatic Backup and Restore is enabled by our system provided and this is configured during the implementation phase.

Technical review expert based on the detailed control of the technical bid of the complaining EO, the way of presentation of the project, its realization and functioning, as well as from my personal experience consider that part c) of the complaining claim is grounded.

c) Requirement 3.14: It is a standard feature of ERP systems therefore the system provided by us supports the calculation of the cost of goods according to the FIFO method.

Technical review expert for part d) of the complaint 1 considers that also this part of the complaint is grounded

d) The system provided by us is configurable so it can be configured to enable tracking of items by serial number.

Technical review expert for part e) of the complaining claim 1 considers that even this part of the complaining claim is grounded

e) The system offered by us is an open platform for various integrations, including the one with access control. As a final product after implementation the system offered by us includes Self Service which during the implementation phase is configured according to the specific requirements of the contracting authority.

The technical review expert for part f) of the complaining claim 1 considers sets of complaining claim 1 considers that this part of the complaining claim is grounded as well. This is evidenced by the references and contracts attached to the tender dossier submitted by the complaining EO and based on fact 7 of this expertise.

Regarding the complaining claim 1 violation by the CA of the article 28 paragraph 9 of the LPP, the Technical Expert considers that during the review of the bids submitted by the EO participating in this public procurement activity, the CA has not followed with precision paragraph 9 of article 28 of the LPP not considering the documentation submitted by the complaining EO, therefore claims 1 of it as fully grounded.

Finding of the technical expert for the complaining claim 2, violation by the CA of Article 59 paragraph 2:

If the CA would have dilemmas that the tender of ASSECO SEE does not support any of the requests submitted in the tender dossier, although nowhere in the bid / tender of ASSECO SEE is it confirmed that any request can not be supported by the system provided and on the contrary is statement of ASSECO SEE which confirms exactly the opposite of the finding of the CA that in the tender of ASSECO SEE there are requirements that are not supported by the system provided, CA should apply article 59.2 of the LPP requesting additional information from ASSECO SEE regarding with the clarification of any of the aspects of its tender.

Taking into account the attached facts and the chronology of the event from the contract notice, to the requests for clarifications, the first complaint, the decision of the PRB, the corrections of the errors, the requests for reconsideration then again the correction of the errors until the current complaint, Technical Expert and that Review consider that CA has not complied with article 59 by not requesting additional information regarding the justifications for the rejection of the bid of the complaining EO.

Finding of the technical expert for complaining claim 3, violation by CA of article 108 / A, paragraph 8.4:

In the reasoning of the decision of the CA regarding the request for reconsideration of the decision for elimination, CA in no part of it has reviewed the issues raised by the Complainant regarding the alleged violations of article 28.9 of the LPP and Article 59 paragraph 2. The decision of the CA regarding the request for reconsideration is a repetition of the justifications from the notice of elimination and does not address the issues requested by the complainant pursuant to Article 108 / A, paragraph 8.4.

Technical review expert, based on Fact 3 of this expertise, analysis of the Request for Reviewing and response to it by the CA, evaluation report and notification of the decision of the CA, considers that the reasons for rejecting the bid of the EO Complainants are identical and also the response to the request for reconsideration, therefore I consider this complaint claim as Ungrounded because CA respectively the evaluation commission and responsible persons who have returned responses are simply based on the requirements of the Contract Notice, DT and Notices to improve errors which have not encountered in the documentation submitted by the complaining EO.

Considering the addressing of the above claims, Review experts consider that the contracting authority has not acted conform article 28.9 and 59.2 of the LPP, not specifying the documentary requirements for justification of the fulfillment of the technical requirements by the economic operators interested in participating in this procedure, which has delayed the procedure and has prevented a uniform bid of the EO.

Based on the clarifications mentioned in the expertise's report, Review experts propose to the review panel of the PRB that the complaint of the EO "ASSECO SEE" SH.P.K. to be considered as partially grounded and to oblige the CA to cancel the procurement procedure, and to re-tender the procedure to advance the requirements, focusing in particular on the technical ones, always acting in accordance with the provisions of the LPP and ROGPP.

Opinion of review / technical experts:

Based on the above clarifications, the review expert and the technical one propose to the review panel that the complaint of the complaining EO should be: partially grounded and to be canceled the procurement activity.

Contracting authority, on the 12.06.2020, through memo, has notified the PRB, that does not agree with the opinion of the review / technical experts.

Economic Operator, on the: 11.06.2020, through memo, has notified the PRB that does not agree with the opinion of the review / technical experts.

The hearing session was held on the 25.06.2020 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 initiation of the procurement activity, contract notice, minutes on the opening of bids, decision on the establishment of the bid evaluation commission, bid evaluation report, contract award notice, complaint of the economic operator, report of the review / technical expert and all memos of the parties to the proceedings.

Regarding the claim of the complaining EO "Asseco See" SH.P.K. Prishtina that the contracting authority has violated article 28 paragraph 9 of the LPP, Review panel conform expert / technical expert clarifies that in the standard letter for the eliminated tenderer, CA has considered that "Asseco See" SH.P.K. Prishtina is irresponsible as it has not met the technical specifications of the tender dossier listed as in the notice given.

a) Requirement 2.2: Considering that the system offered is a UEB platform means that the system operates in various browsers including Firefox and the mobile platform. Review panel conform to the review expert / technical clarifies that based on the facts 1, 5, 6 and 7 of this expertise, for the complaining claim 1 and for the parts which this complaining claim includes, declares that complaining EO in his technical bid has not mentioned that the system offered by it works with the browser Mozilla Firefox but has mentioned the browser: "Safari, IE and Google Chrome", but I have absolutely no doubt that the same platform can not be accessed by users through the browser "Mozilla", but in lack of any written paragraph where this is mentioned or a statement of the complaining EO where it is presented decisively that the same is accessible to users through the browser "Mozilla". Review panel conform to the review / technical expert evaluates as partially grounded the complaining claim 1a. Regarding the claim b) Requirement 3.8: Our system offered is a system which currently operates in public enterprises that have massive billing and that use the connection of payments with invoices according to the principle of "older" so this request is enabled through our system and is part of the system configuration during implementation. Review panel conform review / technical expert clarifies that based on the references, contracts and recommendations which EO has attached in his bid, evaluates that this part of the claim is grounded and the manner of linking payments with invoices is configurable during implementation.

Regarding the claim of the complaining EO "Asseco See" SH.P.K. Prishtina c) Requirement 2.10: Automatic Backup and Restore is enabled by our system provided and this is configured during the implementation phase. Review panel conform review / technical expert clarifies that based on the detailed control of the technical bid of the complaining EO, the way of presenting the project, its realization and functioning, as well as from personal experience evaluates that part c) of the complaining claim is grounded.

Regarding the claim of the complaining EO "Asseco See" SH.P.K. Prishtina d) Requirement 3.14: It is a standard feature of ERP systems therefore the system provided by us supports the calculation of the cost of goods according to the FIFO method. Review panel conform to the review / technical expert clarifies that for part d) of the complaining claim 1 evaluates that this part of the complaining claim is grounded.

Regarding the claim of the complaining EO "Asseco See" SH.P.K. Prishtina e) The system provided by us is configurable so it can be configured to enable tracking of items by serial number. Review panel conform to the review / technical expert clarifies that for part e) of the complaining claim 1 evaluates that this part of the complaining claim is grounded.

Regarding the claim of the complaining EO "Asseco See" SH.P.K. Prishtina f) The system offered by us is an open platform for various integrations, including the one with access control. As a final product after implementation the system offered by us includes Self Service which during the implementation phase is configured according to the specific requirements of the contracting authority. Review panel conform to the review / technical expert clarifies that for part f) of the complaining claim 1 evaluates that this part

of the complaining claim is grounded. This is evidenced by the references and contracts attached to the tender dossier submitted by the complaining EO and based on fact 7 of this expertise.

Regarding the claim of the complaining EO "Asseco See" SH.P.K. Prishtina that the contracting authority has violated article 28 paragraph 9 of the LPP, Review panel conform review expert / technical clarifies that during the review of the bids submitted by the EO participating in this public procurement activity, CA has not followed exactly the paragraph. 9 of the article 28 of the LPP not taking into account the documentation submitted by the complaining EO, therefore, the claim of the complaining EO grounded.

Regarding the claim of the complaining EO "Asseco See" SH.P.K. Prishtina that the contracting authority has violated article 59 paragraph 2 of the LPP, Review panel conform expert / technical expert clarifies that if CA would have dilemmas that the tender of the EO "Asseco See" SH.P.K. Prishtina does not support any of the requests submitted in the tender dossier, although nowhere in the bid / tender of "Asseco See" LLC. Prishtina is not confirmed that any request can not be supported by the system provided and instead is the statement of "Asseco See" SH.P.K. Prishtina which confirms exactly the opposite of the ascertainment of the CA that in the tender of "Asseco See" SH.P.K. Prishtina has requests that are not supported by the system provided, CA should apply article 59.2 of the LPP requesting additional information from "Asseco See" SH.P.K. Prishtina regarding the clarification of any of the aspects of its tender.

Also, the review panel conform to the review / technical expert clarifies that taking into account the attached facts and chronology of the event from the contract notice, to requests for clarification, the first complaint, the decision of the PRB, PSH.nr54 / 2020 dated 02.03.2020 , corrections of errors, requests for reconsideration then again correction of errors until the current complaint, Review Panel conform expert / technical expert evaluates that contracting authority has not complied with article 59 of the LPP, not requesting additional information regarding the justifications. for rejecting the bid of the complaining EO.

Regarding the claim of the complaining EO "Asseco See" SH.P.K. Prishtina that the contracting authority has violated article 108 / A, paragraph 8.4 of the LPP, Review panel conform expert / technical expert clarifies that in the justification of the decision of the contracting authority regarding the request for reconsideration of the decision for elimination, CA in any part of it. has not reviewed the issues raised by the complainant regarding the alleged violations of article 28.9 of the LPP and article 59 paragraph 2. The decision of the CA regarding the request for reconsideration is a repetition of the reasoning from the notice of elimination and does not address the issues. that have been requested by the complainant pursuant to Article 108/A, paragraph 8.4.

Also, the review panel conform review expert / technical clarifies that based on the fact 3 of this expertise, the analysis of the request for reconsideration and the response in it by the CA, the evaluation report and the notification for the decision of the CA, evaluates that the reasons for rejecting the bid of the complaining EO are identical and also the response to the request for reconsideration. Therefore, this complaining claim is ungrounded because the CA respectively the evaluation commission and the responsible persons who have returned responses are simply based on the requirements of the contract notice, TD and notices for correction of errors which have not encountered in the documentation submitted by Complaining EO.

Review panel conform expert / technical expert evaluates the contracting authority has not acted conform article 28.9 and 59.2 of the LPP, not specifying the documentary requirements for justification of the fulfillment of the technical requirements by the economic operators interested in participating in this procedure, which has delayed the procedure and has prevented uniform bidding of EO.

Review panel based on the case file which was available and the progress of this procurement activity, as well as the explanations of the review expert / technician concludes that this procurement activity should be canceled in full and if the contracting authority continues to have interest, the same can be retendered in accordance with the provisions of the LPP and ROGPP, and at the same time advancing the technical requirements, always acting in accordance with the 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. Nuhi PAÇARIZI

Decision to be submitted to:

1x1 CA – Ndërmarrja Hidroekonomike “Ibër Lepenc” SH.A

1x1 EO – “Asseco See ” SH.P.K. Prishtinë

1x1 Archive of the PRB

1x1 For publication on the website of the PRB.