

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: “Internat Security Association Sh.p.k. & Nazeri 2000 Sh.p.k. Dega ne Kosove”- Prishtinë, against the contract notice, regarding with the procurement activity with title: “Securing the facilities of the Municipality of Prishtina”, with procurement no: 616-19-3238-2-1-1, initiated by the Contracting authority/Municipal Assembly of Prishtina, on the 25.06.2020 has issued this:

DECISION

I. APPROVED, as grounded the complaint of the group of the economic operator “Internat Security Association Sh.p.k. & Nazeri 2000 Sh.p.k. Dega ne Kosove”- Prishtinë, regarding with the procurement activity with title: “Securing the facilities of the Municipality of Prishtina”, with procurement no: 616-19-3238-2-1-1, initiated by the Contracting authority/Municipal Assembly of Prishtina.

II. CANCELLED contract award notice “Securing the facilities of the Municipality of Prishtina”, with procurement no: 616-19-3238-2-1-1, initiated by the Contracting authority/Municipal Assembly of Prishtina, and the case returns 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, whereas the procurement manager in the CA is warned about the implementation of the LPP in the case of 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 “Internat Security Association Sh.p.k. & Nazeri 2000 Sh.p.k. Dega ne Kosove”- Prishtinë is approved as 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

Economic operator EO group of EO "Internat Security Association Sh.p.k. & Nazeri 2000 Sh.p.k. Kosova Branch"- Prishtina, as a dissatisfied party has filed a complaint in the PRB, on the 27.05.2020 with no. 332/20 against the notification for contract award, regarding the procurement activity: "Security of the facilities of the Municipality of Prishtina" with procurement no. 616-19-3238-2-1-1, initiated by the contracting authority (CA) - Municipal Assembly-Prishtina, claiming that:

- Contracting authority has acted in contradiction with the article: 1,6,7,59,60,61,72 of the Law on Public Procurement of the Republic of Kosova

Procurement Review Body, conform article 113 and 114 of the LPP on the 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 of the 10.06.2020, regarding the complaining claims of the complaining EO explains as follows:

Answer to Claim No. 1,

Regarding the claim of the complaining EO, that CA has violated article 1, 6, 7, 10, 52, 59, 61 and 72 of the LPP and articles 3 and 4 of the Rules for abnormally low tenders, in the case of the rejection of our tender, on the grounds that:

"We have been obliged to submit a complaint to the Procurement Review Body twice so far and the same institution has suggested that CA to respect article 60 of the LPP, which in no case has been respected by committing violations and not taking into account the decisions of the PRB with no. 82, 83, 90 / 2020 and no. 735,734,757, to continue not also taking into account the opinion of the review expert for two consecutive times.

CA has declared the winner the consortium "Commando" "Aulona POI" and "GFS" even though this group of EO had shortcomings in the documentation and was irresponsible, and also recently announced as the winner the company "Rojet e Nderit" sh.pk, which company has greatly exceeded the budget of the CA, a violation which damages and represents a preliminary misuse of public money by the CA, respectively the procurement office, giving a tender a total of 728,006.40 euro more expensive than our consortium tender.

On the 19.05.2020 we have received the decision from the CA in which it is stated that the Municipality of Prishtina rewards the Rojet e nderit with the cheapest responsible prices "

While the tender of the group of EO "I.S.A" sh.pk and "NAZERI 2000" sh.p.k branch in Kosova, was rejected with the justification as a tender not normally low "

based on the facts found during the treatment of the case the review expert ascertains that the claims of the complaining economic operator are partially grounded because CA in the case of re-evaluation of the bids has not fully implemented the Decision of the PRB, RP no.735 -744-757 / 19 dated 09.12.2019 and the Decision of the PRB, RP no. 82, 83, 90/2020 dated 11.03.2020 not taking into account the recommendations issued by these decisions that CA in the case of re-evaluation of bids to take into account the purpose, the most efficient and transparent way as provided by the law on public procurement and requirements submitted in the contract notice and tender dossier by the CA itself.

Also the review expert, considering the reason of elimination of the CA for the group of complaining EO "Based on the requirements of TDS and labor law it follows that your price 2,379,456.00 € is abnormally low price", concludes that if taken into account values of financial bids of economic operators which according to the CA are administratively responsible and treated in accordance with article 3 and 4 of the "Rules for Abnormally Low Tenders" then the group of complaining EO but also none of the economic operators participating in this procurement activity do not meet the requirements to be treated as an economic operator containing an Abnormally low financial offer.

As well as the drafting of the tender dossier by the CA, respectively the drafting of the price description table describing only the number of positions and hours without specifying the minimum number of employees that must engage economic operators in this procurement activity, has left space for economic operators to submit a financial offer by planning the number of employees as they wish, respectively as much as they themselves thought was necessary / to engage, and this fact also poses a problem to ascertain which of the offers can not comply with the provisions provided by labor law.

Review expert ascertains that CA has not planned a sufficient budget for the realization of this procurement activity, because on the occasion of initiating the procedure in the "Statement of Needs and Determining the availability of funds" is presented the budget in the amount of 2,100,000.00 € (from 700,000.00 € for each year 2019, 2020 and 2021) while on page 3 of this statement in the part where the signing of this statement by the procurement officer, chief financial officer and chief administrative officer is foreseen in order to confirm once again the budget before announcing the decision of CA has given the statement that they agree to increase the budget of 140,000.00 € for 2019 and from 80,000.00 € for the other two years, which means that the additional budget approval for this procurement activity increases the planned budget in the total amount of 2,400,000.00 €, with which means that CA has recommended for contract the Economic Operator "Honor Guards Sh.pk" - Prishtina, in financial value of: 3,107,462.40 euro, which value exceeds the planned budget for 707,462.40 €, it follows that CA before entering into a contractual relationship with the Economic Operator recommended for contract, with the offer and prices offered by this EO, have information that the threshold or ceiling will be exceeded as provided by article 38 of the LPP.

Based on these facts the expert thinks that CA in the case of evaluation has not acted in accordance with paragraph 3 of article 52 of the LPP, which states "Only measurable criteria and which are previously defined in the tender dossier can be used for evaluation. The contracting authority may use only criteria that are directly relevant to the subject matter of the contract. Such criteria are but are not limited to: quality, price, technical merits, aesthetics, and functional characteristics, environmental characteristics, running costs, cost effectiveness, after-sales services and technical assistance. "

It has also acted in contradiction with paragraph 3 of article 56 of the LPP which states "The tenderer, during open procedures, or the candidate, during restricted procedures and competitive procedures with negotiations, will not be disqualified or excluded from such procedures in on the basis of any request or criterion that is not specified in the contract notice and in the tender dossier".

Also the review expert ascertains that the bid of the complaining economic operator is cheaper in the amount of 728,006.40 € than the bid of the economic operator recommended for contract.

Opinion of the review expert

Based on the above clarifications, review expert proposes the review panel that the complaint of the group of complaining EO to be approved as partially grounded, to cancel the contract award notice and given that violations encountered in this procurement activity can not to be corrected at this stage and for the purpose of equal treatment of all economic operators participating in this procurement activity, recommends that this procurement activity be canceled, in order for the contracting authority in the case of retendering to draft measurable requirements and criteria in accordance with the procurement activity as well as fully respecting the law and secondary rules for public procurement.

Contracting authority, on the 15.06.2020 through memo, has notified the PRB that does not agree with the opinion of the review expert.

Economic Operator on the 11.06.2020 through memo, has notified the PRB that partially agrees with the opinion of the review expert but does not agree that this PA to be canceled.

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 initiating 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 procurement, and all memos of the parties to the proceedings.

Review panel after reviewing the case file, reviewing the complaining claims of the complaining EO, findings, concrete analysis and recommendations of the professional review expert, declaration of the parties in the procedure, discussions and screening of evidence in full during the main review session, explains the complaint against the contract award notice.

Regarding the claim of the complaining EO, that CA has violated article 1, 6, 7, 10, 52, 59, 61 and 72 of the LPP and articles 3 and 4 of the Rules for abnormally low tenders, in the case of the rejection of our tender, on the grounds that:

“We have been obliged to submit a complaint to the Procurement Review Body twice so far and the same institution has suggested that CA to respect article 60 of the LPP, which in no case has been respected by committing violations and not taking into account the decisions of the PRB with no. 82,83,90 / 2020 and no. 735,734,757, to continue ignoring also the opinion of the review expert for two consecutive times.

CA has announced the winner the consortium "Commando" "Aulona POI" and "GFS" even though this group of EO had shortcomings in the documentation and was irresponsible, and also recently announced as the winner the company "Guards of Honor" sh. pk, which company has greatly exceeded the budget of the CA, a violation which damages and represents a preliminary misuse of public money by the CA, respectively the procurement office, giving a tender a total of 728,006.40 euro more expensive than the tender of our consortium.

Review panel after reviewing and analyzing the complaining claim of the complaining EO clarifies that CA in the case of re-evaluation of the bids has not fully implemented the

Decision of the PRB, RP no. 735-744-757 / 19 dated 09.12.2019 and the Decision of the PRB, RP no. 82, 83, 90/2020 dated 11.03.2020 not taking into account the recommendations arising from these decisions that CA in the case of re-evaluation of bids to take into account the purpose, the most efficient and transparent way as provided by the law on public procurement and requirements submitted in the contract notice and tender dossier by the CA itself.

Review panel clarifies that complaining EO has been eliminated by the CA with the reasoning that: "Based on the requirements of the TDS and the labor law it follows that your price 2,379,456.00 € is abnormally low price." Review panel clarifies that if we are based on the values of financial bids of economic operators who according to the CA are administratively responsible and treated in accordance with article 3 and 4 of "Rules for Abnormally Low Tenders" we find that the group of complaining EO but none of economic operators participating in this procurement activity cannot be considered as economic operators that contain Abnormally low financial offer.

Also, the drafting of the tender dossier by the CA, respectively the drafting of the price description table describing only the number of positions and hours without specifying the minimum number of employees that must engage economic operators in this procurement activity, has leave space for the same to submit the financial offer by planning the number of employees in their opinion as necessary, a fact that also poses a problem to ascertain which of the offers can not comply with the provisions of labor law.

Review panel clarifies that CA has not planned a sufficient budget for the implementation of this procurement activity, because on the occasion of initiating the procedure in the "Statement of Needs and Determining the availability of funds" was presented the budget in the amount of 2,100,000.00 € (from 700,000.00 € for each year 2019, 2020 and 2021) while on page 3 of this statement in the part where the signing of this statement by the procurement officer, chief financial officer and chief administrative officer is foreseen in order to confirm once again the budget before announcing the decision of CA has given the statement that they agree to increase the budget of 140,000.00 € for 2019 and from 80,000.00 € for the other two years, which means that the additional budget approval for this procurement activity increases the planned budget in the total amount of 2,400,000.00 €, CA has recommended for contract the Economic Operator "Guards of Honor Sh.pk" - Prishtina, in financial value of: 3,107,462.40 e uro, which value exceeds the planned budget for € 707,462.40, thus acting with article 59 and 60 of the LPP since CA has not respected the criteria for contract award Responsive tender with the lowest price, therefore the review panel of evaluates as valid the complaining claim of the complaining EO that CA has recommended for contract EO with the highest price, because from the case documentation it can be seen that the bid of the complaining economic operator is cheaper in the amount of 728,006.40 € than the bid of the economic operator of recommended for contract.

Based on these facts we assess that CA in the case of evaluation has not acted in accordance with paragraph 3 of article 52 of the LPP, which states "Only measurable criteria and which are previously defined in the tender dossier can be used for evaluation. The contracting authority may use only criteria that are directly relevant to the subject matter of the contract. Such criteria are but are not limited to: quality, price, technical merits, aesthetics, and functional characteristics, environmental characteristics, running costs, cost effectiveness, after-sales services and technical assistance. "

It has also acted in contradiction with paragraph 3 of article 56 of the LPP which states "The tenderer, during open procedures, or the candidate, during restricted procedures and competitive procedures with negotiations, will not be disqualified or excluded from such

procedures in Based on any request or criterion that is not mentioned in the contract notice and in the tender dossier, therefore the review panel ascertains that in the case of re-evaluation CA has only partially implemented its requirements set out in the tender dossier and contract notice.

Review panel clarifies that contracting authorities are obliged to ensure that public funds and public resources are used in the most economical way, while taking into account the purpose and subject of the procurement as provided in Article 6 of the LPP.

Also the review panel clarifies that the contracting authority must take into account article 1 of the LPP, as it is known that the purpose of this law is to provide the most efficient, transparent and fair way of using public funds, public resources such as and all other funds and resources of the contracting authorities in Kosova.

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 – Municipal Assembly of Prishtina

1x1 EO – “Internat Security Association Sh.p.k. & Nazeri 2000 Sh.p.k. Dega ne Kosove”- Prishtinë,

1x1 Archive of the PRB

1x1 For publication on the website of the PRB.