

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: “Grami” SH.P.K- Prishtinë, against the cancellation notice of the procurement activity with title: “Supply with uniforms for KCS staff-Part II-Supply with underwear (boots, shoes, etc.) ”, with procurement no. 33600-19-3939-1-1-1, initiated by the Contracting authority/CA/ Kosova Correctional Service, on the 27.07.2020 has issued this:

DECISION

I. APPROVED, as partly grounded the complaint of the economic operator: “Grami” SH.P.K- Prishtinë, regarding with the procurement activity with title: “Supply with uniforms for KCS staff-Part II-Supply with underwear (boots, shoes, etc.)”, with procurement no. 33600-19-3939-1-1-1, initiated by the Contracting authority/CA/ Kosova Correctional Service.

II. CERTIFIED cancellation notice regarding with the procurement activity with title: “Supply with uniforms for KCS staff-Part II-Supply with underwear (boots, shoes, etc.) ”, with procurement no. 33600-19-3939-1-1-1, initiated by the Contracting authority/CA/ Kosova Correctional Service.

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 “Grami” 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: “Grami” SH.P.K- Prishtina, as a dissatisfied party has filed a complaint in the PRB, on the 05.06.2020 with procurement no. 360/20, against the decision on the notification for cancellation of the procurement activity with title: “Supply with uniforms for the KCS staff-Part II-Supply with underwear (boots, shoes, etc.)” with procurement no. 33600-19-3939-1-1-1, initiated by the contracting authority / CA / “Kosova Correctional Service”, claiming that:

- The contracting authority has acted in contradiction with the articles: 6, 7, 28, 52, 56, 59, 60, as well as article 69 of the Law on Public Procurement of the Republic of Kosovo.

Procurement Review Body, conform article 113 and 114 of the LPP on the 25.06.2020, 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 29.06.2020, regarding the complaining claim of the complaining EO explains as follows:

Answer to the Claim

Regarding the claim of the complaining EO, that CA has violated article 6, 7, 28, 52, 56, 59, 60 and 69 of the LPP, with the reasoning that:

“EO Grami SH.P.K eliminates the fact that the boot does not have the required weight of 1500gr. \pm 8% (characteristic relevant for determination) and that the height of the sole (waterproof throughout the height) is not 3.5 cm but 3.4 cm.

This is also a lump sum finding, because even from the weight measurements in the MTI laboratory because the manufacturer's confirmation is that the weight of the boot is 1134 gr. e jo 1016 gr. whereas the height of the sole is exactly 3.5cm, while the height of the sole of the shoe of EO Solid from the Euro Mak laboratory is 3.5 cm and from the measurement of the commission 3.0 cm. This also proves that the CA has not made the assessment in accordance with the conditions and technical specification of TD for underwear - shoes and boots.

1. FINDING by the CA for elimination that in the table for position 3. Long boots, model ARCHA 942 6260 O2 FO of the manufacturer ARTRA from Slovakia, with reasoning that the boots weigh 1016 gr, while in the technical specification of TD is required 1380gr - DOES NOT STAND.

REASONING. 1 For position 3. Long boots, model ARCHA 942 6260 O2 FO offer of GRAMI shpk, meets all technical parameters by confirming with Catalog, EN Certificate of quality and Test Report from the Laboratory, in full compliance with the technical specification of DT. Quality is determined by EN Certificate of Quality and Test Report from the Laboratory, with the required parameters: Professional protective shoes of class I - Anti-slip shoes - Shoes for energy absorption in the heel area, - Shoes for comfort and ergonomics - Shoes resistant to chemical agents - Shoes resistant to oils and fuels - Shoes with antistatic properties - Shoes for protection against water - penetration and absorption of water - Leather thickness - Tensile strength, Shoe weight does not determine the quality of the shoe (if any) meet the technical characteristics). Manufacturers today, both for footwear (shoes, boots, etc ...) and for other goods, always aim to improve the quality, to offer comfort to the user, to reduce the weight of the product by using innovations in

the selection of materials (in synthetic fibers are used instead of plastic, composite materials are used instead of steel materials, etc ...), as in the case of shoes, boots for the army, police, fire brigade, etc. Today we are witnessing that all types of shoes have many times less weight than they had before but also much higher quality.

The criterion of greater weight cannot be a determinant of disqualification. Therefore, the shoes (boots) offered by EO Grami are fully in accordance with the required EN standard and TD.

2. FINDING by the CA for elimination, that the commission for re-evaluation in the case of measuring the shoe sample for the indescribable height from the water, has ascertained that it is 3.4cm - DOES NOT STAND. REASONING. 2 For position 1. Shoes (Men / women), EUCLIDE model of Italian manufacturer Cofra, offer of GRAMI shpk, meets all technical parameters. As required in the DT Technical Specification the shoes offered, including the sample, are waterproof to a height of 3.5cm.

Even from the photo for measuring the sample with shubler (nonjus) made by the Re-evaluation commission it is seen that the value is not 3.4 cm but is offered to the value of 3.5 cm (from the photo it can be seen that the value is 3.47cm), which means that the person who made the measurement did not read the correct value or did not place the measuring instrument in the right place. The measurement of the sole cannot be done accurately on the glued shoe (because it depends on where exactly the measuring tool is placed). Measurement accuracy can only be done when the sole is not glued or the shoe is cut (see explanations from the manufacturer and authorized laboratory).

We made the measurement with "nonjus-shubler", where it is seen that the value is exactly 3.5 cm. This is seen from the correspondence of "0" (zero) in the last scale with the 35 mm (3.5cm) line. So the value that the commission has done with what we have done is negligible (3%) The measurement can be verified once again in presence of the Review Panel, therefore this parameter is fully met and in accordance with the conditions of the TD.

Based on the facts found during the treatment of the case the review expert ascertains that the above mentioned claims of the complaining economic operator are partially grounded because CA with the Notification on the decision of the CA and with the standard letter for the eliminated tenderer dated 19.05. .2020 has complained EO complaining that they have been eliminated from this procurement activity with the reasoning that: "IN TABLE NO.3 Boots, model ARTRA no.42, 9626260, made in Slovakia, it turns out that the weight of a pair of boots is 1016 gr, while in the required technical specification, part of the tender dossier is required to be: 1500 gr. \pm 8%, where the minimum weight of a pair of boots should be: 1380 gr., and it follows that this EO does not meet criteria about weighing according to the mandatory technical specifications that are part of the tender dossier "and as evidence is attached the letter of the Kosovo Metrology Agency with no. protocol 15/2069 dated 07.05.2020, in which are presented the measurements of three types of shoes for companies with names "Bag of EO-A and Bag of EO-B".

Review expert ascertains that complaining EO together with the financial offer has attached the technical parameters by confirming with catalog, EN Quality Certificate and Test Report from the Laboratory according to the requirements submitted by the CA in the contract notice and tender dossier. As well as the other reasoning of the CA is that "Also the re-evaluation commission has examined the samples submitted by this EO and the shoes according to the obligatory technical specifications, to the appearances point 03 according to the description of annex 1 Mandatory technical specifications, where it is stated that - Shoes should be waterproof along the entire height of 3.5 cm minimum, measuring from the surface of the layer. The commission has made the measurement and

ascertains that the height of the offered sample is 3.4 cm (photo evidence). ”, But considering that the“ photo ”evidence attached by the CA and the“ photo ”evidence provided by the complaining EO in the complaint of presented it cannot be ascertained that the samples of shoes submitted by the complaining EO have or that they have indescribable height from the water, of 3.5cm as required by the CA in annex 1 technical specification (samples of shoes submitted by the complaining EO, can to be requested-provided by the CA for the Review Panel, for measurement and ascertainment of the required height).

Taking into account the above facts, as well as the purpose of this procurement activity, review expert thinks that the differences in the weights of shoes and the height of shoe heels in each EO participating in this activity, taking into account paragraph 4 of article 59 of the LPP. , from the CA in the case of re-evaluation of bids should have been taken only as small deviations that cannot cause material changes or large deviations from the characteristics of the shoes and do not have any special importance and purpose considering what will to use shoes, also CA should have taken into account article 1, 6 and 7 in order to ensure the most economical, efficient, transparent and fairer way of using public funds, applying paragraph 1.1 of article 60 of the LPP The contracting authority will award the public contract to the economic operator that has submitted the responsive tender with the lowest price.

Opinion of the review expert: Based on the above clarifications, review expert proposes the review panel that the complaints of the complaining EO to be approved as partially grounded, to cancel the notification for cancellation of the procurement activity of the CA and recommends that the case be returned for re-evaluation.

Procurement Review Body on the 29.06.2020 has notified the parties with the expertise's report.

Contracting authority on the 03.07.2020, through memo has notified the PRB that does not agree with the opinion of the review expert.

The Economic Operator has not returned a response to the PRB, whether it agrees or not with the opinion of the review expert.

The hearing session was held on: 27.07.2020, 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 the 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, notice of cancellation of the procurement activity, complaint of the economic operator, report of the review expert procurement and all memos of the parties to the proceedings.

Regarding the claim of the complaining EO “Grami” SH.P.K-Prishtina that CA has violated article 6, 7, 28, 52, 56, 59, 60 and 69 of the LPP, with the reasoning that the Boot does not have the weight of required from 1500gr. \pm 8% (characteristic relevant for determination) and that the height of the sole (waterproof along the entire height) is not 3.5 cm but 3.4 cm, where the complaining EO in this complaining claim claims that the ascertainment of the CA is flat because even from weight measurements in MTI laboratory, manufacturer confirmation is that the weight of the boot is 1134 gr. e jo1016

gr. whereas the height of the sole is exactly 3.5cm, while the height of the sole of the shoe of EO Solid from the Euro Mak laboratory is 3.5 cm and from the measurement of the commission 3.0 cm. Further, complaining EO adds that even this proves that CA has not made the assessment in accordance with the conditions and technical specification of DT for underwear - shoes and boots. Further, complaining EO claims that for position 3. Long boots, model ARCHA 942 6260 O2 FO offer of GRAMI shpk, meets all technical parameters by confirming with catalog, EN Quality Certificate and Test Report from the Laboratory, in full compliance with the technical specification of the tender dossier. The quality is determined by the EN Quality Certificate and Test Report from the Laboratory, with the required parameters:

Class I professional protective shoes - Anti-slip shoes - Shoes for energy absorption in the heel area, - Shoes for comfort and ergonomics - Shoes resistant to chemical agents - Shoes resistant to oils and fuels - Shoes with shoes for water protection - water penetration and absorption - Leather thickness - Tensile strength, Shoe weight does not determine the quality of the shoe (if the technical characteristics are met). Manufacturers today, both for footwear (shoes, boots, etc ...) and for other goods, always aim to improve the quality, to offer comfort to the user, ie to reduce the weight of the product by using innovations in the selection of materials (in synthetic fibers are used instead of plastic, composite materials are used instead of steel materials, etc ...), as in the case of shoes, boots for the army, police, fire brigade, etc. Today we are witnessing that all types of shoes have many times less weight than they had before but also much higher quality. Further, complaining EO claims that the criterion of greater weight cannot be a determinant of disqualification. Therefore, the shoes (boots) provided by EO Grami are fully in accordance with the required EN standard and tender dossier. In the other reasoning of the complaining EO for position 1 it is emphasized that: Shoes (Men / women), EUCLIDE model of Italian manufacturer Cofra, offer of GRAMI shpk, meets all technical parameters. As required in the Technical Specification of the tender dossier the offered shoes, including the sample, are waterproof at a height of 3.5cm. Complaining EO in continuation of the claim states: Even from the photo for measuring the sample with shubler (nonjus) made by the Re-evaluation commission it is seen that the value is not 3.4 cm but is offered to the value of 3.5 cm 3.47cm), which means that the person who made the measurement did not read the correct value or did not place the measuring instrument in the right place. The measurement of the sole cannot be done accurately on the glued shoe (because it depends on where exactly the measuring tool is placed). Measurement accuracy can only be done when the sole is not glued or the shoe is cut (see explanations from the manufacturer and authorized laboratory). We made the measurement with "nonjus-shubler", where it is seen that the value is exactly 3.5 cm. This is seen from the correspondence of "0" (zero) in the last scale with the 35 mm (3.5cm) line. So the value that the commission has done with what we have done is negligible (3%). in the presence of the Review Panel, therefore this parameter is fully met and in accordance with the conditions of the tender dossier.

Review panel after reviewing the complaining claims of the complaining EO and reviewing the case file clarifies that the elimination of the complaining EO by the CA is based because "On TABLE NO.3 Boots, model ARTRA no.42, 9626260, made in Slovakia, it turns out that the weight of a pair of boots is 1016 gr, while in the mandatory technical specification, part of the tender dossier is required to be: 1500 gr. \pm 8%, where the minimum weight of a pair of boots should be: 1380 gr., and it follows that this EO does not meet the criteria for weighing according to the mandatory technical specifications that are part of the tender dossier ", and as evidence is attached the letter of

the Kosovo Metrology Agency with no. protocol 15/2069 dated 07.05.2020, in which are presented the measurements of three types of shoes for companies with names "Bag of EO-A and Bag of EO-B". So, the complaining claims of the complaining EO are partially grounded. However, given that according to law no. 06 / L -037 ON METROLOGY, the Kosovo Metrology Agency is the only state administration body responsible for the field of metrology and its application in the Republic of Kosovo means that the results of this agency are indisputable. In this case, while this agency has made measurements of these samples, then it follows that the results of these measurements do not conform to the requirements set out in the tender dossier.

Review panel after reviewing the complaining claims and considering the comparison of the results of the Kosovo Metrology Agency with the requirements of the tender dossier, considers that the contracting authority has acted correctly in the case of cancellation of this procurement procedure because samples of the complaining EO. do not meet the requirements of the tender dossier determined by the CA. Therefore, review panel considers that the cancellation of this procurement activity is done in accordance with article 62 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 Correctional Service

1x1 EO- “Grami” SH.P.K- Prishtinë

1x1 Archive of the PRB

1x1 For publication on the website of the PRB.