

Class: UP/II-034-02/06-01/5

Number: 354-01/06-9

Zagreb, March, 06, 2006

Under Article 71(1) of the Public Procurement Act (Official Gazette, No 117/01 and 92/05), the State Commission for Supervision of Public Procurement Procedure, having regard to the complaint lodged against the decision, passed by the client, to select the most advantageous tender in public tendering procedure No. E-MV 171/05, published in *Slobodna Dalmacija* on 05 December 2005, for an overhaul of a Diesel generator unit in RHE Velebit, gives the following

DECISION

The complaint is denied as ungrounded.

Grounds

On 05 December 2005, the client published, in *Slobodna Dalmacija*, an invitation for tendering procedure No E-MV 171/05 for an overhaul of a Diesel generator unit in RHE Velebit.

Four tenders were submitted for the purpose of this procedure.

On 16 December 2005, the client passed a decision on the selection of the most advantageous tender, awarding the contract to U.T.R. d.o.o. (ltd.)

On 20 December 2005, R.U. d.o.o. (ltd.) submitted an objection against that decision.

On 28 December 2005, the client denied the objection against the decision on the selection of the most advantageous tender as fully ungrounded.

On 03 January 2006, R.U. d.o.o. (ltd.) lodged a complaint against the decision on the selection of the most advantageous tender in tendering procedure No E-MV 171/05 essentially stating that the decision, taken by the client, was illegal because its tender was the one with the lowest price; that the client had cancelled the previous tendering procedure without any valid reason.

The complaint is admissible, lodged within the stipulated time period, and represented by an authorized person.

The complaint is ungrounded.

While examining the complainant's first argument, this body did not determine the alleged irregularity. Essentially, the complainant argued that the decision on the selection of the most advantageous tender, taken by the client, was illegal because its tender was the one with the lowest price.

Upon examination of the register of examination, evaluation and comparison of tenders, it is determined that the client's expert committee considered the complainant's tender inadmissible because conditions required in Paragraph 1.1.3.3.(4) and (9) of the tender documentation were not satisfied, i.e. that it failed to submit a declaration of non-punishment verified by a competent authority, a list of at least five successful projects together with a copy of a works contract, and certificates, verified by the clients, of the fulfillment of obligations undertaken in last five years.

Upon examination of the instructions to tenderers, Paragraph 1.1.3.3., it is determined that subparagraph 4 stipulated that a declaration of non-punishment for participating in a criminal organization, corruption, fraud, or money laundering for the tenderer's responsible person and legal person, verified by a competent authority, not older than three months, must be submitted.

Furthermore, subparagraph 9 stipulated that a list of at least five successful overhauls of diesel generator units performed in last five years must be submitted together with certificates of the contract performance verified by the clients.

Upon examination of documentation submitted in the tender, it is determined that the complainant failed to submit a declaration of non-punishment for participating in a criminal organization, corruption, fraud, or money laundering for the tenderer's responsible person and legal person verified by a competent authority, and a list of at least five successful overhauls of diesel generator units performed in last five years together with certificates of the contract performance verified by the clients. Therefore, it must be considered that the tenderer failed to prove its qualifications stipulated by Paragraph 1.1.3.3. (4) and (9) of the instructions to tenderers.

Pursuant to Articles 36(1) and 37(4) of the Public Procurement Act, the client rightly excluded the complainant from further competition as unqualified, because the complainant failed to prove its qualifications by submitting the required documentation. According to Article 60(1), Paragraph 7 of the Act, it rightly considered the complainant's tender inadmissible, because the tenderer was considered unqualified and failed to prove qualifications within the time period stipulated for the submission of tenders.

The client, in its tender documentation, stated that a qualified tenderer whose tender has the lowest price would be selected, which is in accordance with Article 46(1) of the Public Procurement Act stipulating that the client shall, in the invitation to tender and tender documentation, specify the criteria to be applied in selecting the most advantageous tender.

The client determined the lowest price criterion for selecting the most advantageous tender, which is in accordance with Article 46(2), Paragraph 1, of the Act stipulating that the most advantageous tender is an admissible one with the lowest price.

The complainant is wrong when arguing that the decision on the selection of the most advantageous tender taken by the client was illegal as its tender was the one with the lowest price, because this body, upon examination of the tender documentation, determined that between two admissible tenders, submitted by qualified tenderers, the client had selected the one with the lowest price, which is in accordance with Article 8(1) of the Regulation on procurement procedure for goods, works and services of a lesser value.

While examining the complainant's second argument, this body could not determine the irregularity referred to by the complainant. Essentially, the complainant argued that the client had cancelled the previous tendering procedure without any valid reason.

In complaint procedure, the State Commission supervises legality of public procurement procedures only when formal conditions regulated by Articles 70(1) and 71(1) of the Public Procurement Act are fulfilled. As those conditions are not fulfilled in this case, this body is not competent for supervising the argument that the client had cancelled the previous tendering procedure without any valid reason.

On the basis of the decision on the cancellation of previous tendering procedure, the complainant could lodge a complaint before this body, thus fulfilling formal conditions regulated by Articles 70(1) and 71(1) of the Public Procurement Act and enabling this body to be competent for supervising any irregularity and illegality of the previous tendering procedure.

Therefore, the State Commission decides as stated in Paragraph 1.

INSTRUCTION OF LEGAL REMEDY

The complainant can not lodge an appeal against this decision, but has right to initiate an administrative procedure by bringing an action before the Administrative Court of the Republic of Croatia within 30 days from the receipt of the decision.

HEAD OF THE STATE COMMISSION

Goran Matešić

Deliver to:

1. Complainant
2. Client
3. Selected tenderer
4. Government of the Republic of Croatia – Public Procurement Office, Markov trg 2, Zagreb
5. State Audit Office, Zagreb, Tkalciceva 19
6. Records Office, here