



REPUBLIC OF ALBANIA
-COMPETITION AUTHORITY -
Competition Commission

No. ___ Prot.

Dated : 26/ 05 / 2009

DECISION

No. 114, dated 26.05.2009

On

“Some recommendations to enhance competition in the public procurement of the Physical Preservation and Security Service”.

The Competition Authority, in its meeting held on 26.05.2009, with the participation of:

- | | |
|----------------------------|-----------------|
| ▪ Mrs. Lindita Milo (Lati) | Chairwoman |
| ▪ Mr. Lush Perpali | Deputy chairman |
| ▪ Mrs. Servete Gruda | Member |
| ▪ Mr. Koço Broka | Member |
| ▪ Mrs. Rezana Konomi | Member |

Discussed the following issue :

Subject: Review of complaints filed by the Companies of Physical Preservation and Security Services.

Legal basis : Article 24, letters “d” and „f“, and Article 70, paragraph 2 of Law No. 9121, dated 28.07.2003, titled “On the Protection of Competition”.

The Competition Commission, after reviewing the following documents:

- The report submitted by the Working Group tasked with the Assessment of complaints filed by the Companies of Physical Preservation and Security Services; and,
- The request forwarded by the Secretary General of the Competition Authority,

NOTED THAT:

1. Electronic procurement procedures with the subject " Physical Preservation and Security Services with private entities of objects

pertaining to the Prime Minister's Office, ministries and institutions to them subordinated," issued by the contracting Authority, i.e. "The General Directorate of Procurement Concentrated at the Interior Ministry," is governed by Law no. 9643, dated 20.11.2006, titled "On public procurement", as amended, and normative acts issued in implementation thereof.

2. In their complaints, the Companies of Physical Preservation and Security Services claim that in the drafting of tender documents and requests for qualification the legislation on public procurement is violated.
3. The Public Procurement Agency has jurisdiction to review administrative complaints with the aim of recording the violations of procurement law and subsidiary legislation issued in implementation thereof. This competence has been exercised by the Public Procurement Agency with the decision to declare null and void the procurement procedure, subject to appeal, through note verbal No. 4471 / 5, dated 02.04.2009. After making this decision by the Public Procurement Agency, the contracting Authority has launched a new procurement procedure with the same subject.
4. In view of the law "On protection of competition", in both procurement procedures was noted the division of the contract in lots at county level.
5. The division of the contract in lots at regional level realizes the merger between the contracting authorities that do not have comparable size and, per consequence, the bid is required by groups, thus joining the economic operators that are unequal and not comparable between them . This applied method does not allow economic operators to submit individual bids, but obliges them to participate in the tender only jointly, bringing about the restriction of competition and preventing economic operators to enter these procedures as individual bidders. This division in the lots of the contract constitutes a barrier to market entry for the procurement of Physical Preservation and Security Services in terms of the Law "On protection of competition."

FOR THESE REASONS:

The Competition Commission, pursuant to Article 24, letters "d" and „f“, and Article 70, paragraph 2 of Law No. 9121, dated 28.07.2003, titled "On the Protection of Competition", and upon proposal of the Secretariat,

DECIDED:

1. To recommend to the Contracting authority, i.e. the "General Directorate of Procurement Concentrated at the Interior Ministry", to increase the number of public contract lots with object: Physical

Preservation and Security Services with private entities of objects pertaining to the Prime Minister's Office, ministries and institutions to them subordinated,"with the aim of enabling the presentation of requests grouped according to comparable sizes of the size of Contracting authorities with the size of bids from individual economic operators. In this way is enabled the growth of competition between operators that meet the respective levels of demand.

2. To recommend to the Public Procurement Agency that, depending on the nature of the contract that is being procured, to propose to the contracting authorities to divide the contracts in lots / sub-lots, in such a way as to enable a more extensive participation of economic operators in procedures of public procurement, and thus providing a better use of public funds, promotion of the participation of economic operators by firm size, i.e. small and medium enterprises in these procedures, and promoting competition among them.
3. The Secretary General is in charge to communicate such decision to the relevant parties.

This decision enters into effect immediately.

THE COMPETITION COMMISSION

Lush Perpali	Servete Gruda	Rezana Konomi	Koço Broka
(_____)	(_____)	(_____)	(_____)
Deputy Chairman	Member	Member	Member

Lindita Milo (Lati)

CHAIRWOMAN