

Environmental Protection Fund
Number: 03-426/23-526/5

Podgorica, 28th Decembar

Pursuant to Article 144 paragraph 2 of the Law on Public Procurement ("Official Gazette of Montenegro", number 74/19, 3/23 and 11/23), the authorized person of the Environmental Protection Fund in the public procurement procedure according to the tender documentation for the procurement of the International company with experience in investments and EE, RES, sustainable transport and sustainable waste number 03-426/23-526/3 from November 28, 2023, procedure code 65219, on the proposal of the Committee for the implementation of the public procurement procedure,

DECISION ON THE TERMINATION OF THE PUBLIC PROCUREMENT PROCEDURE

The public procurement procedure according to the procurement tender documentation for the International company with experience in investments and EE, RES, sustainable transport and sustainable waste number 03-426/23-526/3 from November 28, 2023, procedure code 65219 is cancelled, due to the reason that the bidder EXERGIA ENERGY AND ENVIRONMENT CONSULTANTS SA, CEED Consulting llc and the bidder Expertise Advisors, EcoEnergy Consulting llc are excluded from the public procurement procedure.

EXPLANATION

Data on the public procurement procedure

Contractor	Environmental Protection Fund
Headquarters	Podgorica
Address	II Crnogorskog bataljona 2c
Number and date of the tender documentation	03-426/23-526/3 from November 28, 2023
Type of procedure	Open procedure
Item type	goods
Procedure code	65219
Description of the subject of procurement	Procurement of the services of an international company with experience in investments and EE RES sustainable transport and sustainable waste
CPV code	90713000 - Environmental consulting services
The subject of public procurement is procured	In total
Estimated value of public procurement as a whole	126,811.58 euros

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Reasons for termination of the procedure

- *The public procurement procedure is terminated due to the fact that no valid bid was submitted in accordance with Article 140, paragraph 1 point 4 of the Law on Public Procurement.;*

- **Offers excluded from the procedure:**

EXERGIA ENERGY AND ENVIRONMENT CONSULTANTS SA, CEED Consulting llc

By the provision of Article 108 paragraph 1 item 5 of the Public Procurement Law stipulates that the Contractor will exclude a business entity from the public procurement procedure if it determines that the bidder has not submitted the declaration of the business entity or that the declaration was made incorrectly, and the provision of Article 122 paragraph 2 of the Public Procurement Law stipulates that the declaration of the business entity must be submitted in electronic form through the Public Procurement Office.

In the subject tender documentation, point 11, paragraph 1, the contractor provided that the bids are drawn up in the ESJN in accordance with the tender documentation and the valid Rulebook on the content of the bid and instructions to bidders for drawing up and submitting bids, while in the Instructions to bidders for drawing up and submitting bids, that make an integral part of the aforementioned rulebook, in point 1 - Method of preparation of the offer, paragraph 9, point 1, paragraph 10, point 3, as well as Article 120 paragraph 16 item 1 and paragraph 17 item 3 of the PPL, it is stipulated that the bidder is obliged to submit along with the bid: a statement of the business entity and that after the deadline for submission of bids, the declaration of the business entity of the bidder may not be changed and/or supplemented.

The committee for the implementation of the public procurement procedure determined that the bidder EXERGIA ENERGY AND ENVIRONMENT CONSULTANTS SA, CEED Consulting llc did not submit the statement of the business entity in the manner provided for in the tender documentation.

In point 11 of the call for tenders from the tender documentation, the contractor provided instructions for the preparation of the offer, which in paragraph 1 stipulates that the offer must be prepared at the ESJN in accordance with the tender documentation and the valid Rulebook on the content of the offer and instructions for the preparation and submission of the offer, then in paragraph 2 provided that the fulfillment of the conditions for participation in the public procurement procedure is proved by a declaration of the business entity, which is made on the form given in the Rulebook on forms of the declaration of the business entity, and in paragraph 3 provided that the bidder is obliged to fill out the declaration accurately, completely, correctly and unambiguously of the business entity in accordance with the requirements from the tender documentation. Furthermore, in the tender documentation, the Contractor stipulated the obligation for the bidders to submit declarations of the business entity in the offer in order to prove the fulfillment of the conditions for participation in the public procurement procedure. Article 111 paragraph 1 prescribes that the applicant for qualification, that is, the bidder submits a declaration of the business entity, which guarantees that it will during the duration of the public procurement procedure and the implementation of the public procurement contract, fulfill all the conditions for participation in the public procurement procedure and that there is no reason for exclusion from the public procurement procedure, provided for in the tender documentation, and paragraph 3 of this article that in the case of submitting a joint bid, a statement submitted by each member of the offer, if it is submitted with a subcontractor and each subcontractor, and paragraph 4 of this article prescribes that the statement of the business entity is made and submitted in the form prescribed by the Ministry."

After the overview of the electronic offer and the submitted Declaration of the business entity of the bidder EXERGIA ENERGY AND ENVIRONMENT CONSULTANTS SA, it was determined that the bidder and the subcontractor did not act in accordance with the Instructions for filling out the declaration, which states: "To all questions that the business entity should answer the YES or NO answer does so in a way that leaves the correct answer in the Statement while the other optional answer is deleted" In their statements, the bidder and the subcontractor did not delete the second optional answer for any condition and therefore did not declare that they fulfilled the stated conditions.

As Article 111 paragraph 1 of the Law on Public Procurement stipulates that the bidder submits a statement from the business entity guaranteeing that during the duration of the public procurement procedure and the implementation of the public procurement contract, it will meet all the conditions for participation in the public procurement procedure and that there is no reason for exclusion from the procedure of public procurement, stipulated in the tender documentation and paragraph 2 of the article in question that the bidder is obliged to provide complete, clear and accurate information in the statement of the business entity, that the deficiency of his statement regarding the statement on the fulfillment of the required mandatory conditions and other conditions is the basis for mandatory exclusion from the public procurement procedure procurement from Article 108 paragraph 1 point 5 of the Law on Public Procurement.

Acting on the above, the Committee for the Implementation of the Public Procurement Procedure acted upon the decision of the Committee for the Protection of Rights in Public Procurement Procedures no. UP. 0906-2(06/2021 from 20.12.2021.

After the overview of the bidder's offer at the Public Procurement Office, it was determined that subcontractor CEED Consulting llc did not submit the Declaration of a business entity, as it was obliged to do according to Article 111 paragraph 3 of the Public Procurement Law.

According to the above, the bidder EXERGIA ENERGY AND ENVIRONMENT CONSULTANTS SA, CEED Consulting llc, is excluded from the public procurement procedure in accordance with Article 108 paragraph 1 item, 5 of the Public Employment Law, because it did not submit the statement of the business entity for the subcontractor, and EXERGIA ENERGY AND ENVIRONMENT CONSULTANTS SA submitted the statement of the business entity, which was not properly prepared.

2. Expertise Advisors, EcoEnergy Consulting llc

By the provision of Article 108 paragraph 1 item 5 and 7 of the Public Procurement Law stipulates that the Employer will exclude a business entity from the public procurement procedure if it determines that the submitted statement of the business entity was improperly made and if it did not submit a bid guarantee in the manner provided for in the tender documentation in accordance with Article 122 para. 2, 3 or 4 of this law and the provision of Article 122 paragraph 2 of the PPL stipulates that the declaration of the business entity and the offer guarantee must be submitted in electronic form through the ESJN.

In the subject tender documentation, point 11, paragraph 1, the contractor provided that the bids are drawn up in the ESJN in accordance with the tender documentation and the valid Rulebook on the content of the bid and instructions to bidders for drawing up and submitting bids, while in the Instructions to bidders for drawing up and submitting bids, that make an integral part of the aforementioned rulebook, in point 1 - Method of preparing the offer, paragraph 9, item 1 and 2, paragraph 10 item, 3 and 6, as well as Article 120 paragraph 16 item, 1 and 2 and paragraph 17 item 3 and 6 of the PPL, it is prescribed that the bidder is obliged to submit with the bid: a statement of the business entity and a bid guarantee and that after the deadline for submission of bids, the declaration of the business entity of the bidder and the bid guarantee must not be changed and/or supplemented, except in cases from Article 97 paragraph 5 and Article 120 paragraph 14 of this law.

The committee for the implementation of the public procurement procedure determined that the bidder Expertise Advisors, EcoEnergy Consulting llc did not submit the statement of the business entity and the offer guarantee in the manner provided for in the tender documentation.

In point 11 of the call for submitting the tender documentation, the contractor provided instructions for the preparation of the offer, which in paragraph 1 stipulates that the offer must be prepared at the ESJN in accordance with the tender documentation and the valid Rulebook on the content of the offer and instructions for the preparation and submission of the offer, then in paragraph 2 provided that the fulfillment of the conditions for participation in the public procurement procedure is proved by a declaration of the business entity, which is made on the form given in the Rulebook on forms of the declaration of the business entity, and in paragraph 3 provided that the bidder is obliged to fill out the declaration accurately, completely, correctly and unambiguously of the business entity in accordance with the requirements from the tender documentation. Furthermore, in the tender documentation, the Contractor stipulated the obligation for the bidders to submit declarations of the business entity in the offer in order to prove the fulfillment of the conditions for participation in the public procurement procedure. Article 111 paragraph 1 prescribes that the applicant for qualification, that is, the bidder submits a declaration of the business entity, which guarantees that it will during the duration of the public procurement procedure and the implementation of the public procurement contract, fulfill all the conditions for participation in the public procurement procedure and that there is no reason for exclusion from the public procurement procedure, provided for in the tender documentation, and paragraph 3 of this article that in the case

of submitting a joint bid, a statement submitted by each member of the offer, if it is submitted with a subcontractor and each subcontractor, and paragraph 4 of this article prescribes that the statement of the business entity is made and submitted in the form prescribed by the Ministry."

After the overview of the electronic offer and the submitted Declaration of the economic entity of the bidder Expertise Advisors, EcoEnergy Consulting doo, it was determined that the bidder and the subcontractor did not act in accordance with the Instructions for filling out the declaration, which states: "All questions to which the economic entity should answer YES or NO does it in a way that leaves the correct answer in the Statement while deleting the second optional answer" In their statements, the bidder and the subcontractor did not delete the second optional answer for any condition and therefore did not declare that they fulfilled the stated conditions.

As Article 111 paragraph 1 of the Law on Public Procurement stipulates that the bidder submits a statement from the business entity guaranteeing that during the duration of the public procurement procedure and the implementation of the public procurement contract, it will meet all the conditions for participation in the public procurement procedure and that there is no reason for exclusion from the procedure of public procurement, stipulated in the tender documentation and paragraph 2 of the mentioned article that the bidder is obliged to provide complete, clear and accurate information in the statement of the business entity, that the deficiency of his statement regarding the statement on the fulfillment of the required mandatory conditions and other conditions is the basis for mandatory exclusion from the public procurement procedure procurement from Article 108 paragraph 1 point 5 of the Law on Public Procurement.

Acting on the above, the Committee for the Implementation of the Public Procurement Procedure acted upon the decision of the Committee for the Protection of Rights in Public Procurement Procedures no. UP. 0906-2(06/2021 from 20.12.2021.

After the overview of the offer of Expertise Advisors, EcoEnergy Consulting llc, it was determined that the bidder did not submit a bid guarantee in accordance with Article 122 of the Public Procurement Law and point 8 of the tender documentation, but only submitted a bid guarantee on the Public Procurement Law without an electronic signature.

According to the above, the bidder Expertise Advisors, EcoEnergy Consulting llc, is excluded from the public procurement procedure in accordance with Article 108 paragraph 1 item. 5 and 7 of the PPL, because it submitted a declaration of the business entity that was not properly made and the bid guarantee was not submitted in the manner provided for in the tender documentation and in accordance with Article 122 paragraph 2, 3 or 4 of the PPL.

Valid offers: None

Bearing in mind the above, and in accordance with Article 140 paragraph 1 point 4 of the PPL, the authorized person decided as in the enacting term.

Instructions on legal protection

The candidate/bidder can file an appeal against this decision to the Committee for the Protection of Rights within 10 days from the date of publication of the decision.

The complaint is submitted through the contractor, until the establishment of the ESJN, directly or by registered mail in written form, and after the establishment of the ESJN electronically via the ESJN.

A complaint that is not submitted in the manner provided above will be rejected as inadmissible.

The complainant is obliged to attach to the complaint proof of payment of the fee for conducting the procedure in the amount of 1% of the estimated value of the public procurement, and a maximum of 20,000.00 euros, to the bank account of the Committee for the Protection of Rights number 530-20240-15 at NLB Montenegro banka AD

The amount of the payment from the previous paragraph is the amount credited to the account of the Committee for the Protection of Rights.

If the subject of the procurement is divided into lots, and the appeal refers only to a certain lot/s, compensation is paid in the amount of 1% of the estimated value of the public procurement of that lot/s.

Instructions for payment of the fee for conducting the procedure by foreign applicants are available on the website Committee for the Protection of Rights <http://www.kontrola-nabavki.me/>.



AUTHORIZED PERSON

Drasko Boljević

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