



Republika e Kosovës
Republika Kosova – Republic of Kosovo
ORGANI SHQYRTUES I PROKURIMIT
TELO ZA RAZMATRANJE NABAVKE
PROCUREMENT REVIEW BODY

Psh. No.589/23

Pursuant to the article 105 point 1 and 2 as well article 109 point 2 of the Law on Public Procurement of the Republic of Kosova no.04/L-042, amended and supplemented by Law No. 04/L-237, Law no.05/L-068, and Law no.05/L-092, after reviewing the complaint of the Economic Operator LEOMED SH.P.K, related to the procurement activity: “Supply of medical equipment”, with procurement no: 10/220/70050/00000/0731-23-6982-1-1-1, initiated by the Contracting authority –Hospital SHEIKH ZAYED, the President of the Procurement Review Body Vjosa Gradinaj Mexhuani on the 23/08/2023 has issued this:

DECISION

1. Rejected as not allowed, the complaint of LEOMED SH.P.K with protocol no.2023/0589 of the 17/08/2023, this complaint submitted for the procurement activity: “Supply of medical equipment”, with procurement no: 10/220/70050/00000/0731-23-6982-1-1-1, initiated by the Contracting authority –Hospital SHEIKH ZAYED.
2. It is allowed the Contracting authority- Hospital SHEIKH ZAYED to continue further with the procurement activity: “Supply of medical equipment”, with procurement no: 10/220/70050/00000/0731-23-6982-1-1-1, regarding this complaint, if there is no other complaint about this procurement activity.
3. In accordance with Article 31, point 4, of the Rules of Procedure of the PRB, the complaining economic operator will be refunded the complaint’s fee in the amount deposited when the complaint was submitted. The complaining EO is obliged to, in accordance with Article 31 point 6 of the Rules of Procedure of the PRB, within a period of sixty (60) days, make a request for the return of the insurance of the complaint, otherwise the deposit will be confiscated, and these funds will go to the Budget of the Republic of Kosova.

REASONING

-Procedural facts and circumstances-

The Procurement Review Body, in the electronic system on the 17.08.2023, received the complaint no. 589/23 from “LEOMED” SH.P.K. related to the procurement activity: “Supply of medical equipment”, with procurement no: 10/220/70050/00000/0731-23-6982-1-1-1, initiated by the Hospital SHEIKH ZAYED in the capacity of the Contracting authority.

On the 07.07.2023, CA “SHEIKH ZAYED HOSPITAL” published B05-Notice for contract related to the aforementioned activity. According to this announcement, the deadline for accepting tenders is 18.08.2023.

On the 14.08.2023, EO "LEOMED" SH.P.K. had made a request for reconsideration at the CA. Whereas on the 15.08.2023, the CA rejected the request for reconsideration of the economic operator based on Article 108/A paragraph 8.1 of the LPP as well as on the basis of Article 62.1 paragraph a of the Public Procurement Regulation.

-Administration and Evaluation of Evidence -

From the evidence presented proves that for the procurement activity “Supply of medical equipment”, with procurement no: 10/220/70050/00000/0731-23-6982-1-1-1, initiated by the CA- Hospital SHEIKH ZAYED, it is established that the contract notice was published in the e-procurement system on the 07.07.2023, while the deadline for accepting tenders was 08.18.2023. While EO on the 14.08.2023 EO “RIO PLUS” SH.P.K. made a request for reconsideration to the CA. The Contracting Authority on the 15.07.2023 CA rejected the request for reconsideration of the economic operator.

The complainant was obliged, in accordance with paragraph 3.1 of Article 108/A of the LPP, within the legal deadlines to submit a request for reconsideration to the CA and only after leading the preliminary procedures in the CA, the economic operator in accordance with Article 109 of the LPP - will be able to file a complaint with the PRB. Article 108/A paragraph 3.1 of the LPP stipulates that the complaining economic operator must submit the request for review to the relevant contracting authority: *if the alleged violation is related to the notification of the contract or the tender documents within five (5) days before the deadline for submission of offers. Likewise, Article 60.1 point a) in Regulation 001/2022 on Public Procurement determines that: Whenever the request for reconsideration is related to the contract notice or the tender documents at least five (5) days before the deadline for submission of offers. In calculating the time limits, the day of submission of offers is day (0).*

On the basis of the above, it is concluded that the complaint submitted to the Procurement Review Body dated 17.08.2023 by EO LEOMED Sh.P.K., for the procurement activity “Supply of medical equipment”, with procurement no: 10/220/70050/00000/0731-23-6982-1-1-1, initiated by the Contracting authority –Hospital SHEIKH ZAYED, is ineligible because the complainant did not submit the request for reconsideration within the legal time limits against the notification of the Contracting Authority as specified above in - Procedural facts and circumstances - in accordance with Article 108/A, 109 and of the Law on Public Procurement,

and Article 60 of Regulation 001 /2022 for Public Procurement, and as such it is rejected as not allowed and was not reviewed by the PRB.

The PRB always starts from the rules, solutions and principles of the LPP according to which each CA exercises its independence in the sense of article 8 and 9 regarding procurement planning and forecasting of needs, but the aforementioned criteria must always guarantee the equality of the EO which are foreseen as such with the TD which, in the sense of Article 27, in connection with Article 28, constitutes the key public procurement document. Therefore, in the sense of Article Article 51 (Notification of Selection Criteria) of the LPP, according to which all selection criteria must be limited only to the criteria necessary to ensure that only economic operators who possess the necessary professional, financial and technical skills to fulfill the terms of the relevant contract will be considered qualified to receive such a contract or to receive an invitation to tender. And that, in no case, the contracting authority should not include, specify or use selection criteria that are based on considerations other than those allowed by the provisions of articles 65-70 of this law. Therefore, the Review Panel informs the CA that in every activity must act in accordance with the legal provisions and authorizations as provided by Articles 1, 6, 7, 27, 28, 51, 59, 60, 69 of the LPP.

Regarding the complaint's fee, it is decided in accordance with Article 31 point 4, of the PRB's Work Regulations, that the complaint's fee is returned to the complaining economic operator in the amount deposited when the appeal is submitted. The complaining EO is obliged to, in accordance with Article 31 point 6 of the Rules of Procedure of the PRB, within a period of sixty (60) days, make a request for the return of the insurance of the complaint, otherwise the deposit will be confiscated, and these funds will go to the Budget of the Republic of Kosova.

The President of PRB, based on what was said above, decided as in the provision of this decision.

President of the PRB

Vjosa Gradinaj

Legal advice:

An appeal is not allowed against this decision, but the dissatisfied party can appeal to the Commercial Court, within 30 days from the date of acceptance of this decision.

Decision to be submitted to:

1x1 CA – Hospital SHEIKH ZAYED;

1x1 EO – “LEOMED Sh.P.K.”;

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.