



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

Psh. No.43/24

Based on Article 105 points 1 and 2 of the Law on Public Procurement of Kosova no. 04/L-042, supplemented and amended by Law 04/L-237, supplemented and amended by Law 05/L-068, supplemented and amended by Law 05/L-092, after considering the complaint of Economic Operator “KRASNIQI” SH.P.K, against the Contract Notice related to the procurement activity "Re-Tendering - Internal cleaning and sanitation services at Gjilan General Hospital” with procurement number 220-70001-0731-23-8855-2-1-1, initiated by the contracting authority (CA) - GJILAN GENERAL HOSPITAL, the President of the Procurement Review Body Vjosa Gradinaj Mexhuani, on the 15/01/2024 has issued this:

DECISION

1. Dismissed as not allowed, the complaint of EO “KRASNIQI” SH.P.K, with protocol no.43/2024, of the 12/01/2024, complaint filed for the procurement activity: “Re-Tendering - Internal cleaning and sanitation services at Gjilan General Hospital” with procurement number 220-70001-0731-23-8855-2-1-1, initiated by the contracting authority (CA) - GJILAN GENERAL HOSPITAL.
2. It is allowed the contracting authority - GJILAN GENERAL HOSPITAL to continue with the procurement activity: “Re-Tendering - Internal cleaning and sanitation services at Gjilan General Hospital” with procurement number 220-70001-0731-23-8855-2-1-1, regarding this complaint, if there is no other complaint about this procurement activity.

REASONING

-Procedural facts and circumstances-

The Procurement Review Body in the electronic system dated 12.01.2024 has received the complaint no. 43/24 from EO "KRASNIQI" SH.P.K, regarding the procurement activity: "Re-Tendering - Internal cleaning and sanitation services at Gjilan General Hospital" with procurement number 220-70001-0731-23-8855-2-1-1 initiated by the GJILAN GENERAL HOSPITAL in the capacity of the contracting authority.

On the 22.08.2023 GJILAN GENERAL HOSPITAL has published B05- Contract Notice related to the aforementioned activity. According to this announcement, the deadline for accepting tenders is 13.09.2023. While on the 04.01.2024 B54 published the standard form for correcting errors in published notices, according to this form the deadline for accepting tenders is 15.01.2024.

On the 09.01.2023 at 16:23, EO "KRASNIQI" SH.P.K. made a request for reconsideration to the CA, while on the 10.01.2023 the CA rejected the request for reconsideration of the economic operator as ineligible for review.

- Administration and evaluation of evidence -

The evidence presented proves that for the procurement activity "Re-Tendering - Internal cleaning and sanitation services in Gjilan General Hospital" with procurement number 220-70001-0731-23-8855-2-1-1, initiated by HOSPITAL I GENERAL GJILAN, in the capacity of the Contracting Authority, the contract notice was published in the e-procurement system on the 22.08.2023, while on the 04.01.2024 the CA published the B54 standard form for correcting errors in published notices, according to this form the deadline for the acceptance of tenders is 15.01.2024. EO "KRASNIQI" SH.P.K. made a request for reconsideration to the CA on 09.01.2023 at 16:23, which was also rejected as inadmissible by the CA on the 10.01.2023.

The office for receiving complaints, after receiving the complaint, while verifying whether the complaint was submitted according to the rules and legal provisions, found that the complainant submitted the request for reconsideration to the Contracting Authority outside the legal deadlines.

The complaining EO 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 conducting the preliminary procedures in the CA, the economic operator in accordance with Article 109 of The LPP will be able to appeal to 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 contract notification 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).

As well as Article 5 of the LPP determines that: The time limits of this law must start on a working day and end on a working day. The time limit runs until 16:00 on the day of expiry. The contracting authority may decide to set another time provided that it is no earlier than 12:00 on the day of expiry.

Based also on the interpretation of the PPRC dated 07.11.2023 and the aforementioned provisions, the PRBO emphasizes that according to the Contract Notice, the deadline for accepting tenders was 15.01.2024, therefore the complaining EO "KRASNIQI" SH.P.K., has been obliged to submit a request for reconsideration within the legal deadlines.

It is established that the complaint submitted to the Procurement Review Body dated 12.01.2024 by EO "KRASNIQI" SH.P.K., for the procurement activity entitled: "Re-Tendering - Internal cleaning and sanitation services at the Gjilan General Hospital" with number procurement 220-70001-0731-23-8855-2-1-1, initiated by the GJILAN GENERAL HOSPITAL in the capacity of the Contracting Authority, is dismissed as not permitted because the appellant did not submit the request for reconsideration within the legal deadlines against the notification of the Contracting Authority. Therefore, the Procurement Review Body clarifies that only after leading a regular preliminary procedure and within the legal deadlines at the CA, the complainant can file a complaint with the PRB.

However, the PRB always starts from the rules, solutions and principles of the LPP according to which each CA exercises his/her independence in the sense of article 8 and 9 regarding procurement planning and forecasting needs, but the aforementioned criteria must always guarantee equality of EO which are provided as such also with DT which in terms 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, 65, 69, 70 of the LPP.

In conclusion, this complaint is in violation of Article 108/A and 109 of the Law on Public Procurement, and Article 60 of Regulation 001/2022 on Public Procurement, and as such it is dismissed as not allowed and was not reviewed by the PRB. No review fee has been received for this complaint.

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

President of the PRB

Mrs.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 – **GJILAN GENERAL HOSPITAL;**

1x1 EO – **KRASNIQI"SH.P.K.;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.