



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

Psh. No.474/23

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, and Article 64 of Regulation No. 002/2022 on Public Procurement after considering the complaint of the Economic Operator Malsijaj Company Sh.P.K., related to the procurement activity: “Horizontal and vertical signaling of roads and rural settlements”, with procurement no: 616-22-11453-2-1-1, initiated by the Contracting authority - Municipal Assembly of Prishtina, the President of the Procurement Review Body Vjosa Gradinaj Mexhuani on the 17/07/2023 has issued this:

DECISION

Rejected as out of deadline, the complaint of “Malsijaj Company Sh.P.K.”, with protocol no.2023/0474 of the 07/07/2023, this complaint submitted for the procurement activity: “Horizontal and vertical signaling of roads and rural settlements”, with procurement no: 616-22-11453-2-1-1, initiated by the Contracting authority - Municipal Assembly of Prishtina.

It is allowed the Contracting authority- Municipal Assembly of Prishtina to continue further with the procurement activity: “Horizontal and vertical signaling of roads and rural settlements”, with procurement no: 616-22-11453-2-1-1, regarding this complaint, if there is no other complaint about this procurement activity.

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-

On the 13.06.2023, the Municipal Assembly of Prishtina, in the capacity of the contracting authority, published the Notice on the Decision of the Contracting Authority regarding the procurement activity entitled: “Horizontal and vertical signaling of roads and rural settlements”, with procurement no: 616-22-11453-2-1-1.

On the 19.06.2023 EO “Malsijaj Company Sh.P.K.”, submitted a request for reconsideration to the CA. Whereas on the 26.06.2023 the CA rejected the request for reconsideration of the economic operator as not allowed.

The economic operator dissatisfied with the decision of the CA-Municipal Assembly of Prishtina has submitted a complaint to the Procurement Review Body through e-procurement on the 07.07.2023.

-Administration and Evaluation of Evidence -

From the evidence presented proves that for the procurement activity “Horizontal and vertical signaling of roads and rural settlements”, with procurement no: 616-22-11453-2-1-1, the Municipal Assembly of Prishtina in the quality of the contracting authority (CA) has published the Notice on the Decision of the Contracting Authority on the 13.06.2023. Against this notification, a request for reconsideration was submitted by the complaining economic operator on the 19.06.2023, while on the 26.06.2023 the CA rejected the request for reconsideration of the complaining economic operator as ungrounded.

Since the above-mentioned decision of the CA-Municipal Assembly of Prishtina was published on the 26.06.2023, the legal deadline to submit a complaint to the PRB has started running from 27.06.2023 to 06.07.2023 at 16:00.

The office for receiving complaints after receiving the complaint has found that the complaining economic operator EO “Malsijaj Company Sh.P.K.”, has submitted a complaint to the Procurement Review Body on the 07.07.2023, which consequently falls outside the legal deadline provided by the LPP. The complainant was obliged, in accordance with paragraph 2 of Article 109 of the LPP, to submit a complaint to the PRB within the legal deadlines after conducting the preliminary procedures in the CA.

Article 109 paragraph 2 of the LPP stipulates that: *Complaint to the PRB must be submitted within ten (10) days after the decision issued by the contracting authority in the preliminary dispute resolution procedure in accordance with Article 108/A of this law.* Likewise, Article 64.1 in Regulation 001/2022 on Public Procurement stipulates that: *The complaint to PRB must be submitted only after leading a preliminary procedure for resolving the dispute and submitted within ten (10) days after the decision issued by the contracting authority in the preliminary dispute resolution procedure in accordance with Article 108/A of the LPP.*

-The conclusion-

On the basis of the above, it is concluded that the complaint submitted to the Procurement Review Body dated 07.07.2023 by EO Malsijaj Company Sh.P.K.”, for the procurement activity “Horizontal and vertical signaling of roads and rural settlements” is ineligible because the complainant did not submit the complaint within the legal deadlines against the notification of the Contracting Authority. The Procurement Review Body clarifies that only after conducting a regular preliminary procedure and within the legal deadlines, the complainant can file a complaint at the PRB. As a conclusion, the complaint was submitted in violation of Article 109 of the Law on Public Procurement and Article 64 of the Regulation 001/2022 for Public Procurement, as such, is considered inadmissible and was not considered by the PRB.

The contracting authority - the Municipal Assembly of Prishtina, can continue with the procurement activity (described above) if there is no other complaint about this activity. The Review Panel, however, informs them that in every activity CA they must act in accordance with the legal provisions and authorizations as defined by Article 1, 6, 7, 27, 28, 59, 60, 65 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 – Municipal Assembly of Prishtina;

1x1 EO – “Malsijaj Company Sh.P.K.”;

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.