



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

Psh. No.849/23

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 the Economic Operator (OE) WOOD CORPORATION L.L.C., related to the procurement activity with title: “Supply and assembly of kindergarten inventory” with procurement number 208 Udheheqesi-23-1185-1-1- 1, initiated by the MINISTRY OF EDUCATION, in the capacity of the contracting authority, the President of the Procurement Review Body Vjosa Gradinaj Mexhuani on the 15/11/2023 has issued this:

DECISION

1. Dismissed as inadmissible, the complaint of EO "WOOD CORPORATION" L.L.C. with protocol no.2023/0849, dated 30/10/2023, this complaint submitted for the procurement activity: “Supply and assembly of nursery inventory” with procurement number 208 Udheheqesi-23-1185-1-1- 1, initiated by the MINISTRY OF EDUCATION, in the capacity of the contracting authority.
2. It is allowed the contracting authority - MINISTRY OF EDUCATION to continue further with the procurement activity: “Supply and assembly of kindergarten inventory” with procurement number 208 Udheheqesi-23-1185-1-1-1, 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 fee in the amount deposited when the complaint was submitted. The complaining EO is obliged, in accordance with Article 31 point 6 of the PRB's Rules of Procedure, within sixty (60) days to make a request for the return of the complaint insurance, 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 30.10.2023 has received the complaint No. 849/23 from the complaining EO WOOD CORPORATION L.L.C. related to the procurement activity "Supply and assembly of kindergarten inventory", with procurement number 208 Udheheqesi-23-1185-1-1-1, initiated by the Ministry of Education in the capacity of the Contracting Authority.

CA on the 22.09.2023 published the Notice on the decision of the Contracting Authority, while on the 28.09.2024 it published B08 the Notice for contract award on the 04.10.2023 it published B52 - the Notice for signing the contract related to the activity described above .

Complaining EO "WOOD CORPORATION" L.L.C. submitted a request to reset the deadline dated 05.10.2023 (which was rejected by the CA, emphasizing, among other things, "that users of the electronic system must always check the inbox within the account of the electronic procurement system and during this time there was no problem/ obstacle in the operation of the system"), while the request for reconsideration was submitted on 16.10.2023.

-Evaluation and administration of evidence -

From the evidence presented, it is proven that for the procurement activity “Supply and assembly of kindergarten inventory”, with procurement number 208 Udheheqesi-23-1185-1-1-1, initiated by the Ministry of Education in the capacity of Contracting Authority on the 22.09 .2023 has published the Notice on the decision of the Contracting Authority.

The office for receiving complaints, after receiving the complaint, during the verification of 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 on 16.10.2023, outside the legal deadlines. The complaining EO was obliged, in accordance with paragraph 3.2 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 3.2 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 decision to award a contract or a design competition, within the deadline of five (5) days after the date of the contract award notice or the design contest results notice that was sent to the complainant. Likewise, Article 60.1 point b) in Regulation 001/2022 on Public Procurement determines that Whenever the request for reconsideration concerns the decision to award a contract or a design competition within the period of five (5) days after the date of publication of the announcement on the decision of the CA (B58) or the announcement on the results of the design competition in the electronic procurement system. In calculating the time limits, the day of publication of the Notice on the decision of the CA (B58) is day (0). The PRB clarifies that in accordance with Article 3, paragraph 3.17 of the Public Procurement Regulation No. 001/2022, the complaining EO has received the B58 Notice on the decision of the

Contracting Authority dated 22.09.2023 because All registered and active users of Contracting Authorities, Economic Operators or as a natural person receive messages (e-mails) sent automatically by the electronic procurement system. Messages are received in the "Inbox" within the account created in the electronic procurement system and in the user's private e-mail. KRPP is only responsible for automatic e-mails sent/received in the inbox of the user's account within the electronic procurement system. Users of the e-procurement system should always check their account inbox within the e-procurement sistem”.

Therefore, from the evidence presented above, it is established that the complaint submitted to the Procurement Review Body dated 30.10.2023 by EO "WOOD CORPORATION" L.L.C., for the procurement activity entitled "Supply and assembly of nursery inventory", with number procurement 208 Udhehekesi-23-1185-1-1-1, initiated by the Ministry of Education, 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 B58. 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. 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.

The Procurement Review Body clarifies that this decision has a procedural character, while the CA is responsible for the further development of this activity, in accordance with the provisions and legal authorizations as defined by article 1, 6, 7, 24.2 quoted: The contracting authority is responsible for ensuring that all procurement activities of such contracting authority to be executed in full compliance with this law related to article 27, 28, 59, 60 and 65 of the LPP.

Regarding the complaint's fee, it is decided in accordance with 31 point 4, of the PRB Work Regulations, the appeal 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

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 –**MINISTRY OF EDUCATION**;
1x1 EO – **WOOD CORPORATION L.L.C.**;
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.