



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

Psh. No.995/23

Based on Article 105 points 1 and 2 of the Law on Public Procurement of Kosovo 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 (EO) “Crystal Clear” Sh.P.K, related to the procurement activity “Maintenance of facilities - cleaning of facilities of KPSH and KPS” with procurement number 632-23-11804-2-1-1, initiated by the contracting authority (CA) – “Municipality of Gjakova”, President of the Procurement Review Body Vjosa Gradinaj Mexhuani, on the 13.03.2024 has issued this:

DECISION

Dismissed as not allowed, the complaint of the “Crystal Clear” Sh.P.K, with protocol no.2023/995, dated 11/12/2023, submitted for the procurement activity “Maintenance of facilities - cleaning of facilities of KPSH and KPS” with procurement number 632-23-11804-2-1-1, initiated by the contracting authority (CA) – Municipality of Gjakova.

Allowed the contracting authority - Municipality of Gjakova to continue with the procurement activity “Maintenance of facilities - cleaning of facilities of KPSH and KPS” with procurement number 632-23-11804-2-1-1, regarding with this complaint, if there is no other complaint about this procurement activity.

REASONING

- Procedural facts and circumstances -

The Procurement Review Body in the electronic e-procurement system dated 11.12.2023, has received a complaint with protocol no.995/23 from EO “Crystal Clear” Sh.P.K, for the procurement activity with title: “Maintenance of facilities - cleaning of facilities of KPSH and

KPS" with procurement number 632-23-11804-2-1-1, initiated by Municipality of Gjakova, in the capacity of the contracting authority.

On the 09.11.2023, "Municipality of Gjakova" as the Contracting Authority has published B05-Contract Notice.

On the 29.11.2023 EO "Crystal Clear" Sh.P.K submitted a request for reconsideration to the CA. Whereas on the 30.11.2023 CA rejected the request for reconsideration of the economic operator as unfounded.

The Tender dossier was published on the 22.11.2023

-Evaluation and administration of evidence -

On the 30.11.2023, the opening of the offer was foreseen. Initially, there was a Request for Reconsideration from another Economic Operator dated 22.11.2023, then the CA suspended the procurement activity, while on the 24.11.2023 the CA rejected the request for reconsideration as a matter of principle. On the 27.11.2023, the CA has postponed the deadline for bidding until 30.11.2023, but has not made any other changes in the requirements of the tender file. The complaining EO filed a complaint with the TD in which the CA published it and the deadline for complaints for reconsideration was 24.11.2023. According to the CA, it was only obliged to postpone the deadline for bidding because the activity was suspended according to the prior request. Therefore, the panel assesses that this complainant only has the goal of prolonging the procurement activity, while according to the content of the complaint, there is no complaint claim other than the citations of the articles of the LPP.

From the evidence presented, it is proven that for the procurement activity "Maintenance of facilities - cleaning of facilities of KPSH and PSC" with procurement number 632-23-11804-2-1-1, initiated by "Municipality of Gjakova", the contract notice was published in the e-procurement system on the 09.11.2023, the deadline for accepting tenders was 30.11.2023. While on the 29.11.2023 EO "Crystal Clear" Sh.P.K had made a request for reconsideration before the CA. On 30.11.2023, the Contracting Authority rejected the request for reconsideration of the economic operator as unfounded.

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 at 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).

Therefore, from the evidence presented and the course of this procurement activity, it is established that the complaint submitted to the Procurement Review Body on 11/12/2023 by EO "Crystal Clear" Sh.P.K. for the procurement activity entitled: "Maintenance of facilities - cleaning of the facilities of the KPSH and the PSC" with procurement number 632-23-11804-2-1-1 initiated by the "Municipality of Gjakova", is dismissed as not permitted because the complainant did not submit the request for reconsideration within the deadlines legal 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 at the PRB.

In conclusion, this complaint is in violation of Article 108/A of the Law on Public Procurement, and Article 60 of Regulation 001/2022 on Public Procurement, and as such is dismissed as not allowed and was not considered by the PRB. Also, the office for receiving complaints has found that the complainant did not present proof of payment of the fee when submitting the complaint to the PRB in accordance with Article 111 of the LPP.

The contracting authority - Municipality of Gjakova can continue with the procurement activity "Maintenance of facilities - cleaning of facilities of KPSH and PSC" with procurement number 632-23-11804-2-1-1, regarding this complaint, if there is no other complaint about this procurement activity. 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 TD 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.

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 – **MUNICIPALITY OF GJAKOVA;**

1x1 EO – **CRYSTAL CLEAR SH.P.K;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.