



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

Psh. No.777/23

Pursuant to the article 105 point 1 and 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 considering the complaint of the Economic Operator (EO) N.T.P. “LULISHTJA BUÇA”, regarding the procurement activity: “Supply and Maintenance of the Toy Park in the Ulpiana Neighborhood”, with procurement no: 616-23-6462-2-1-1, initiated by the ASSEMBLY OF THE MUNICIPALITY OF PRISHTINA in the capacity of the Contracting Authority, the President of the Procurement Review Body Vjosa Gradinaj Mexhuani on the: 18/10/2023 has issued this:

DECISION

It is rejected as not allowed(early) the complaint of the EO N.T.P. “LULISHTJA BUÇAJ”, with protocol no. 777/2023 of the 10/10/2023, filed for the procurement activity: “Supply and Maintenance of the Toy Park in the Ulpiana Neighborhood”, with procurement no: 616-23-6462-2-1-1, initiated by the ASSEMBLY OF THE MUNICIPALITY OF PRISHTINA in the capacity of the Contracting Authority (CA).

It is allowed the ASSEMBLY OF THE MUNICIPALITY OF PRISHTINA - (CA) to continue with the procurement activity “Supply and Maintenance of the Toy Park in the Ulpiana Neighborhood”, with procurement no: 616-23-6462-2-1-1, in relation to 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, 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 dated 10.10.2023 has received the complaint with Protocol No. 777/23 from EO N.T.P. “LULISHTJA BUÇAJ”, regarding the procurement activity: “Supply and Maintenance of the Toy Park in the Ulpiana Neighborhood”, with procurement no: 616-23-6462-2-1-1, initiated by the ASSEMBLY OF THE MUNICIPALITY OF PRISHTINA in the capacity of the Contracting Authority.

On the 22.06.2023, the Assembly of the Municipality of Prishtina has published Contract Notice related to the aforementioned activity. While on the 20.09.2023, published the Notice on the CA's decision.

On the 04.10.2023, EO N.T.P. “LULISHTJA BUÇAJ” had submitted a request for reconsideration to the CA. Whereas on the 12.10.2023 the CA has dismissed as not allowed the request for reconsideration of the economic operator.

- Evaluation and administration of evidence –

From the evidence presented, it is confirmed that for the procurement activity “Supply and Maintenance of the Toy Park in the Ulpiana Neighborhood”, with procurement no: 616-23-6462-2-1-1, initiated by the ASSEMBLY OF THE MUNICIPALITY OF PRISHTINA, it is established that the contract notice was published in the e-procurement system on the 22.06.2023, while on the 20.09.2023 published the Notice on the decision of the CA. But that another economic operator (Selman Networks) submitted a request for reconsideration on the 25.09.2023, in which case the CA partially approved the request for reconsideration and turned the procurement activity into a reassessment. The decision by the CA has not yet been published, the complaining EO N.T.P. “LULISHTJA BUÇAJ” on the 04.10.2023 had submitted a request for reconsideration to the CA, which on the 12.10.2023 was rejected by the CA, on the grounds that after returning to the reassessment, the procurement activity has not been completed, respectively, it has not been published the final result of this procurement activity

PRB clarifies that the Complaining EO was obliged, in accordance with Article 108/A of the LPP, after accepting the decision by the Contracting Authority, 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 file a complaint with the PRB. Article 108/A paragraph 1 of the LPP determines that: *Any interested party who considers that his/her rights, as provided by this law, have been violated by the decision of a contracting authority during the performance of a procurement activity and who has been harmed or is at risk of being harmed by an alleged violation, may submit a request for reconsideration to that contracting authority. Requests for reconsideration may be related to contract notices, tender documents, or other notices and decisions as defined in this law, during the performance of the relevant procurement activity.* While article 109 of the LPP determines that: *Against any decision taken by the contracting authority in accordance with the circumstances of Article 108/A, any interested party may submit a complaint to the PRB. The complaint must be submitted only after conducting a preliminary procedure for resolving the*

dispute in accordance with Article 108/A of this law in relation to Article 59 of Regulation 001/2022 on Public Procurement, therefore, as such, it is dismissed as not permitted in the sense of being premature (early) and was not considered by PRB.

ASSEMBLY OF THE MUNICIPALITY OF PRISHTINA - CA, can continue with the procurement activity in the re-evaluation phase for the activity “Supply and Maintenance of the Toy Park in the Ulpiana Neighborhood”, however the PRB informs that in every activity CA must act in accordance with the provisions and legal authorizations as defined by article 1, 6, 7, 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 Rules of Procedure of the PRB, the appeal fee is returned to the complaining economic operator in the amount deposited when the appeal is submitted. The complaining EO is obliged, in accordance with article 31 point 6 of the PRB's Rules of Procedure, within a period of sixty (60) days to make a request for the return of the insurance of the complaint, otherwise the deposit will be confiscated, and these funds will exceed 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 – **ASSEMBLY OF THE MUNICIPALITY OF PRISHTINA;**

1x1 EO – **N.T.P. LULISHTJA BUÇAJ**”;

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.