



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

Psh. No.985/23

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 Economic Operator ALTINN SH.P.K, related to the procurement activity with title: “Supply of tools (Subsidies with tools for the establishment and development of businesses)” with procurement number 615-23-6917-1-1-1, initiated by the Municipality of Podujeva, in the capacity of the contracting authority, the President of the Procurement Review Body Vjosa Gradinaj Mexhuani, on the 15/12/2023 has issued this:

DECISION

1. Dismissed as not allowed as premature, the complaint of EO “ALTINN SH.P.K.” with protocol no.985/2023, of the 06/12/2023, complaint filed for the procurement activity: “Supply of tools (Subsidies with tools for the establishment and development of businesses)” with procurement number 615-23-6917-1-1-1, initiated by the Contracting authority - Municipality of Podujeva.
2. It is allowed the contracting authority - MUNICIPALITY OF PODUJEVA to continue with the procurement activity: “Supply of tools (Subsidies with tools for the establishment and development of businesses)” with procurement number 615-23-6917-1-1-1, 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 06.12.2023 has received the complaint no. 985/23 from ALTINN SH.P.K regarding the procurement activity: “Supply of tools (Subsidies with tools for the establishment and development of businesses)” with

procurement number 615-23-6917-1-1-1, initiated by the Municipality of Podujeva, in the capacity of the contracting authority.

The Municipality of Podujeva, regarding the aforementioned activity, on the 10.07.2023 published B05 - Contract Notice, while on the 01.12.2023 it published B58 Notice on the decision of the Contracting Authority, where it awarded with a contract Arsimi sh.p.k.

The complaining EO submitted a request for reconsideration of the CA's decision on the 05.12.2023 at 09:28. While the Contracting Authority on the 08.12.2023 has rejected as unfounded the request for reconsideration of the complaining EO.

- Administration and evaluation of evidence -

The evidence presented proves that for the procurement activity “Supply of work tools (Subsidies with work tools for the establishment and development of businesses)”, with procurement number 615-23-6917-1-1-1, Municipality of Podujeva, in the quality of the Contracting Authority dated 10.07.2023 has published B05 - Contract Notice, dated 01.12.2023 CA has published B58. Complainant EO ALTINN SH.P.K has submitted a request for reconsideration of the CA's decision on the 05.12.2023 at 09:28. On the 06.12.2023 he submitted a complaint to the PRB, while on the 08.12.2023 the Contracting Authority rejected the request for reconsideration of the complaining EO ALTINN SH.P.K.

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 for the said complaint, still without waiting for the CA's decision about the request for reconsideration, addressed to the PRB. On the 06.12.2023 he submitted a complaint to the PRB, while on the 08.12.2023 the Contracting Authority rejected the request for reconsideration of the complaining EO ALTINN SH.P.K.

The PRB clarifies that the complaining EO was initially obliged to submit the request for reconsideration within the legal deadlines and in accordance with the legal provisions, further after conducting a preliminary procedure for resolving the dispute at the CA, the complaint 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 the LPP, in the PRB.

Article 109 of the Law on Public Procurement states 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 leading a preliminary procedure for resolving the dispute in accordance with Article 108/A of this law*”. Likewise, Article 64.1 of Regulation No. 001/2022 on Public Procurement defines: *“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 issued decision by the contracting authority in the preliminary dispute resolution procedure in accordance with Article 108/A of the LPP”*.

According to the legal office, it is established that the complaint submitted to the Procurement Review Body dated 05.12.2023 by EO ALTINN SH.P.K for the procurement activity with title

“Supply of work tools (Subsidies with work tools for the establishment and development of businesses)”, with procurement number 615-23-6917-1-1-1, initiated by the Municipality of Podujeva, is dismissed as not permitted as premature because the complainant has not submitted the complaint to the PRB according to the aforementioned provisions. 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 and 109 of the Law on Public Procurement, and Article 64 of Regulation 001/2022 on Public Procurement, and as such it is dismissed as not allowed and was not considered by the PRB.

The contracting authority - MUNICIPALITY OF PODUJEVA is allowed to continue with the procurement activity "Supply of work tools (Subsidies with work tools for the establishment and development of businesses)", with procurement number 615-23-6917-1-1 -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 its 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 51 (Notification of Selection Criteria) of the LPP according to which all selection criteria must be limited to the criteria necessary to ensure that only economic operators possessing the necessary professional, financial and technical skills to fulfill the conditions of the relevant contract will be considered qualified to receive a contract such or for receiving the 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, 69 of the LPP.

The PRB clarifies that the same complainant, i.e. OE ALTINN SH.P.K, for the procurement activity entitled "Supply of work tools (Subsidies with work tools for the establishment and development of businesses)", with procurement number 615-23-6917-1-1 -1, submitted a complaint to PRB dated 05.12.2023 with protocol number No. 981/23, which was deemed as an unauthorized complaint, and the funds that he deposited at the time of filing the complaint were returned to him PRB. But the complainant ALTINN SH.P.K repeatedly filed a complaint with protocol number No. 985/23, presenting the proof of the same payment, that is, the same proof of payment for both complaints with protocol number 981/23 and 985/23. And this payment fee has been returned through decision No. 981/23 dated 12.12.2023.

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 PODUJEVA;**

1x1 EO – **ALTINN SH.P.K;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.