



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

Psh. No.713/23

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 reviewing the complaint of the Economic Operator “TIC LOG SH.P.K., regarding with the procurement activity: “Supply of sports equipment-retender”, with procurement no: 214-23-7134-1-1-1, initiated by the Contracting authority – Kosova Police, President of the Procurement Review Body Vjosa Gradinaj, on the 28/09/2023 has issued this:

DECISION

It is rejected as not allowed the complaint to the economic operator EO “TIC LOG” SH.P.K., with protocol no.713/2023 of the 20/09/2023, complaint filed for the procurement activity: “Supply of sports equipment-retender”, with procurement no: 214-23-7134-1-1-1, initiated by the Contracting authority – Kosova Police.

It is allowed the Contracting Authority - Kosova Police, to continue with the procurement activity: “Supply of sports equipment-retender”, with procurement no: 214-23-7134-1-1-1, regarding this complaint, if there are no other complaints 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 -

The Procurement Review Body in the electronic system dated 20.09.2023 has received the complaint no. 713/23 from EO "TIC LOG" SH.P.K., related to the procurement activity with title: "Supply of sports equipment-retender", with procurement no: 214-23-7134-1-1-1, initiated by the Kosova Police in the capacity of the Contracting authority.

On the 12.07.2023, the Kosova Police has published B05-Contract Notice related to the aforementioned activity. According to this announcement, the deadline for accepting tenders is 25.08.2023.

On the 16.09.2023 EO "TIC LOG" SH.P.K submitted a request for reconsideration to the CA. Whereas on the 18.09.2023 the CA rejected the request for reconsideration of the economic operator as inappropriate and in the contrary to Article 108A of the LPP and Article 60 of the Regulation on Public Procurement.

- Evaluation and administration of evidence -

The evidence presented proves that for the procurement activity: "Supply of sports equipment-retender", with procurement no: 214-23-7134-1-1-1, initiated by the Kosova Police, the contract notice was published in the e-procurement system on 12.07.2023, the deadline for accepting tenders was 25.08.2023. While on 16.09.2023 EO "TIC LOG SH.P.K" had submitted a request for reconsideration to the CA. The Contracting Authority on 18.09.2023 CA rejected the request for reconsideration of the economic operator as ineligible.

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.* Also, 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).*

It is established that the complaint submitted to the Procurement Review Body dated 20.09.2023 by EO "TIC LOG" SH.P.K , for the procurement activity with title: "Supply of sports equipment-retender", with procurement no: 214-23-7134-1-1-1, initiated by the Contracting authority - Kosova Police, is dismissed as not allowed because the complainant did not submit the request for reconsideration within the legal deadlines 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 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.

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 I 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.

Since the submitted complaint is dismissed as not allowed, not being examined in accordance with Article 31 point 4, of the PRB's Rules of Procedure, to the complaining economic operator is returned the complaint's fee in the amount deposited when the complaint was filed. 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 Kosovo.

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 – Kosova Police;

1x1 EO – “TIC LOG” SH.P.K;

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.