



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

Psh. No.1062/23

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 “AMBIENTI” SH.P.K., against the contract notice related to the procurement activity “CLEANING AND HYGIENIC MAINTENANCE OF THE FACILITIES OF THE MUNICIPALITY OF RAHOVEC” with procurement number 623-23-12928-2-1-1, initiated by the contracting authority (CA) - MUNICIPAL ASSEMBLY - RAHOVEC”, the President of the Procurement Review Body Vjosa Gradinaj Mexhuani, on the 04/01/2024 has issued this:

DECISION

1. Dismissed as not allowed, the complaint of EO “AMBIENTI” SH.P.K, with protocol no.1062/2023, of the 29/12/2023, complaint filed for the procurement activity: “CLEANING AND HYGIENIC MAINTENANCE OF THE FACILITIES OF THE MUNICIPALITY OF RAHOVEC” with procurement number 623-23-12928-2-1-1, initiated by the contracting authority (CA) – Municipal Assembly of Rahovec.

2. It is allowed the contracting authority - Municipal Assembly of Rahovec, to continue with the procurement activity: “CLEANING AND HYGIENIC MAINTENANCE OF THE FACILITIES OF THE MUNICIPALITY OF RAHOVEC” with procurement number 623-23-12928-2-1-1, 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 29.12.2023 has received the complaint no. 1062/23 from "AMBIENTI" SH.P.K, regarding the procurement activity entitled: "CLEANING AND HYGIENIC MAINTENANCE OF THE OBJECTS OF THE

MUNICIPALITY OF RAHOVEC". with procurement number 623-23-12928-2-1-1, initiated by the Municipal Assembly Rahovec in the capacity of Contracting Authority.

On the 29.11.2023, the Municipal Assembly Rahovec has published B05-Contract Notice related to the aforementioned activity. According to this announcement, the deadline for accepting tenders is 14.12.2023. While on the 20.12.2023 B54 published the standard form for correcting errors in published notices, according to this form the deadline for accepting tenders is 29.12.2023.

Dated 22.12.2023 (Friday) at 20:36 EO "AMBIENTI" SH.P.K had made a request for reconsideration at the CA, while on the 26.12.2023 the CA rejected the request for reconsideration of the economic operator as ineligible.

- Administration and evaluation of evidence -

The evidence presented proves that for the procurement activity "CLEANING AND HYGIENIC MAINTENANCE OF OBJECTS OF THE MUNICIPALITY OF RAHOVEC", with procurement number 623-23-12928-2-1-1, initiated by the Municipal Assembly - Rahovec in the capacity of Contracting Authority the contract notice was published in the e-procurement system on the 29.11.2023, while on the 20.12.2023 the CA published the B54 standard form for correcting errors in published notices, according to this form the deadline for accepting tenders is 29.12. 2023. OE " AMBIENTI " SH.P.K. had submitted a request for reconsideration to the CA on 22.12.2023 (Friday) at 20:36 and it is considered to have been accepted by the Contracting Authority on the 26.12.2023 (ie on the first following working day) which also has been rejected as out of date.

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 submitted the request for reconsideration to the Contracting Authority outside the legal deadlines and did not provide proof of payment as required by point 10 paragraph 1 of article 111 of the LPP.

The complaining EO 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 conducting the preliminary procedures in the CA, the economic operator in accordance with Article 109 of The LPP will be able to complaint to 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).

As well as Article 5 of the LPP determines that: The time limits of this law must start on a working day and end on a working day. The time limit runs until 16:00 on the day of expiry. The contracting authority may decide to set another time provided that it is no earlier than 12:00 on the day of expiry.

Based also on the interpretation of the PPRC dated 07.11.2023 and the aforementioned provisions, PRB emphasizes that according to the Contract Notice, the deadline for accepting tenders was 29.12.2023, therefore the complaining EO "AMBIENTI" SH.P.K., has was obliged to submit a request for reconsideration within the legal deadlines.

It is established that the complaint submitted to the Procurement Review Body dated 29.12.2023 by EO "AMBIENTI" SH.P.K., for the procurement activity entitled: "CLEANING AND HYGIENIC MAINTENANCE OF OBJECTS OF THE MUNICIPALITY OF RAHOVEC", with procurement number 623- 23-12928-2-1-1, initiated by the Municipal Assembly - Rahovec in the capacity of the Contracting Authority, 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. 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, 109 and 111 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 considered by PRB.

The contracting authority - Municipal Assembly - Rahovec is allowed to continue with the procurement activity "CLEANING AND HYGIENIC MAINTENANCE OF OBJECTS OF THE MUNICIPALITY OF RAHOVEC", with procurement number 623-23-12928-2-1-1, regarding this complaint, if there is no other complaint about this procurement activity.

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 – **MUNICIPAL ASSEMBLY - RAHOVEC;**

1x1 EO – **AMBIENTI " SH.P.K.;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.