



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

Psh. No.42/24

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 “Pro Tech Clean” SH.P.K, related to the procurement activity “Cleaning and maintenance of the facility inside and outside of the Public University Kadri Zeka Gjilan” with procurement number 941-23-13776-2-1-1, initiated by the contracting authority (CA) – “Public University Kadri Zeka, the President of the Procurement Review Body Vjosa Gradinaj Mexhuani, on the 15/01/2024 has issued this:

DECISION

Dismissed as not allowed, the complaint of EO “Pro Tech Clean” SH.P.K, with protocol no.42/2024, of the 12/01/2024, complaint filed for the procurement activity: “Cleaning and maintenance of the facility inside and outside of the Public University Kadri Zeka Gjilan” with procurement number 941-23-13776-2-1-1, initiated by the contracting authority (CA) – “Public University Kadri Zeka.

It is allowed the contracting authority - Public University Kadri Zeka to continue with the procurement activity: “Cleaning and maintenance of the facility inside and outside of the Public University Kadri Zeka Gjilan” with procurement number 941-23-13776-2-1-1, regarding 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 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 12.01.2024 has received the complaint, regarding the procurement activity: "Cleaning and maintenance of the facility inside and outside of the Public University Kadri Zeka Gjilan" with procurement number 941-23-13776-2-1-1, initiated by the Public University Kadri Zeka in the capacity of the contracting authority.

On the 11.12.2023, "Kadri Zeka Public University", in the capacity of the Contracting Authority, published B05-Contract Notice, where according to this notice, the deadline for the submission of offers was: 01.04.2024 at 14:00.

EO "Pro Tech Clean" Sh.P.K. on the 29.12.2023 at 4:17 p.m., the EO had submitted a request for reconsideration to the CA. Whereas on the 03.01.2024 the CA rejected the request for reconsideration of the economic operator.

- Administration and evaluation of evidence - The evidence presented proves that for the procurement activity "Cleaning and maintenance of the facility inside and outside of Kadri Zeka Public University Gjilan" with procurement number 941-23-13776-2-1-1, initiated by "Kadri Zeka Public University", the contract notice was published in the e-procurement system on 11.12.2023, the deadline for accepting tenders was 04.01.2024. While on 29.12.2023 EO "Pro Tech Clean" SH.P.K. had made a request for reconsideration at the CA. On the 03.01.2024, the Contracting Authority rejected the request for reconsideration of the economic operator.

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 with 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 12/01/2024 by EO "Pro Tech Clean" SH.P.K., for the procurement activity entitled: "Cleaning and maintenance of the facility inside and outside of Kadri Zeka Gjilan Public University" with procurement number 941-23-13776-2-1-1, initiated by "Public University Kadri Zeka" Also referring to the interpretation of the KRPP dated 07.11.2023 -630/2023, which interpretation clarifies the legal deadlines for appeal. The Legal Office finds that this complaint 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 with the PRB. In conclusion, this complaint is in violation of Article 108/A, 109 and 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 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 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 contracting authority - "Kadri Zeka Public University" can continue with the procurement activity "Cleaning and maintenance of the facility inside and outside Kadri Zeka Public University Gjilan" with procurement number 941-23-13776-2-1-1 , regarding this complaint, if there is no other complaint about this procurement activity. The Procurement Review Body informs that in every CA activity 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.

Since the submitted complaint is dismissed as unauthorized by not being examined in accordance with Article 31 point 4 of the PRB Work Regulations, the complaining economic operator is returned the complaint 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 – **Public University Kadri Zeka;**

1x1 EO – **Pro Tech Clean SH.P.K;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.