



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

Psh. No.324/23

Pursuant to the article 105 point 1 and 2 as well article 109 point 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 “JIHUA 3502 CAREER APPAREL LTD”, against the contract notice related to the procurement activity: “Supply of uniforms for tactical duties”, with procurement no: 214-23-2841-1-1-1, initiated by the Contracting authority – Kosova Police, the President of the Procurement Review Body Vjosa Gradinaj Mexhuani on the 20/06/2023 has issued this:

DECISION

Rejected as not allowed, the complaint of “JIHUA 3502 CAREER APPAREL LTD”, with protocol no.2023/0324 of the 30/05/2023, regarding with the procurement activity: “Supply of uniforms for tactical duties”, with procurement no: 214-23-2841-1-1-1, initiated by the Contracting authority – Kosova Police.

It is allowed the Contracting authority- Kosova Police to continue further with the procurement activity: “Supply of uniforms for tactical duties”, with procurement no: 214-23-2841-1-1-1, 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 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-

On the 30.05.2023, the Procurement Review Body in the electronic system accepted the complaint with Protocol no.324/23 from EO “JIHUA 3502 CAREER APPAREL LTD”. The complaint is related to the procurement activity entitled: “Supply of uniforms for tactical duties”, with procurement no: 214-23-2841-1-1-1, initiated by the Contracting authority – Kosova Police.

CA – Kosova Police, has published the Contract Notice regarding the activity cited above, dated 28.03.2023.

On the 22.05.2023, the Contracting Authority published the B54 Standard Form for correcting errors in the notices published according to this form, the deadline for accepting tenders was 02.06.2023.

On the 29.05.2023 EO “JIHUA 3502 CAREER APPAREL LTD” submitted a request for reconsideration to the CA. Whereas on the 31.05.2023 the CA rejected the request for reconsideration of the economic operator as inadmissible on the grounds that the deadline for the submission of tenders was 02.06.2023, while the request for reconsideration by the complaining economic operator was submitted from 29.05.2023 after 16:00, although the deadline for submitting the request for reconsideration is 29.05.2023 at 16:00.

-Administration and Evaluation of Evidence -

From the evidence presented proves that for the procurement activity “Supply of uniforms for tactical duties”, with procurement no: 214-23-2841-1-1-1, initiated by the Contracting authority – Kosova Police, it is established that according to the contract notice published in the e-procurement system dated 28.03.2023, the deadline for accepting tenders was 02.06.2023. While on the 29.05.2023 at 16:23 EO “JIHUA 3502 CAREER APPAREL LTD” had made a request for reconsideration to the CA. On the 31.05.2023, the Contracting Authority rejected as impermissible the request for reconsideration of the complaining 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 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.

Likewise, article 60.1 point a) in Regulation 001/2022 on Public Procurement stipulates 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 on the 30.05.2023 by EO "JIHUA 3502 CAREER APPAREL LTD" for the procurement activity entitled: "Supply of uniforms for tactical tasks", with procurement number 214-23-2841-1 -1-1, initiated by the contracting authority (CA) - 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 informs the CA that in every activity must act in accordance with the legal provisions and authorizations as provided for in Article 1, 6, 7, 27, 28, 59, 60, 65 of the LPP.

Regarding the complaint's fee based on the email dated 07.06.2023 from ALL MAKES GLOBAL SERVICES through which it was confirmed that for this procurement activity the consortium company NPSH ALLMAKES GLOBAL SERVICES and JIHUA 3502 CAREER APPAREL LTD are in a consortium agreement, as well as based on the attached authorization is confirmed by the company JIHUA 3502 CAREER APPAREL LTD, where it declares that AGS is the legal representative for Kosovo, therefore it is decided in accordance with Article 31 point 4, of the PRB's Work Regulations, that the complaint's fee is returned to the complaining economic operator in the amount deposited when the appeal is 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 Kosovo.

The President of PRB, based on what was said above, decided as in the provision of this decision.

President of the PRB

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 – “JIHUA 3502 CAREER APPAREL LTD”;
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.