



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

Psh. No.1041/23

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 “Internat Security Association” SH.P.K, against the Decision on contract award related to the procurement activity “Physical security of KEK facilities” with procurement number KEK-23-4552-2-1-1, initiated by the contracting authority (CA) – “Kosova Energy Corporation”, the President of the Procurement Review Body Vjosa Gradinaj Mexhuani, on the 04/01/2024 has issued this:

DECISION

Dismissed as not allowed, the complaint of EO “Internat Security Association” SH.P.K, with protocol no.1041/2023, of the 22/12/2023, complaint filed for the procurement activity: “Physical security of KEK facilities” with procurement number KEK-23-4552-2-1-1, initiated by the contracting authority (CA) – “Kosova Energy Corporation”, this complaint cannot be reviewed, since the economic operator is considered a party without material legal interest in accordance with article 4 paragraph 1.26 of the LPP.

It is allowed the contracting authority - Kosova Energy Corporation, to continue with the procurement activity: “Physical security of KEK facilities” with procurement number KEK-23-4552-2-1-1, 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’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 19.05.2023, “Kosova Energy Corporation” sh.a, has published B05- Contract Notice related to the procurement activity: "Physical security of KEK facilities", with procurement number KEK-23-4552 -2-1-1.

On the 07.12.2023 CA published B58 Notice on the decision of the Contracting Authority, where according to this notice EO Defense Security shpk; international security AAH shpk, has been recommended for contract award.

EO "Internat Security Association "SH.P.K. on the 12.12.2023 submitted a request for reconsideration against the decision of the CA dated 07.12.2023, while the CA on the 14.12.2023 rejected the request for reconsideration of the complaining EO.

The Procurement Review Body in the electronic system dated 22.12.2023 has accepted the complaint with No. protocol 1041/23 from the economic operator “Internat Security Association” SH.P.K., related to the procurement activity entitled: “Physical security of KEK facilities”, with procurement number KEK-23-4552-2-1-1 , initiated by “Kosova Energy Corporation” sh.a, sh.a, in the capacity of the Contracting Authority.

- Administration and evaluation of evidence -

From the evidence presented, for the procurement activity “Physical security of KEK facilities” with procurement number KEK-23-4552-2-1-1, initiated by “Kosova Energy Corporation” sh.a, it is concluded that the decision for the contract was published in the e-procurement system on 07.12.2023. The economic operator with the data mentioned above, as a dissatisfied party with the CA's decision, has submitted a complaint to the PRB (Protocol 1041/23).

The Procurement Review Body, after examining and completing all the evidence and documents of the case, finds that for this procurement activity PRB has published on the 16.11.2023 decision no. 2023/593-597-594, by which EO “Internat Security Association” SH.P.K., has been deemed as irresponsible regarding the procurement activity described above and therefore eliminated from participation.

PRB after reviewing and analyzing all the documentation of the complaint and the procurement procedure in the context of the explanations as above, and especially paying due attention to the nature and purpose of the complaining claims, the parties in the procedure found that the complainant is qualified as a party without material legal interest, where, among other things, article 103 of the LPP is implemented, according to which, “The provisions of this part determine the basic and procedural rights and legal remedies available to interested parties as this term is defined ("interested party ") in Article 4 (of this law)". The meaning of this provision clearly proves the opinion of PRB, legal remedies can be initiated only by the interested parties, referring in this case to the definition given in Article 4 of the LPP.

Therefore, based on the meaning of Article 4, of the LPP, in relation to Article 103 and 111, of this Law, the Review Panel considers that its submitter cannot be considered an interested party and that there is no need to issue a merit assessment of the specific assertions of to this Complaint, because the same are irrelevant in the sense of Article 111 of the LPP and for this legal issue the decision of the PRB was given, with no. 2023/593-597-594 dated 16.11.2023, with which decision the procurement activity in question has been reassessed, while EO "Internat Security Association" SH.P.K. has been evaluated as irresponsible and has therefore been eliminated from the procurement activity.

After the assessment and administration of all the evidence regarding this procurement procedure, the PRB considers that the complaint of the complaining EO received at the PRB on the 22.12.2023 is inadmissible because the same is a judged case “Res Judicata” and for the same already a decision has been made.

From all the clarifications mentioned above, the PRB rejects the complaint submitted on 22.12.2023 with no. protocol 1041/23 from the economic operator "Internat Security Association" SH.P.K., because the complaint for this procurement procedure is considered a judged case according to paragraph 2.16 of article 105 of the Law on Public Procurement, which states: "In repeated cases with claims the same appeal, when the object of the dispute and the parties are the same, for cases that have been examined before, the chairman of the review panel must treat it as a "res judicata" case, and in accordance with Article 4, 1. 26 of the law, Complainant EO "Internat Security Association" SH.P.K. with the trade name is considered as a party without legal interest because by decision 2023/593-597-594, the same is considered irresponsible, therefore the Complainant cannot prove that he has the status of the interested party according to provision 4, 1.26 of the LPP.

The contracting authority – “Kosova Energy Corporation” sh.a. can continue with the procurement activity (described above) if there is no other complaint about this activity. The Procurement Review Body informs that in every activity CA must act in accordance with the provisions and legal authorizations as defined by article 1, 6, 7, 27, 28, 59, 60, 65 of the LPP.

Given that the complaining EO paid a fee when submitting the complaint, the same, in accordance with article 31, par 4 of the PRB Work Regulations, is returned to the complaining EO. The same is obliged to submit the request for the return of funds within sixty (60) days according to article 31 par 6 of the regulation cited above.

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 ENERGY CORPORATION sh.a.;**

1x1 EO – **Internat Security Association"SH.P.K.;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.