DRAFT REGULATION NO. .../2016
OF THE WORK OF PUBLIC PROCUREMENT REVIEW BODY OF KOSOVA
## Contents

<table>
<thead>
<tr>
<th>Article</th>
<th>(Brief)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>(The purpose of the Rules of Procedure)</td>
</tr>
<tr>
<td>2</td>
<td>(Terms of the Rules of Procedure)</td>
</tr>
<tr>
<td>3</td>
<td>(Procurement Review Body)</td>
</tr>
<tr>
<td>4</td>
<td>(Official Language)</td>
</tr>
<tr>
<td>5</td>
<td>(Principles)</td>
</tr>
<tr>
<td>6</td>
<td>(Transparency of the work)</td>
</tr>
<tr>
<td>7</td>
<td>(Preservation of secrets)</td>
</tr>
<tr>
<td>8</td>
<td>(External Contacts and Cooperation)</td>
</tr>
<tr>
<td>9</td>
<td>(The jurisdiction of PRB)</td>
</tr>
<tr>
<td>10</td>
<td>(Structure of the PRB)</td>
</tr>
<tr>
<td>11</td>
<td>(Conflicts of Interest)</td>
</tr>
<tr>
<td>12</td>
<td>(General Principles for Review Panels)</td>
</tr>
<tr>
<td>13</td>
<td>(Submission of the complaints)</td>
</tr>
<tr>
<td>14</td>
<td>(Contents of the complaint)</td>
</tr>
<tr>
<td>15</td>
<td>(Registration of the Complaints)</td>
</tr>
<tr>
<td>16</td>
<td>(Unified Cases)</td>
</tr>
<tr>
<td>17</td>
<td>(Preliminary review of the Complaint and Assignment of the Review Expert)</td>
</tr>
<tr>
<td>18</td>
<td>(Suspension or Revocation of suspension)</td>
</tr>
<tr>
<td>19</td>
<td>(Report of the PRB Review Expert)</td>
</tr>
<tr>
<td>20</td>
<td>(Procedures and competences of the contracting authority in relation with the complaint)</td>
</tr>
<tr>
<td>21</td>
<td>(Setting up of Review Panels - RPs)</td>
</tr>
<tr>
<td>22</td>
<td>(Composition of the Review Panel)</td>
</tr>
<tr>
<td>23</td>
<td>(Extraction of Order Inquiry by Review Panels)</td>
</tr>
</tbody>
</table>
Article 24.  (Extraction of the Settlement Order and Decisions of Review Panels)  ................. 15

Article 25.  (Obtaining additional information or evidence) .................................................. 16

Article 26.  (Procedure of open Hearing session) ............................................................. 16

Article 27.  (Review Experts and Independent Advisors) ................................................... 17

Article 28.  (Panel discussions and minutes) ................................................................. 17

Article 29.  (Restrictions on the decisions of the PRB) ...................................................... 17

Article 30.  (Withdrawal of the Complaints) ................................................................. 18

Article 31.  (Contents of the Decisions) ............................................................................. 18

Article 32.  (Compensation of Damages to procedural costs) ............................................ 19

Article 33.  (Order for compensation - calculation of damages) ....................................... 19

Article 34.  (Return of the fee of the complaint after evaluation of the complaint) .......... 19

Article 35.  (Preliminary value and sustainability of decisions) ........................................... 20

Article 36.  (Ordinance which includes non-validity of the contract) ............................... 21

Article 37.  (Disqualification of economic operators) ........................................................ 21

Article 38.  (Implementation of the decisions of the PRB) ................................................ 22

Article 39.  (Official Seal of PRB) .................................................................................. 22

Article 40.  (Policies on access to documents)) ................................................................. 22

Article 41.  (Reporting to Parliament) ............................................................................... 22

Article 42.  (Transition and final provisions) ..................................................................... 23

Annex I: PRB’s Organisational Structure ............................................................................. 24

Annex II: PRB’s Core Functions ......................................................................................... 25
Under Article 142 (Chapter XII) of the Constitution of the Republic of Kosova and parts VIII and IX of the Law on Public Procurement (no.04/L-042 of the Republic of Kosovo, amended and supplemented with the law No. 04/L-237, law No. 05/L-068 and law No.05/L-092), (hereinafter: PPL), Board of the Procurement Review Body in the meeting held on the ............, has approved:

RULES OF PROCEDURE OF THE PROCUREMENT REVIEW BODY

PART I GENERAL PROVISIONS

Article 1. (The purpose of the Rules of Procedure)

(1) The object of this regulation is to establish detailed rules on the procedure for reviewing complaints in relation to the rules of the public procurement procedure, the method of work of the Public Procurement Review Body and decision-making in cases which are subject to treatment and competence of the PRB, and other issues important for the operation and performance of PRB.

The regulation also provides specific instructions for the implementation of certain functions of the PRB. In this sense, they serve as an internal guide for all employees of the PRB, enhancing the understanding of each employee about his or her responsibilities towards the organisation and the general public.

Issues related to the work of the PRB, which are not governed by this regulation, can be regulated by a special decision of the Board of PRB, relying on this regulation and PPL.

(2) Acronym for the Procurement Review Body will be PRB.

Article 2. (Terms of the Rules of Procedure)

In understanding this regulation:

1) “Party” is any person who in cases handled by PRB is presented in the quality of the CA, bidders, interested person, legal representative or authorized by them.

2) "conflict of interest" is a situation where the President or members of the PRB, have private interests which could affect decision-making in cases that are subject to treatment in the PRB, and could jeopardize the public interest and the work of the PRB.

3) "case" is the legal issue on which the Review Panel decides within its powers in conformity with the PPL.

4) "The Review Panel" established in accordance with current procedural regulations of the PRB and with Part IX of PPL.

5) “PRB Review Expert” is the review expert, employee of PRB employed in the the Divison for Complaints’ Review of PRB.

6) "PPL" Public Procurement Law of the Republic of Kosovo.
In accordance with the principle of gender equality, all definitions used in male grammatical form, will be used as neutral for men and women.

Article 3. (Procurement Review Body)

(1) PRB is an independent administrative body for review, which is responsible for the exercise and performance of the authorities, powers, functions and responsibilities specified in the provisions of the Public Procurement Law.

(2) PRB’s headquarters is in Prishtina.

(3) PRB is a public authority and an independent budget organization, an independent budget user. PRB is subject to all laws and regulations of the Republic of Kosova to the same extent as any other budget users.

(4) The Head of the Secretariat of PRB and its staff are civil servants. This does not apply to members of the Board or independent consultants.

Article 4. (Official Language)

(1) The official languages of PRB are Albanian and Serbian language.

(2) Parties of the review procedure, will need to present in certified translation in Albanian or Serbian any documents issued in foreign languages, which they consider to be important for the decision making in a particular case for PRB.

Article 5. (Principles)

During the exercise of reviewing the complaints, PRB is guided by the following principles:

a) Legality;

b) Equality and non-discrimination;

c) Independence and impartiality in decision making;

d) Transparency and public information;

e) Protection of personal data, commercial or state secrets;

f) Prevention of conflicts of interest;

g) Prevention of corruption;

h) Preservation of value for money;

i) Protection of the public interest.

Article 6. (Transparency of the work)

(1) The President should ensure transparency of the work of the PRB. PRB shall inform the public about its work and findings through public presentation of the annual report and through media conferences.

(2) The President of PRB (or person authorized by him) as well as individual members,
with the authorization of the President shall inform the public about the daily work of PRB.

(3) PRB, through publication on the website, makes transparent the date and time of holding the hearing sessions.

(4) Decisions of the PRB, in reviewing complaints will be published within five (5) days on the website of the PRB, in the original language of the decision and within fifteen (15) days in English or other languages for all cases of high-value contracts.

(5) Decisions of the PRB, will be published in full version, unless some part of the decision containing personal data or information classified as confidential. These parts will be made anonymous before publication (eg. by shading in black).

Article 7.  (Preservation of secrets)

(1) In carrying out their tasks, all employees of PRB as well as independent professionals and experts appointed by the PRB, to participate in the review and make a decision in a particular case will protect personal information and data representing the state, military, official or business secret. Documents and instruments shall be treated in accordance with the security classification as defined by the Law on Protection of Personal Data (no. 03 / L-172).

(2) PRB Board through special internal act, shall determine measures and procedures for the preservation of personal data and data representing state, military, official or business secrets.

Article 8.  (External Contacts and Cooperation)

(1) PRB will cooperate with the state authorities in order to ensure the independence and autonomy of PRB, as a body to supervising the legality of contract award procedures.

(2) PRB shall establish contacts and cooperation with comparable institutions in other countries and will participate actively in relevant international organizations.

PART II STRUCTURE AND FUNCTIONS OF PRB

Article 9.  (The jurisdiction of PRB)

(1) PRB is responsible for the execution of the functions specified in the PPL, the Law on Public Private Partnership (No. 04/ L-045), as well as other laws that can make such an adjustment and complaints about these laws.

Article 10.  (Structure of the PRB)

(1) PRB has a structure described in detail in Regulation No. XX/2016 with the following internal organization:

(2) PRB Board is composed of 5 members, one of whom is the President.
(3) PRB’s Secretariat, which provides administrative support to PRB, is headed by the “Head of the Secretariat of PRB” and is structured into the following organisational units, which report directly to the Head of the Secretariat of the PRB:

a) Complaints’ Review Division
b) Internal Division
c) Finance Division
d) Legal and Representations in the Courts Sector
e) HR Officer

(4) The suspension and dismissal of the President and members of the PRB shall be subject to the procedures laid down in Article 101 of the PPL. If there is filed an indictment towards the President or a member of PRB for a criminal offence, he/she shall be suspended with payment of fifty percent (50%) of his/her salary, until his/her removal or until he/she is pronounced innocent by a final court judgement. Suspension shall become effective from the moment the indictment is filed by the prosecutor.

(5) The President or the member of PRB shall be removed from the office if he/she is pronounced guilty for any criminal offence through a final court judgment. This removal shall become effective from the moment the final court judgment is pronounced.

(6) If the President or a member of PRB acts in contrary to the professional ethics associated with his/her duties, the Government shall propose to the Assembly the dismissal of the chairperson or a member of PRB.

(7) The internal organization, the functions and responsibilities of work positions of PRB and the number of persons employed (systematization of jobs) are described in detail by Regulation No. XX/2016 “On Internal Organization and Systematization of Jobs in the Procurement review Body”

**Article 11. (Conflicts of Interest)**

(1) A PRB Review Expert or members of the Review Panel, an expert or independent advisor, a PRB staff will not be involved in the review of a case, if he / she faces a conflict of interest determined by the provisions of Law no. 04/L-051 on Prevention of Conflict of Interest in exercising public functions.

(2) Considering those mentioned above and the reasons for exclusion, the person concerned shall immediately notify the President of the PRB, which will take a decision on the exclusion.

(3) Excluding the President of the PRB shall be decided in the PRB Board, led and chaired by a Member other than the President.
PART III RULES OF PROCEDURE FOR REVIEW PANELS

Article 12. (General Principles for Review Panels)

(1) A proceeding of reviewing a complaint shall be conducted and completed in an expeditious, fair and non-discriminatory manner that is directed towards achieving a fair solution, legal and effective for the subject involved. All complaint review proceedings shall be conducted in accordance with the applicable provisions of Part IX of PPL.

(2) Neither the proceedings of the reviewing, nor any decision taken by PRB shall be in any manner that discriminates in favor of or against any participant in the proceedings or any other legal or natural person.

(3) PRB will respect the dissenting nature of the reviewing procedure.

(4) All interested parties will have equal access to the complaint review proceedings and remedies established in this part.

(5) In taking the actions or measures provided in Part IX of PPL, PRB shall (i) act as soon as possible, (ii) act in a manner that is proportionate to the infringement or other matters of complaint and (iii) takes into account the possible consequences of such measures or actions, for all interests likely to be harmed, including the public interest.

(6) A PRB decision to re-evaluate the selection of tenderers or awarding the contract does not imply a change in the initial result.

(7) Annex II attached to this regulation illustrates in a process flow diagram the main Complaints Review Functions of the PRB.

Article 13. (Submission of the complaints)

(1) In accordance with paragraph 1 of Article 109 of the PPL, a complaint to the PRB may be submitted only after a preliminary procedure for resolution of the dispute. Thus, the complaint initially has to be submitted to the Contracting Authority and in the event that the interested party is not satisfied with the decision taken by the Contracting Authority in question, it may file a Complaint to the PRB.

(2) Complaint to the PRB must be submitted within ten (10) days after the decision issued by the contracting authority in the preliminary procedure of dispute resolution in accordance with Article 108A of the PPL.

(3) Complaints must be submitted written in one of the official languages, according to the Law on the Use of Official Languages. However complaints for the procurement of large value contracts or design contest may be submitted also in English.

(4) The complainant is required to complete and submit the complaint in the official form of PRB, as published on the website of the PPRC and the PRB.

(5) Complaint can be filed on the premises of the PRB, or by mail courier.

(6) The complainant shall submit the original of the complaint to the PRB and
simultaneously send, with the same method or by ordinary mail a copy to the contracting authority with the protocol by the PRB.

(7) All complaints are obliged to pay a fee for the complaint to the PRB, in the amount of:

(a) Whenever the complaint relates to the decision of the award of the contract, the value of the complaint fee is equal to one percent (1%) of the value of the offer, but not less than 100 Euros and not more than 5,000 Euros.

(b) Whenever the complaint relates to the contract notices, tender documents, the value of the complaint fee is equal to one percent (1%) of the estimated contract value, but not less than 100 Euros and not more than 5,000 Euros.

(8) Payment shall be made in cash or cash equivalent into the account established by the PRB in accordance with the Financial Rules.

(9) Complaint should be clear, short and with the complaining claims alleged, that may have been violated certain articles of PPL, by the contracting authority. Claims should be the same as those presented to the contracting authority.

(10) All supporting documentation must be attached to the complaint. Documentation must be submitted in the language in which it was issued, or if issued in more than one language in one of the official languages. However when we are dealing with procurement of large value contracts or design contest, supporting documents can be submitted in English language.

(11) PRB requires from contracting authorities to submit the entire package of documents, dealing with the particular complaint within 3 days. If the contracting authorities do not implement a decision or order of the PRB, then PRB shall comply with the provisions of Article 118 paragraph 8 of the PPL.

**Article 14. (Contents of the complaint)**

(1) A complaint should include at least the following information:

- Information of the complainant: the name, the postal address, the electronic address, and contact information;

- Information of the representative or agent of the competence of the legal representative;

- the name of the concerned contracting authority;

- sets forth a reasonably specific description of the concerned procurement activity;

- attaches a copy of the concerned contract award notice or design contest results notice, if such has been issued or published;

- demonstrates that the complainant qualifies as an “interested party,” as defined under Section 4 paragraph 1.26 of PPL;

- describes the factual circumstances constituting or giving rise to the alleged violation;
- specifies the provision or provisions of the PPL law that is alleged to have been violated;
- describes how the alleged violation has caused, or threatens to cause, material damage to the complainant in cases where the complainant includes a claim for compensation;
- attaches a copy of the decision of the contracting authority issued during the preliminary resolution of disputes in accordance with Article 108A of the PPL;
- submits an evidence of payment of the complaint fee, described in Article 118 of the PPL.

- Demand for solutions;
- Demand for compensation of procedural costs;
- Signature of the authorized person and seal.

**Article 15. (Registration of the Complaints)**

(1) Complaint must be registered by the Complaints’ Officer, who, upon request, issues to the complainant a certificate with the date of receipt of the documents.

(2) All complaints registered will be published on the website of the PRB, immediately after registration.

**Article 16. (Unified Cases)**

(1) The President of PRB may decide to combine the review of cases which are related to the same case or the same tender, and these cases will be decided upon by the same Review Panel of the same review expert.

(2) The same review expert, regarding cases repeated, with the same complaining claims which are examined before by the Review Panel, notifies the Review Panel associated with these complaining claims.

(3) In repeated cases of same complaint allegations, where the subject of the dispute and the parties are the same, for cases earlier examined, the chairman of the Review Panel should treat them as a matter already judged "res judicata", according to article 105.2.16 of the PPL.

**Article 17. (Preliminary review of the Complaint and Assignment of the Review Expert)**

(1) The Complaints’ Officer will review the complaint immediately to determine if it belongs to the jurisdiction of the PRB, if it is complete and if delivered within the legal limits.

(2) As stipulated in Article 111 paragraph 3 of the PPL, PRB will complete such review within one (1) day after receiving the complaint.

(3) If the complaint does not fall under the jurisdiction of the PRB or the Law, then the
PRB’s Head of Secretariat will be notified in order to reject it. This includes also complaints regarding the entities which are not contracting authorities or contracts not covered by PPL.

(4) All cases of refusals will be made in writing, and will be justified.

(5) If the complaint is incomplete and does not meet the above requirements, in accordance with paragraph 4 of article 111 of the PPL, the Receiving Complaints’ Officer will inform the deliverer for deficiencies as soon as possible (by fax or email). If the submission deadline has expired or will expire in not less than four (4) working days, the complainant shall be allowed four (4) days to rectify the complaint and to be submitted again (with all copies attached). If the deadline has not expired or will not expire in two (2) days, the complainant may re-submit the complaint at any time before the scheduled expiration.

(6) If after the re-submission, the complaint is deficient, then the PRB’s Head of Secretariat shall reject as non-allowed the complaint and will not be possible to be re-submitted again even if improvements are done.

(7) If it is ascertained that the complaint belongs to the jurisdiction of PRB, is complete and is submitted on time, as defined by the PPL, the PRB’s Head of Secretariat notifies the Contracting Authority, which is obliged to automatically suspend the procurement activity to which the complaint relates, in conformity with article 112.1 of the PPL. The case is immediately assigned, by the Head of the Secretariat, to a PRB review expert who is a member of the Complaints’ Review Division.

(8) A Review Panel will be formed as soon as a complaint is received for review in order to examine the allegations made in the complaint.

(9) Each case will be immediately assigned to a PRB Board member, who will be the president or the sole member of the Review Panels established, and will be responsible for the case ("designated member of the PRB"). Cases will be assigned taking into account the workload and complexity Cases will be assigned in the manner in which they were received, as each member takes a case from the register until all cases are separate, ensuring that cases were distributed evenly throughout the year.

(10) The Head of PRB’s Secretariat will also immediately assign the case to a PRB review Expert who is an employee of the Complaints Review Division, given the technical expertise required, the workload in relation to cases and other duties that they may be committing in the PRB, in order to respect deadlines for reviewing complaints.

(11) The president of the Review Panel will make a recommendation whether the case can be dealt with only by the PRB Review Expert or whether in unusual cases when the technical expertise of Complaints Review Division is not enough, an external technical expert is also needed. This recommendation must be made no later than two (2) days following acceptance of the complaint by the PRB.

(12) If a recommendation is made for external expertise, the President of the PRB will decide within one (1) day and select an External Expert from the "Register of Technical
Experts" of the PRB.

(13) Within the same technical field, the principle of rotation should be applied to candidates available when selecting the external technical experts, ensuring that cases were distributed evenly throughout the year.

(14) All decisions of the Board for external support are taken within the limits of the annual budget of the PRB.

Article 18. (Suspension or Revocation of suspension)

(1) The submission of full complaint within the time limit and within the jurisdiction of PRB shall suspend the procurement activity unless the PRB President decides otherwise. Upon receiving the complaint, the PRB’s Head of Secretariat, issues a notification on the suspension of the procurement activity.

(2) If the contracting authority makes a request for the removal of the suspension, the President of the PRB must review the request of the contracting authority and the complainant's reasoning in its submission, without delay and decide between these two submissions. He / she must inform about the decision the two parties within three (3) days of receipt of the request of the contracting authority. This notification can be done by the fastest method.

(3) Removal of the suspension will be considered if the suspension would cause material harm to the public interest and when that harm is greater than the interest of the complainant. Cases where the public interest would be harmed include delays in the procurement of goods, services or works which are critical for the operation of an essential infrastructure, as well as delays that would severely disrupt the delivery of critical services such as utility or health services.

(4) A decision for the revocation of a suspension shall not in any way prejudice or otherwise negatively affect the complaint or the complainant.


(1) The PRB Review expert, whom is assigned the case under Article 17 of the Rules of Procedure of the PRB, reviews all allegations contained in the complaint.

(2) The PRB Review expert may require from contracting authorities, all necessary documents when the complaint is against any contracting authority.

(3) The PRB Review Expert as necessary shall interview all parties to the proceedings.

(4) The PRB Review expert is required to provide the Review Panel with a written assessment of the validity of the allegations contained in the complaint.

(5) The PRB Review expert will send, through the PRB Review Panel, a written assessment, to the Contracting Authority and the complainant within ten (10) calendar days after receiving the complaint. The forwarding of the assessment made by the Review Panel shall be without prejudice to its final decision on the case.

(6) If the contracting authority and the complainant agree with the report of the review
expert, in such case the procedure in reviewing the complaint ends where no hearing session will be scheduled, but the President of the Review Panel will issue a conclusion that the contracting authority, within 5 days to implement the review expert's report, by notifying the parties to the proceedings and the Review Panel.

(7) The PRB Review Expert provides the Review Panel, the complainant and the head of the contracting authority with a written assessment and the Review Panel issues its final decision. Opinions and recommendations of the review expert are not binding on the Review Panels.

**Article 20. (Procedures and competences of the contracting authority in relation with the complaint)**

(1) The contracting authority will respond to the PRB Review Expert’s opinion within four (4) days, by a written decision, in connection with the conclusion of the review expert, together with evidence of the complainant's notice.

(2) The decision of the contracting authority will be sent to the PRB and the complainant about the issues raised in the complaint. If there are different statements or facts presented by the contracting authority, or if the contracting authority denies or has findings that differ from those of the review expert, the answer of the contracting authority shall be made in detail with grounds and arguments.

(3) The contracting authority, after receiving written evaluation of the PRB Review Expert, has five (5) calendar days to take necessary corrective actions to improve failures in the procurement procedures.

(4) If the contracting authority fails within the time limit specified in paragraph 1 of this Article, to issue the required decision or issues a decision that rejects or denies the validity of an allegation or that fails to ascertain the validity of a claim, the complaint will refer to the Review Panel.

(5) If the contracting authority issues a decision which finds that the allegations contained in the complaint is valid, but fails to take appropriate corrective actions within the time limit specified in paragraph 3 of article 115 of the PPL, the complainant may then, within three days (3) of the expiry of such deadline, to submit a written notice at the Review Panel and the contracting authority in connection with such failure and require from the Review Panel to review the matter and issue an order to the contracting authority under paragraph 2 Article 105 of the PPL.

(6) If the contracting authority receives written notification within the time limit by the complainant under paragraph 5 of this Article, the contracting authority shall bring within three (3) days after receipt of such notification, will transfer all the documents and information about procurement activity in question to the PRB.

**Article 21. (Setting - up of Review Panels - RPs)**

(1) The Review Panel must be set immediately following initial acceptance of the complaint.
(2) A Review Panel shall have the competence, authority, power and responsibility, under the conditions specified in the PPL, to:

– review the complaints of the interested parties about alleged violations of the Public Procurement Law;
– dismiss the complaint submitted as unfounded, or as such that does not fall within the competence of the PRB;
– decide on complaints directed to the panel in accordance with the Law;
– undertake other reasonable actions to determine whether there has been violation of the law and, if so, what steps should be taken;
– to issue interim and final orders;
– make decisions on procedural costs.

Article 22. (Composition of the Review Panel)

(1) Review Panels are consisted of one (1), three (3) or five (5) members of the Board of PRB.

(2) The composition of each Review Panel, will be determined using the rules of procedure as well as the objective criteria in accordance with the Board and signed by the President. These will take into account the complexity of the case, as recommended by the PRB Head of Secretariat, and the value of the relevant contract.

(3) The President of PRB, in assigning the Review Panel also sets (a) the President of the Review Panel and (b) the Rapporteur of the case, which prepares a detailed information on the case and presents the same to the Review Panel, by the principle of rotation.

(4) The President of PRB shall appoint one member of the panel, in the following cases:

- When the value of the subject of the complaint for the procurement activity does not exceed the amount of 50,000.00 €.

(5) The President appoints three-member panel, in the following cases:

- When we are dealing with the assessment of discriminatory criteria during the tendering stage, or
- When the value of the subject of the complaint for the procurement activity is over 50,000.00 € and not greater than 500,000.00 €.

(6) The President appoints a panel of five members in the following cases:

- When the value of the subject of the complaint for the procurement activity is over 500,000.00 €, or
- When the case is of an special interest and importance

(7) If any member of a Review Panel of one or three-members is unable to participate
in the Review Panel, for reasons such as illness, absence or conflict of interest, then the President of PRB shall appoint another member.

(8) In cases where the value of the procurement procedure exceeds 500,000.00 EURO, but for the above reasons a five-member panel can not be appointed, then the President has the authority to amend the Review Panel from five members to a Review Panel of three members.

(9) The President of the Review Panel shall sign all documents produced by the Review Panel assigned in the concrete case.

Article 23. (Extraction of Order Inquiry by Review Panels)

(1) The Review Panel may issue an order to any person, enterprise or public authority to provide, deliver or allow access to all data, information, documents (except reserved legal advices) and any item of personal estate or real estate that the Review Panel for reviewing considers relevant in conducting investigation or reviewing of the procurement procedure.

(2) The Review Panel may issue an order to any person to appear in the review process of the procurement in front of the Review Panel and provide evidence about everything that the Review Panel considers necessary in order to take a right decision, in the exercise of the reasonable discretion, to be relevant to the subject matter of the procurement.

(3) A Review Panel has the right to take other actions necessary and appropriate to verify arguments or claims of the parties.

Article 24. (Extraction of the Settlement Order and Decisions of Review Panels)

(1) A Review Panel examining a complaint has the competence, authority, power and responsibility, under the conditions specified in the PPL, to issue different orders of settlement and decisions;

(2) If such contract is not yet lawfully signed by both sides, and as far as PPL allows, the Review Panel may issue an order to revoke or suspend the award of a public contract or the results of a design contest;

(3) A Review Panel may issue an order, as allowed in the PPL, for a contracting authority requiring from that authority to cancel or revoke a decision of such authority which may have taken during the procurement activity, including the conditions and specifications found not in accordance with the law in the tender dossier;

(4) A Review Panel may issue an order to a contracting authority requiring that authority to pay compensation to a complainant;

(5) A Review Panel may issue an order to a contracting authority requiring that authority to correct an alleged violation and / or to prevent further damage to the appellant and / or other interested party;

(6) A Review Panel may issue an order to the contracting authority requiring that
authority to omit specifications, requirements or technical criteria, economic, financial or selection which are discriminatory in any announcement, invitation, tender dossier, contract documents or other document in connection with a procurement;

(7) A Review Panel may issue an order requiring from law enforcement officials to assist the PRB to ensure the adherence of an order of the PRB;

(8) A Review Panel may issue an order that makes a signed contract ineffective, if concluded without prior publication in accordance with Article 42 of the PPL, or if the signature of the contract is made before the expiration of the deadline referred to sub-paragraph 1 of paragraph 4 article 26 of the PPL;

(9) A Review Panel may impose penalties on any contracting authority that despite the issuance of an order under sub-paragraph 2.13 of Article 105 of the PPL, continues to supervise or implement the contract subject to such an order;

(10) A Review Panel has the authority to address any refusal or lack of cooperation by any party and decide in favor of the opposing party, provided that such decision is justified:

(11) A Review Panel when deciding will examine only the claims contained in the complaint;

(12) In repeated cases of same complaint allegations, where the subject of the dispute and the parties are the same, for cases earlier examined, the chairman of the Review Panel should treat them as a matter already judged "Res judicata". For a compliant to be treated as “Res judicata”, the following conditions need to be fulfilled:
   1. Repeated cases
   2. Same allegations
   3. Subject of the dispute is the same
   4. Parties are the same

(13) A Review Panel primarily decides in the hearing session without the presence of the parties.

Article 25. (Obtaining additional information or evidence)

(1) The Review Panel may request with an order additional information, which may include delivery of material, evidence from any person, company or public authority to which the Review Panel, reasonably believes may be relevant to the case and can involve the evidence of such persons.

Article 26. (Procedure of open Hearing session)

(1) Review Panel, mainly decides in the hearing session without the presence of the parties.

(2) Review Panel may, in exceptional cases, to explain complex technical facts about the object of the complaint, to set a hearing session with the participation of the parties which have a legal and material interest.
(3) A hearing session may be held at the request of procedural parties. When the procedural parties require from the Review Panel to hold a hearing session, the Review Panel will decide with conclusion to accept or reject the request of the party.

(4) Date and time of the hearing session will be defined and communicated to the parties at least three (3) calendar days in advance. Each party has the right to request a postponement of the hearing to the justification based on the condition that this will happen only once, while the delay can not be more than five (5) calendar days.

(5) The performance of a hearing session will be recorded in the minutes and signed by all participants.

**Article 27.  (Review Experts and Independent Advisors)**

(1) A Review Panel may require the presence and testimony, during an examination, of a Review Expert who has handled the case, regardless of whether is a member of the Division for Complaints’ Review of the PRB or technical external expert. This request shall be made if the Panel considers that it needs an expertise provided in specific technical issues. This may include, but is not limited to, issues related to technical standards, engineering, finance, which determines the amount of damages.

(2) Every external expert appointed or will be included in the Register of Technical Review Experts of PRB, will be eligible for inclusion.

**Article 28.  (Panel discussions and minutes)**

(1) The PRB Review expert appointed by PRB will make a summary of the case during the hearing session, and then each member of the Review Panel will have the opportunity to discuss or ask questions to the parties in the proceedings.

(2) Voting should be made by a simple majority and no member of the Review Panel can abstain from voting.

(3) Actions taken in the meetings of the Review Panel, in which case a certain disagreement is discussed, shall be recorded in the minutes. Discussions in the future may be recorded on video and audiotape.

(4) The minutes of the hearing session include: name of the institution, the members of the Review Panel, the date and time when the action was taken, the title of the object of examination in the procedure and information on the participating parties and their attorneys.

(5) The minutes shall be signed by the President of the Review Panel, the participating parties or their lawyers and clerk who recorded the minutes. The minutes will be an integral part of the case file.

(6) The voting result may be published; however, the vote of each member is strictly confidential.

**Article 29.  (Restrictions on the decisions of the PRB)**
(1) PRB shall issue decisions, conclusions and orders ("Decisions") within fifteen (15) calendar days, as follows:

(a) The expiration of three (3) days stipulated in Article 115.7 of the PPL, for the contracting authority to transfer all documents and records relating to the concerned procurement activity. This, provided that the Contracting Authority has received a copy of a written notice from the complainant in the PRB, about the failure of the contracting authority to take appropriate remedial action within five (5) days specified in article 115.3 of PPL.

(b) Submission of additional data and / or explanations requested by the PRB, under point 3 of article 116 of the PPL or the complainant or the contracting authority and approved by the PRB pursuant to paragraph 4 of the same article.

(2) The Review Panel in complex cases, may postpone the deadline for review no other than 20 calendar days.

**Article 30. (Withdrawal of the Complaints)**

(1) The party can withdraw the complaint at any time before the hearing or discussion of the Review Panel, even when the issue is resolved by the other party, but not limited to them. In such cases, deposits or fees for a complaint should be refunded to the complainant.

(2) The party can withdraw the complaint at any time before the hearing or before the end of the hearing session. In such cases, deposits or fees for a complaint should be returned to the complainant.

(3) If the complainant withdraws the complaint without reason before the hearing session of the Review Panel, then it will not be returned the fee for complaint.

(4) The complainant who withdraws the complaint without reason, will bear also the compensation of procedural expenses.

(5) In case of withdrawal of complaints filed under the PPL, PRB, under Article 110 of the PPL has the authority to continue on its own behalf the review of any direct or indirect doubt made in a such complaint.

**Article 31. (Contents of the Decisions)**

(1) Decisions shall contain: (1) introduction, enacting clause and the reasoning, (2) any order given, including damages, but not limited to, cancellation, signature of the contract, the procurement procedure followed, (3) if there were damage and if so, to what extent (4) rules concerning the return of the fee for complaint.

(2) Contracting Authority is obliged within 10 days to implement the decision of the Review Panel in accordance with article 105 of the PPL. When the decision of the RP, is to re-evaluate the procurement activity, the CA is obliged, within 15 days of receipt of the decision, to notify the PRB regarding the outcome of the re-evaluation and at the same time to notify the parties to the proceedings.
(3) The reference number for the case and reviewed procurement should appear in the Decision. The decision may be issued in the Albanian or Serbian language.

(4) The decision must be issued to all parties, while its original form should remain on the register and archive of PRB.

**Article 32. (Compensation of Damages to procedural costs)**

(1) If a statement by the complainant qualifies as valid, party of the review procedure may request compensation for damages. Review Panel in this case may (i) define a member to do calculations in accordance with the normative applicable acts of damages, if any, caused to the complainant as a result of the violations committed by the concerned contracting authority and (ii) issue an order requiring from such contracting authority to pay the amount of such damages to the complainant.

(2) A party of the review procedure may request compensation of procedural expenses, which will include the complaint’s fee and the time lost to prepare the complaint and answer of the requirements of the Review Expert or Review Panel.

(3) Costs can be recovered to the successful party. The costs will be as follows:

- Preparation of the complaint including transaction expenditure - from 250.00 EURO for cases under 100,000.00 € up to 350.00 EURO for the cases over 100,000.00 EURO.

- Receipt and delivery costs of the complaint’s fee (interest rate and duration of the insurance fee to the Central Bank of the Republic of Kosova).

- The losing party can also be ordered to pay the costs of the independent expert, if the PRB deems appropriate.

**Article 33. (Order for compensation - calculation of damages)**

(1) PRB must comply with the Law on Obligations and the existing law when assessing compensation made. PRB must provide compensation only when it is requested by the complainant.

(2) This compensation is compensated by the contracting authority within 30 days of the notification of the decision of the PRB.

**Article 34. (Return of the fee of the complaint after evaluation of the complaint)**

(1) As part of the decision of the Review Panel, the Review Panel should assess whether the complaint is or without grounds. Review Panel must determine that the claim is without grounds, if it concludes that the complainant, at the time of filing the complaint, knew or should have known that there was not supportive objective evidence, or did not have reasonable support in the law for such an assertion.

(2) In particular and without limitation, the Review Panel shall consider the complaint ungouned if the complainant, even if there were no violations of the law, there would be no chance to win the tender. Therefore, the complainant has not suffered any loss, but tried to cancel the tender, to give the opportunity to themselves to change prices or
the conditions of the bid in a way that is unfair to the other bidders, will be assessed as ungrounded.

(3) In such cases, PRB shall notify the complainant in writing without delay, to its designation and before doing this, should take such measures that are appropriate to impose insurance funds, whereas the fee for complaint must be considered as confiscated funds.

(4) If the PRB ascertains that the complaint was based, or the complainant withdraws the complaint, then to the complainant should be returned the insurance fee of the complaint, according to Article 13 paragraph 7 of Rules of Procedures.

(5) In case when to the complainant is approved as grounded the complaint, or withdraws the complaint, the complainant, within 60 days must apply for withdrawal of deposit in the amount according to Article 13 paragraph 7 of these Rules of Procedures for the provision of the complaint. If the complainant does not apply within this time limit of 60 days, it will be confiscated the deposit of the complaint‘insurance and these funds will go into the budget of the Republic of Kosova.

(6) If the PRB ascertains that any of the allegations made in the complaint are false, then PRB may require from the complainant to pay an additional fine of up to € 5,000.00 €.

(7) If the PRB applies a fine under paragraph 4 of article 118 of the PPL, an order will be issued to the complainant to pay the fee, and the complainant will be informed that until the fee is not paid in full or a competent court reverses the decision of the PRB, the complainant could not take part in any procurement activities foreseen under the law.

(8) When PRB, notify the complainant of the confiscation of the fee for complaint and additional fine of 5,000.00 EURO, shall remind the complainant in writing that the complainant is entitled thirty (30) days to appeal to the Basic Court against this decision.

(9) All fees and fines of complaints received 5,000.00 EURO must be held in an account dedicated to the special interests of the PRB. Just after the main lawsuit in a competent court or the deadline for such action has expired, the funds are available to the Kosova Budget, to be treated as public money under the Law on Public Financial Management.

(10) If the Court finds that the complaint was based, then the court may issue an order that reverses or rejects all orders dealing with the complaint’s fee and a fine of 5,000.00 EURO, and ordering PRB to return to the complainant the complaint’s fee and the amount of the fine together with interest.

Article 35. (Preliminary value and sustainability of decisions)

(1) PRB must ensure that those decisions are in accordance with the Public Procurement Law, the Law on Administrative Procedure, the practices of the European Court and interpretations of the European Commission or with similar International
standards, European Convention on the Human Rights, and with all applicable laws in Kosova.

**Article 36. (Ordinance which includes non-validity of the contract)**

(1) The contract should not be declared invalid by PRB, unless the complainant requests it as special treatment, and when giving evidence to conclude that the public interest for declaring the contract null and void exceeds the public interest for extending the contract, including the interest of the economic operator in question and the interest of the contracting authority and the general public to have continuity of services, goods and works. If there is any significant damage to the public interest with the invalidation of the contract, then instead of depreciation, should be given compensation or damages to the damaged party.

(2) Cases where the contract is invalidated, should be limited. Public interest in the invalidation of the contract must exist usually only when there was fraud by contractors to the extent that he otherwise would have never won the contract, and giving such an example or cancellation of contract is more important for the public interest than the continuation of the contract.

(3) In cases when is taken decision on invalidating the contract, it should be taken into account that how forward has gone the contract and what is the degree of execution. Contracts that have already been substantially implemented, should be invalidated only on rare occasions.

(4) When a contract is invalidated, PRB shall ensure that the contractor is paid for the work done, the services executed or goods supplied. Only in cases of truly exceptional when the contractor itself has been deeply deceptive, in a way that the fraud has resulted in taking the contract that contractor, who otherwise would not have gotten such a contract, it may be avoidance of retaliation any damage to him.

(5) If the contract is invalidated, then the contractor will face consequences as defined in PPL, and other laws.

(6) PRB shall declare ineffective, in whole or in part, a public contract or design contest, if it determines that a public contract or design contest
   i. was awarded without prior publication of a notice when required by the PPL;
   ii. was concluded during the period of standstill according to Article 26 of the PPL; or
   iii. was concluded during the period of imposition of any interim measures ordered by the PRB or a court for bidding the conclusion of a contract.

**Article 37. (Disqualification of economic operators)**

(1) PRB is obliged and has the authority to review and disqualify an economic operator from participation in public procurement. When PRB with a request from a CA, initiates an examination of the false information or forged documents, as referred to in Article 99 (2) of the PPL, it shall provide the economic operator the right to be heard including legal guarantees referred to in Article 107 of the PPL.
Article 38.  (Implementation of the decisions of the PRB)

(1) PRB will impose a fine of not less than five thousand (5,000) euros for the contracting authority that does not comply with an order or disrespecting an order of the PRB within five (5) days.

Article 39.  (Official Seal of PRB)

PRB should have an allowed stamp square and round “Procurement Review Body” in Albanian and Serbian language.

- Round stamp, has the size 3.9 cm, in the middle of the stamp there is the emblem of the PRB and the text as follows: The Republic of Kosova, Procurement Review Body - Prishtina and in two languages, Albanian and Serbian.

- Square stamp which has the size 6.9 X 3.7 cm in which is located the emblem of the Republic of Kosova and the emblem of the Procurement Review Body, containing the Republic of Kosova, the Procurement Review Body - Prishtina, number and date, both Albanian and Serbian.

Article 40.  (Policies on access to documents))

(1) PRB can store them unopened to the public or unauthorized persons information developed by PRB during the conduct of its work, to the extent permitted under the PPL and the Law on Access to Official Documents.

(2) PRB shall cooperate fully with the General Auditor or the Court of competent jurisdiction.

Article 41.  (Reporting to Parliament)

(1) PRB must provide an annual report on its work to the Assembly of the Republic of Kosova, no later than the end of February, about the previous calendar year. The annual report will include data and analysis of legal protection in public procurement system, as well as complaints from the complaining economic operators against the decision of the Contracting Authorities to contract award and against the contract notice.

(2) The report shall contain the following information:

- Total number of complaints received;
- The number of complaints rejected, incomplete and out of deadline under Article 109 and Article 111 of the PPL, or the failure to deposit the fee for complaint, required in Article 118 of PPL, and the number of complaints withdrawn;
- The number of complaints ascertained to contain no valid allegation;
- The number of procurement activities that were canceled as a result of a complaint;
- Detailed information on any event where a contracting authority failed to respect an order of the PRB or of a Review Panel;
- The number of review proceedings that resulted in a conclusion that the concerned
procurement activity and the award or decision validly made;
- Financial report for the previous year, as approved by the Commission on Budget and
  Finances;
- Details of all decisions of the Basic Court - Department about PRB or all complaints
  reviewed in the Basic Court;
- The need for new employees;
- Details of the budget and personnel of PRB;
- Details about the physical space of the institution;
- Assessment of the state of legal protection and public procurement in general;
- Report on addressing the Auditor General's report.

Article 42.  (Transition and final provisions)
(1) This Rules of Procedure enters into force eight (8) days after publication on the
website of the PRB.
(2) Rules of Procedure with the protocol number , will not be valid from the date of
implementation of this Rules of Procedure of the PRB.

Prishtina,

President of the PRB
____________________
Annex I: PRB’s Organisational Structure

PRB ORGANOGRAM dated: _____________

President

Member → Member → Member

Head of Secretariat

Head of the Finance Division

Head of the Review Complaints’ Division

Finance Officer-1

1. Review Expert -1
2. Receiving Complaint’s officer -1
3. Archive officer -1

HR Officer

1. Translator English-Albanian -1
2. Translator English Serbian -1
3. IT Officer -1
4. RP Executive assistant -1

Head of the Internal Division

Senior Legal officer-1

Head of the legal sector

Prishtina

Organogram dated: _____________prot.no._______ done after the new positions in accordance with the budget of _____________.

This organogram comes into force on the date of the signature.

Regarding the implementation of this organizational structure the Head of the Secretariat of the PRB will take care.

PRB President
Blirim Dina
Annex II: PRB’s Core Functions

PRB’s Core Functions are executed in the course of accomplishing PRB’s mission i.e. the Review of Procurement Decisions. The following Functions will be described into more detail, with the aid of basic Flowcharts:

<table>
<thead>
<tr>
<th>Code</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>CF.1</td>
<td>Receipt of Complaints</td>
</tr>
<tr>
<td>CF.2</td>
<td>Setting up of Review Panels (RP)</td>
</tr>
<tr>
<td>CF.3</td>
<td>Appointment of a Review Expert</td>
</tr>
<tr>
<td>CF.4</td>
<td>Complaint Examination and Analysis</td>
</tr>
<tr>
<td>CF.5</td>
<td>Examination by the Review Panel</td>
</tr>
<tr>
<td>CF.6</td>
<td>Issuance of Decisions</td>
</tr>
<tr>
<td>CF.7</td>
<td>Translation and Publication of Decisions</td>
</tr>
</tbody>
</table>

The above functions are implemented in a general sequence illustrated in the following figure:

**Figure 1:** Main Complaints Review Functions of the PRB
**CF.1 Receipt of Complaints**

The PRB is not obliged to review all complaints submitted to it, irrespectively of form and content. Therefore, this function describes how complaints are screened *before* their content is analysed and reviewed. This responsibility rests largely with the Receiving Complaints Officer under the Complaints’ Review Division, who is the staff member responsible for examining a complaint to ensure it contains all the required information. In complex cases, requiring a second opinion, he/she may be assisted by the Head of the Complaints’ Review Division.

The following figure and accompanying notes summarise the main steps that are followed by the PRB when receiving a complaint:
# Receipt of Complaints

## Process Steps

### CF.1 Receipt of Complaints

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Receive and register a complaint</td>
</tr>
<tr>
<td>2.</td>
<td>Dispatch the complaint to the Contracting Authority concerned</td>
</tr>
<tr>
<td>3.</td>
<td>Verify that the complaint is accompanied by a complaints fee, deposited to PRB’s bank account</td>
</tr>
<tr>
<td>4.</td>
<td>Verify the complaint is submitted within the legal time limits</td>
</tr>
<tr>
<td>5.</td>
<td>Examine the format and basic contents of the complaint to ensure it meets PPL’s requirements and can be processed by PRB</td>
</tr>
<tr>
<td>6.</td>
<td>Notify immediately the complainant in writing if the requirements of the above step are not fulfilled</td>
</tr>
<tr>
<td>7.</td>
<td>Request and receive any relevant documents from the Contracting Authority</td>
</tr>
<tr>
<td>8.</td>
<td>Finalise initial review and prepare the file for a Review Expert to take over that case</td>
</tr>
<tr>
<td>9.</td>
<td>Notify the complainant in writing, in case a decision not to review a complaint is taken</td>
</tr>
</tbody>
</table>

## Organisational Roles

### Process Steps

<table>
<thead>
<tr>
<th>Role</th>
<th>Complaints Review Division</th>
<th>Internal Division</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRB Board</td>
<td>PRB President</td>
<td>Review Panel</td>
</tr>
</tbody>
</table>

### Organisational Roles

- **Complaints Review Division**
  - Head of Secretariat
  - Legal Sector
  - HR Officer
  - Finance Division
  - Receiving Complaints Officer
  - Complaints' Review Expert
  - Archive Officer
  - Executive Assistant
  - IT Officer
  - Translator

- **Internal Division**
  - PRB Board
  - PRB President
  - Review Panel
  - Head of Secretariat
  - Legal Sector
  - HR Officer
  - Finance Division
  - Receiving Complaints Officer
  - Complaints' Review Expert
  - Archive Officer
  - Executive Assistant
  - IT Officer
  - Translator

Start

End
Notes:

Step 1: The following apply:

– A standard form is currently available in PRB’s web site (http://oshp.rks-gov.net) and shall be filled to initiate the process.
– The complaint shall be submitted in original.
– Upon receipt, the complaint must be registered in a Complaints Database. This will later on facilitate statistical analysis of the complaints received.

Steps 2-6: The initial review of the complaint must be completed within one (1) day after receiving it.

Step 2: A copy of the (original) complaint is immediately made and is dispatched to the Contracting Authority by the same means or by ordinary post.

Step 3: In this step the Receiving Complaints’ Officer needs to collaborate with the Financial Officer. According to PPL (Article 118) it is compulsory that all complainants are required to pay a fee together with the filing of a complaint. Payment shall be made in cash or cash equivalent into the account established by the PRB in accordance with the Financial Rules. If this payment is not received the complaint is not reviewed!

Step 4: Article 109 paragraph 2 of the PPL states in detail what the time limits are and should be consulted by the Receiving Complaints’ Officer. Thus: Appeal to the PRB must be submitted within ten (10) days after the decision issued by the contracting authority in the preliminary procedure of dispute resolution in accordance with Article 108A of the PPL.

Step 5: According to PPL (Article 111) the following information must be included in the submitted complaint for PRB to take Action:

– the name, address and contact information of the complainant;
– the name of the concerned contracting authority;
– a reasonably specific description of the concerned procurement activity;
– an attached copy of the concerned contract award notice or design contest results notice, if such has been issued or published;
– a demonstration (as defined under Article 4 of PPL) that the complainant qualifies as an “interested party.”;
– a description of the factual circumstances constituting or giving rise to the alleged violation;
– a specification of the provision or provisions of the present law that have allegedly been violated;
– a description of how the alleged violation has caused, or threatens to cause, material damage to the complainant in cases where the complainant includes a claim for compensation;
– a copy of the decision of the contracting authority issued during the preliminary resolution of disputes in accordance with Article 108A of the PPL; and
– evidence of payment of the complaint fee, described in Article 118 of the PPL.

Complaints related to entities that are not Contracting Authorities or to contracts not falling within PPL or the Law on Public Private Partnerships cannot be reviewed by the PRB and must be excluded at this stage.

The Head of the Division for Complaints’ Review may provide additional support to the Receiving Complaints’ Officer during the examination of complex cases, if requested.

Step 6: As stated by the PPL, (Article 111, paragraph 4), if the PRB determines that a complaint does not meet the requirements it shall immediately notify the complainant in writing, by the most rapid means possible, (by fax or email) of the nature of the deficiencies. If the filing period has expired or will expire in less than four (4) days, the complainant shall have four (4) days after receiving such a notification to correct the deficiencies and to resubmit the complaint. If the filing period has not yet expired and will not expire in less than two (2) days, the complainant may re-submit the complaint any time prior to the expiration of the filing period.

If after the resubmission there are still shortcomings, then PRB shall refuse the complaint and it will not be possible resubmit the complaint again, even if recompiled.
CF.2 Setting up of Review Panels

According to Article 106 of PPL, a Review Panel may consist of one, three or five members, as defined by internal rules of the PRB (Rules of Procedure, Article 22), which take into account the value of the proposed contract and the complexity or importance of the issue.

The Review Panel must be set immediately following initial acceptance of the complaint (Article 111 paragraph 5 of PPL).

The selection of individual Board Members for each Review Panel is made by the President. It is particularly important that, in performing this selection, the President ensures that cases are uniformly distributed to Board Members over the course of the year, taking into accounts the factors of complexity and anticipated workload of cases.

The following figure and accompanying notes summarise the main steps that are followed in order to set up the Review Panel for a particular case.
## Setting up of Review Panels

### CF.2 Setting up Review Panels

1. Examine the complaints case and assess its complexity, as well as the procurement value concerned.

2. Is the procurement case of special importance and interest? (irrespective of the value concerned)

3. Is the value of the procurement activity lower than 50,000 Euros?

4. Is the complaints case dealing with the assessment of discriminatory criteria during the bidding stage?

5. Appoint a One-member panel

6. Is the value of the procurement activity over 50,000.00€ and no greater than 500,000.00€?

7. Appoint a Three-Member Panel

8. The value of the procurement activity must be over 500,000.00€?

9. Appoint a Five-member Panel
Notes:

Step 1: During this review the President will take into consideration all elements contained in the initial review of the complaint (CF.1) completed by the Receiving Complaints’ Officer.

Step 2: All cases of special importance and interest (as assessed by the President) are examined by 5 Member Review Panels.

Step 3: Even if a case involving discriminatory criteria is below the lower threshold it is still examined by a 3 Member Review Panel.

Step 4: In case a one-member Review Panel is set, its only member will necessarily be the designated Board Member originally assigned the case by the President.

Steps 2-5 All thresholds set here (50.000 €, 500.000€) will be regularly reviewed by the Board of the PRB and may be adjusted accordingly.

Steps 6: When selecting Members for the Review Panels, the rotation principle will be applied by the President, whenever possible.
CF.3 Appointment of a Review Expert

The PRB, according to PPL, is required to “immediately assign to one of its review experts the task of reviewing the conduct of the concerned procurement activity and to assess the validity of the allegations contained in the complaint” (PPL, Article 113, paragraph 1). Thus, following the setting up of a Review Panel (CF.2), the Review Panel’s president (or sole member) is assigned responsibility for monitoring and managing the case throughout the process, until the Panel meets and reaches a decision. This Member initiates the process and recommends whether, in extraordinary circumstances, additional external technical expertise and support is necessary, for the Board to reach a decision.

The following figure and accompanying notes summarise the main steps that are followed by the PRB when appointing a Review Expert:
### Appointment of a Review Expert

<table>
<thead>
<tr>
<th>PROCESS STEPS</th>
<th>ORGANISATIONAL ROLES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>PRB Board</td>
</tr>
<tr>
<td>Start</td>
<td></td>
</tr>
<tr>
<td>CF.3 Appointment of a Review Expert</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Assess whether this case must be combined with another case on the same subject or tender</td>
</tr>
<tr>
<td>2</td>
<td>Assign the incoming complaint to a Review Panel Member</td>
</tr>
<tr>
<td>3</td>
<td>Assume overall responsibility and request from the Head of the Secretariat to appoint a PRB Review Expert</td>
</tr>
<tr>
<td>4</td>
<td>Appoint A PRB Review Expert</td>
</tr>
<tr>
<td>5</td>
<td>Does the case required specialised technical support not available within PRB?</td>
</tr>
<tr>
<td></td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>NO</td>
</tr>
<tr>
<td></td>
<td>Recommend to the President to appoint, in addition to the PRB Review Expert, an external Technical Review Expert from the &quot;Technical Experts Registry&quot;</td>
</tr>
<tr>
<td>6</td>
<td>Appoint the additional external Technical Review Expert</td>
</tr>
<tr>
<td>7</td>
<td>Notify the External Technical Review Expert that he is to be allocated the case, following PRB's President Decision. Notify the PRB review expert that he is to collaborate with an external expert.</td>
</tr>
<tr>
<td>End</td>
<td></td>
</tr>
</tbody>
</table>
Notes:

Step 1: The President may decide to bring together cases which are related to the same subject or tender, in order for them to be examined by the same Review Expert and decided by the same Review Panel.

Step 2: The President immediately assigns the complaint to the PRB Board Member who is the President of the Review Panel being established under procedure CF.2, in order to decide on the case. The designated Member will be responsible for monitoring and supervising the expert who is assigned the case, until his/her decision has been written and communicated to all parties involved.

Steps 3: The Head of the Secretariat assigns the case to a PRB Review Expert. This allocation should be made taking into account their expertise, their workload pertaining to cases and other tasks they may be carrying out at the PRB. Whenever applicable, a rotation approach to the naming of experts must be adopted, allowing Complaints’ Review Division experts to gradually build the necessary expertise and skills.

Steps 4, 5: If the responsible Board Member considers that the case requires, in addition to the PRB Review Expert, support from an external technical expert who possesses necessary technical knowledge and skills not available within the Complaints Review Division, then he recommends so to the President. Normally, this should only happen in exceptional cases.

Step 6: The President decides if the request for an external technical expert must be accepted. Resorting to external technical review experts must be kept to a minimum and always within budget constraints. Only external experts already registered with PRB’s “Technical Experts Registry”, or having the capacity to do so, should be contacted. Within the same technical field, selecting the same external expert again and again, when more candidates are available must be avoided.
CF.4 Complaints Examinations and Analysis

The PRB Review Expert assigned under CF.3 is required, according to Article 114 Paragraph 1 of the PPL, within 10 days from his/her assignment, to review the contracting authority’s documentation and related records, conduct any interviews that are found appropriate and necessary and produce a written assessment of the procurement activity and the validity of each of the allegations contained in the complaint.

If an external technical Review Expert has been also appointed he/she collaborates with the PRB Review Expert providing all technical explanations or information necessary.

The President of the Review Panel who has been nominated by the President to hold responsibility for the complaint case (CF.2, Step 2) will be supervising the work of the review expert(s) *as required*. Obviously, ensuring best co-operation between the persons involved (the President of the Review Panel, the PRB Review Expert and possibly the external Technical Expert as well) provides the key to successful examination of the case. A balance must be achieved between, on the one hand, an excessively “light” supervision that does not communicate any priorities or particular directions that the responsible President of the Review Panel believes that need to be taken and, on the other hand an unnecessarily “heavy” supervision which may upset the wanted separation between fact finding and the judicial part of the decision.

The following figure and accompanying notes summarise the main steps that are followed by the PRB when examining a complaint.
### Complaint Examination and Analysis

#### PROCESS STEPS

<table>
<thead>
<tr>
<th>CF.4 Complaint Examination and Analysis</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Review the complaint and all respective documents (President of the RP may supervise, when necessary)</td>
</tr>
<tr>
<td>2. Request additional documents from the contracting authority or other sources (President of the RP may supervise, when necessary)</td>
</tr>
<tr>
<td>3. Conduct interviews with both involved parties (President of the RP may supervise, when necessary)</td>
</tr>
<tr>
<td>4. Prepare written assessment of the complaint</td>
</tr>
<tr>
<td>5. Review and approve (or correct) the written assessment</td>
</tr>
<tr>
<td>6. Send the written assessment to the Contracting Authority and Complainant (where applicable)</td>
</tr>
</tbody>
</table>

#### ORGANISATIONAL ROLES

<table>
<thead>
<tr>
<th>PRB Board</th>
<th>PRB President</th>
<th>Review Panel</th>
<th>Head of Secretariat</th>
<th>Legal Sector</th>
<th>HR Officer</th>
<th>Finance Division</th>
<th>PRB Review Panel</th>
<th>Head of Secretariat</th>
<th>Legal Sector</th>
<th>HR Officer</th>
<th>Finance Division</th>
<th>Complaints Review Division</th>
<th>Internal Division</th>
</tr>
</thead>
</table>

- **Complaints Review Division**
  - Receiving Complaints Officer
  - Complaints' Review Expert
  - Archive Officer
  - Executive Assistant
  - IT Officer
  - Translator

- **Internal Division**

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Start: 1
End: 6
Notes:

Step 1: The review is of a primarily fact finding nature and is conducted by the PRB Review Expert. The President of the Review Panel’s role has to remain supervisory. If an external technical expert is also involved he shall collaborate with the PRB Review Expert, providing support and explanations on technical issues on his particular field of specialisation, when requested.

Step 2: The review expert may, according to PPL Article 114 paragraph 1, “interview, as he/she deems appropriate and necessary, any official, employee or consultant of the contracting authority or the complaining party”. The role of the President of the Review Panel must be again seen as supervisory and supportive here. The President of the Review Panel need not take part in the interviews.

Step 3: The written assessment, prepared by the PRB Review Expert, is the output from a fact finding report and is intended to support the Review Panel in reaching a decision. Therefore, it should be structured in a way that clearly addresses the validity of each of the allegations contained in the complaint. It is addressed to all involved parties: the Contracting Authority, the complainant and the Review Panel that will be examining the case.

Step 4: The Review Panel which has been appointed for the case has to provide its authorisation before the PRB Review Expert’s written assessment is disclosed outside the PRB, after ensuring that it is well structured, complete and clear, fulfilling the purpose of informing all sides about the case at stake. The Review Panel’s authorisation is without prejudice to the Panel’s final verdict for the case.
**CF.5 Examination of a Case by the Review Panel**

According to the PPL Article 115, a complaints case is referred to a PRB Review Panel and the Review Panel proceedings start if, within 4 days after receiving the Review Expert’s assessment, the concerned Contracting Authority:

a) fails to issue the required decision, or,

b) issues a decision that rejects or denies the validity of an allegation, or,

c) fails to assess the validity of an allegation

**Oral Hearing**

As a rule, cases are decided by the Review Panels with an oral hearing. In uncomplicated cases, where the parties agree on the factual issues, the PRB may decide not to conduct an oral hearing, because such a hearing will not be necessary. The parties concerned however, as well as the Review Panel handling the case, have the right even in that case to request an oral hearing and the Review Panel is left to decide on that. If an oral hearing does take place, PRB must communicate its date and time three calendar days in advance. It can be postponed up to a maximum of five calendar days, upon a justified request by any party. Minutes from an oral hearing are taken and must be signed by all participants.

**Procedural Principles**

According to PPL, Article 107, review proceedings must be based on a set of procedural rules. The principles on which these rules are based are included both in the Law as well as in the Rules of the Procedure of the PRB.

The following, in particular, must be fully respected, or ensured:

(i) The right of the parties to be heard, including right to make written submissions (PPL, Article 107);

(ii) the right of the parties to be informed about arguments and allegations advanced by the other party and to respond to such arguments and allegations (PPL, Article 107);

(iii) the right of the parties to have legal representation (PPL, Article 107);

(iv) the right of the parties to present evidence and arguments in a hearing before the PRB, including examination and cross-examination of witnesses (PPL, Article 107);

(v) the right of the parties to request the appointment of technical witnesses (PPL, Article 107);

(vi) the expeditious, fair and non-discriminatory manner of the proceedings, which should be always directed at achieving a fair, lawful and effective
resolution of the subject matter involved (PRB Rules of Procedure, Article 12);

(vii) the non-discriminatory manner of the proceedings or of any decision taken, which should ensure that their conduct shall be done or made in any manner that does not discriminate in favor of or against any participant or any other legal or physical person (PRB Rules of Procedure, Article 12);

(viii) the adversarial nature of the review proceedings, which, by their own nature, have to resolve issues between antagonistic, or conflicting, parties or interests (PRB Rules of Procedure, Article 12);

(ix) the equal access of all interested parties to the procurement review proceedings and remedies (PRB Rules of Procedure, Article 12);

(x) that PRB shall act as expeditiously as possible (PRB Rules of Procedure, Article 12);

(xi) that PRB shall act in a manner that is proportionate to the alleged violation or other matter complained about (PRB Rules of Procedure, Article 12);

(xii) that PRB shall take into account the probable consequences of such action or measure for all interests likely to be harmed, including the public interest (PRB Rules of Procedure, Article 12);

(xiii) the confidentiality principle, under which PRB is required to protect from disclosure to the public or unauthorized persons information developed or received by it during the conduct of its work to the extent this is required by the legal framework, with the notable exception to information provided to the Auditor General (PPL Article 108)

During the examination of a case, a Review Panel may:

- Issue investigation orders under which data, information, documents and/or other items of movable and/or immovable property are produced to the panel by physical or legal persons, including public authorities
- issue orders for persons to appear in review proceedings and provide testimony
- issue a variety of resolution orders for:
  - Setting aside or suspending an award of a public contract;
  - suspending or terminating the conduct of a procurement activity;
  - canceling or revoking a decision by a contracting authority;
  - requiring a contracting authority to pay compensation;
  - correcting an alleged violation and/or to prevent further damage;
  - removing discriminatory technical, economic, financial or selection specifications, requirements or criteria;
  - rendering a concluded and signed contract ineffective.
- issue an order requiring law enforcement officials to assist in obtaining compliance with any of the above orders
• impose penalties on any contracting authority that, despite the issuance of an order continues to observe or implement the contract that is the subject of such order
• address any refusal or lack of cooperation by an any party and decide in favour of the opposite party, provided that such a decision is justified.

**Presence of Independent Technical Experts**

If a Panel requires additional technical support it may request, during its sessions, the presence of the internal or external technical experts who have produced the written assessment of the procurement activity, or any other expert or consultant which can support it in reaching a decision.

**CF.6 Issuance of Decisions**

The issuance of PRB Decisions is regulated by Article 116 of the PPL. Decisions are always accompanied by a written statement of the factual and legal bases justifying them.

The following essential conditions must be observed, according to the law:

(i) Before a decision is reached, PRB must ensure that all proceedings leading to it have been conducted based on the principles presented under procedure CF.5 above.

(ii) All information that is required by the PRB has been duly provided. This includes both information provided through the submission of material, as well as information provided through testimonies.

(iii) Similarly, if any other party has requested to present additional information for the case its request has been examined by the PRB and if found sensible has been accepted.

In 3 and 5 member Review Panels decisions are reached by voting, through a simple majority. Members of the Review Panel may not abstain from the voting. (The voting result may be published; however, the voting of each member is strictly confidential.

Regarding the deadline for issuing decisions, PPL (Article 117) clearly states that:

• In normal cases decisions are issued not later than fifteen (15) days following the latest (and last) submission of information by the Contracting Authority concerned. Obviously this is presumed to have taken place within the limits identified by the PPL.
if the PRB decides that the case is particularly complex (in which case, according to procedure CF.4 a five member panel must be normally involved) an extension of a maximum 30 days can be decided by PRB.

A Review Panel decision may lead to:

- Approval of the procurement activity when it is considered that the Contracting Authority did not violate the PPL provisions
- re-evaluation of the procurement activity, when it is considered that the Contracting Authority Evaluation Commission, during the evaluation procedure, did not respect or interpret correctly the criteria included in the tender dossier and therefore did not make objective evaluation
- annulment of the procurement activity, when it is considered that the Contracting Authority violated procurement procedures
- rejection of the complaint, when it is considered that the complaints filed were not complete, or were submitted passed the deadline, or that the entity submitting the complaint failed to offer insurance complaint testimony or has since then withdrawn its complaint, etc.

A Review Panel decision, can only be challenged (annulled or amended) at the courts.

**CF.7 Translation and Publication of Decisions**

According to Article 117 Paragraph 2 of the PPL, decisions of the PRB on review claims and complaints shall be published:

- within five (5) days on the PRB webpage in the original language of the decision
- within fifteen (15) days with regard to other languages, as well as in English for all cases with a high contract value.

As state by the Rule, when a decision is published those parts that contain personal data or are considered as confidential will be excluded.

It is essential for PRB to safeguard a high quality of translations as well as a full compliance to the above deadlines, through the application of quality of translation standards that are observed both by its internal translators (PRB staff), as well as by any external translators providing services to PRB.