

REGULATION NO.01/2017 OF THE WORK OF PUBLIC PROCUREMENT REVIEW BODY OF KOSOVA

2017

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Under Article 142 (Chapter XII) of the Constitution of the Republic of Kosovo 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 17.03.2017 on the 20.03.2017 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, No.04/L-042, amended and supplemented with the law No. 04/L-237, law No. 05/L-068 and law No.05/L-092.

(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, a PRB review experts, professional expert or external expert, 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 this Rules of Procedure.
- 5) "PRB Review Expert" is the review expert, employee of PRB employed in the the Divison for reviewing Complaints" of PRB.

6) "PPL" Public Procurement Law of the Republic of Kosova.

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) Principle of contradictory in the procedure;
- e) Transparency and public information;
- f) Protection of personal data, commercial or state secrets;
- g) Prevention of conflicts of interest;
- h) Prevention of corruption;
- i) Efficiency;
- j) Preservation of value for money;
- k) 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 published on the website of the PRB and whenever is needed, 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 and all third parties 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.

(3) Any attempt to influence the PRB and its decision is prohibited.

(4) Every use of public authority, mass media, and public appearances in order to exercise influence on the course of the complaint's procedure and decisions of the PRB is prohibited.

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, 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 an internal organization structure described as follows:

(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 Section and Representations in the Courts
- e) HR Office

(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 President 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 work positions) are described in detail by Regulation "On Internal Organization and Systematization of work in the Procurement review Body".

Article 11. (Conflicts of Interest)

(1) A PRB Review Expert or members of the Review Panel, or President, any other

staff of the PRB, or an expert or independent advisor, third party 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. Principle of independence and impartiality in decision making will be fully respected.

(3) PRB will respect the dissenting nature of the reviewing procedure. Principle of contradictory of the procedure will be fully respected.

(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 in 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.

(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.

(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. Complaining 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) In accordance with article 111 paragraph 1 of the LPP, a complaint should include at least the following information:

- Information of the complainant : the name, name of the company, the 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;
- a proof that the complainant qualifies as an “interested party,” as defined under article 4 paragraph 1.26 of PPL;
- description of violation of PPL or other legislation and an explanation, and presents evidence;
- 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’s fee, described in Article 118 of the PPL.
- Demand for solution;
- 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’ Official, 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, except in cases specified in Article 22 of this regulation.

(2) The same review expert, technical or professional of procurement, ascertains that complaining claims are the same 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 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’ Official will review the complaint immediately to determine if it belongs to the jurisdiction of the PRB, contains the information of complainant; contains name of the relevant Contracting authority; a reasonable description of the procurement activity in question; it has attached a copy of the contract award notice or notice of design contest, if such a thing is issued or published; a description of violation of PPL or other legislation and an explanation, and presents evidence; a description 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’s fee, described in Article 118 of the PPL; Demand for solution; Demand for compensation of procedural costs; Signature of the authorized person and seal.

(2) Official to receive Complaint 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 is expired by the Law, then the President of the PRB will be notified in order to reject it or dismissed as expired deadline the complaint. 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 Official for Receiving Complaints’ 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 President of the PRB shall reject as not-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 Contracting Authority, which is obliged without notification by the PRB, automatically to suspend the procurement activity to which the complaint relates, in conformity with article 112.1

of the PPL. The case is immediately assigned, to a review expert of the PRB, professional expert of procurement which is in the list of professional expert of procurement by the Head of the Secretariat, in cooperation with President of the PRB.

(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 importance workload and complexity.

(10) The Head of PRB's Secretariat in cooperation with the President of the PRB, will also immediately assign the case to a PRB review Expert, technical or professional of procurement.

(11) Procurement Review expert, technical or professional, will make a written request through electronic mail or physical copy, whether the matter should be treated by technical expert. This request must be made no later than two (2) days following acceptance of the authorization for reviewing.

(12) If a recommendation is made for assigning of a technical expert, the President of the PRB will decide and select an External Expert from the "Register of Technical Experts" 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.

(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) Criterion for removal of the suspension will be considered if the suspension would cause material damage to the public interest and when that damage is greater than the interest of the complainant. Cases where the public interest would be damaged includes 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.

Article 19. (Report of the PRB Review Expert)

(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, by notifying in written the supervisor to whom responds and President of the Review panel.
- (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 prepare a report or a written evaluation within ten (10) calendar days after receiving the complaint. This evaluation shall be without prejudice to its final decision of the Review panel on the case. The Expert's Report of the PRB, after the protocol, from the archive of the PRB will be sent, to the Contracting Authority, to the complainant, to the review panel.
- (6) If the contracting authority and the complainant agrees with the report of the review expert of the PRB, 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.
- (7) Regardless the compliance of the parties, regarding the report of the review expert the Review panel can proceed with reviewing the complaint.

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 PRB 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 allegation 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 created after receiving the complaint conform article 17 of this Regulation.

(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, 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.

(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 10.000,00 €.

(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 10.000.00 € 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) Review Panel, when deciding, will primarily examine only complaining claims contained in the complaint;

(3) Review Panel may issue an order to the contracting authority so far allowed by

LPP, forcing such authority to suspend or terminate the conduct of a procurement activity or the implementation of the decision of such authority related to or during activity in question;

(4) 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;

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

(6) 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;

(7) 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;

(8) 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;

(9) 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;

(10) 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;

(11) 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:

(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 President of the Review Panel should treat them as a matter already judged "*Res judicata*". For a complaint to be treated as "*Res judicata*", as defined in this article, 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) Economic Operators, at the hearing session may be represented: the owner – co owner, the legal representative of the EO who is in labor relations at the EO, a person which has authorized the EO in the tender dossier, or attorneys.

(4) Contracting authorities, at the hearing, can be represented: the authorized person, employees of CA, by the MAO or the Responsible Procurement Official or attorneys.

(5) Date and time of the hearing session will be defined and communicated to the parties at least two (2) calendar days in advance. Each party has the right to request postponement of hearing session with the justified excuse on the condition that it will happen only once, while the delay cannot be more than five (5) calendar days.

(6) Development of a hearing session will be recorded in the minutes and signed by all participants.

(7) The hearing session is lead by President of the review panel in cooperation with the members of the review panel. Participants in a hearing session can discuss only for reviewed subject and only when given the word by the President of the review panel. If any of the participants in the hearing session tends to misuse with his authorization, President of the hearing session will behold a verbal remark, if the same does not apply the verbal remark, then President along with members of the panel will give written notice and might detract from the hearing session and to impose a fine of 100 € to 500 €.

Article 27. (Review Experts, procurement professional expert and technical external expert)

(1) A Review Panel may require the presence and testimony, during an examination, of a Review Expert, a procurement professional expert who has handled the case, or external technical expert.

(2) Every expert appointed will be included in the division for reviewing of the complaints, Register of professional Experts of the procurement, or register for technical experts of the PRB.

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. Voting should take place immediately after the hearing session in the session for consultation and voting.
- (3) In specific cases, in order to establish the facts and evidence presented during the hearing session, the Review Panel may postpone the hearing session for consultation and voting for an indefinite period but on condition to be respected the legal deadlines set out in the PPL for making decisions.
- (4) After the hearing session for consultation and voting, the President of the Review Panel shall equip the parties in the procedure by a decision of the review panel.
- (5) 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.
- (6) The minutes of the hearing session include: name of the institution, the members of the Review Panel, the date and time when the decision was taken, the title of the object of examination in the procedure and information on the participating parties and their attorneys.
- (7) 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.
- (8) 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 from 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 not more 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) 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, 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 always pays the costs of the independent expert.

Article 33.(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 complaining claim is ungrounded, 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 ungrounded 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 grounded, or the complainant withdraws the complaint, or if PRB declares incompetent in handling the complaint in question, and if the complaint is incomplete, and if the complaint is out of legal deadline, then to the complainant should be returned the insurance fee of the complaint, according to Article 13 paragraph 7 of Rules of Procedures.
- (5) Confiscation of the insurance fee of the complaint shall also apply in cases where the review panel dismisses the complaint as inadmissible, when it is determined that the complainant has been irresponsible and when is clear that the purpose of the complainant is the prolongation of the procurement activity.
- (6) 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 theses Rules of Procedures for the insurance 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's insurance and these funds will go into the budget of the Republic of Kosova.
- (7) 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 €.

(8) 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.

(9) When PRB, notifies 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.

(10) 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 completion of examination of the 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.

(11) If the Court finds that the complaint was grounded, 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 rate.

Article 34.(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 35.(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 sufficient 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 from that contractor, who otherwise would not have gotten such a contract, it may be avoidance of disbursement 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:

- 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 36.(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 37. (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 38. (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 39. (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 40. (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 that do not contain the 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 are 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 41. (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 494/15 of the 22.06.2015, will not be valid from the date of implementation of this Rules of Procedure of the PRB.

Prishtina on the 20.03.2017

President of the PRB
