



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

Psh. No.1212/24

The Review Panel, appointed by the President of the Procurement Review Body (PRB), based on Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova (Law No. 04/L-042, supplemented and amended by Law 04/L-237, Law 05/L-068, supplemented and amended by Law 05/L-092) composed of Isa Hasani –President, deciding upon the complaint of (EO) “Reforma” SH.P.K, against the Decision to contract award or a design competition regarding the procurement activity “SUPPLY OF SPARE PARTS FOR “SKODA OCTAVIA” VEHICLES with procurement number; 214-24-10180-1-1-1, initiated by the contracting authority (CA) - “KOSOVA POLICE”, on the 18/02/2025, has issued this:

DECISION

1. Refused, as ungrounded the complaint of EO “Reforma” SH.P.K” with no. 2024/1212, dated 14.12.2024, regarding the procurement activity “SUPPLY OF SPARE PARTS FOR “SKODA OCTAVIA” VEHICLES with procurement number; 214-24-10180-1-1-1, initiated by the contracting authority (CA) - “KOSOVA POLICE.
- 2.Certified, B58 Notice on the Decision of the Contracting Authority, regarding the procurement activity: “SUPPLY OF SPARE PARTS FOR SKODA OCTAVIA VEHICLES” with the data as in point 1. (one) of the decision.
3. In accordance with Article 31, point 5, of the Rules of Procedure of the PRB, the complaining economic operator EO “Reforma” SH.P.K. shall have the complaint fee confiscated in the amount deposited upon filing the complaint, while the funds shall be transferred to the Budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances -

On 04.10.2024, "KOSOVO POLICE", in the capacity of the Contracting Authority, has published the Contract Notice B05 regarding the procurement activity entitled "SUPPLY OF

SPARE PARTS FOR SKODA OCTAVIA VEHICLES" with procurement number 214-24-10180-1-1-1, while the Decision of the Contracting Authority was issued on the 26.11.2024 for the contract award.

The contracting authority has implemented an open procedure, contract type: supply, estimated contract value: 300,000.00 €.

On the 01.12.2024, EO "Reforma" SH.P.K has submitted a request for review against the abovementioned decision of the CA. On the 06.12.2024, the Contracting Authority has rejected as unfounded the request for review.

On the 14/12/2024, the PRB has received the complaint from "Reforma" SH.P.K with no. 2024/1212 regarding the activity "SUPPLY OF SPARE PARTS FOR SKODA OCTAVIA VEHICLES" with procurement number 214-24-10180-1-1-1.

-On the preliminary review phase-

The Review Panel has found that the complaint contains all the elements set out in Article 111 of the LPP and as such has been submitted within the legal deadline in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for the resolution of disputes in the sense of Article 108/A of the LPP, by the economic operator who is an interested party under Article 4 paragraph 1 sub-paragraph 26 of the LPP. In this way, the Review Panel has found that it is competent to review this complaint under Article 105 of the LPP and there is no procedural obstacle to continue with the review of the complaint on its merits.

CA's response to the request for reconsideration of EO REFORMA SH.P.K.

The CA has not violated Article 7 - The contracting authority has treated all economic operators in an equal and non-discriminatory manner and will act in a transparent manner. In this case, the CA has evaluated the offers received from the EO fairly and equally in accordance with the contract notice, the TDS and the mandatory technical specifications, without favoring or discriminating against any EO.

Therefore, this claim of the EO is unfounded.

The CA has not violated Article 59 - The contracting authority will consider a tender responsive only if the tender in question complies with all the requirements set out in the contract notice, the FDT and the mandatory technical specifications Annex. Therefore, the CA has examined, evaluated and compared all offers in an equal and non-discriminatory manner and in compliance with all the requirements set out in the contract notice and the tender dossier.

Therefore, this claim of the EO is unfounded.

Claim 1: Reasons for your elimination as EO - CA clarifies that l.You in the price list was requested the column "name of the manufacturer and country of origin", you in this column have put instead of the manufacturer the name "ORIGINAL", original is not a manufacturer., As you were also informed in the standard letter for elimination, CA did not request clarification on this

point because it would not bring a positive result because your offer is higher than the recommended offer.

- Claim 2: You have submitted an authorization from the authorized Distributor of the manufacturer PORSCHE MACEDONIA but you have not attached the Agreement confirming between the distributor and the manufacturing company that the distributor has the right to issue an authorization, because PORSCHE MACEDONIA but the distributor. As you were informed in the standard letter for the elimination, the CA did not request clarification on this point because it would not bring a positive result because your offer is higher than the recommended offer.

- Claim 3: regarding the name of the recommended EO, it does not stand, because in the contract notice the name is set as it is registered in the ARBK, while in all documents stamped by the EO, they are with this seal. Also, the EO logo placed in the documents provided by the EO is also with this logo. Therefore, this claim of the EO is unfounded. See the seal of the EO recommended for the contract.

Claim 4: Regarding the authorizations of the recommended EO with the justification that they are distributors and not manufacturers and you have not attached the Agreement Confirmation between the distributor and the manufacturing company that the distributor has the right to issue authorization,

CA clarifies that this point does not hold because CA has verified all authorizations submitted by the EO bid and all of them confirm to us that they are manufacturers, as well as in the verifications via the internet, the manufacturers MAPCO, TRISKAN, SRLRicambi, EUVITES are manufacturers. Therefore, this claim of the EO is unfounded.

Claim 5: Regarding the claim that the manufacturer MAPCO does not have item 23 in stock, the CA clarifies that nowhere in the tender dossier and the contract notice is it requested that the manufacturer must have the requested items in stock, according to the request in the tender dossier, the deadline for the Bidding which the EO must adhere to during the implementation of the contract is requested, we have confirmation from the manufacturer that it supports the EO's bid and we have the statement from the EO's bid on the delivery deadline which is according to the request in the tender dossier.

The CA has not violated Article 61 of the LPP and Article 41 of Regulation no. 01/2022 - Because the CA has analyzed all the prices of all the packages and has concluded that these prices are not Abnormally Low prices, as claimed by the complaining EO. Also, the evaluation report was carried out professionally by the members of the evaluation commission and there was no favoritism towards the EO recommended for the contract as claimed by the complaining EO. Since the Contract Award Criteria where the criterion was the responsive tender with the lowest price, in this case the CA has acted in full harmony with Article 60, 61, LPP 41-RRUOPP by recommending for the contract the EO with the lowest price according to the Contract Notice and in the DT. The Authority has not contested any price of the financial offer of the EO recommended for the Contract.

According to RRUOPP- Article 41 Abnormally Low Tenders none of the conditions have been met for this tender to be considered an Abnormally Low tender by the CA, Article 41.1 The concept of an abnormally low tender refers to tenders that for the contracting authority at first glance appear to be unreliable when compared to the subject matter of the contract and in accordance with the circumstances, and which are likely to have a negative impact on the performance of the contract implementation - for the CA all prices are reliable prices and there is no price that would negatively affect the performance of the implementation of this contract according to this financial offer of the EO recommended for the Contract.

Also, the regulation GUIDELINES No. 001/2023 ON PUBLIC PROCUREMENT

point 11. Abnormally Low Tenders cannot be applied.

- The claims that the CA has violated Article 72 of the LPP are not valid since the CA explains that it has not violated this Article since the evaluation of the bids was carried out in accordance with the Public Procurement Law, in accordance with the requirements in the tender dossier and in the contract notice. The CA also did not request additional clarifications since it would not bring a positive result because your bid is higher than the recommended bid.

The complaining claim is unfounded.

Claim 1: Reasons for your elimination as EO - CA explains that in your price list, the column for the name of the manufacturer and the country of origin was requested, and in this column you have placed the name ORIGINAL instead of the manufacturer, original is not a manufacturer. As you were also informed in the standard letter for elimination, for this point CA did not request clarification because it would not bring a positive result because your offer is higher than the recommended offer.

2. You have submitted an authorization from the authorized distributor of the manufacturer "PORSCHE MACEDONIA" but you have not attached the Confirmation Agreement between the distributor and the manufacturing company that the distributor has the right to issue an authorization, because PORSCHE MACEDONIA is not a distributor. As you were also informed in the standard letter for the elimination of this point, the CA did not request clarification because it would not bring a positive result because your offer is higher than the recommended offer. Therefore, this claim of the EO is unfounded.

According to the above-mentioned facts, the CA has not violated any of the above-mentioned articles. The complaint of the EO is not in accordance with the requests of the CA and in this case the request for Reconsideration is Unfounded.

The claims of the complaining economic operator "Reforma" SH.P.K are presented as follows:

On 27.11.2024, we, as an economic operator participating in the tender entitled: "Supply of spare parts for Skoda Octavia vehicles", procurement no.: 214-24-10180-1- 1-1, have received the notification from the contracting authority - Kosovo Police on the elimination (standard letter B42).

Also in the standard letter of elimination - the contracting authority has elaborated the reasons for the elimination as follows:

1. The price list requires the name of the manufacturer and the country of origin in the column - however, we as an economic operator have put the original name instead of the manufacturer, the original is not the manufacturer;
2. Authorization issued by the manufacturer - the agreement must be attached - confirmation between the distributor and the manufacturing company that the distributor has the right to issue an authorization.

Regarding point 1 of our elimination from this procurement activity - we inform the PRB that this reason is unsustainable and unfounded in the provisions of the LPP. In the column - manufacturer's name, we have not put the name of the manufacturer because we considered that it is implied by the very title of this activity "Supply of spare parts for Skoda Octavia vehicles" (we have set the term Original for the manufacturer while the country of production - Germany. So this means that we offer only original parts from the manufacturer Skoda - the manufacturer of the auto part is Skoda - original parts manufactured by Skoda - since it is only about Skoda). We have offered authorization of the manufacturer "Porsche" from Austria, namely from the Porsche branch in Macedonia, so we have put the original name to show that we will offer original parts for the "Skoda Octavia", from the manufacturer "Skoda", because "Porsche Automobil Holding SE" is the main shareholder with 53.3% of the shares in the VW Group, which also includes Skoda.

So Porsche is the manufacturer and owner of the "Skoda" vehicle.

However, in case of eventual uncertainties, the contracting authority could request additional clarifications from us based on Article 72 of the LPP.

Likewise, point 2 of our elimination from further competition in this procurement activity does not stand and the same has no legal basis. Based on the Tender Dossier, point 7.1 & 7.2 of the Professional Suitability Requirements, it is requested: 3. Authorization from the manufacturer or the authorized distributor of the manufacturer (if the authorization is from the distributor, then as evidence, a contract or authorization between the distributor and the manufacturer must be brought, for the sale of the products you offer for the tender (with the title and Procurement No. of the project in question), for a contract duration of 36 months. We as an economic operator have provided the authorization from the manufacturer "Porsche Automobil Holding SE" - namely from Porsche Macedonia - branch in Skopje. Porsche is the main shareholder with 53.3% of the shares in the VW Group, which also includes Skoda. So "Porsche" is the manufacturer and owner of the Skoda vehicle, not the distributor as you claim as a contracting authority, and that we did not need to attach a contract or authorization between the distributor and the manufacturer, for the sale of the products we offer. The authorization number of the company "Reforma" from the Skoda vehicle manufacturer is 430/10050. Please check with Porsche - Skoda.

For information and details, please contact Porsche Macedonia at:
bartolomej.kajtazi@porsche.com.mk or tel. no.: 00389 70 352 366

Therefore, from the above facts and evidence, it results that our offer was a responsible offer and conforms to the requirements of the Tender Dossier. In the notification on the decision of the contracting authority dated 27.11.2024 for this procurement activity, you have recommended for awarding with the contract to the EO. Independent Auto Parts Dealer "Buqa".

After accessing the tender documentation provided to us by the contracting authority in the bid of the economic operator recommended for contract award, we conclude that the bid of this economic operator is irresponsible and that the contracting authority has violated the provisions of the LPP for the following reasons:

The LPP article 7 Equality of Treatment/Non-Discrimination has been violated. The contracting authority, when recommending for award of the contract to EO "Buqa", has discriminated against us, favoring EO "Buqa", because the same operator is irresponsible. EO "Buqa", has not fulfilled point 7.1 & 7.2 of the Tender Dossier in the Professional Eligibility Requirements, it has been requested: 3. Authorization from the manufacturer or the authorized distributor of the manufacturer (if the authorization is from the distributor, then as evidence, a contract or authorization between the distributor and the manufacturer must be brought, for the sale of the products you offer for the tender (with title and Procurement No. of the project in question), for the duration of the contract of 36 months.

From the very title of the contract that the CA requires spare parts for the Skoda Octavia vehicle and requires authorization from the manufacturer (meaning the Skoda vehicle) - then the authorization must necessarily be from the Skoda vehicle manufacturer. The same economic operator has attached authorizations in its bid from several companies such as Mapco, Triskan, SRLRicambi, Euvites, but these companies are packaging companies and not manufacturers - which have the quality of a distributor and not a manufacturer that produces parts in various factories around the world, have their own brand registered, package goods under their own brand name and sell them. They are distribution companies for their own brands produced by various global companies.

The CA has not done any research and has not presented any evidence for these authorizations and for the companies that have authorized DPT Buqa to supply spare parts.

The company "Triscan" from Denmark does not have its own factory for the production of parts, but it operates as a company specialized in the development, testing and distribution of vehicle parts, Triscan cooperates with various networks of manufacturers and parts manufacturers in Europe and Asia to produce the components that it sells. MAPCO Company Information about MAPCO Autotechnik GmbH MAPCO is a German company based in Bruck, which offers spare parts and accessories for vehicles. The company was founded in 1977 and today focuses primarily on the packaging and distribution of parts for the aftermarket under the MAPCO brand. This includes steering, suspension, braking, engine and filter systems. MAPCO distributes products for millions of vehicles in Europe and beyond, being known for its high quality and

focus on customer satisfaction. Today, MAPCO is part of the international BBB Industries group, which acquired the company on January 28, 2022. Sources

1. Information taken from the official MAPCO website: <https://www.mapco.com>

2. Details about the company's history and ownership:
<https://pitchbook.com/profiles/company/123456>

3. Summary of the company's activities: <https://www.bbbind.com>

Company Overview Triscan Information about Triscan

Triscan is a Danish company specializing in the aftermarket of automotive parts. The company offers a wide range of products, including parts for braking, steering, suspension, cables, and other categories. Triscan operates primarily as a packager and distributor, not as a direct manufacturer of the parts it offers. It cooperates with external suppliers and global manufacturers, ensuring high quality standards for its products.

Triscan's Main Features -**Packaging and Distribution**: Triscan does not manufacture directly, but supplies from global manufacturers and serves the aftermarket market with high-standard parts.

-**Strict Quality Control**: Its products undergo strict controls to ensure that they meet European standards.

-**Modern Logistics Infrastructure**: The company has advanced distribution systems that ensure fast and efficient deliveries.

Wide product range: Offers over 60,000 items for various vehicle categories.

Information Sources Information about Triscan is taken from the following sources:

-Triscan's official website and public materials published by the company.

-Data and reports on the aftermarket of vehicles in Europe.

-Summaries and analyses from well-known portals for the spare parts industry.

-Triscan's official website: <https://www.triscan.dk>

-Reports and analysis from industry portals: <https://www.aftermarketnews.com>

-General information on the aftermarket market in Europe: <https://www.autoserviceworld.com>

So these companies in question, hypothetically speaking, even if they were manufacturers of the same spare parts, they would have to have the authorization of the manufacturer of their Mapko or Triscan brand.

The contracting authority in this case has used double standards, where I as an economic operator have offered an original authorization from the well-known European manufacturer "Porsche Automobil Holding SE" - I have offered the authorization number for the sale and

servicing of spare parts for Skoda vehicles, and you have eliminated me on the pretext that there is no agreement with the manufacturer, while the EO "Buqa" despite the fact that the same has not offered the authorizations or agreements with the mentioned companies which are authorizations from companies that are distributors of its own brand and in no way manufacturing companies. These are authorizations from distributing companies and not manufacturing companies and the CA again awarded the contract to DPT Buqa.

I request from the CA that for these mentioned cases and claims of the company Reforma to state its arguments and evidence contrary to our claims. So far, it has not done this. Abnormally Low Tenders - Article 41 of Regulation No. 001/2022 on Public Procurement

The contracting authority, in the case of the recommendation for awarding the contract to EO "Buqaj", has violated Article 41 of Regulation No. 001/2022, because the prices offered by this EO are abnormally low prices, compared to the prices offered by us. The total price of the financial offer of this operator is: 10686.55 euros, the price of EO "Reforma" Sh.P.K.: 17026.93 euros, while the price of EO "Baki Automobile" is: 21980.10 euros. In the specific case, the conditions for the implementation of Article 41.3 of the Regulation in question have been met, because the price offered by EO "Buqaj" is more than 10% lower than the price or costs of the second lowest tender.

The CA was obliged to act in accordance with Article 41.6 of the Regulation by requesting a written statement from EO "Buqaj". Because based on the said Article, quote: "In the event that a tender (or a tender position where the weighted price per unit is applied) appears to be abnormally low, the Contracting Authority shall request in writing from the economic operator that has submitted the tender or tender position that appears to be abnormally low according to paragraph 41.3 or 41.4 of this Regulation, a written statement which includes a detailed breakdown of the relevant parts of the tender and which includes an explanation for the low price using the standard form approved by the PPRC "Standard letter for abnormally low tenders". EO.DPT "Buqa", in addition to offering abnormally low prices, has also offered items that the company does not have in stock. "Mapco" as is the item with serial number 23, "Mapco" production Turremarres.

While as we explained above, the company "Mapco" is not a manufacturer of items at all, but is a distributor-reseller. Violation of Article 52.7 of the LPP

The CA in the tender dossier has also requested servicing services from the bidding company for works that cannot be carried out in the service of the Kosovo Police Operational Fleet. These are works and services that are carried out in services authorized by the VW-Group, because we are dealing with "online" services, offered by the manufacturer "Skoda". For this reason, these certain works and services cannot be carried out in the Car Service of the Kosovo Police Operational Fleet.

Order and contact the competent Kosovo Police Car Service for what reason they cannot perform these types of services - because they do not have a service license for the same services from the

manufacturer "Skoda". Only authorized Skoda car services have access to performing these works and services, of which there are only 4 in Kosovo: Reforma, Porsche Kosova, Baki Automobile and AHP.

To perform these service works, the provider must have a Car Service or have a cooperation contract with a Skoda licensed Car Service for the performance of services. The economic operator DPT BUQA has offered a cooperation contract with the company Hili shpk, which company apparently does not even have a registered Car Service - see the content of the contract.

At the same time, the company Hili shpk has not even presented the authorization from the manufacturer Skoda that it can perform the services requested by the CA. The economic operator "Hili SH.P.K." on 09.10.2024 signed a lease contract with Shukri Dervisholli at the Notary Office of Faik Sh. Çollaku with headquarters in Fushë Kosovë, where the object of the lease was the real estate with the Are culture. While in Article 2 of the contract there is a declaration of the parties that in this real estate there is an unlegalized object. So the contracting parties themselves accept that the object is unlegalized, while the contracting authority accepts this contract as granted. In the specific case, this contract should be declared NULL, in accordance with Article 35 of the LPD. The logical question is how the contracting authority rewards an economic operator who has rented a facility and which facility is not legalized. How can it be taxed and how will the economic operator pay the tax to the Tax Administration for the rental?

The CA should, in accordance with Article 52.7 of the LPP, verify the documentation in detail.

Violation of Article 59 of the LPP, Examination, Evaluation and Comparison of Tenders The contracting authority in the case of the recommendation for awarding the contract to the EO "Buqaj" has violated Article 59 of the LPP, because the Evaluation Commission for the examination, evaluation and comparison of offers at the CA has recommended for awarding the contract an irresponsible economic operator who does not meet the requirements of the Tender Dossier. On the other hand, we as bidders in this procurement activity have been eliminated without legal basis, despite the fact that our offer is responsible. Violation of Article 72 of the LPP, Documentation and additional information The contracting authority in the case of the development of this procurement activity has violated Article 72 of the LPP, because we as a bidder in this procurement activity have been eliminated from further competition in this procurement activity without requesting additional information, whereas if additional information had been requested from us, we believe that the reasons for elimination as explained above would not have stood and we would have been the operator recommended by the contracting authority.

Referring to the allegations above, the complaining economic operator considers that the Contracting Authority has acted in violation of Article 7 of the LPP Article 52.7 of the LPP Article 59 of the LPP Article 61 of the LPP Article 72 of the LPP Article 41 of Regulation No. 001/2022 On Public Procurement, Abnormally Low Tenders. Based on all the evidence and facts that we have elaborated above, we request the PRB Review Panel to take the following: **DECISION to APPROVE** as grounded the complaint of EO "REFORMA" SH.P.K, regarding the tender Supply of spare parts for Skoda Octavia vehicles", with procurement no.: 214-24-

10180-1-1-1, initiated by the contracting authority-Kosovo Police. The notification on the decision of the CA-Kosova Police dated 27.11.2024, for the award of the contract, is CANCELLED and the case is returned for Reconsideration.

- Administration and evaluation of evidence –

Based on Article 111 paragraph 5 in connection with Articles 113 and 114 of the LPP, the Review Body on 20/12/2024 authorized the review expert to conduct the initial review of the file and claims according to the complaint with no. 1212/24, while on 31/12/2024 the review expert's report with no. 2024/1212 was submitted with the following recommendations: Based on the above-mentioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO is rejected as unfounded and that the decision of the CA remains in force.

The expertise report has been duly accepted by all procedural parties. The CA agrees with the expertise report, while the EO disagrees with the expert report. Regarding the claims of the EO "Reforma" SH.P.K, the review expert through report no. 2024/1212 has assessed as follows:

The review expert explains that the complaining economic operator ("Reforma" LLC), dissatisfied with the decision of the Contracting Authority/Kosovo Police, has filed a complaint with the PRB, claiming that the contracting authority has not primarily respected the legal provisions of Article 59 of the Law on Public Procurement (LPP), specifically claiming that we have been unfairly eliminated by the CA and at the same time claiming that the recommended for the contract (Independent Commercial Store "Buqa"), is not responsible.

The contracting authority, after completing the evaluation of the bids, notifies the complaining economic operator with a standard letter of the eliminated tenderer, in which it provides the reasons for the elimination, while recommending for the contract the EO "Independent Commercial Auto Parts Store "Buqa" Përparimi, Prizren.

The complaining EO on 27.11.2024 requested access to official documents, while the CA on 29.11.2024 allowed access to the complaining EO. The review expert explains that the complaining operator Reforma SHPK on 01.12.2024 submitted a request for Re-examination, while on 06.12.2024 the contracting authority rejected the request for Re-examination as unfounded. The contracting authority eliminates the complaining EO with the following justifications:

The review expert explains that, in the price list where the contracting authority has requested that the name of the manufacturer and the country of origin be indicated, the complaining EO has indicated only the country of origin. The review expert, after analyzing the submitted evidence, assesses that despite the fact that the complaining EO has not indicated the name of the manufacturer, such a fact is known because the CA has also requested an authorization from the

manufacturer, in which the fact of who the manufacturer is and also the country of origin is clarified.

Regarding the second reason for elimination, the complaining EO in its complaint claims that Porsche is the main shareholder with 53.3% of the shares in the VW Group and is not a distributor as claimed by the CA - Kosovo Police, which also includes Skoda, and that according to the complaining EO it is not necessary to attach the contract or authorization between the manufacturer and the distributor.

The review expert explains that the complaining EO has submitted the authorization from Porsche Macedonia, which is authorized for Skoda, Audi and other vehicles. Based on the data of this authorization, the review expert assesses that this authorization is from the distributor and is not directly from the manufacturer. Therefore, the claim of the complaining EO does not stand because the Porsche for which the complaining EO claims, must have a contract with Porsche Macedonia and the same should have been submitted in its bid.

The complaining EO, in its complaint, claims that the recommended for the contract, is not responsible with the justification that it has offered the authorization from a company that is a packaging company and not a manufacturer that has the quality of a distributor and not a manufacturer. The review expert explains that the authorization submitted in the offer of the recommended for the contract is according to the request of the tender dossier and the contract notice. In addition, the review expert explains that the CA, in response to the request for review, declared that it has verified the evidence and at the same time confirmed that the authorization is issued by the distributor. The review expert also explains that with a simple search on the internet it results that the company that issued the authorization is an authorized distributor of Skoda vehicle equipment. Therefore, the claim of the complaining EO does not stand.

The complaining EO, in its complaint, claims that the conditions foreseen in the regulation for abnormally low prices have been met, with the justification that the offer of the recommended for the contract is 10% lower than the price of the second tender. The review expert assesses that this claim does not hold because in order to apply the table foreseen for abnormally low prices, there must be three responsive offers, and in the specific case the offer of EO Baki is irresponsible according to the standard letter of the tenderer and at the same time I explain that according to the legal provisions of Article 61 of the LPP, the evaluation of prices is the right of the contracting authority and the same has provided a response to the request for review.

In addition, the complaining EO claims that the recommended for the contract has offered a contract related to vehicle servicing, a contract with EO Hili which does not have an authorization from Skoda for vehicle servicing, therefore it claims that it has not fulfilled point 2 of the technical and professional capacity. The review expert, regarding this claim, explains that it does not stand because the CA in the tender dossier did not request an authorization for servicing from the manufacturer and at the same time explains that an economic operator cannot be eliminated for a request that is not submitted in the tender dossier.

Recommendation to the review expert:

Based on Article 111 paragraph 5 in connection with Articles 113 and 114 of the LPP, the Review Body on 20/12/2024 authorized the review expert to conduct the initial review of the file and claims according to the complaint with no. 1212/24, while on 31/12/2024 the review expert's report with no. 2024/1212 was submitted with the following recommendations: Based on the above-mentioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO be rejected as unfounded and that the decision of the CA remain in force.

- Findings of the Review Panel –

The Rules of Procedure of the Public Review Body, which is published on the PRB website, in Article 20, paragraph 2 of the Rules, stipulates the requirements for the Contracting Authority and the Economic Operator that all information and notices must be submitted and communicated through the public communication platform, if possible.

Based on the documents of this case, the Panel considers that regarding the issue in the concrete case, there is no need to convene a hearing with the parties, within the meaning of Article 24 paragraph 1 of the Rules of Procedure of the PRB, taking into account the fact that the claims of the parties and their submissions, the evidence as well as the report of the review expert provide sufficient data to decide on the merits.

The Review Panel assesses that the Review Expert Report, drafted at the request of the Panel regarding the dispute in this case of public procurement activity, contains the essential elements of such a document as foreseen by the provision of Article 113 in conjunction with Article 114 of the LPP, according to which the expert is required to review all procurement documentation, including all complaint claims and to provide the Panel and all parties to the dispute with an independent and professional assessment of the procurement activity and the validity of the complaining claims.

However, it should be noted that the expert report is not binding on the Review Panel and that each such report is assessed and/or analyzed in the overall context of the case files, the alleged facts and other possible evidence, taking into account the nature of the possible violations, the course, nature and purpose of the procurement activity, therefore the fact that in which cases and for what, the Panel relies or not, on the expert report and/or any of the recommendations, is a matter of his/her independent and professional judgment, as these responsibilities are addressed in terms of Article 98, 99 in conjunction with Article 105 of the Public Procurement Law.

According to the above, the review expert has professionally and objectively treated the claims of the complaining economic operator EO “Reforma” SH.P.K. The argumentation in the review expert’s report is quite detailed, understandable and fully based on the relevant documents referring to the procurement activity. The findings in the review expert’s report can be confirmed through the tender dossier as well as the documents with which the tenderers have bid. The review expert’s report has assessed that the claims of the complaining economic operator EO “Reforma” SH.P.K. are unfounded.

In the specific case, from the report of the review expert, the evidence presented by the complaining economic operator, the documents of the tender dossier and other evidence of the case, it has been found that the complaining claims are unfounded, presented against the decision of the contracting authority for the procurement activity. Based on the factual situation ascertained as above, the Review Panel has given full confidence to the findings and recommendations in the report of the review expert. Consequently, the Review Panel has found that the claims of the complaining economic operator are unfounded. Therefore, the Review Panel, after administering and evaluating the evidence, fully ascertaining the factual situation, relying on the LPP as the applicable material law, after reviewing the complaining claims, taking into account all the case files and the recommendation of the review expert, has found that the complaint of the economic operator should be rejected as unfounded and the Decision of the contracting authority, dated 26.11.2024, to award the contract to the responsible economic operator with the lowest price remains in force. Consequently, the Review Panel has decided to confirm, the Notice of Decision of the Contracting Authority, Kosovo Police, regarding the procurement activity "SUPPLY OF SPARE PARTS FOR SKODA OCTAVIA VEHICLES", with procurement number: 214-24-10180-1-1-1, initiated by the Contracting Authority (CA) - Kosova Police.

The review panel notes that according to the Public Procurement Regulation - Article 41 Abnormally Low Tenders, the legal conditions for this tender to be considered an Abnormally Low tender by the CA have not been met, Article 41.1, stipulates "The concept of an abnormally low tender refers to tenders that, for the contracting authority, at first glance appear to be unreliable when compared to the object of the contract and in accordance with the circumstances, and which are likely to have a negative impact on the performance of the contract implementation".

Also, Article 41.3 of the regulation in question has determined that at least 3 (three) responsive tenders must be submitted, Article 41.3 determines "Contracting authorities shall require economic operators to explain the price offered for responsive tenders, when all of the following conditions are met: i. the price offered is more than 30% lower than the average price of responsive tenders; ii. the price offered is more than 10% lower than the price or costs of the second lowest tender; iii. at least 3 (three) tenders have been submitted.

The review panel notes that the Contracting Authority, in its response given on 06.12.2024 to the request for review of the EO "Reforma" SH.P.K, has provided legal justifications for the complaining claims regarding Article 61 of the LPP, Article 41 of the Regulation no. 01/2022, Public Procurement (RRPP) and Guidelines no. 001/2023, Public Procurement (UPP) and on the occasion of decision-making in this procurement activity.

The review panel finds that the Contracting Authority/Kosovo Police has acted in accordance with the legal provisions of the LPP, RRPP and UPP, when deciding on this procurement activity, since it is observed that the complaining claims of the complaining EO are unfounded because in order to apply the table provided for abnormally low prices, there must be three

responsive offers, and in the specific case, the offer of EO "Baki" is irresponsible, according to the tenderer's standard letter, 22.11.2024, while in this procurement activity only 3 (three) economic operators have applied and only two EOs have been responsive. According to the legal provisions of Article 61 of the LPP, the evaluation of prices is the right of the contracting authority and that for the contracting authority all prices are reliable prices and there is no price that would negatively affect the performance of the implementation of this contract according to this financial offer of the EO recommended for the contract.

The review panel also notes that, based on the facts and factual situation described above, the complaining economic operator EO "Reforma" SH.P.K. has bid at the highest price, respectively in the amount of; 17,026.93 euros, while the economic operator recommended to be awarded the contract EO "Buqa", has bid at a lower price than the complainant, respectively in the amount of 10,686.55 euros and this contributes to the principle of economy in the use of budgetary funds for the procurement activity.

Therefore, referring to Article 104.1 of the LPP, which requires that the review procedure be implemented in a prompt, lawful and effective manner, and also analyzing the documents of this case in their entirety in the context of this procurement process, the Panel did not consider it necessary to elaborate again in detail and unnecessarily in this case each complaint claim, since the same have been specifically identified in the contested decision of the contracting authority and have been analyzed and argued without objection by this Panel. Among other things, in the challenged decision of the contracting authority and in the reports of the review expert, fair explanations have been given also in relation to the complaining claims. The Panel notes that the reasons given in the challenged decision of the contracting authority are professional and argued without objections with material evidence, without the need to describe them again. Therefore, the Panel supports the assessments of the review expert with recommendation, who have explained in his expertise report numbered; 2024/1212, that during the development of this procurement procedure, the contracting authority has implemented the legal provisions of the LPP.

The review panel emphasizes that in accordance with Article 1 and 6 of the LPP, that Contracting Authorities exercise their institutional independence in the public procurement process, however, it remains within the competences and responsibilities of this body to review complaints and legality in the procurement process, according to Article 24, paragraph 2 of the LPP cited "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in full compliance with this Law" in relation to Article 59,1 cited "The contracting authority shall establish an Evaluation Commission for the examination, evaluation and comparison of bids. All members of the Evaluation Commission shall take full individual responsibility for the evaluation of the bid"

The Review Panel has decided in accordance with the legal competences within the meaning of Article 104 paragraph 1 in conjunction with Article 103, Article 105 and Article 117 of the LPP to implement the procurement review procedure in a prompt, fair, non-discriminatory manner, with the aim of resolving the case legally and effectively. Therefore, the Review Panel based its

findings on the relevant provisions of the LPP, which predict and regulate such situations that may arise during a procurement activity.

From what has been stated above, it has been decided as in the provision of this decision.

President of the Review Panel

Mr. Isa Hasani

Legal advice:

An appeal is not allowed against this decision, but the dissatisfied party can appeal to the Commercial Court, to the Department for Administrative Affairs for annulment of the decision within 30 days from the date of acceptance of the decision.

Decision to be submitted to:

1x1 CA – **KOSOVA POLICE**;

1x1EO–“ **Reforma**” SH.P.K”;

1x1 Archive of the PRB;