



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

Psh. No.1054/23

The Review Panel, appointed by the President of 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 Law 05/L-092) in the composition of Vedat Poterqoi - President, Vjosa Gradinaj Mexhuani and Isa Hasani - Member, deciding according to the complaint of EO “Agron Halimi” B.I, against the contract notice or with tender documents regarding with the procurement activity “Veterinary services in the field throughout the territory of the Republic of Kosova” with procurement number 40800-23-12612-2-1-1, initiated by the contracting authority (CA) - Veterinary and Food Agency, on the 20/02/2024 has issued this:

**DECISION**

1. Refused as ungrounded the complaint of "Agron Halimi" B.I. with no. 2023/1054, dated 26/12/2023, related to the procurement activity “Veterinary services in the field throughout the territory of the Republic of Kosovo”, with procurement number 40800-23-12612-2-1-1, initiated by the authority contractor (CA) - Veterinary and Food Agency.
2. The notification for the contract for the procurement activity as in point I of the provision remains in force.
3. In accordance with Article 31 point 5 of the Rules of Procedure of the PRB, the complaining economic operator is confiscated the complaint’s fee in the amount deposited when the complaint is submitted, while the funds go to the Budget of the Republic of Kosova.

## REASONING

### - Procedural facts and circumstances -

On the 15.11.2023, the Veterinary and Food Agency, in the capacity of the Contracting Authority, published the Contract Notice B05 related to the procurement activity with "Veterinary services in the field throughout the territory of the Republic of Kosova", with procurement number 40800-23-12612-2 - 1-1. The deadline for submitting offers is 27.12.2023 (the offers have not been opened).

The contracting authority has implemented an open, negotiated, limited procedure, type of contract: service, estimated value of the contract: 809,910.00 €.

On the 13.12.2023 EO "Agron Halimi" B.I submitted a request for reconsideration against the aforementioned decision of CA. On the 19.12.2023, the Contracting Authority rejected the request for reconsideration as unfounded.

On the date: 26.12.2023, EO "Agron Halimi B.I.", filed a complaint with no.: 2023/1054, against the contract notice, related to the procurement activity: "Veterinary services in the field throughout the territory of the Republic of Kosova" with no. of procurement: "40800-23-12612-2-1-1.

### -On the stage of preliminary review-

The Review Panel has concluded that the complaint contains all the elements defined through Article 111 of the LPP and as such was submitted within the legal term in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for resolving disputes in the sense of Article 108/A of the LPP, from the economic operator who is an interested party according to article 4 paragraph 1 sub-paragraph 26 of the LPP. In this way, the Review Panel has concluded that it is competent to review this complaint according to Article 105 of the LPP and there is no procedural obstacle to proceed with reviewing the complaint in a meritorious manner.

CA's response to the request for reconsideration: "Regarding EO's claim that CA has violated Article 7 of the LPP is unfounded, because as CA we have respected this article and the contracting authority has treated economic operators equally and non-discriminatory and acted transparently. The contracting authority shall not execute any aspect of the procurement activity in a manner that reduces or eliminates competition between economic operators or that discriminates against one or more economic operators. In this case, in the e-procurement system, we notice that the tender dossier has been downloaded many times, but that the contracting authority, after receiving the opinion from the Anti-Corruption Agency, the request mentioned in the tender dossier and in the contract notice, namely in points III.2.4) Capacity technical and professional of the contract notice and Requirements on technical and/or professional opportunities items 9.1 and 9.2 of the tender file Request 1. Economic operators must meet the criteria for a graduate veterinarian and a graduate veterinary technician according to the number

of animals in the fund, which are divided into three categories Category 1 municipalities with over 20,000 animals - Prizren Lot 2, Ferizaj Lot 3 and Podujeva Lot 9 - must have at least three (3) veterinarians and six (6) veterinary technicians. Category 2 municipalities up to 20,000 animals - Mitrovica Lot 1, Gjilanit Lot 4, Skenderajt Lot 5, Deçanit Lot 6, Vushtrri Lot 8 and Lipjanit Lot 12 must have at least two (2) veterinarians and four (4) veterinary technicians. Category 3 municipalities up to 10,000 animals - Fushë Kosovës Lot 7, Junikut Lot 10, Leposaviqit Lot 11, Obiliqit Lot 13, Zubin Potokut Lot 14, Zveçanit Lot 15, Ranillugut Lot 16, Parteshit Lot 17, Klllokotit Lot 18, Garancije Lot 19 and Mamushes Lot 20 must have at least one (1) veterinarian and two (2) veterinary technicians has left as a whole and the contracting authority has respected the opinion given and with the form for the amendment of the correction of the procurement procedure attached to the system of e- procurement as published has dismissed this request in its entirety. With a request addressed to the AKA, the opinion of the AKA can be sent to each interested economic operator.

Regarding the EO's claim that the CA has violated Article 52 of the LPP, it is unfounded, because as the CA we have respected this article and have developed the procurement procedure according to Article 52 paragraph 1. The contracting authority in the contract notification and in the file of the tender will specify the criteria that will be used for awarding the contract. The criteria must be either the lowest price or the most economically advantageous tender in the case of this procurement procedure, the established criterion is the tender with the lowest weighted price and according to paragraph 6 of this article, which states that In case of the criterion, the tender with the lowest price is not allowed to convert prices into points and weight the points.

In the case of contracts for multiple services or in the case of contracts with unit prices, prices may be weighted based on the importance of each "category of services" or each "item" in order for the Contracting Authority to determine which tender is the most a lower price. In case of the lowest price, weighting the prices, the weighted prices are based on the price offered by the individual Economic Operators, therefore it is not allowed to determine the points by comparing the prices of different bidders. So the services are divided into categories according to the requesting unit and each category is given a percentage importance. As a contracting authority, we expect economic operators to be careful when using terms such as in one sentence of the request for reconsideration, this term was used "and not according to the law of Daut (sometimes the service and sometimes the table)" because we have to remind the economic operators who use types of these terms that based on the public procurement law in the past were awarded with a contract and performed the services based on this law. Based on what was said above, CA-AUV considers that the request for reconsideration is contrary to the contract notice and the tender file and CA AUV according to Article 108/A, paragraph 10.1, rejects the proposed request for review as No base. Claims of the complaining economic operator "Agron Halimi B.I." are presented as follows:

In Annex 1, the mandatory technical specifications of the CA-AUV are based on the Veterinary Law No. 21/2004 article 31,32 and 33 as well as the administrative instructions that Mandatory technical specifications such as: carrying out field work in a clear, accurate and precise manner must be done through licensed veterinary practices based on the administrative instruction MA-

No. 22/2005 on the licensing of ambulances, stations and veterinary clinics Article 2 point e, f, g, h, i, Article 14, Article 4 point 6, Article 7 point 9. I respect you fully and without discrimination towards one or more EO with each request also in the Tender File: Title of the contract: Field veterinary services in the entire territory of the R. of Kosovo No. of procurement: 40800-23-12612-2-2-1-1. This discriminates the veterinary services which, in order to obtain the right (license) to work, have paid taxes and were obliged by law to keep employed at least two veterinary technicians. For the same services in May 2023 Veterinary services in the field throughout the territory of the Republic of Kosovo with no. Procurement: 40800-22-14128-2-1-1 have been requested in the Professional Suitability and Professional Ability at least 3 veterinarians and 6 veterinary technicians with the right to work, while now in the Second group of 20 Municipalities they change the requirements by adapting it to an EO We request PRBO assessment that the Veterinary and Food Agency clearly define that the mandatory technical specifications Annex 1 DT are based on the Veterinary Law No. 21/2004 and in the administrative instructions. The contracting authority will compile the technical specifications in such a way that they are consistent with the purpose of the procurement and aimed at ensuring the best possible access for all interested economic operators and tenderers. The contracting authority is specifically prohibited from drawing up technical specifications that favor or discriminate against one or more economic operators. We request from the PRBO that the Contracting Authority act on the basis of Article 28. This request is expressed because there are indications that the CA is acting in favor of an economic operator based on the past when the procedure was canceled because the operator of the CA was extremely irresponsible, we have made a request for reconsideration, but the CA, using its powers without the right, has rejected our request based on many facts and arguments, in addition to this, the CA has canceled the first procedure even though there was an EO in the Lot that belonged to Ferizaj Municipality responsible as we were, this has only come to pave the way for the second time for the favoring Operator to meet the requirements and criteria of the file. The CA has also removed all possible criteria related to Veterinary medicine and only give their EO the opportunity to meet the conditions and technical specifications. We request from the PRBO for evaluation of the Tender File with: Title of the contract: Veterinary services in the field in the entire territory of the R. of Kosovo, No. of procurement: 40800-23-12612-2-2-1-1. Is it in compliance with the Public Procurement Law of the Republic of Kosovo as amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L092 in particular for the criteria for awarding the contract Article 52. To specify the annex Description of the prices - the assessment of the cost of the service should be divided into categories with separate fields according to importance, not included in the calculation also the tables for salary compensations, fixed costs, variable costs and profits in separate sections for each service separately. If using the economically most favorable tender variant by weighing the prices, then it must be determined precisely for the category or service that is taken as the basis for the contract award criteria. In 2023, we have fallen victim to the interpretation of the Contract Award Criteria by awarding the Contract to the EO which did not meet the eligibility requirements, technical and professional capacity and with the highest price weighting in the table and in the Category and announced as the responsible tender with the cheapest price and as the responsible tender with administrative requirements.

We request from the PRBO for evaluation, whether the criteria for awarding the contract of this TD are in accordance with the aforementioned LPP.

- Administration and evaluation of evidence -

In order to fully verify the factual situation, the review panel administered as evidence the expert's report, the opinions of the parties related to the expert's report, the complainant's submissions and documents, the contracts and documents of the contracting authority, the relevant documents related to the procurement activity as and all the evidence that has been proposed by the procedural parties.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 03.01.2024 has authorized the review expert to conduct the initial review of the file and claims according to complaint no. 1054/2023, while on 11.01.2024 the review expert's report with no. 2023/1054 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 the CA is allowed to continue with the procurement activity.

Regarding the claims of EO "Agron Halimi B.I", the review expert through report no. 2023/1054 assessed as follows:

Answer to the first claim (I): The structure of the complaint prepared by the complaining economic operator is not divided into complaint claims, but for practical purposes of the expert report, we have listed the complaint claims as follows. According to complaint no. 1, the CA violated Article 7 of the LPP Equality in Treatment/Non-Discrimination. The complaining economic operator has not provided any specific evidence that the CA-during the preparation of the tender file, has asked for any document in the selection criteria which enables the complaining EO to participate in this procurement activity. According to article 51.3, all the selection criteria as well as the required documents and information that are established and described in this article, must be directly relevant and proportional in relation to the subject of the relevant contract. The minimum qualification requirements may be determined by the CA when the CA determines that it is necessary to ensure that only EOs possessing certain professional, financial or technical skills will participate in the competition for the contract. According to the CA, they have also received an opinion from the Anti-Corruption Agency on this issue and have made changes in the tender file in harmony with the opinion of the Anti-Corruption Agency. It remains the responsibility of the CA if the requirements are harmonized according to the opinion of the Anti-Corruption Agency. Since this issue has been dealt with by AKK, we will not deal with it further. Based on the papers of the case, the CA's claim that the changes in the tender file were made according to the opinion of the Anti-Corruption Agency, the review expert finds that this complaining claim is unfounded.

Answer to the second claim (II): According to this claim, CA has violated Article 28 of the Technical Specifications. In the complaint of the complaining EO itself, it refers to Article 28 of the Technical Specifications, but at this point it deals more with the issue of violation of the selection criteria, precisely the criteria of professional suitability that are related to the

complaining claim no. 1. As for the request of the complaining economic operator that "We request PRB assessment that the CA is clearly defined that the mandatory technical specifications Annex 1 DT are based on the Veterinary Law No. 21/2004 and in the administrative instructions, we find that the services must be performed in harmony with the Veterinary Law, as stated by the CA in the part of Annex 1 to the Technical Specifications. After the CA has established selection criteria according to the opinion of the Anti-Corruption Agency, then in the role of the reviewing expert with the aim of not creating ambiguities in decision-making, we will not deal with this complaint any further. The examining expert, based on the documents of the case, the complaining claim of the complaining economic operator, the tender file, finds that this complaining claim is unfounded.

Answer to the third claim (III): According to this complaining claim, CA has violated Article 52 Notification of the criteria for awarding the contract. CA has used in this procurement activity the criterion for awarding the contract "Cheapest price with points" According to article 52.6 of the LPP and article 27.12 and 27.13 of the Public Procurement Regulation 001/2022. According to article 52.6, article quote: In the case of contracts for multiple services or in the case of contracts with unit prices, the prices may be weighted based on the importance of each "category of services" or each "item" so that the Contracting Authority to determine which is the offer with the lowest price. In case of the lowest price, weighting the prices, the weighted prices are based on the price offered by the individual Economic Operators, therefore it is not allowed to determine the points by comparing the prices of different bidders. In the tender file in Annex 6 Criteria for Awarding the Contract, CA has set the criterion "Lowest weighted price" by dividing the categories of services in the price description into three categories Part A.B.C. It is worth noting that it is the responsibility of the Contracting Authority to divide the services and score them in relation to the planned value of the services for each category in order to achieve the weighting function according to article 27.14, quote article "27.14 The only weighting function of price is to determine the contract with the lowest price, but the payment is always made based on the offered price". The reviewing expert, based on the documents of the case, the tender dossier, article 52.6 of the LPP, article 27 paragraphs 12,13,14 of the Regulation on Public Procurement 01/2022, finds that the complaining claim of the complaining economic operator is without based. Based on the description made above according to the documents of the case, the tender dossier, the opinion of the Anti-Corruption Agency, the review expert recommends the review panel to remain in force the notification for the contract and the tender dossier, CA, to continue with the procurement activity according to the LPP.

The expertise's report has been duly accepted by all procedural parties. CA declares that it agrees with the recommendations of the review expert's report, while EO has not given an answer regarding the expert's report.

The review panel has assessed that the conditions have been met to decide on this case without a hearing in the sense of Article 24 paragraph 1 of the Rules of Procedure of the PRB, taking into account that the claims of the parties and their submissions, the evidence as well as the review expert's report provide sufficient data to decide on the merits of the case.

- Findings of the Review Panel -

Referring to article 104.1, of the LPP, according to which it is required that the review procedure be implemented in a fast, legal and effective manner and also analyzing in their entirety the documents of this subject in the context of this procurement process, The panel did not consider it necessary to elaborate again in detail and without need in this case each complaint claim, as long as they are specifically singled out especially in the contested decision of the contracting authority and in the review expert's report. The argumentation in the expert's report is quite detailed, comprehensible and entirely based on the relevant documents that refer to the procurement activity. The findings in the expert's report can be confirmed through the tender dossier as well as the documents with which the tenderers have bid.

RP considers that all CAs should be extra careful so that the selection criteria will not be unfairly strict leading to discrimination and limiting competition, as well as to ensure as much competition as possible. without risking the contracting of unprofessional companies as well as with the understandable purpose of filtering and excluding unstable companies that cannot implement the specific contract, so the selection criteria must fulfill its objective and practically filter out unstable companies, in relative to the volume and complexity of the work foreseen in the activity, but not to the extent that the established criteria lead to discrimination. Consequently, the review panel supports the report compiled by the review expert appointed by PRB, whose duty was to review all complaints and his opinion, which is supposed to be professional, supported it with legal reasonableness and came to a concrete finding that there is no discrimination on the part of CA and the demands are based on the law.

#### *-Conclusion -*

The review panel considers that the CA in this case, based on the expert's recommendations, acted in accordance with the provisions of articles 7, 27 of the LPP. Therefore, the return of a procurement activity for the improvement of the Tender Dossier, without facts and evidence and/or without a legal basis, is not in harmony with Article 1 of the LPP, according to which the purpose of this Law is, among others, quoted : "...to ensure the integrity and responsibility of public officials, civil servants and other persons who perform or are involved in a procurement activity by requiring that the decisions of such individuals and the legal and factual basis for such decisions, not to be influenced by personal interests, to be characterized by non-discrimination and a high degree of transparency, and to be in accordance with the procedural and essential requirements of this law". However, for each request placed by the CA in the Tender File, based on Article 24, paragraph 2 of the LPP, the Contracting Authority is responsible for ensuring that all procurement activities of such Contracting Authority are executed in compliance complete with this law. Likewise, according to article 51, paragraph 3 of the LPP, CA, all selection criteria as well as the required documents and information that have been established and described in this article, must be directly relevant and proportional in relation to the subject of the respective contract. Likewise, all CAs are obliged to draft TD and technical specifications in accordance with article 27 and 28 of the LPP.

Regarding Article 105, taking into account the requirement of Article 104, paragraph 1, of the cited Law according to which, quoted: "The procurement review procedure will be implemented and carried out in a fast, fair and non-discriminatory manner, which aims at the fair, legal and

effective resolution of the matter..." Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations, which may arise during a procurement activity .

For point I of the decision, it was decided based on article 117 of the LPP in relation to article 29 and paragraph 31 of the PRB Work Regulations.

For point II of the decision, it was decided based on article 131 of the LPP in relation to article 29 paragraph 3 of the PRB Work Regulations.

For point III of the decision, it was decided based on article 31 paragraph 5 of the PRB Work Regulations related to article 118 of the LPP.

From what was said above, it was decided as in the provision of this decision.

**President of the Review Panel**

Mr.Vedat Poterqoi

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**Legal advice:**

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

Decision to be submitted to:

1x1 CA – **VETERINARY AND FOOD AGENCY;**

1x1 EO – **Agron Halimi B.I.;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.