



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

Psh. No.283/23

Review Panel, appointed by the President of the PRB, Pursuant to the article 105 as well article 106, and 117 of the Law on Public Procurement of the Republic of Kosova no.04/L-042, amended and supplemented by Law No. 04/L-237, Law no.05/L-068, and Law no.05/L-092, composed of: Vedat Poterqoi - President, Vjosa Gradinaj Mexhuani - member, Agon Ramadani - member, deciding according to the complaint of the EO “Flomed” sh.p.k., with residence in Prishtina, and the complaint of the OE “S.V.Veterina” with residence in Vushtrri, against the decision for contract award, regarding the procurement activity with title: “Disinfection, Disinsect and Deratization Services in Police facilities” with procurement number 214-22-5200-2-1-1, initiated by the contracting authority (CA) – Kosova Police, on the 24/07/2023 has issued this:

### **DECISION**

1. Approved, as partly grounded the complaints of the EO “Flomed” sh.p.k., with residence in Prishtina, and the complaint of the OE “S.V.Veterina” with residence in Vushtrri, the decision for award, regarding the procurement activity with title: “Disinfection, Disinsect and Deratization Services in Police facilities” with procurement number 214-22-5200-2-1-1, initiated by the contracting authority (CA) – Kosova Police, is cancelled, while the procurement activity returns to Re-evaluation.
2. Within 10 days, the CA must inform the PRB about all the actions taken regarding this procurement activity, otherwise, the PRB has the right to take measures against the CA for non-compliance with the decision as provided by the provisions of Article 131 of LPP.
3. It is allowed to return the complaint’s fee to the amount deposited at the time of filing the complaint. The complaining EO is obligated to, in accordance with article 31 point 6 of the PRB's Rules of Procedure, within a period of sixty (60) days, make a request for the return of the insurance of the complaint, otherwise the deposit will be confiscated, and these funds will exceed the Budget of the Republic of Kosova.

## REASONING

*- Procedural facts and circumstances -*

On the 10.06.2023 the Kosova Police, in the capacity of the Contracting Authority, has published the contract notice. On the 10.02.2023, the CA has published the form for the correction of errors in published notices.

On the 28.04.2023, B58 published the announcement on the decision to contract award for the procurement activity entitled: "Disinfection, Disinsect and Deratization Services in Police facilities" with procurement number 214-22-5200-2-1-1, where it was recommended for a contract where it was recommended for a contract EO "Doctor Exterminator DDD" sh.p.k.

EO "Flomed" sh.p.k., dated 03.05.2023, submitted a request for reconsideration to the CA. On the 11.05.2023, the CA - Kosova Police, by decision, rejected the request for reconsideration of the complaining EO.

Dissatisfied with the decision of the CA, the complaining EO "Flomed" sh.p.k., with the decision of the CA dated 15.05.2023, submitted a complaint to the PRB, with protocol number 2023/0283.

On the 03.05.2023, the Economic Operator "S.V.Veterina" submitted a request for reconsideration to the CA - Kosova Police, on the 11.05.2023 the CA rejected the request for reconsideration and confirmed the Notice on the Decision of the CA dated 28.04.2023, for the delivery of the cantata for the aforementioned procurement activity.

On the 22.05.2023, the Economic Operator "S.V. Veterina" has submitted a complaint to PRB, with protocol number 292/2023, against B58 Notice on the Decision of the Contracting Authority for the procurement activity described above.

The contracting authority has implemented an open procedure, type of contract: service, estimated value of the contract: 379,614.27 €.

The Procurement Review Body has notified the parties on the: 29.05.2023 with the expertise's report.

On the 31.05.2023, the Kosova Police - CA stated that it does not agree with the review expert's opinion, while EO "S.V. Veterina" on the 06.01.2023, stated that it does not agree with the review expert's opinion, while EO "Flomed" sh.p.k. has not been declared.

The EO's complaint was made in accordance with Article 109.1 of the LPP, according to which any interested party can submit a complaint to the PRB against any decision taken by the CA. Since the EO has also applied for reconsideration, it means that its actions also refer to Article 108/A of the cited Law. Therefore, the PRB considers that the Complaint fulfills the prerequisites in terms of the provisions now cited and the same falls under its competences in terms of Article 105 of the LPP.

During this procurement activity, the Contracting Authority-Kosova Police implemented an open procedure, type of service contract. Estimated value 379,614.27 €. Criteria for contract award Responsible tender with the lowest price.

*- Evaluation and administration of evidence -*

The PRB has engaged the external procurement review experts to, in accordance with Article 113 of the LPP, conduct the initial review of the dossier and complaining claims, which in the expert's report dated 29 of May 2023, for case 293/2023, has recommended that:

- The complaints of "S.V. Veterina" are approved as grounded.
- The matter is returned to Re-evaluation

Whereas, the expertise's report dated 16 of the June 2023, for subject 283//2023 recommended that:

- The complaints of "Flomed" sh.p.k. are approved as grounded.
- To completely cancel the aforementioned procurement activity.

*- Findings of the Review Panel –*

The Review Panel considered that regarding the issue in this particular case, there is no need to convene a hearing with the parties, in accordance with Article 24 paragraph 1 of the Rules of Procedure of the PRB, as long as the claims of the parties, the evidence, their submissions and the expertise of the review expert, provide sufficient data to decide on the merits.

On the basis of these letters, the RP focused on the main issue for this procurement activity regarding the complaint claim of the complaining EO "Flomed" shpk, regarding the use of the preparations contained in the technical specification in this procurement activity as well as the preparations offered by the EO complainer The reasons why the SHP stopped to deal with these complaint claims is precisely because of the public interest regarding the health of the citizens. Therefore, RP supports the actions of the reviewing expert and the reasoning given in the expertise report no. 283/2023, as well as the research done after receiving the letter from MMPHI, where it was found that, quote:

After the verifications that I have made in the legal acts which are based on the return of the answer and the decisions that have been issued for the import permit for biocidal products, I have come across that the MMPHI/DMMU has used the European directive (1451/07) which is repealed from 29.10.2014, where it is confirmed that the active substance that we requested information about was allowed during this period, but with the entry into force of Regulation No. 528/2012/EU of the European Parliament and of the Council of 22 of May 2012, as well as of the European directive on biocidal products permitted for use (European Directive No. 1062/2014 dt. 04.08.2014 and addition/amendment dated 19.06. 2022, preparations with Sulfur

active substances are not allowed. This is also confirmed based on information from the European Chemicals Agency (ECHA). See the link below.

<https://echa.europa.eu/information-on-chemicals/biocidal-active-substances>

According to the findings of the review expert in the expertise's report 283/2023, that the European directive (1451/07) has been repealed as well as the European directive for biocidal products allowed for use (European Directive No. 1062/2014 dt. 04.08.2014 as well as addition/change dated 19.06.2022, preparations with active substances Sulfur are not allowed.

Therefore, the Review Panel, in accordance with the existing situation, classifies the complaint of the complaining EO as partially grounded, obliges the contracting authority, the Kosova Police, during the re-evaluation phase, to first conduct research on these preparations with active substances raised in the claims raised in the complaint 283/ 2023, and after a correct finding if these preparations are allowed, then I will start to re-evaluate the offers, otherwise I will cancel the procurement activity as public health is expressed. Then, if there is still interest, I will retender and make the necessary improvements in the Tender dossier.

With the standard letter for the eliminated tenderer, the complainant "S.V. Veterina" with no. 292/2023, has been eliminated on the grounds that it has not fulfilled the request of the TD, regarding the references which are not signed and not sealed and some contracts of workers, the articles contain errors and are contradictory to each other. Regarding the fact that it was not a request of the Tender dossier that these references be signed and sealed. Based on the fact that any document that is issued by one party to the other party in physical form in order for that document to be acceptable must at least be signed by the party that issues it, this is not sustainable, but based on the fact that this procurement activity is re-evaluated due to the claims raised in the other complaint 283/2023, then, from this point of view, the RP partially gives the right to the complainant since the EO owns the workers and the references are issued after a contract or activity carried out earlier, so these completed works can be verified through additional clarifications and this can be done in the re-evaluation phase and in accordance with Article 72. Therefore, RP partially supports the expertise's report.

Due to the apparently relatively complex nature of this procurement activity and based on its powers in the sense of Article 99 in relation to Article 104 and 105, the Review Panel has carefully analyzed all complaints, including all actions, acts and correspondence between the parties and from this context it can be understood that the CA has not fully respected the legal provisions as sanctioned by articles 1, 6, 7, 27, 59 as well as 24, paragraph 2 of the LPP, which quotes: "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in full compliance with this law".

From the point of view of this Panel, the expert reports include the complaining claims of the parties, as expressly required by Article 114 of the LPP in the general context of the independent assessment of each claim, in relation to the nature of the claim and the violations asserted as well as given the purpose, content and nature of this procurement activity.

During the review and decision process, the Panel applied, as always, articles 1, 6, 7, 24, 27, 59, 60, 103, 104 of the LPP according to which all interested parties will have equal access in the

procurement review procedures and in the legal remedies and that no decision of the PRB will be taken in a way that discriminates in favor of or against a subject in the procedure.

Therefore, from the above, the review panel in accordance with article 117 of the LPP 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 – **Kosova Police;**
- 1x1 EO – **FLOMED SH.P.K., S.V., Veterina;**
- 1x1 Archive of the PRB;
- 1x1 For publication on the website of the PRB.