



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

Psh. No.0751/25

The Review Panel, appointed by the Acting President of the PRB, pursuant to 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 by Kimete Gashi Brajshori deciding upon the complaint of EO “AGRI BAU” SH.P.K, against the Contract Notice or the tender documents related to the procurement activity “Supply with agricultural machinery” with procurement number 641-25-6684-1-1-1, initiated by the contracting authority (CA) - “LEPOSAVOQ MUNICIPAL ASSEMBLY, on the 30/09/2025, has issued this:

DECISION

1. Approved, as grounded the complaint of the EO “AGRI BAU” SH.P.K with no. 2025/0751, dated 07/08/2025, regarding the procurement activity “Supply with agricultural machinery” with procurement number 641-25-6684-1-1-1, initiated by the contracting authority (CA) - “LEPOSAVOQ MUNICIPAL ASSEMBLY.
2. **Cancelled**, Contract notice regarding the procurement activity “Supply with agricultural machinery”, with procurement number 641-25-6684-1-1-1, initiated by the contracting authority (CA) - “LEPOSAVOQ MUNICIPAL ASSEMBLY”. The CA shall make improvements to the tender dossier and extend the deadline for bidding.
3. Within 10 days, the CA must inform the PRB of all 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 for in the provisions of Article 131 of the LPP.
4. Since the complaint of the complaining EO is approved as grounded, the complaint fee is refunded in the amount deposited when submitting the complaint. The complaining EO is obliged, in accordance with Article 31, point 6 of the Rules of Procedure of the PRB, to make a request for the return of the complaint security within a period of sixty (60) days, otherwise the deposit will be confiscated, and these funds will go to the Budget of the Republic of Kosova.

REASONING

-Procedural facts and circumstances -

On the 24.07.2025, “LEPOSAVOQ MUNICIPAL ASSEMBLY”, in the capacity of the Contracting Authority, has published B05 Contract Notice regarding the procurement activity “Supply with agricultural machinery” with procurement no.: 641-25-6684-1-1-1.

The contracting authority has implemented an open procedure, type of contract: supply, estimated contract value: 150,000.00. €

On the 30.07.2025, EO “AGRI BAU” SH.P.K has submitted a request for review against the aforementioned decision of the CA. On 04.08.2025, the Contracting Authority has rejected as grounded the request for review.

On the 07.08.2025, the PRB has accepted the complaint from EO “AGRI BAU” SH.P.K with no. 2025/0751 regarding the activity “Supply with agricultural machinery” with procurement number 641-25-6684-1-1-1.

-On the preliminary review phase -

The Procurement Review Body has found that the complaint contains all the elements specified 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 dispute resolution in the sense of Article 108/A of the LPP, by the economic operator that is an interested party according to Article 4 paragraph 1 subparagraph 26 of the LPP. In this way, the Procurement Review Body has found that it is competent to review this complaint according to Article 105 of the LPP and there is no procedural obstacle to continue with the review of the complaint on its merits.

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

Dissatisfied with the decision of 04.08.2025 on the rejection of our request for reconsideration by the CA-LEPOSAVOQ MUNICIPAL ASSEMBLY regarding the procurement activity: "Supply with agricultural machinery procurement no.: 641-25-6684-1-1-1 within the legal deadline in accordance with Article 109 of the LPP. before the PRB we exercise the following:

COMPLAINT- On 30.07.2025 we have exercised a request for reconsideration to the CA regarding the compilation of the Tender Dossier since the FTD and the Parameasures have been set with requests that directly affect the reduction-elimination of competition between economic operators which is clearly sanctioned by the Public Procurement Law.

On 04.08.2025 the CA has taken the decision to Reject of our request, considering it as unfounded, not justifying any point of our claims. Only claim no. related to the scythe of the motor cultivator has been accepted to be removed as a technical error.

Below you will find our claims regarding this activity

Claim no. 1-To the tender dossier; Terms and requirements of delivery 5.3, CA has requested; Time limits for the start and / or completion of the contract

Within 20 days from the date of signing the contract start finish We have explained to the CA that this deadline is extremely short and directly affects the reduction and elimination of economic operators that do not possess this type and this number of equipment in their stocks, meaning that the company that already has this type of motor cultivators and milking machines in stock is favored. and raises the suspicion that this activity is paid for by a company that has this type and this quantity of motor cultivators in stock. We have also informed and believe that the CA is also aware that these equipment are not produced in our country. but even if they were produced, there is no possibility that they would be produced and delivered within 20 days and we as EO have requested that the delivery deadline should be at least 45 days. Because there is no possibility for an EO to deliver the equipment on time except from the company that has it in stock and that we think is qualified for this tender. The CA, upon reviewing our request, had decided to extend the deadline for only +5 more days without giving any justification as to what impact it could have on delivery. +5 days means a total contract closing of 25 days for an activity with a value of 150,000.00 euros. Also, the CA, in the request for bid validity and tender security, has requested a 3-4 month deadline just to evaluate this procurement activity, meaning that the CA needs 3-4 months of tender validity just to evaluate the tender, while on the other hand, it has requested that the contract be closed within 25 days for equipment that is not produced at all in Kosova.

Claim No. 2 - This claim of the request for reconsideration has already been accepted in the request for reconsideration and it is not necessary to elaborate further, (we have only identified according to the serial number of the claims in the request for reconsideration) To: Annex 1 Technical specifications. LOT 2 CA has requested: - The capacity of the Tank is set at min. 4.5L which tank does not correspond to the capacity of the motor cultivator and this specification limits participation because for this type of motor cultivator the standard capacity of the tank is 2.5L, therefore this capacity is outside the standards and is unnecessary and irrelevant to determine since the CA has established the power of the motor cultivator. The capacity of the tank should be left to the manufacturer as the production standards are based on the power capacity of the motor cultivator. or be a minimum of 2.5L. The CA has also requested that a catalog be submitted for these specifications, which must be accessible on the manufacturer's website with all the specifications, and has not allowed the EO to provide a statement for technical specifications that they are in accordance with the request, which are optional and are not found in a standard catalog on the web.

Claim 3.To: Annex 1 Technical specifications. LOT 2 CA has requested:- The capacity of the Reservoir is set at min. 4.5L which reservoir does not correspond to the capacity of the motor cultivator and this specification limits participation because for this type of motor cultivator the standard capacity of the reservoir is 2.5L, therefore this capacity is outside the standards and is unnecessary and irrelevant to be determined since the CA has established the power of the motor

cultivator. The capacity of the reservoir should be left to the manufacturer as per the production standards based on the power capacity of the motor cultivator. or to be a minimum of 2.5L.

The CA has also requested that a catalog be submitted for these specifications, which must be accessible on the manufacturer's website with all the specifications, and has not allowed the EO to provide a declaration for technical specifications that they are in compliance with the request, which are optional and are not found in a standard catalog on the web.

Claim no.4 To; Annex 1 Technical specifications. LOT 2. to point no.10 of the technical specifications for motor cultivator CA has requested; Point. 10 Working depth 10mm Working depth 10mm (1cm) is quite small and we do not know if it is a technical error or that is how it was determined, therefore we request that this specification be adjusted. Although in the request for Reconsideration we requested that this specification be changed because it is an error. because there does not exist and cannot be a motor cultivator cutter with a working depth of 10mm, CA has rejected this claim by not explaining the rejection at all on this point. Standard motor cultivator cutters have a minimum working depth of 100mm (10cm). and cannot have a working depth of 10mm (1cm). Point no. 16 of the technical specifications CA has requested; To submit the catalog and be verifiable on the web page for all the above-mentioned specifications. Honorable, CA has requested a verifiable catalog on the web, and in the technical specifications it has requested specifications that are optional and some of them outside the manufacturers' standards and cannot all be in the manufacturer's catalog on the web. Therefore, we have rightly requested from CA that, in addition to being verifiable on the web, the catalog be given the opportunity to commit to a statement on the technical specifications from the EO or the manufacturer for specifications that are optional because some specifications that you have requested may not appear in the Manufacturer's standard catalog, but they can be produced for you based on your request. Therefore, we request that this point be made possible declaration from the EO or manufacturer that the specifications are in accordance with the CA's request.

Claim.5 Point no. 16 of the technical specifications The CA has requested; To submit the catalog and to be verifiable on the web page for all the above-mentioned specifications. Honorable, the CA has requested a verifiable catalog on the web, and in the technical specifications it has requested specifications that are optional and some of them are outside the manufacturers' standards and cannot all be in the manufacturer's web catalog. Therefore, we have rightly requested from the CA that, in addition to being verifiable on the web, the catalog be given the opportunity to commit to a statement on the technical specifications from the EO or the manufacturer for specifications that are optional because some specifications that you have requested may not appear in the Manufacturer's standard catalog, but they can be produced based on your request. Therefore, we request that on this point, a declaration be made by the EO or the manufacturer regarding the specifications that they are in compliance with the CA's request.

Claim no. 6 In the technical specifications Lot 2 for the milking machine, the CA has requested; The machine must have a 16L copper or stainless steel tank, Honorable, as for the requested tank with copper material, there is no copper on the market. It can have Aluminum or Stainless Steel. Therefore, we request that this also be improved. and the material be specified. The CA in the decision to reject the request for Reconsideration did not provide any justification for our Claims

no. 3.4.5.6, but the rejection was made only with the following: Other claims of the Economic Operator AGRIBAU SH.P.K. considers them as a tip based on the request for reconsideration for the subject "Supply with agricultural machinery" and makes a decision to reject it. The CA's failure to justify the claims in the request for reconsideration by not taking the aforementioned claims seriously and by not justifying the Responses to our Claims, is in violation of the law on public procurement, specifically Article 108/A Preliminary Resolution of Disputes, as well as the Regulation and the Public Procurement Guide. Therefore, we request that these requirements, according to our aforementioned claims, be changed and improved in the tender dossier because they directly affect the reduction-elimination of competition between economic operators, which is clearly in violation of the Public Procurement Law. After all that was said above. Referring to the claims as above, "AGRI BAU" LLC considers that the Contracting Authority has acted in violation of Article 1- Purpose, Article 7- Equality in Treatment/Non-Discrimination, Article 27- Tender Dossier, Article 28- Technical Specifications, Article 108/A Preliminary Settlement of Disputes, Regulation No. 001/2022 on Public Procurement Article 19 Technical Specifications, (19.1 In application of Article 28 and 29 of the LPP), ARTICLE 19.6 and ARTICLE 19.4 of the Regulation No. 001/2022 on Public Procurement. We request the PRB Review Panel, based on the explanations and evidence provided above, to approve the complaint in its entirety as grounded. To annul the decision dated 04.08.2025. and to request the Contracting Authority to correct the Tender Dossier and technical specifications.

Response of the Contracting Authority to the request for reconsideration: After consultations with the drafters of the specification of the case, A.K. Municipality of Leposaviq and for claim no. 1, the delivery deadline is extended for another 5 days, i.e. from 20 to 25 days after the signing of the contract. For claim 2, the improvement is made by adding a scythe to the technical specification Annex 1 of the tender dossier. The other claims of the Economic Operator AGRIBAU SH.P.K. are considered as not based on the request for reconsideration for the case Supply of agricultural machinery and make a decision to reject it. We, as the CA, thank you for participating in this tender, and encourage you to participate and bid in this tender.

Based on Article 111 paragraph 5 in connection with Articles 113 and 114 of the LPP, the Review Panel on 15.08.2025 authorized the expert to conduct the initial review of the file and claims according to the complaint with no. 0751/2025, while on 19.08.2025 the expert report with no. 2025/0751 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 approved as grounded, the CA make improvements to the tender file and extend the deadline for bidding.

The review panel has assessed that the conditions have been met to decide on this case without a hearing session within the meaning 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 and the report of the review expert provide sufficient data to decide on the merits of the case.

- Administration and evaluation of evidence –

In order to fully establish the factual situation, the review panel has administered as evidence the expert's report, the parties' opinions regarding the expert's report, the complainant's submissions and documents, the contracting authority's letters and documents, relevant documents related to the procurement activity, as well as all evidence proposed by the procedural parties.

Regarding the claims of EO "AGRI BAU" SH.P.K, the review expert through report no. 2025/0751 has assessed as follows: Introductory clarification: The Contracting Authority (CA) - Municipality of Leposaviq has carried out the procurement activity with the title: "Supply with agricultural machinery", with procurement number: 641-25-6684-1-1-1, open procedure, type of contract: supplies. The Contracting Authority has published the tender dossier on the E-Procurement platform on 22.07.2025. The complaining Economic Operator, "AGRI BAU" SH.P.K., has submitted the request for review to the CA on 30.07.2025. On 04.08.2025, the CA has issued a decision on the rejection of this request. The complaining Economic Operator, dissatisfied with the decision of the CA, filed a complaint on 07.08.2025 with the PRB, objecting to the criteria set out in the contract notice and the tender dossier of the CA. The review expert assesses the claims as follows:

Response to Complaining claim No. 1 The complaining Economic Operator claims that the contracting authority in the criteria set out in the FDT, in "Conditions and requirements of delivery, point 5.3, Time limits for the commencement and/or completion of the contract has requested: within 25 days after signing the contract". The review expert analyzes and assesses the complaining claim as well-founded, with the reasoning that the Contracting Authority has requested "commencement and completion of the contract within 25 days, for delivery to take place". Our recommendation is that this point be corrected and the delivery deadline be around 40 calendar days, as we consider that the deadline set by the Contracting Authority is short for the realization of the supply of the requested equipment. Such a deadline, in addition to making it difficult to fulfill the contract in a quality manner, also limits competition in the market and may create opportunities for favoring certain Economic Operators.

Response to the complaint claim No. 3, 4 and 5; The Economic Operator claims that the CA has made restrictions and at the same time discrimination in positions 6, where it is requested "Fuel tank capacity min 4.5L", position 10, where it is requested "Depth of work 10mm", and in position 16, where it is requested "Catalog, To be submitted and be verifiable on the website for all the above-mentioned specifications". The review expert analyzes and evaluates the complaint claims as well-founded, with the reasoning that the Contracting Authority, regarding the following positions, has set requirements that require review? Position 6: The CA has requested that the fuel tank capacity be 4.5L. Our recommendation is that this position be corrected to an interval of minimum 3L to maximum

5L, to allow more competition and technical alternatives in the market? Position 10: The CA has requested that the depth of the work be 10mm. Our recommendation is that this request be corrected to min.15cm -

25cm, because we consider that it may be a technical error in the specification/Position 16: The CA has requested a verified catalog from the website for all the specifications mentioned. Our

recommendation is to request catalogues in accordance with the requirements of the tender dossier, or a relevant declaration that guarantees the ability to provide the required supplies, in accordance with the technical specifications. We recommend that the Contracting Authority correct these positions and act in accordance with Article 7 of the Public Procurement Law, creating the widest possible space and opportunity for the participation of economic operators in this procurement activity.

Response to the complaining claim No. 6: The contracting authority in the criteria set by the FDT, in Lot 2 - Supply of Agricultural machinery - Motor cultivator with tiller and plow, as well as a milking machine for dairy cows, position 1 Milking machine for dairy cows, has requested: "The machine must have a 16L copper or stainless steel tank". The complaining Economic Operator claims that the CA has made discriminations and restrictions where it quotes: "In the technical specifications of Lot 2 for the milking machine, the CA has requested: The machine must have a 16L copper or stainless steel tank. Honorable, regarding the requested tank with copper material, there is no on the market, it can have Aluminum or Stainless Steel, therefore we request that this also be improved, and that the material be specified. The CA in the decision to reject the request for Reconsideration has not given any justification for our claims no. 3,4,5,6, but the rejection has done with just the sentence.

The review expert analyzes and evaluates the complaining claim as unfounded, with the reasoning that the equipment requested by the Contracting Authority cannot be considered discriminatory. In this case, the CA has requested that the tank be made of copper or stainless steel, which means that a valid alternative has been offered regarding this technical specification, where the complaining EO itself has emphasized that there may be equipment with a stainless steel tank on the market.

The review expert, after evaluating several points claimed by the complaining Economic Operator, in relation to the positions set out in the tender dossier specifications by the Contracting Authority, considers that there is a basis for intervention in some of them. Our recommendation is that the Contracting Authority correct the aforementioned positions and, at the same time, act in accordance with Articles 7, 51 and 52 of the Public Procurement Law. It is also recommended that the contract notice be corrected and the deadline for submission of bids be extended, in accordance with the deadlines set out in the legislation in force.

- Findings of the Review Panel –

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 complaint claims. However, it should be noted that the legal fact that the expert report is not binding on the Review Panel and that any such report is assessed and/or analyzed in the general 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 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 the sense of Article 98, 99 in conjunction with Article 105 of the Public Procurement Law.

The review panel has independently and objectively, with due diligence and professional care, assessed all the evidence of the case. In this way, it was found that the Contracting Authority did not act in accordance with the legal provisions on public procurement and the requirements of the Tender Dossier regarding the procurement activity “Supply with agricultural machinery” with procurement no.: 641-25-6684-1-1-1.

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 complaint claims, taking into account all the case files and the recommendations of the review expert, has found that the complaint of the Economic Operator is approved as grounded. Consequently, the Review Panel has decided regarding the procurement activity entitled “Supply with agricultural machinery” with procurement no.: 641-25-6684-1-1-1, the CA to make improvements to the tender dossier and extend the deadline for bidding. Based on what was described above, consequently, the review panel finds that the complaint of the complaining EO is approved as grounded, the CA to make improvements to the tender dossier and extend the deadline for bidding.

The Review Panel has decided in accordance with the legal competences in terms of Article 104 paragraph 1 in conjunction with Article 103, Article 105 and Article 117 of the LPP for the implementation of 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, which may arise during a procurement activity.

For point I of the decision, it was decided based on Article 117 of the LPP in conjunction with Article 29 of the PRB's Rules of Procedure.

For point II of the decision, it was decided based on Article 131 of the LPP in conjunction with Article 29 paragraph 3 of the PRB's Rules of Procedure.

For point III of the decision, it was decided based on article 31 paragraph 4 and paragraph 6 of the PRB Rules of Procedure in relation 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

Mrs.Kimete Gashi

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 – **LEPOSAVOQ MUNICIPAL ASSEMBLY;**

1x1 EO – **“AGRI BAU SH.P.K.”;**

1x1 Archive of the PRB;