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

Psh. No.161-163/26

The Review Panel, appointed pursuant to Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosovo (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 Kimete Gashi Brajshori President, Batisha Ibrahimi Member and Vedat Poterqoi Member deciding on the complaint filed by the Economic Operator EO “Dauti Komerc” SH.P.K. and the complaint filed by the Economic Operators GOE “Hc Store” - “Meka” - “Fehmi Cakiqi” SH.P.K. regarding the procurement activity entitled: “Supply of food items - Lot 3 and Lot 5”, with procurement number: 201/26300-25-11214-1-1-1 initiated by the Contracting Authority (CA) - Central Procurement Agency, on the 08/04/2026 has issued this:

DECISION

I. Approved, as partly grounded the complaint of the EO “Hc Store” - “Meka” - “Fehmi Cakiqi” SH.P.K. submitted to the Procurement Review Body on 18.03.2026 with protocol number 0163/26, as well as the complaint of the Economic Operator “Dauti Komerc” SH.P.K. submitted to the Procurement Review Body on 16.03.2026 with protocol number 0161/26 for the procurement activity entitled: “Supply with food items - Lot 3 and Lot 5” with procurement no. 201/26300-25-11214-1-1-1, initiated by the Contracting Authority (CA) - Central Procurement Agency.

II. Remains in force, Notification of the Decision of the Contracting Authority described under point I. of this provision.

III. The refund of the amount deposited upon filing the complaint is allowed and the complaining economic operator “Hc Store” - “Meka” - “Fehmi Cakiqi” SH.P.K. and the Economic Operator “Dauti Komerc” SH.P.K. are 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 be transferred to the Budget of the Republic of Kosovo.

REASONING

-Procedural facts and circumstances -

On the 18.12.2025, the Central Procurement Agency in the capacity of the Contracting Authority has published the Contract Notice regarding the procurement activity entitled "Supply of food items - Lot 3 and Lot 5" with procurement number: 201/26300-25-11214-1-1-1

This procurement activity was conducted through an open procedure with the type of contract Supply and with an estimated contract value of 2,010,000.00 €.

On the 04.03.2026, EO “Dauti Komerc” SH.P.K. has filed a request for review against the Notification on Decision B58 of the Contracting Authority.

On the 03.03.2026, EO “Hc Store” - “Meka” - “Fehmi Cakiqi” SH.P.K. has also filed a request for review against the Notification on Decision B58 of the Contracting Authority.

On the 09.03.2026, the Contracting Authority has published a decision through which the complaints of both Economic Operators are rejected as unfounded and the notification on the decision of the Contracting Authority is confirmed.

On the 16/03/2026, EO “Dauti Komerc” SH.P.K. has filed a complaint with the PRB with no. 0161/26.While on 18/03/2026 EO “Hc Store” - “Meka” - “Fehmi Cakiqi” SH.P.K. has submitted to the PRB the complaint with no. 0163/26.

-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.

Taking into account the fact that both complaints are related to the same procurement activity, namely to the notification of the same decision of the Contracting Authority regarding this procurement activity, it has been decided that complaint no. 0161/26 and complaint no. 0163/26 shall be merged and treated as a unified case within the meaning of Article 16 paragraph 1 of Regulation no. 01/2020 on the Work of the Procurement Review Body.

The claims of the complaining economic operator “Dauti Komerc” SH.P.K. are presented as follows:

We agree with the elimination of the two bidders, since it is considered that conditional loans are not accepted and, in any form of conditionality, they do not meet the criteria of the tender dossier. While for the bidder recommended for the contract “Beni Dona”, we have reasonable doubts that it has not also met the requirement: 11.2.3 Economic and financial capacity, respectively Requirement 2: The economic operator must prove that it has the financial capacity to perform the contract, through cash in the bank or bank support - unconditional access to credit for the performance of the contract, or a positive balance in “Cash and cash equivalents” at the end of the year in the Cash Flow Statement for the year ending on 31 December 2025, in the amount of at least:

• Lot l - 100,000.00€;

• Lot 2 - 200,000.00€.

This is because the very fact that the document is considered a business secret raises doubts that this requirement has not been met, based on two points:

1. If the economic operator has cash in the bank, then the fact that it has been recommended for award under a contract for two lots means that it has over €300,000.00 in cash, which cannot be considered a secret, as it is an easily verifiable fact.

2. If it is a loan, then the document should not be named “Evidence from the bank for cash”, as it has been presented. This document was not provided to us even in a cleaned version following our request for access to documents.

Therefore, we consider that the Contracting Authority (CA) has violated Article 59 during the evaluation of the bids, as well as Article 11, by not providing access to this document, even though it does not affect the business activity of either company. For this reason, we request that, at least during the review of the request for review, parts of this document (where sensitive values or data may be deleted) be attached to us, in order to verify whether it concerns cash or credit, and whether this credit is unconditional. Based on the facts presented, we consider that we are dealing with: Violation of Law No. 04/L-042 on Public Procurement of the Republic of Kosovo, amended and supplemented by Law No. 04/L-237, Law No. 05/L-068 and Law No. 05/L-092:

Violation of Article 1 - Purpose The Law on Public Procurement aims to ensure the efficient, transparent and fair use of public funds. The Contracting Authority, by recommending for a contract an economic operator for whom there are reasonable suspicions of non-fulfilment of financial requirements, as well as by not providing access to documentation due to “business secrecy”, has acted contrary to this purpose, thereby undermining transparency and the fair use of public funds.

Violation of Article 6 - Economy and efficiency

The CA has not ensured the economic and efficient use of public funds, as it has recommended an economic operator without verifying the actual fulfillment of the financial capacity, thus jeopardizingthe performance of the contract.

Violation of Article 7 - Equality of treatment / Non-discrimination The CA has not treated economic operators equally and transparently, as for the recommended operator, documentation classified as a business secret and inaccessible to other parties was received, while for the other tenderers the criteria were strictly applied.

Violation of Article 52 - Notification of the criteria for the award of the contract The criteria for economic and financial capacity were not respected during the evaluation, as the recommended operator did not prove in a verifiable manner that they were fulfilled.

Violation of Article 59 - Examination and evaluation of bids The CA has considered as responsible a bid that does not comply with the requirements of the tender dossier, specifically with requirement 11.2.3 for economic and financial capacity.

Violation of Article 60 - Award criteria The criterion “responsible tender with the lowest price” was not respected, as the contract was recommended to an operator who did not submit a responsive bid.

Violation of Regulation No. 001/2022 on Public Procurement - Article 40 The CA did not carry out a full and documented verification of the fulfillment of the requirements of the tender dossier, contrary to this provision.

Violation of the principle of proportionality The CA applied different evaluation standards for different operators, being more rigorous towards some bidders and more tolerant towards the recommended operator.

Doubts about the legality of the classification as “business secret” The classification of the proof of financial capacity as a business secret is unfounded, as this document does not contain strategic or competitive information, but only proves the fulfillment of a legal criterion.

Denial of the CA’s claim for business secret

1. The document does not constitute a trade secret in the material sense of the law.

2. It is of a verification and non-competitive nature.

3. The classification was made without concrete justification.

4. Article 11 does not allow the prevention of the verification of the legality of the decision.

5. The CA was obliged to provide a functional clean version that enables verification.

6. The version provided does not meet this purpose.

Conclusion - Based on the evidence and facts presented, we request that the case be returned for re-evaluation and during this process all the claims raised be clarified.

The claims of the complaining economic operator “Hc Store” - “Meka” - “Fehmi Cakiqi”

SH.P.K. are submitted as follows:

In the capacity of the Group of Economic Operators (GOE) for the procurement activity "Supply of food items" - Lot 5, we submit a request for review of the Notice on the Decision of the Contracting Authority, published on 27.02.2026.

This appeal is filed against the decision to eliminate our bid, based on the reasoning provided by the Contracting Authority regarding the Declaration for the Establishment of the Group and the bank support document.

Reasoning of the Contracting Authority According to the Contracting Authority, our bid was eliminated on the grounds that the administrative requirement regarding the Declaration for the Establishment of the Group was not met, namely:

• In point 5 of the declaration, only two members of the group are listed with percentages of participation (75% and 25%);

• One member of the group does not appear at all with a percentage of participation in the implementation of the contract, but only with responsibility for providing the bank support letter;

• The bank support letter does not meet the requirements of the tender dossier, as it is considered conditional;

• It has also been found that the financial capacity according to the requirements has not been sufficiently proven.

Claim 1 - Declaration on the Establishment of the Group - The elimination of our bid on the grounds that the Declaration on the Establishment of the Group was not properly completed is unfounded and in violation of the Public Procurement Law (PPL).

We have submitted a bid as a Group of Economic Operators, where: Two members have operational participation in the implementation of the contract (75% and 25%); The other member, N.P.T. AL-VIS (Fehmi Cakiqi B.I.), has committed to financial support through the provision of a bank support letter.

This role is fully legal and in accordance with Article 68.4 of the LPP, which allows economic operators to rely on the capacities of other entities, regardless of the legal nature of the relationship with them, provided that the availability of resources is proven.

Also, according to official interpretation no. 18 of 22.11.2022 by the PPRC:

"An economic operator may rely on the capacities of other entities to meet financial or technical requirements and cannot be disqualified for this reason."

This results in:

• Reliance on other capacities is permitted;

• It is not required that each member of the group has an operating percentage participation;

• The group as a whole is responsible for the performance of the contract.

Furthermore, Article 71 of the LPP does not require that each member of the group has a percentage of the performance of the contract, but only that the requirements be met by the group as a whole.

Therefore, the elimination of our bid due to the lack of a member's percentage is in contradiction with Article 68.4 and Article 71 of the LPP, as well as with the official interpretation of the PPRC.

Claim 2 - Bank support document

The tender dossier required that the financial capacity be proven through:

• cash in the bank, or

• bank support / access to credit.

We have submitted:

• bank support letter from a licensed institution;

• evidence of cash in the bank in the amount of €200,000.

These documents fully meet the purpose of the financial criterion.

The rejection of the bank letter on the grounds that it is “conditional” is unfair and disproportionate, since:

• the form of the document is standard and determined by the bank;

• the economic operator cannot influence the format of the document;

• the document clearly demonstrates the availability of financial support.

In case of uncertainty, the Contracting Authority had a legal obligation, according to Article 72 of the LPP, to request clarifications from the issuing bank.

Failure to use this mechanism and the immediate elimination of the bid constitutes a direct violation of Article 72.

Also, the practice of the PRB (case 2024/0352) confirms that the Contracting Authority must request clarifications in such cases.

The rejection of our documents, despite the fact that they prove real financial capacity, constitutes:

• violation of Article 59 (principle of proportionality);

• incorrect interpretation of Article 68 of the LPP;

• violation of fair competition.

Allegation 3 - Violation of Article 61.3 of the Public Procurement Regulation

In accordance with Article 61.3 of Regulation No. 002/2024, the Contracting Authority is obliged to publish requests for review on the electronic procurement platform.

In the specific case, the CPA has not published two requests for review, violating:

• the principle of transparency;

• the right of the parties to information and supervision of the process.

Allegation 4 - Violation of the fundamental principles of the LPP - The Contracting Authority has awarded an economic operator with a higher price, while our bid was lower by around 9,800 €. This action is in violation of: Article 1 of the LPP (efficiency and cost-effectiveness);

• Article 7 (equal treatment and non-discrimination);

• Article 59 (objective evaluation of bids).

Furthermore, there are suspicions of unequal treatment, since:

• our bid was eliminated for formal reasons;

• while the other bid has been declared the winner, despite the highest price.

This creates a perception of selective application of criteria and undermines fair competition.

Conclusion Based on all of the above, we request that:

• the decision to eliminate our bid be annulled;

• our bid be re-evaluated in accordance with legal provisions;

• equal treatment and a fair procurement process be ensured.

Based on Article 111 paragraph 5 in conjunction with Articles 113 and 114 of the LPP, the PRB on the 19.03.2026 authorized the review expert to conduct the initial review of the file and claims according to the complaint with no. 0161/2026, while on 23.03.2026 authorized the review expert to conduct the initial review of the file and claims according to the complaint with no. 0163/2026, while on 02.04.2026 the report of the review expert was submitted with no. 0161/26&0163/2026.

• Administration and evaluation of evidence -

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

Regarding the claims of “Dauti Komerc” SH.P.K. the review expert through report no. 2026/0161 have assessed as follows:

The review expert, clarifies that the complaining EO, dissatisfied with the Notice on Decision (B58) of the CA

- Central Procurement Agency, has filed a complaint with the PRB with the claim that the contracting authority has not respected the provisions of Article 59 of the LPP, by recommending for the contract irresponsible EO.

Claim no. 1 The complaining EO, claims that the EO recommended for the contract has not fulfilled request no. 2 of the capacity on the economic and financial situation, where the CA has requested:

Requirement 2: The economic operator must prove that it has financial capital for the implementation of the contract: cash in the bank or bank support, unconditional access to credit for the contract implementation or a positive balance in Cash and cash equivalents at the end of the year in the

Cash flow statement for the year ending 31 December 2025 - in the amount of at least:

Lot 1 - 100,000.00€;

Lot 2 - 200,000.00€.

The review expert, after examining the case files, specifically the offer of the EO recommended for the contract in relation to the evidence for the request cited above, assesses that the recommended for the contract has fulfilled the requirement no. 2 of economic and financial capacity, specifically in the evidence submitted in the offer of the EO recommended for the contract it is seen that it has funds over 300,000.00€ and because the same has submitted in its offer the request for business secrecy, the review expert cannot provide more information, but the evidence for the review panel is found on the E-Procurement platform. Therefore, the claim of the complaining EO is unfounded.

Claim no. 2 The complaining EO claims that the CA has not provided full access, due to the request for business secrecy which the EO recommended for the contract has submitted in its offer.

The review expert clarifies that the EO recommended for the contract has submitted the request for a business secretary and at the same time clarifies that the complaining EO has no other claim regarding the bid of the recommended one for the contract.

Regarding the claims of EO “Hc Store” - “Meka” - “Fehmi Cakiqi” SH.P.K. the review expert through report no. 2026/0163 have assessed as follows:

Claim no. 1 The main complaint claim according to complaint 163/26 has to do with the reason for the elimination of the complaining EO by the CA, where according to the CA the same does not meet the requirement of the tender dossier for cash in the bank or unconditional access to credit in the amount of 200,000 €.

CA claims that: "You have been eliminated for the reason: it has been assessed that you have not fulfilled the administrative requirement regarding the DECLARATION FOR

ESTABLISHMENT OF THE GROUP where in point 5 of this declaration only two members of the group appear who have a % (percentage) of participation in the implementation of the contract in the ratio of 75% to 25%, while one member of the group does not appear at all in the percentage of participation in the implementation of the contract, so one member of the group appears who has no participation at all in the implementation of the contract but only has the responsibility as stated in this declaration, we quote: "Also N.P.T. AL - VIS (Fehmi Cakiqi B.I.) undertakes as a member of the group to issue a supporting letter of credit from a licensed bank on behalf of the tender published by the "AQP", in this case, in fact, the credit for this EO does not meet the condition for which this request is made, which is intended for the contractor to have liquidity/financial means for the start and implementation of the contract without problems. Also, for this EO, it has been assessed that the Letter of Reference does not meet the requirement of the tender dossier, since in it we quote: "(name of the bank) will consider financial support based on its financial capacity after the financial analysis made by our credit analysts for the requested amount...", so in addition to the fact that this document is issued for a member of the group who does not participate in the implementation of the contract, it is also not issued according to the request of the tender dossier where it is required to be unconditional access. While in another document for the leader of the the group has proven that on 29.12.2025 it had financial assets in a value that does not meet the minimum requirement of 200,000€ as required..."

While the complaining EO through the complaint to the PRB claims, among other things, that:

"Therefore, the elimination due to the lack of an operational percentage conflicts with Article 68.4 and the official interpretation of the PPRC, since the group is responsible for the execution of the contract, and not the entity without operational participation. In this specific case, through the bank letter of the EO N.P.T. AL-VIS (Fehmi Cakiqi B.I.) we have proven to the contracting authority that we will have the necessary resources available. Official interpretation of the PPRC no. 18 dated 22.11.2022: "An economic operator may rely on the capacities of other entities to meet the financial or technical requirements and cannot be disqualified because it did not participate as a group of economic operators." It is also emphasized that: "It is the right of every economic operator to rely on the capacities of another entity; the difference lies only in the responsibility for the execution of the contract." Therefore, the elimination due to the lack of an operational percentage conflicts with the official interpretation of the regulatory authority, namely the PPRC, since even according to the PPRC's interpretation, the economic operator responsible for the execution of the contract is the economic operator who relies on the capacities of other entities and as a result, in this case, the Group of Economic Operators HC STORE SH.P.K.; MEKA SH.P.K.; is responsible for the execution of the contract.

The review expert gives the opinion that in accordance with Article 68 of the LPP paragraph 4, a group of economic operators can rely on the capacities of participants in the group of other entities. In the specific case, EO Femi Cakiqi is a member of the group of the complaining EO (which has provided confirmation from the bank that on 10.02.2026 it had a balance available of 236,037.62 EUR) and the group can rely on its economic capacity. In the specific case, the tender dossier did not specify or limit the mandatory percentage of participation for the leader or members, and despite the fact that the third member of the EO was not specified with a "participation percentage" (this sentence in itself poses a challenge since there is no formula or unit that determines the "participation percentage"), the review expert gives the opinion that the group as a whole can rely on the capacity of the group member. Based on the above, we assess that the complaint claim is well-founded and that the group of EOs can rely on the economic capacity of the group member.

-Review session –

The Panel found that there are no elements for preventing conflict of interest, as required in accordance with Article 11 of the PRB Rules of Procedure, in connection with paragraph 1.75 of Article 4 of the LPP, and at the same time analyzed all the documents of this case, including all the acts and actions of the parties, and considered that there is a need to hold a hearing with the parties, since two experts have been appointed regarding these complaints, as well as the submissions of the parties and their actions, do not constitute a sufficient basis to decide on the merits as provided for in paragraph 2 of Article 24 of the PRB Rules of Procedure, and that there is a need to request the contracting authority and/or the complainant to provide additional information and/or explanations, in accordance with paragraph 3 of Article 116 of the LPP.

- Findings of the Review Panel -

The Panel considers that the expert reports contain a priori 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 the entire procurement documentation, including all complaint claims and to provide the panel and all parties with an independent and professional assessment of the procurement activity and the validity of the complaint claims. However, it should be emphasized that the expert report is not binding on the Review Panel and that any such report is assessed and/or analyzed in the overall context of the case files, the alleged facts and any other 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 supports or not, any report and/or any of the recommendations, is a matter of his/her independent and professional judgment, as these responsibilities are addressed to him/her in the sense of Article 98, 99 in connection with Article 105 of the LPP.

In order to fully establish the factual situation, the review panel has administered as evidence the

Report of the Review Expert, the opinions of the parties regarding the expert report, the submissions and documents of the complaining economic operators and the recommended economic operator, the letters and documents of the Contracting Authority, the statements of the parties in the procedure during the hearing session, other relevant documents related to the procurement activity as well as all the evidence proposed by the procedural parties.

Regarding the complaint claims submitted by the complaining EO "Dauti Komerc SH.P.K"-Prishtina with no: 2026/0161, based on the facts and arguments mentioned above, the PS trusts the report of the review expert, without the need to repeat the same, consequently, the PS leaves the decision of the contracting authority in force, thus assessing that the recommended EO meets the criteria set out in the TD.

Regarding the complaint submitted by the complaining GOE “Hc Store; Meka;Fehmi Cakiqi SH.P.K. with no: 2026/0163, based on the facts and arguments presented, the expert with his report has not managed to prove that the complaining EO has fulfilled the requirements set out in the DT, therefore the PSH does not support the finding of the review expert regarding the elimination of the complaining GOE regarding the Declaration for the Establishment of the Group of this GOE. In this specific case, this group of economic operators have entered into a consortium with three Economic Operators, where according to this consortium the Leader Economic Operator HC STORE SH.P.K has been designated, other participating members are EO MEKA SH.P.K and EO N.P.T. AL-VIS (Fehmi Cakiqi B.I.). According to the Declaration for the establishment of the group for the member N.P.T. AL-VIS (Fehmi Cakiqi B.I.) the contribution of this EO is not foreseen at all, because the responsibility is divided only between the Group Leader and one member of EO MEKA SH.P.K while the third member of this group N.P.T. AL-VIS (Fehmi Cakiqi B.I.) is not divided at all. The declaration submitted by the complaining GOE and formed with these divisions of responsibilities:

a) [75% of participation in the implementation of each Lot of the contract for Lot, 3 & 5: Leader: HC STORE SHPK

b) [25% of participation in the implementation of the contract Lot, 3 & 5, member: MEKA SHPK

RP assesses that such formulation has not met the criteria set out in the TD and also ascertains that the member of the N.P.T. AL-VIS group (Fehmi Cakiqi B.I.) except for having provided a declaration from the same Bank has no other contribution to the implementation of the contract related to this procurement activity when it is known that the formation of the group is done precisely for capacity support as provided for by the legal provisions of Article 68 and 69 of the LPP and as such does not meet the criteria set out in the TD.

The review panel after the administration and evaluation of the evidence, the full ascertainment of 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 complaints of the Economic Operators should be approved as partially well-founded, while the Notice on the Decision of the Contracting Authority - Central Procurement Agency - related to the procurement activity entitled "Supply with food items - Lot 3 and Lot 5" with procurement number: 201/26300-25-11214-1-1-1 should remain in force, since there are no sufficient legal arguments to order the CA to return the procurement activity for re-evaluation, for the reasons elaborated above in this decision.

Therefore, acting in accordance with the powers cited above and Article 104 paragraph 1 and 4 of the LPP, according to which the procurement review procedure shall be implemented and carried out in a prompt, fair and non-discriminatory manner, aiming at the legal and effective resolution of the case, as well as referring to Article 117 of the LPP, and in the evidence presented above, the Review Panel decided as in the provision of this decision.

From what was said above, it has been decided as in the provision of this decision. 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 – **Central Procurement Agency;**
1x1 EO **– Dauti Komerc SH.P.K., HC STORE SH.P.K.;**
1x1 Archive of the PRB