



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

Psh. No.0231/25

The Review Panel, appointed by the Acting President of the Procurement Review Body (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 of Kimete Gashi Brajshori - President, Batisha Ibrahim - member and Vedat Poterqoi - member, deciding upon the complaint of the Economic Operator (EO) “SA - SALLAHU” SH.P.K, against the Contract Notice or the tender documents related to the procurement activity “Re-tender-Expansion of National Road N9-Segment Kijevë-Dollc, Lot 1, St 0+000-4+000 with length L=5,330.60m” with procurement number 205-25-2216-5-1-1, initiated by the contracting authority (CA) - “MINISTRY OF INFRASTRUCTURE, on the 30/05/2025, has issued this:

### **DECISION**

1. Approved, as partly grounded the complaint of EO “SA - SALLAHU” SH.P.K with no. 2025/0231, dated 04/04/2025, regarding the procurement activity “Re-tender-Expansion of National Road N9-Segment Kijevë-Dollc, Lot 1, St 0+000-4+000 with length L=5,330.60m” with procurement number 205-25-2216-5-1-1, initiated by the contracting authority (CA) - “MINISTRY OF INFRASTRUCTURE. While the CA's contract notice remains in force.
2. Within 10 days, the CA must inform the PRB of all actions taken in relation to this procurement activity, otherwise, for non-compliance with the decision, the PRB may take measures against the CA as provided for in the provisions of Article 131 of the Law on Public Procurement of Kosova.
3. Since the complaint of the complaining EO is approved as grounded, the complaint fee is refunded in the amount deposited when submitting the complaint.
4. The complaining EO is obliged to, in accordance with Article 31, point 6 of the Rules of Procedure of the PRB, within a period of sixty (60) days, make a request for the return of the complaint security, 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 20.03.2025, the "MINISTRY OF INFRASTRUCTURE", in the capacity of the Contracting Authority, has published B05 Contract Notice regarding the procurement activity with "Re-tender-Expansion of National Road N9-Segment Kijevë-Dollc, Lot 1, St 0+000-4+000 with length L=5,330.60m" with procurement no.: 205-25-2216-5-1-1.

The contracting authority has implemented an open procedure, type of contract: work, estimated value of the contract: 9,750,000.00.

On the 28.03.2025, EO "SA - SALLAHU" SH.P.K has submitted a request for reviewing against the aforementioned decision of the CA. On 04.04.2025, the Contracting Authority has rejected as grounded the request for reviewing.

On the 04.04.2025, the PRB has received the complaint from EO "SA - SALLAHU" SH.P.K with no.2025/0231 regarding the activity "Re-tender-Expansion of National Road N9-Segment Kijevë- Dollc, Lot 1, St 0+000-4+000 with length L=5,330.60m" with procurement number 205-25-2216-5-1-1.

### ***-On the preliminary review phase -***

The PRB has found that the complaint contains all the elements set out in Article 111 of the LPP and as such has been submitted within the legal deadline in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for the resolution of disputes in the sense of Article 108/A of the LPP, by the economic operator who is an interested party according to Article 4 paragraph 1 sub-paragraph 26 of the LPP. In this way, the Review Panel has found that it is competent to review this complaint 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 "SA SALLAHU" SH.P.K. are presented as follows:***

*The Contracting Authority, in violation of Article 112 of the LPP, has initiated a new tender procedure without canceling the previous procedure, thus conducting two procurement procedures in parallel for the same object. This is also confirmed by the fact that referring to the Response dated 28.03.2025 sent by the Procurement Review Body (PRB) to our Request dated 26.03.2025 for information regarding the stage of review of complaint no. 971/24 submitted for the procurement activity 'Expansion of the National Road N9-Segment Kijevë-Dollc, Lot 1,2,3,4' with proc. no. 2024/205-23-1843-5-1-1, LOT 1", it is emphasized that the complaint is still under review, and that it is currently in status 16 in the e[1]procurement system, "awaiting decision" by the Review Panel. According to Article 112 of the Law on Public Procurement of Kosovo (LPP), while the complaint is under review, the procurement activity should be considered suspended, ensuring a fair and transparent process for all parties involved. Since the procedure is considered suspended until the final decision of the PRB on the aforementioned complaint, in violation of the provision of 112, the CA has re-tendered the procurement procedure, without the*

previous procedure being canceled by a decision, and now in the procedure, is currently conducting two procurement activities at the same time, for the same procurement object. Therefore, we request the PRB to issue an order to suspend the procurement activity in accordance with Article 105, paragraph 2.7 of the LPP. The Contracting Authority, in violation of the rules for reviewing requests for review, has not addressed my request at all, therefore we submit the same claims to the PRB. After reviewing the Tender Dossier, we have noticed that the CA Ministry of Infrastructure has set conditions and requirements that are in conflict with the Law No. 04/L 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 as well as Regulation No. 01/2022 on Public Procurement and its supplement/amendment. According to Articles 7 and 28 of the LPP, the drafting of conditions and criteria must be done in accordance with the purpose and directed towards ensuring the best possible access for all interested economic operators and tenderers, always in accordance with the applicable standards under the law. According to Article 28 paragraph 2 of the LPP, the Contracting Authority is specifically prohibited from drafting technical specifications that favor or discriminate against one or more economic operators. According to Article 17.17 of Regulation No. 01/2022, the tender dossier shall be prepared in a manner that does not: a) Restrict competition among economic operators b) Discriminate against or act in favor of one or more economic operators. Therefore, for the following Requests in the Tender Dossier, we have requested the CA to amend and correct them in accordance with the LPP. Claim 1 Regarding Request No. 7 of the FDT: List of completed contracts in the requested area for the past three-year period not less than 14,000,000.00 euros. The economic operator must have completed projects in the field of road construction, reconstruction and rehabilitation of roads. Required evidence 7. List of projects signed and stamped by the EO together with the final acceptance minutes of the works or references indicating the value, date, nature and location of the projects in the requested area for the past three-year period. We consider that the word "or reference" should be removed from the required evidence, due to the fact that based on Article 26.7 of the Public Procurement Regulation it is determined that "References for contracts implemented may be evidenced by the final report on the performance of the works or by certificates for the performance and/or satisfactory completion of the projects, which is mentioned as evidence in Article 69 of the LPP." Article 69 paragraph 6.2. The procurement law provides: "a list specifying all works projects and construction activities carried out in the past three-year period, accompanied by certificates of satisfactory completion and/or completion of the most important works projects and/or construction activities; the certificates shall specify the value, date and location of the works projects and/or construction activities and specify whether they have been carried out and/or completed in accordance with commercial rules and have been properly completed; whenever possible, the contracting authority may be required to agree with the competent public authority in Kosovo or else Therefore, it means that references alone without technical acceptance cannot be considered as evidence to prove the successful implementation of contracts, therefore it means that this request from the Contracting Authority is determined in violation of the aforementioned provisions. Claim 2 Referring to the List of equipment required for this procurement activity, we see that the CA for some of the following equipment has requested equipment, the weight of which is unnecessary for the implementation and needs of the

*project. For the following items from the List of equipment, we request from the CA that the same be changed and drafted in accordance with the LPP, construction standards and project needs. Item no. 3 Dump truck (dumper) with a carrying weight of at least 15t, (12 pieces), the carrying weight should be changed to at least 10t due to the fact that this weight meets the general construction standards, and meets the needs of this project, since this tonnage was foreseen even before the re-tendering. Item no. 13 Vibrating cylinders with iron wheels with a weight of at least 8t (2 pieces) the carrying weight should be changed to at least 7ton, because this weight meets the general construction standards, the type of equipment - asphalt cylinder, and the needs of this project, since this was foreseen even before the re-tendering.ewhere to submit copies of the relevant certificates directly to the contracting authority”.*

*Referring to the above allegations, “SA - SALLAHU” SH.P.K considers that the Contracting Authority has acted in violation of Article 112, Article 1, Article 7, Article 28, Article 69, Regulation No. 01/2022 on Public Procurement, Article 62. Therefore, based on the above, we request the Procurement Review Body to Approve our Complaint as well-founded, to suspend the procurement procedure until the decision of the PRB on Complaint 971/24, and to oblige the CA to change the conditions in accordance with the LPP and the public procurement rules.*

***Contracting Authority's response to the request for reconsideration:***

***Response regarding claim 1:*** *After reviewing this claim regarding the above-mentioned request, we inform you that such a request is in accordance with the LPP, the rules and guidelines for public procurement. While regarding the request regarding references, it is very clear that the request is a final acceptance or Reference, which implies that the projects must be completed and accepted with technical acceptance to be accepted as a fulfilled request by the EO.*

***Response regarding claim 2:*** *After reviewing this claim, we inform you that the requirements that are specified in the TDS are minimum requirements and remain the same as they are specified in the TDS. Therefore, this claim is rejected.*

*Therefore, your request for reconsideration is rejected. Therefore, we consider that the Ministry of Environment, Spatial Planning and Infrastructure - Procurement Division, has fulfilled all the criteria set out in the tender dossier, in accordance with the Rules and Law No. 04/L-042 on Public Procurement of the Republic of Kosovo, as amended and supplemented by Law No. 04/L-237, Law No. 05/L~ 068 and Law No. 05/L-092, on the determination of the criteria in the contract notice and the tender dossier. From what was said above, it was decided as in the provision of this decision.*

***- Administration and evaluation of evidence –***

Based on Article 111 paragraph 5 in connection with Articles 113 and 114 of the LPP, the Review Panel on 10.04.2025 authorized the expert to conduct the initial review of the file and claims according to the complaint with no. 0231/2025, while on 16.04.2025 the expert report with no. 2025/0231 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 partially grounded, while the contract notice of the CA remains in force.

The expertise report has been duly received by all procedural parties, the CA and the EO have not responded to the report of the review expert.

***Regarding the claims of EO "SA — SALLAHU" SH.P.K, the review expert through report no. 2025/0231 has assessed as follows:***

Claim no. 1. The complaining EO in its complaint has filed a complaint claim requesting the suspension of this procurement procedure - re-tendering with the justification that the AK - MINISTRY OF INFRASTRUCTURE, has initiated the procedure in violation of the provisions of the LPP and at the same time through the complaint requests the suspension of this procurement activity until the issuance of decision no: 971/24.

***Regarding this complaint claim, the review expert explains that he does not have the competence to provide an assessment because issuing a decision on a specific issue is within the competence of the review panel.***

*Claim No. 2. Regarding request No. 7 of the FDT: List of completed contracts in the requested field for the past three-year period not less than 14,000,000.00 euros. The economic operator must have completed projects in the field of road construction, reconstruction and rehabilitation of roads. Required evidence 7. List of projects signed and stamped by the EO together with the minutes of final acceptance of the works or references indicating the value, date, nature and location of the projects in the requested field for the past three-year period. We consider that the word "or reference" should be removed from the requested evidence, due to the fact that, based on Article 26.7 of the Public Procurement Regulation, it is determined that "References for completed contracts can be proven with the final report of the work or with certificates for the satisfactory completion and/or completion of projects, which is mentioned as evidence in Article 69 of the LPP." According to the complaining EO, references alone without technical acceptance cannot be considered as evidence to prove the successful implementation of contracts, therefore it means that this request from the Contracting Authority is determined in contradiction with the aforementioned provisions.*

***The review expert, regarding this complaint allegation, assesses that the request placed in the tender dossier is in accordance with the legislation in force for public procurement. The request cited above is in accordance with Article 69 of the LPP, therefore this claim is unfounded.***

***Claim no. 3. The complaining EO claims that some of the equipment that has been requested, specifically the weight of which is unnecessary for the implementation and needs of the project. The complaining EO regarding the equipment requested in the tender dossier: Item no. 3 Dump truck (dumper) with a carrying weight of at least 15t, (12 pieces), to change the carrying weight to at least 10t due to the fact that this weight corresponds to the general construction standards, and corresponds to the needs of this project since this tonnage was foreseen even before the re-***

*tendering and item no. 13 Vibrating cylinders with iron wheels with a weight of at least 8t (2 pieces) to change the carrying weight to at least 7ton.*

***The review expert assesses that the claim of the complaining EO regarding the equipment does not stand because the contracting authority in the request for equipment has also determined the minimum weight of the equipment, which means that EOs interested in this procurement activity can offer equipment with even greater weight.***

The Panel found that there are no elements for preventing conflict of interest, as required in the sense of Article 11 of the PRB Rules of Procedure, in connection with paragraph 1.75, 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 no need to convene a hearing with the parties, since the submissions of the parties and their actions constitute a sufficient basis to decide on the merits as provided for in paragraph 1, Article 24 of the PRB Rules of Procedure, and that there is no need to request the contracting authority and/or the complainant to provide additional information and/or explanations, in the sense of paragraph 3, Article 116 of the LPP.

***- 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, evaluated all the evidence of the case. In this way, it has been found that the Contracting Authority has acted in accordance with the legal provisions on public procurement and the requirements of the Tender Dossier regarding the procurement activity “Re-tender-Expansion of National Road N9-Segment Kiev-Dolc, Lot 1, St 0+000-4+000 with length L=5,330.60m” with procurement no.: 205-25-2216-5-1-1.

The Review Panel, after administering the relevant evidence, notes that the claims submitted in the Complaint do not coincide with those submitted in the request for reconsideration. In this finding, according to Article 64, paragraph 2 of the Public Procurement Regulation, the change in the content of the claims compared to those submitted in the previous phase makes it impossible for the Review Panel to accept and review them.

The Review Panel finds that, given the lack of accurate and timely submission of the claims by the complaining EO and based on the legal provisions and the Public Procurement Regulation, the claims submitted different from those in the request for reconsideration cannot be subject to review by the Panel.

Based on the legal and regulatory provisions in force, and in particular on Article 108/A and 109 of the Law on Public Procurement, as well as on Article 64, paragraph 2 of the Public Procurement Regulation, the Review Panel decides that it is not possible to review the complaint claims that have not been submitted in a regular manner and within the conditions established during the preliminary phase of the procedure, according to the competencies established by the legislation in force.

In this context, the Panel clarifies that the requirement for the submission of claims in a complete and timely manner is an essential element for guaranteeing the transparency and efficiency of public procurement procedures, thus ensuring a fair and legal process.

Also, in accordance with Article 24 of the Law on Public Procurement, the contracting authority is responsible for ensuring the execution of all procurement actions in full compliance with the requirements and provisions of this law. This responsibility includes ensuring transparency, equal treatment of economic operators and strict compliance with legal procedures throughout the procurement process.

However, the Review Panel will make a brief announcement regarding this claim, in order to inform interested parties on the status of the other contested procurement procedure.

In relation to the other procurement procedure, the Procurement Review Body (PRB) has taken a decision with protocol number 2024/0971, dated 16.10.2024. This decision has not been repealed according to the provisions of the administrative procedure and has not been challenged by any of the relevant stakeholders in court.

The PRB has also issued an official notification on the progress of this procedure, with protocol number 944, 964, 971/24, dated 31.12.2024.

With this Decision and Notification, all parties to the procedure, all other complaining Operators, including the now complaining Economic Operator, as well as the Contracting Authority, have been duly notified and communicated.

In this way, the Review Panel finds that regarding the first claim of the complainant, there are no grounds to continue its treatment, since the case has already been closed by the PRB and is not subject to this complaint review.

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, granting confidence, has found that the complaint of the Economic Operator is approved as partially grounded, only for the fact that it concerns the first claim. Consequently, the Review Panel has decided regarding the procurement activity entitled "Re-tender-Expansion of the

National Road N9-Segment Kijevë-Dollc, Lot 1, St 0+000-4+000 with length L=5,330.60m” with procurement no.: 205-25-2216-5-1-1, while the Notice of the CA remains in force. In support of what was described above, the review panel consequently finds that the complaint of the complaining EO is approved as partially grounded, while the Notice of the CA remains in force.

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 to implement the procurement review procedure in a prompt, fair, non-discriminatory manner, with the aim of resolving the case legally and effectively. Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations that may arise during a procurement activity.

Point I of the decision has been decided based on Article 117 of the LPP in conjunction with Article 29 of the PRB Rules of Procedure.

Point II of the decision was decided based on Article 131 of the LPP in conjunction with Article 29 paragraph 3 of the PRB Rules of Procedure.

Point III of the decision was decided based on Article 31, paragraph 4 and paragraph 6 of the PRB Rules of Procedure in conjunction with 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**

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**Mrs. Kimete Gashi Brajshori**

**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 – **MINISTRY OF INFRASTRUCTURE;**

1x1EO-“SA - SALLAHU” SH.P.K;  
1x1 Archive of the PRB;