



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

Psh. No.0235/25

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 (LPP) composed of Kimete Gashi Brajshori – President, Batisha Ibrahim – Member and Vedat Poterqoi-Member, deciding upon the complaint of the Economic Operator (EO) “Beni Dona Plast” SH.P.K, against the Decision to contract award or a design competition of the “Kosova Academy for Public Safety in the capacity of the Contracting Authority (CA) regarding the procurement activity Food preparation and supply services for the needs of KAPS - re-tender 2 with procurement number 214-24-9937-2-1-1, on the 30/05/2025, has issued this:

DECISION

1. **Approved**, as partly grounded the complaint of EO “Beni Dona Plast” SH.P.K with no. 2025/0235, regarding the decision of the CA - Kosova Academy for Public Safety regarding the procurement activity Food preparation and supply services for the needs of KAPS - re-tender 2 with procurement number 214-24-9937-2-1-1.
2. **Remains in force**, Contract award notice regarding the procurement activity Food preparation and supply services for the needs of KAPS - retender 2 with procurement number 214-24-9937-2-1-1 initiated by the contracting authority (CA) - Kosova Academy for Public Safety..
3. The complaint’s fee is refunded in the amount deposited when filing the appeal. 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 appeal 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 26.09.2024, the Kosovo Academy for Public Safety in the capacity of the Contracting Authority has published the Contract Notice B05 regarding the procurement activity with the Services of food preparation and supply for the needs of KAPS - retender 2 with procurement number 214-24-9937-2-1-1.

While on 19.03.2025 it has published the B58 Notice on the decision of the Contracting Authority where it has awarded with the contract to EO Isuf Musliu B.I.

This procurement activity has been carried out with an open procedure with the type of contract service and with an estimated contract value of 1,608,300.00 euros.

On the 24.03.2025, EO Beni Dona Plast SH.P.K has submitted a request for reviewing against the aforementioned decision of the CA. On 27.03.2025, the Contracting Authority has rejected as unfounded the request for reviewing.

On the 04.04.2025, the PRB has accepted the complaint from EO Beni Dona Plast SH.P.K with no. 0235/2025 regarding the activity "Food preparation and supply services for the needs of KAPS - retender 2" with procurement number 214-24-9937-2-1-1..

-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 "Beni Dona Plast SH.P.K. are presented as follows:

First claim (I): "The Contracting Authority - Kosova Academy for Public Safety, the first activity with procurement number: 214-23-29-211- Food preparation and supply services for the needs of KAPS, has started with the publication of the Contract Notice on the Procurement Platform on 11.01.2023. Due to the fact that for ten months they failed to award a contract to the EO: "Isuf Musliu" B.I from Vushtrri, preferred by the Responsible Officers of the Contracting Authority and to whom the Selection Criteria had been adapted, on 17.10.2023 on the E-Procurement Platform they published Form B10 - Notice of Cancellation of the Procurement Activity. The Contracting Authority - Kosovo Academy for Public Safety again on 24.11.2023 on the Procurement Platform published the Contract Notice for the activity with procurement number 214-23-13065-211- Food preparation and supply services for the needs of KAPS -Re-tender. Again, the CA Officials continued to discriminate against other EO and favor EO: "Isuf Musliu" B.I by adapting the Selection Criteria by requiring Authorization from the manufacturer or

Authorized Dealer for sale for packaged food with no. 3,4,5,6 and by Changing the Price Description by adding four items that the CA never had in the Price Description for over 20 years. Due to the fact that for ten months they still failed to award a contract to the EO: "Isuf Musliu" B.I from Vushtrri, preferred by the responsible officials of the Contracting Authority and to whom the Selection Criteria had been adapted in this activity, on 19.08.2024 on the E-Procurement Platform they published Form B10 - Notice for Cancellation of the Procurement Activity. The Contracting Authority - Kosovo Academy for Public Safety on 27.09.2024 on the Procurement Platform published the Contract Notice for the activity with procurement number 214-24-9937-211 - Food preparation and supply services for the needs of KAPS - Re-tender 2. Again, the CA officials continued to discriminate against other EOs and favor EO: "Isuf Musliu" B.I by adjusting the Selection Criteria by requesting Authorization from the manufacturer or Authorized Dealer for sale of packaged food with no. 3,4,5,6 and by changing the composition of item 3 of packaged food. The bids for this procurement activity were opened on 15.10.2024 and only EO: "Isuf Musliu" B.I with the total bid price of: 1,371,644.00 € and our company EO: Beni Dona Plast SH.P.K with the total bid price of: 1,319,152.70 €. From the date of opening of bids 15.10.2024 to the date 27.11.2024, 43 days have passed when the CA on the E-Procurement Platform published Form B58-Notification on the Decision of the Contracting Authority for awarding the contract to EO: "Isuf Musliu" B.I from Vushtrri in the total value of: 1,371,644.00 €. It should be noted that the CA has developed this procurement activity using shortened time limits from 40 days to 20 days, with justification of the urgency they have for these services, while for the evaluation of the offers they needed 43 days. After the Contracting Authority on 27.11.2024 at 15:37 on the E-Procurement platform published Form B58- Notification on the Authority's Decision. Contracting for award of contract EO: "Isuf Musliu" BI from Vushtrri in the total value of: 1,371,644.00 € which is 52,491.30 € higher than the total price of our offer - EO; Beni Dona Plast SH.P.K. and on this date through the E-Procurement Platform sends us the Standard Letter for the Eliminated Tenderer.

Our company on 02.12.2024 through the E-Procurement Platform has sent the CA Request for Review. The Contracting Authority - Kosovo Academy for Public Safety, on 05.12.2024 through the E-Procurement Platform has sent us the Decision of the CA - Rejection of the Request for Review. This Response - Decision from the Contracting Authority for the rejection of our Request for Review dated 05.12.2024 was not signed by the Responsible Procurement Officer (Bekim Dakaj) nor by the Deputy Director General of KAPS, (Mr. Kastriot Jashari). Based on the violations committed by the CA during the development of this procurement activity, we consider that this action of these two officials of the CA - KAPS, is intentional and an attempt to avoid taking responsibility for the substantial violations committed during the development of this procurement activity, including the drafting of the Response - Decision to reject our Request for Reconsideration. Also, the reasons that the Procurement Officer of the Public Procurement Agency (KAPS) has noted, in the Response dated 05.12.2024, for rejecting our Request for Review, were unsustainable, manipulative and in complete contradiction with the provisions of the primary and secondary public procurement legislation mentioned above. On 13.12.2024, our company Beni Dona Plast SH.P.K. sent the Procurement Review Body complaint no. 1208/24. The PRB Review Panel on 13.02.2025 issued decision no. PRB: 2024/1208, where it accepts our annex as partially grounded and returns the case for Reassessment. As a result of these actions

mentioned above, the Officials of the CA-KAPS, for over two years have not been able to successfully complete this procurement activity but continue to award the same EO: "Isuf Musliu" B.I. with a contract using the Negotiated Procedure without Publication of the Contract Notice. Only for the period May 2023 - September 2024, using the Negotiated Procedure without Publication of the Contract Notice and without ever inviting us to negotiations, even though our company Beni Dona Plast SH.P.K. is a leader in the Republic of Kosovo in terms of providing these services and without inviting any other EO to negotiations, has invited, negotiated and signed contracts only with the preferred EO - EO: "Isuf Musliu" BI from Vushtrri, in the amount of 1,591,642.70 Euros. The Responsible Officials of the Public Procurement Agency (KAPS), even after the decision of the PRB, No. PRB: 2024/1208 dated 13.02.2025, still continued with negligence and delaying the bid evaluation process, where from 13.02.2025 it took them 35 days to complete the bid re-evaluation. This delay is deliberate and is evidenced by the fact that the Contracting Authority - Kosovo Academy for Public Safety, again using the Negotiated Procedure without Publication of the Contract Notice, has developed the activity with procurement number 214-25-1102-2-1-5 - Food preparation and supply services for the needs of KAPS and on 18.03.2025 (one day before the publication of Form B58 for the open procedure) on the E-Procurement Platform, has published Form B08 - Contract Award Notice, where it has awarded the operator preferred by the CA - EO: "Isuf Musliu" B.I. with a contract in the amount of 447,145.00 for the next six months. All of the above proves that the Responsible Officials of the CA - Kosovo Academy for Public Safety during the development of this procurement activity have committed substantial violations of Article 1 of the LPP, which is the purpose of the law, Article 6 of the LPP Economy and Efficiency and Article 46 of the LPP - Special Rules for Enabling the Reduction of Time Limits due to the fact that they have not achieved: This delay is intentional and is proven by the fact that the Contracting Authority - Kosovo Academy for Public Safety, again using the Negotiated Procedure without Publication of the Contract Notice, has developed the activity with procurement number 214-25-1102-2-1-5 - Food preparation and supply services for the needs of the KAPS and on the date 18.03.2025 (one day before the publication of Form B58 for open procedure) on the E-Procurement Platform has published Form B08- Contract Award Notice where the contract has been awarded to the operator preferred by the CA - EO: "Isuf Musliu" B.I in the amount of 447,145.00 for the next six months. All of the above proves that the Responsible Officials of the Public Procurement Agency - Kosovo Academy for Public Safety during the development of this procurement activity have committed substantial violations of Article 1 of the LPP, which is the purpose of the law, Article 6 of the LPP - Economy and Efficiency and Article 46 of the LPP - Special Rules for Enabling the Reduction of Time Limits due to the fact that they have not achieved.

Second claim (II): "violation of Article 7 of the LPP. Based on our bid and the reasons for elimination which the CA has noted in the Standard Letter to the Eliminated Tenderer dated 19.03.2025, it is very clear that the CA during the Re-evaluation of the bids has committed a substantial violation of Article 7 of the LPP due to the fact that our company, EO: Beni Dona Plast SH.P.K and EO: "Isuf Musliu" B.I, we have bid with packaged products 3,4,5,6, which are produced by the same manufacturer – EXPRESS MENU s.r.o from the Czech Republic and Authorized by this manufacturer and the CA again during the Re-evaluation of the bids has discriminated against us by eliminating us from the procurement activity and favoring EO: "Isuf

Musliu” B.I, by awarding it with a contract even though the bid of this EO is for 52,491.30 € higher than the total price of our bid. The Contracting Authority: KOSOVO PUBLIC SAFETY ACADEMY did not treat us equally during the evaluation of the bids, as also stated by the Review Panel in Decision No. PRB: 2024/1208 dated 13.02.2025, where it stated: “During this evaluation of this activity, double standards were used, which the PS considers to be in contradiction with the basic principles of public procurement, consequently, it states that the complaining claim is grounded.”

Third claim (III): “violation of Article 59 and 72 of the LPP and Article 40 of the Regulation 001/2022 on Public Procurement. The claim of the CA that the packaged item no. 4 - Beef Goulash does not meet the technical specifications, and that it does not have the 3-year deadline as requested, does not stand, due to the fact that the catalogs to which the CA referred are general catalogs for the production of current packaged items that EXPRESS MENU s.r.o from the Czech Republic has received orders. These catalogs also indicate the date when the packaged items are ready to be produced and ready for the market. This is also evidenced by the catalog that the CA referred to for item no. 4 Beef Goulash where it states: “The goods can be received on November 27, 2024”. Also in the catalog that refers to the CA, it states: The minimum term is 2 years, not as the CA claims that the term is 2 years. The manufacturing company EXPRESS MENU s.r.o from the Czech Republic has the capacity to produce all types of packaged items according to the technical specifications and terms of use according to the requirements of the customer of the items, including packaged items 3,4,5,6 that the CA has requested in the Tender Dossier of this procurement activity. The term of use of packaged items produced by the manufacturing company EXPRESS MENU s.r.o, depends on the packaging in which they are packaged. Depending on which term of use of packaged items is requested by the customers of this company, it also chooses the packaging that suits that term of use. Also, the composition of the packaged items depends on the customer's requirements and the technical specifications that the customer requires. The catalogs of packaged food items published on the website of EXPRESS MENU s.r.o from the Czech Republic cannot be treated as if they were catalogs of vehicles, IT equipment or other technical equipment that are unchanged for years. The company EXPRESS MENU s.r.o from the Czech Republic changes and publishes the catalogs of packaged food items on its website whenever any of the items has changed the technical specifications according to the requirements of its customers as mentioned above. Our company Beni Dona Plast SH.P.K., together with the offer, has sent to the CA the Authorization of the Production Company EXPRESS MENU s.r.o from the Czech Republic and a Confirmation of this company that the production company EXPRESS MENU s.r.o. confirms that we are currently producing Chicken Pasta 120gr. with this composition: turkey liver (20%), chicken meat (20%), root vegetables (carrot, celery, parsley), water, onion, almonds (5%), cranberries (3%) (cranberries, sugar, sunflower oil, garlic, salt, bay leaves, whole pepper, red pepper. For packaged food 3- item no. 2- - Pasta 120 gr. requested in the

tender with procurement number 214-24-9937-211- Services for preparation and supply of food for the needs of KASP - New Tender 2, published by the Contracting Authority: KOSOVO ACADEMY FOR PUBLIC SAFETY, our manufacturing company EXPRES

MENU s.r.o. has all the capacities to produce Pasta 120 gr, consisting of: Min.

chicken meat (40%), vegetables, carrots, celery, parsley, water, onion min. (5%), garlic, salt, bay leaves min. with the same quality, conditions of use and packaging as Chicken Pasta 120 gr.

This confirmation letter also proves that the manufacturing company EXPRESS MENU s.r.o from the Czech Republic has the capacity to produce all packaged items with specifications - composition of items, packaging and shelf life according to the orders of its own customers and in this specific case also according to the order of our company Beni Dona Plast SH.P.K. in case of signing the contract with AK- AKSP. If the bid evaluation commission or the Responsible Officers of the CA had any ambiguity regarding these packaged items, in accordance with Article 59 paragraph 2 and Article 72 of the LPP, they had the opportunity to directly address in writing the manufacturing company EXPRESS MENU s.r.o. from the Czech Republic for additional clarifications regarding the four packaged items that the CA - KAPS has requested in the Tender Dossier and Price Description, and not to discriminate against us by eliminating us from the procurement activity and awarding the contract to the EO: "Isuf Musliu" B.I. whose total bid price is €52,491.30 higher than the total price of our bid. Since the Responsible Officials of the CA during the Re-evaluation of the bids nor during the review of our Request for Re-Examination dated 24.03.2025 did not act according to the Decision of the Review Panel: No. PRB: 2024/1208 dated 13.02.2025 to act according to Article 59 paragraph 2 and Article 72 of the LPP, to request additional clarifications either from our company Beni Dona Plast SHPK or directly to the manufacturing company EXPRESS MENU s.r.o. from the Czech Republic for additional clarifications regarding the packaged items, on 01.04.2025 we sent the manufacturing company EXPRESS MENU s.r.o. from the Czech Republic a request for clarification-confirmation regarding the packaged item no. 4- Beef and potato goulash, min. 330 g. In this request, among others, we have noted: "Since KASP has not requested any additional clarification from your company, we kindly ask you to confirm whether your manufacturing company, EXPRES MENU s.r.o., has the capacity to produce, package and meet the product shelf life requirements according to KASP requirements for item no. 4 - Beef and potato goulash, min. 330g, with multi-layer packaging closed with protective film according to standards, containing pieces of meat (min. 33%), fried potatoes, onions, peppers, basil, garlic, oil and pepper". (Evidence - Request for confirmation that we have sent to the Production Company EXPRES MENU s.r.o." dated 01.04.2025). The Production Company "EXPRES MENU s.r.o." immediately on 02.04.2025 sends us confirmation regarding our request dated 01.04.2025. In this confirmation, the Production Company "EXPRES MENU s.r.o.", among other things, noted: "Based on your request for clarification, we confirm that our company, EXPRES MENU s.r.o., has the capacity to produce, pack and store the packaged item No. 4 - Beef and potato goulash, min. 330g, packed in multilayer bags sealed with protective film according to standards. This product contains meat pieces (min. 33%), potatoes, onions, peppers, basil, garlic, oil and ground pepper, as required by the Contracting Authority (CA) - Kosovo Academy for Public Safety (KAPS). We also confirm that the shelf life of this product is guaranteed thanks to our patented CTP (Continuous Thermal Process) technology, which ensures that the food remains free of preservatives, colorings and flavorings, being stored at ambient temperature for up to 10 years. This information is public and can be verified on our official website (www.expresmenu.com).

We also confirm that all packaged products required by KAPS (No. 3, 4, 5, 6) are produced in accordance with the technical specifications required by the CA in this procurement process.” (Evidence - Confirmation from the Manufacturing Company EXPRES MENU s.r.o.” from the Czech Republic dated 02.04.2025). Complaint allegation regarding the offer of EO: “Isuf Musliu” B.I that the CA has awarded with the contract: We consider that the offer of EO: “Isuf Musliu” B.I that the CA has awarded with the contract is an irresponsible offer for these reasons? EO: “Isuf Musliu” B.I has offered with an Authorization issued in December 2023 and based on the clarifications that the CA has provided during the pre-tendering phase, in this Authorization of the manufacturer is indicated the number of a preliminary procurement activity: 214-23-13065- 211 and not as required by the public procurement legislation, which should be the number of the procurement activity: 214-24-9937-2-1-1. Bidding with an Authorization that has the procurement number of another activity marked, automatically makes this Authorization invalid and the bid irresponsible. Based on the information we received at the meeting we had with representatives of EXPRESS MENU s.r.o from the Czech Republic on 11.10.2024, we were told that in December 2023, EXPRESS MENU s.r.o from the Czech Republic issued an Authorization to a company from Kosovo without mentioning the name of the company. Therefore, we consider that the Catalogs sent together with the offer by EO: “Isuf Musliu” B.I for the current activity with procurement number: 214-24-9937-2-1-1 are the same as those sent by the CA on 11.03.2024 for the previous activity with procurement number: 214-23-13065-211, although the CA during the development of the current activity with procurement number: 214-24-9937-2-1-1, has completely changed the technical specifications of the item: PACKAGED FOOD 3- Chicken patties. The Contracting Authority: KOSOVO ACADEMY FOR PUBLIC SAFETY did not conduct the evaluation of the bids in accordance with Article 59 and 72 of the LPP, as also established by the Review Panel in decision no. PRB: 2024/1208 dated 13.02.2025, where it found: "The Review Panel has independently and objectively, with professional conscience and care evaluated all the evidence of the case and considers that the Contracting Authority during the examination, evaluation and comparison of the bids did not act in accordance with Article 59 and 72 of the LPP"

Claim four (IV) - violation of Article 97 of Regulation 001/2022 on Public Procurement - Serious Violations - Non-Implementation of the Decision of the Procurement Review Body No. 2024/1208 dated 13.02.2025. The Contracting Authority: KOSOVO ACADEMY FOR PUBLIC SAFETY during the Re-evaluation of the bids has not implemented the Decision No. 2024/1208 dated 13.02.2025 due to the fact that it has continued to violate the primary and secondary legislation applicable in the Republic of Kosovo, has not implemented Article 59 paragraph 2 and Article 72 of the LPP due to the fact that it has not requested additional clarifications from either our company Beni Dona Plast SHPK or the manufacturing company EXPRESS MENU s.r.o. from the Czech Republic but has directly eliminated us from the procurement activity. Based on all of the above and based on the provisions of the primary and secondary public procurement legislation mentioned above. "

Referring to the above allegations, Beni Dona Plast LLC considers that the Contracting Authority has acted in violation of Articles 1, 6, 7, 59, 72 of the LPP as well as Articles 40 and 97 of the RRP. We request the PRB Review Panel to consider our complaint as well-founded

and to order the CA - Kosova Academy for Public Safety to annul the decision of the Contracting Authority dated 19.03.2024 and to implement the Decision of the Review Panel no. no. 2024/1208 dated 13.02.2025

CA's response to the request for review: "On the request for review of EO "Beni Dona Plast" Sh.p.k. dated 24.03.2025 as unfounded I.REJECTED as unfounded the request for review of EO,, Beni Dona Plast" Sh.p.k." for the procurement activity entitled,, Food preparation and supply services for the needs of KAPS - retender 2" with procurement number 214/23/24/211 & 214/24/9937/211. Reasoning: Based on the request for review dated 24.03.2025, your request is rejected since you have not provided facts and evidence on the reasons for the elimination of your bid".

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 review expert to conduct the initial review of the file and claims according to the complaint with no. 0235/2025, while on 02/05/2025 the review expert's report with no. 2025/0235 was submitted with the following recommendations: Based on the aforementioned clarifications, the review expert proposes to the review panel that the complaint of the complaining EO be approved as partially grounded, the contract notice be canceled and if the CA still has an interest, the procurement activity be re-tendered.

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 report, the opinions of the parties regarding the expert report, the complainant's submissions and documents, 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 EO Beni Dona Plast SH.P.K - the review expert through report no. 2025/0235 has assessed as follows:

First finding (I): "The same complaint claims raised through complaint 235/25 were reviewed through report 1208/24, in which case we recommended that this procurement activity be canceled, a recommendation that we give now, since in our opinion for this procurement activity the two participating EOs have offered a product that does not comply with the requirements of the tender dossier. Both participating EOs, both the complainant and the EO recommended for the contract, do not meet the requirements of the dossier-technical specification for the same position - Potato stew. The complaining EO did not provide the shelf life as requested in the dossier, while the recommended EO did not provide the composition of the dish as requested in the dossier. Also, the expert's opinion is that the change of products after the opening of the bids, whether due to the expiration date or due to the composition or any other reason, would

constitute a material change of bid. The complaining EO did not provide the shelf life as requested, while the recommended EO did not provide the composition of the dish as requested.

- Findings of the Review Panel —

The Review Panel, after evaluating and administering the evidence according to the submitted complaint, clarifies that the findings in the review expert's report for this case are not entirely sustainable. Consequently, the Review Panel, regarding the claims of the complaining economic operator, has not fully trusted the review expert's report regarding the claims of the complaining economic operator.

It is worth emphasizing the fact that for the Review Panel, the findings and recommendations of the review experts are not mandatory, but serve only as evidence among all other evidence that it evaluates in each case separately. The Review Panel decides independently, objectively and with due professional care, always protecting the public interest through the LPP and the secondary legislation in force for public procurement.

The Review Panel notes that in relation to this procurement activity, a preliminary decision was issued with no. 2024/1208 dated 13.02.2025, where the Review Panel has issued findings that the CA has not acted in accordance with the legal provisions by using double standards during the evaluation of the bids, by accepting the authorization of the manufacturer by the EO recommended for the contract, in contradiction with the requests of the CA, etc. without the need for the same to be repeated again because they are evidenced in the decision of the aforementioned PRB. Therefore, based on these findings, the procurement activity has been returned to re-evaluation, in order for the CA to re-evaluate the bids in accordance with the legal provisions, specifically Article 59 of the LPP.

Based on the data presented on the e-procurement platform, the procurement activity has been returned for re-evaluation, in which case the CA has formed another commission for re-evaluation of the bids and the same considers that the EO recommended for the contract is responsible, while the complaining EO has not bid in accordance with the requirements of the TD, which has offered products with different packaging from those required in the DT, with a shelf life shorter than that required by the TD, has submitted a catalog lacking technical specifications and, based on the public procurement guidelines, has rejected the complainant's bid.

The Review Panel emphasizes that the contracting authority, even after these evidenced legal violations, has still insisted on their recommendation that the EO recommended for the contract is responsible, while the complaining EO has shortcomings that, according to the CA, are unacceptable.

In this regard, the Panel also explains that the Contracting Authority (CA), within the meaning of Articles 1 and 6 and in accordance with Article 115 of the Law on Public Procurement, in its capacity as initiator of this procurement activity, had the opportunity to review its decision based on the findings of the review expert. The Law specifies that if the CA confirms that the claim or all claims are valid and have not been rejected by the complainant, they may take corrective

actions recommended by the expert. However, even in this case, the CA continued to reject the expert report, reiterating that the CA considers the bid of the recommended EO as responsive, while the bid of the complaining EO as irresponsible. Therefore, the Review Panel, based on the above, clarifies that this issue according to these claims is now considered to be addressed, based on Article 105, paragraph 2.15, of the Law on Public Procurement (LPP), which provides that in repeated cases with the same complaint claims, when the object of the dispute and the parties are the same, for cases that have been reviewed previously, the chairperson of the Review Panel must treat it as a case judged "res judicata".

However, the Review Panel, based on Article 104, paragraph 4 of the LPP, which stipulates that "In taking the prescribed measures, the PRB must act in a manner proportionate to the alleged violation or the issue for which the complaint has been filed, and take into account the possible consequences of the actions or measures on all interests that may be harmed, including the public interest". It is obliged to take into account the fundamental principle of protecting the public interest in terms of preventing unreasonable delays and taking into account the principle of proportionality between the shortcomings of the EO recommended for the contract and the shortcomings of the complaining EO, where the EO recommended for the contract in this case, according to the conviction of this panel, has more shortcomings in the administrative aspect and for these shortcomings it does not find it reasonable, despite the violations of the CA, to cancel the procurement activity in its entirety. Because the Kosova Academy for Public Security, which in this case is the police school and feeds the troops that ensure the security and constitutional order of the country, will be left without food because they do not have any current active contracts.

Therefore. The PS decides to grant the CA the right and to leave the CA's decision in force, a decision which was issued by an evaluation commission which is supposed to be professional and also responsible according to Article 59.1 cited "All members of the Evaluation Commission take full individual responsibility for the evaluation of the bid". Then, in application of Article 1 of the LPP and in order not to prolong this procurement activity further, the panel assesses that the selection of the EO recommended for the contract, as well as the development of this procedure, is also the responsibility of the CA. At the same time, it is also at the discretion of the CA to implement Article 59.4 regarding minor deviations, where for the CA there is no convincing argument that the recommended EO may be irresponsible, then the panel assesses that the selection of the EO recommended for the contract is also the responsibility of the CA. The Review Panel emphasizes that each contracting authority (at central and local level) enjoys autonomy in procurement planning (Article 8) and in determining the needs to be met (Article 9), of course in accordance with the budgetary capacity and that the CA in the specific case had the right to decide also on the EO recommended for contract award based on Article 24 paragraph 2 of the LPP cited "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in full compliance with this law".

Therefore, 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 should be approved as partially well-founded, but insufficient to return the procurement activity for re-evaluation and to extend the procurement activity. Consequently, the Review Panel has decided to confirm the Contract Notice of the Contracting Authority - “Kosovo Academy for Public Safety” related to the procurement activity titled “Food preparation and supply services for the needs of KAPS” with procurement no.: 214-24-9937-2-1-1.

Based on the competences of the PRB provided for in Article 105, in conjunction with Article 106 of the LPP, the Review Panel implemented, in addition to Articles 1 and 6, among others, Article 103 of the cited Law, according to which all interested parties shall have equal access to the procedures for the review of the procurement and to legal remedies and that no decision of the PRB shall be taken or made in a manner that discriminates in favor or detriment of a participant in the procedure or another person or enterprise, as well as Article 104 of the LPP.

Based on the above, the Review Panel decided as in the provision of this decision, in accordance with Article 117 of the LPP.

President of the Review Panel

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 – **Kosova Academy for Public Safety;**
1x1EO–**“Beni Dona Plast” SH.P.K;**

1x1 Archive of the PRB;