



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

Psh. No.0055/24

The Review Panel, appointed by the President of PRB, based on 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 Law 05/L-092) in the composition of Vedat Poterqoi - President, Isa Hasani - Member and Vjosa Gradinaj Mexhuani - Member, deciding according to the complaint of (EO) “SRAHEP” Sh.P.K., against the non-execution of the decision of the PRB of the Municipality of Prishtina in the capacity of the Contracting Authority (CA ) related to the procurement activity “Supply with inventory for the needs of KPSH” with procurement number 616-23-9889-1-1-1, on the 07/03/2024 has issued this:

### **DECISION**

1. Dismissed as not allowed, the complaint of EO “SRAHEP” SH.P.K., with no. 2024/0055, dated 17/01/2024, related to the procurement activity “Supply with inventory for the needs of KPSH” with procurement number 616-23-9889-1-1-1, initiated by the Municipality of Prishtina.
2. The complaint’s fee is returned to the amount deposited when the complaint is submitted. 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 insurance of the complaint, 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 18.09.2023, "MA of Prishtina" in the capacity of the Contracting Authority has published the Contract Notice B05 related to the procurement activity with "Supply of inventory for the needs of KPSH" with no. of procurement: 616-23-9889-1-1-1.

This procurement activity was developed through an open procedure with the type of work contract and with an estimated contract value of 600,000.00.

On the 10.01.2024, EO "SRAHEP" LLC submitted a request for reconsideration against the aforementioned decision of the CA. On the 12.01.2024, the Contracting Authority approved the request as grounded.

On the 17.01.2024, PRB received the complaint from EO "SRAHEP" Sh.P.K, with no. 2024/0055 related to the activity "Supply with inventory for the needs of KPSH" with procurement no: 616-23-9889-1-1-1.

*-On the preliminary review stage-*

The Review Panel has concluded that the complaint contains all the elements defined through Article 111 of the LPP and as such was submitted within the legal term in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for resolving disputes in the sense of Article 108/A of the LPP, from 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 concluded that it is competent to review this complaint according to Article 105 of the LPP and there is no procedural obstacle to proceed with reviewing the complaint in a meritorious manner.

The claims of the complaining economic operator "SRAHEP" SH.P.K. are presented as follows: Claims of the complaining EO: "The Contracting Authority has not corrected the tender file on the electronic platform and consequently has not changed the requirements and evidence for participation as it is requested in PRB decision: 2023/0843. The Contracting Authority has decided only the description of the price, as a result it is not known exactly which conditions must be met to participate in the tender, since it has corrected the tender file but has not presented the changes in the new tender file. Not placing the new tender file on the electronic platform represents a violation of Article 17 of the Procurement Regulation 001/2022, specifically paragraphs 17.12 and 17.16. By not changing the tender dossier, the Contracting Authority has also left in effect conditions of participation which are discriminatory and not relevant to the nature of the procurement in question, despite the conclusion of the review panel that the Contracting Authority must ensure that the conditions set must be relevant to the nature of the procurement. Therefore, not satisfied with the actions of the Contracting Authority, on 10.01.2024 we submitted a request for reconsideration, since the Review Panel has assessed that the Contracting Authority should make improvements in the tender file by allowing a tolerance of the dimensions and weights of the inventory, with except for equipment that necessarily for objective reasons must have the dimensions and weight as requested. Regarding the claim of the complainant that the CA has adapted the technical specifications of only one manufacturer, then the review panel thinks that 4/3 F02 Standard Form for reconsideration of the decision in the CA this represents a violation of Article 28 of the LPP, so the CA is obliged to draft of the Tender dossier conform to article 27 and 28 of the LPP.

Therefore, the CA must take measures to verify these findings of the complaining EO and if they are stable, then make these improvements. Until the end of this evaluation, the review panel

came as a result of not correctly ascertaining the situation by the review experts. Regarding the claim of the complainant regarding the authorization from the manufacturer or dealer, the review panel does not agree with the finding of the review expert because the authorizations and declarations of conformity are different, which are not the same, therefore, for the review panel, such a criterion related to this nature of supply is a heavy criterion and greatly limits competition. Even though the review panel has made it clear to the Contracting Authority that the authorization limits the competition to a large extent, so the criterion is discriminatory, the CA has again set the same criterion by changing the places of the words in the sentence, but the essence has remained the same.

Therefore, the CA must take measures to remove the authorization from the manufacturer as determined by the review panel. Also, the review panel does not agree in this case with the review expert because the review expert came to this conclusion as a result that this certificate "aims to ensure that the medical devices are safe and effective for their intended use", while , the procurement activity is related to the inverter, including in the specification, curtains, cabinets, chairs, etc. So the CA must act in accordance with Article 51, paragraph 1 of the LPP, quote: "All selection criteria must be limited to the criteria necessary to ensure that only economic operators who possess the necessary professional, financial and technical skills to fulfill the conditions of the relevant contract shall be considered qualified to receive such contract or to receive the invitation to tender. In no case shall the contracting authority include, specify or use selection criteria that are based on considerations other than those allowed by the provisions of articles 65-70 of this law". After the complaint, the Contracting Authority corrected some specifics in the price description and placed the price description on the platform, but despite the changes it made, it did not postpone the tender submission deadline. Therefore, in this case, he acted in violation of Article 24, paragraph 24.7 in relation to paragraph 24.5, since after the changes, the minimum period that must be left from the date of the changes to the date of submission of the tender is a minimum of ten (10) days, while the CA has given a period of seven (7) days from the date of the change of technical specifications in the price description.

So, as seen above, the Contracting Authority did not take as a basis the findings of the Review Panel of the PRB regarding the conditions of participation, and in this case also committed a violation for disregarding the decision of the PRB as defined in Article 97 of Procurement Regulation. Based on what was said above, on 10.01.2024, we have requested the Contracting Authority to suspend the procurement procedure in question, to re-examine the conditions of participation in accordance with the findings of the PRB Review Panel, and to remove it from the file. of the tender the discriminatory criteria in order to avoid the violations of the procurement legislation found by the review panel in order to implement the decision of the PRB as well as to upload the corrected procurement dossier in question to the system, clarifying the conditions of participation and extend the tender submission deadline by at least 10 days from the date of uploading the corrected tender dossier to the system.

The Contracting Authority has examined our claims presented in the request for reconsideration and on 12.01.2024 has made a decision by which it has fully approved all the appeal claims, finding that the appeal claims refer exclusively to the PRB decision with the PRB sign: 2023

/0843 related to this procurement activity. They have also highlighted that compliance with the decisions of the PRB is an indisputable legal obligation in the sense of Article 97 paragraph 97.1 RRPP and that it has been found that all complaining claims that refer exclusively to the decision of the PRB are grounded. But even though it has fully approved our request for reconsideration, the CA has continued with the same conditions that the PRB has described as discriminatory since it has not removed the manufacturer's authorization from the request, it has requested evidence that cannot be realized, since The requirements on technical and/or professional opportunities, article 9.1&9.2, point 2, as evidence required a notarized CV, which cannot be done since notaries do not consider it as a document that can be notarized. It has also requested to present the Copy of the License of the KAPPM as a wholesale distributor of medical equipment which is not relevant to the nature of the procurement since the nature of the procurement is the supply of furniture and inventory and not medical equipment as the above request was presented . This is done with the definite intention of favoring any EO and to discriminate other EO competitors.

Therefore, we ask the Procurement Review Body (PRB) that, in accordance with your powers provided for in the provisions of the LPP as well as in the aforementioned provisions, to take measures against the CA for not implementing the decision of the PRB with the sign PRBO: 2023/0843, to order the Contracting Authority to automatically suspend the procurement activity in question until our complaint is examined and a decision is taken by PRBO, as well as to order the Contracting Authority to eliminate the discriminatory technical and selection criteria mentioned above which are included in the contract notice and in the tender file, related to the procurement activity in question.

Referring to the claims as above, "SRAHEP" SH.P.K, considers that the Contracting Authority acted in violation of Article 7, 27, 28, 51, 69 of the LPP, as well as Article 4, 17, 24, 25, 97 of regulation no. 001/2022 for public procurement.

CA's response to the request for reconsideration: "The claims of the complainant are cited as follows: "The Contracting Authority has not corrected the tender file on the electronic platform and consequently has not changed the requirements and evidence for participation as requested in the PRB decision: 2023/0843. The Contracting Authority has decided only the description of the price, as a result it is not known exactly which conditions must be met to participate in the tender, since it has made corrections to the tender file, but has not presented the changes in the new tender file The failure to place the new tender file on the electronic platform represents a violation of Article 17 of the Procurement Regulation 001/2022, specifically paragraphs 17.12 and 17.16. By not changing the tender file, the Contracting Authority has also left in effect conditions of participation which are discriminatory and not relevant to the nature of the procurement in question, despite the conclusion of the review panel that the Contracting Authority must ensure that the conditions set must be relevant to the nature of the procurement. The Review Panel has assessed that the Contracting Authority should make improvements in the tender file by allowing a tolerance of the dimensions and weights of the inventory, with the exception of the equipment that necessarily for objective reasons must have the dimensions and weight as requested. Regarding the claim of the complainant that the CA has adapted the

technical specifications of only one manufacturer, then the review panel thinks that this represents a violation of Article 28 of the LPP, so the CA is obliged to make the drafting of the Tender dossier in accordance with Articles 27 and 28 of LPP. Therefore, the CA must take measures to verify these findings of the complaining EO and if they are stable, then make these improvements. Until the end of this evaluation, the review panel came as a result of not correctly ascertaining the situation by the review experts. Regarding the claim of the complainant regarding the authorization from the manufacturer or dealer, the review panel does not agree with the findings of the review expert because the authorizations and declarations of conformity are different, which are not the same, therefore, for the review panel, such a criterion related to this nature of supply is a heavy criterion and greatly limits competition. Therefore, the CA must take measures to remove the authorization from the manufacturer as determined by the review panel. Also, the review panel does not agree in this case with the review expert because the review expert came to this conclusion as a result that this certificate aims to ensure that the medical devices are safe and effective for their intended use, while the activity of the procurement is about the inverter, including in the specification, curtains, cabinets, chairs, etc. So the CA must act in accordance with article 51, paragraph 1 of the LPP, quote: All selection criteria must be limited to those necessary to ensure that only economic operators who possess the necessary professional, financial and technical skills to fulfill the conditions of the relevant contract will be considered qualified to receive such a contract or for receiving the tender invitation. In no case, the contracting authority must not include, specify or use selection criteria that are based on considerations other than those allowed by the provisions of articles 65-70 of this law. After the complaint, the Contracting Authority corrected some specifics in the price description and placed the price description on the platform, but despite the changes it made, it did not postpone the tender submission deadline. Therefore, in this case, he acted in violation of Article 24, paragraph 24.7 in relation to paragraph 24.5, since after the changes, the minimum period that must be left from the date of the changes to the date of submission of the tender is a minimum of ten (10) days, while the CA has given a period of seven (7) days from the date of the change of technical specifications in the price description. So, as can be seen above, the Contracting Authority did not take as a basis the findings of the PRB Review Panel regarding the conditions of participation, and in this case also committed a violation for disregarding the decision of the PRB.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 19.01.2024 has authorized the review expert to conduct the initial review of the file and claims according to complaint no. 0055/24, while on 02.02.2024 the review expert's report with no. 2024/0055 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 contract award notice be canceled and recommends that the matter be reassessed.

The expertise's report has been duly accepted by all procedural parties. CA disagrees with the recommendations of the review expert's report, while the EO has not given an answer regarding the report of the review expert.

*- Administration and evaluation of evidence -*

In order to fully verify the factual situation, the review panel administered as evidence the expert's report, the opinions of the parties related to the expert's report, the complainant's submissions and documents, the contracts and documents of the contracting authority, the relevant documents related to the procurement activity as and all the evidence that has been proposed by the procedural parties.

Regarding the claims of EO "SRAHEP" SH.P.K., - the review expert through report no. 2024/0055 assessed as follows:

Claim no. 1: "The main complaining claim according to complaint no. 55/24 is that CA has not respected the decision of PRB no. Manufacturer's authorization and ISO standards are restrictive requirements.

After analyzing the documents of the case, and the decision of the PRB no. 843/23, we have found that in addition to the corrections proposed by the review experts to allow +/-5% tolerance in dimensions, the review panel has concluded that the requests for authorization of the manufacturer and the requirements for certificates in the present case are requirements that largely limit competition.

PRB decision no. 843/23: "...Regarding the claim of the complainant regarding the authorization from the manufacturer or dealer, the review panel does not agree with the finding of the review expert because the authorizations and declarations of conformity are different, which does not are the same, therefore, for the review panel, such a criterion related to this nature of supply is a heavy criterion and greatly limits competition. Also, the review panel does not agree in this case with the review expert because the review expert came to this conclusion as a result that this certificate "aims to ensure that the medical devices are safe and effective for their intended use", while , the procurement activity is about inventory, including in the specification, curtains, wardrobes, chairs, etc..".

Given that by the decision of PRB it was established that authorization and certificates are criteria that largely limit competition, and these criteria are found in the corrected file of the CA, the expert's assessment is that the decision of OSH was not respected of no. 843/23.

Based on what we mentioned above, we estimate that the complaining claims are grounded, and that the CA has acted in violation of Article 97 of Regulation 001/2022 on public procurement.

According to the above, the review expert handled in a professional and objective manner the claims of the complaining economic operator "SRAHEP" SH.P.K., The argumentation in the report of the review expert is quite detailed, understandable and fully based on the relevant documents that refer to procurement activity. The findings in the expert's report can be confirmed through the tender dossier as well as the documents with which the tenderers have bid.

*- Findings of the Review Panel -*

*The review panel independently and objectively, conscientiously and professionally evaluated all the evidence of the case. Regarding this complaint about the procurement activity "Supply with inventory for the needs of the KPSH" with no. of procurement: 616-23-9889-1-1-1, PRB has received an email from the CA Municipality of Pristina, on 31.01.2024. Stating that "The complaining economic operator "Srahep" Sh.P.K. on 10.01.2024 submitted a request for reconsideration against the contract notice dated 06.12.2023. Further on 12.01.2024 the responsible procurement officer made a decision through which has approved the request for reconsideration of the complaining economic operator as fully founded. Consequently, the contracting authority has also published the B54 Standard Form for the Correction of Errors in Published Notices through which the relevant changes were made in the tender dossier. The decision to approve the request for re-examination is justified so that all complaints were referred to the findings and findings according to the decision of the Review Panel with no. 2023/0843. So, in addition to the fact that the request was approved and the tender file was changed according to the request for reconsideration, in this case the relevant decision of the Review Panel in PRB was respected. Despite these facts, the complaining economic operator dated 17.01.2024 submitted a complaint to PRB through which he requested that the Review Panel compel the Contracting Authority to change the requirements of the tender file which have already been changed due to the approval of the request for reconsideration of the complaining economic operator, Taking into account the above, it follows that the complaining economic operator has no material interest or risk of damage or violation of any right, since the purpose for which the complaint was submitted has already been realized by the contracting authority itself. Through article 4 paragraph 1 subsection 26 of the LPP it is defined that "Interested party - the person who can prove a material interest from the result of the procurement activity implemented by the contracting authority in relation to a special public contract or design competition including any person of who has been or may be at risk of harm from an alleged violation". From this point of view, the complaining economic operator is not an interested party in relation to the complaint submitted in the sense of article 4 paragraph 1 subparagraph 26 of the LPP. Further through article 108/A of the LPP it is determined that the complaint can be submitted only by the interested party. Since the complaining economic operator is not an interested party for the reasons elaborated above, the complaint as such should be dismissed as impermissible by the Review Panel".*

The review panel verifies the aforementioned statements by the CA through the e-procurement platform, so it was found that the complaining EO, with the CA on 10.01.2024, submitted a request for re-examination by presenting his/her complaint claims, CA issued a decision on 12.01.2024 and has approved the request for re-examination of the complaining EO as fully founded, with the notification of the contract and the tender file has been sent back for improvement (i.e. the TD has been withdrawn for improvement). And in accordance with article 63.1.3, point b. of Regulation No. 001/2022 for Public Procurement, CA has published the notification for correcting errors, using the B54 form which dated 15.01.2024 published it on the electronic procurement platform. After the publication of this form B54, and the improvement of the TD, the economic operator related to his dissatisfaction/incompatibility with the improvement of the TD, then it was necessary to submit the request for re-examination in accordance with article 108/A, if eventually the CA did not subject to DT improvements. In this

case, the economic operator did not use this opportunity after the improvement of the TD, which was expressly foreseen by the legal provision of the LPP, article 108/A. So, in terms of Article 109 of the LPP, which quotes: "1. Against any decision made by the contracting authority in accordance with the circumstances of Article 108/A, any interested party can submit a complaint to the PRB. The complaint must be submitted only after conducting a preliminary procedure for resolving the dispute in accordance with Article 108/A of this law. 2. Complaints to the PRB must be submitted within ten (10) days after the decision issued by the contracting authority in the preliminary procedure of resolving the dispute in accordance with Article 108/A of this law". As a consequence of this, the review panel, in accordance with the above-mentioned provisions, is forced to dismiss the complaint in question as inadmissible and, as such, it was not processed by this Panel. On the contrary, if this complaint were to be considered then it would result in a violation of Article 108/A and 109 of the LPP on the part of the Panel.

The cases when the complaining EO had allowed you to come with a complaint to the PRB in this case, it would have been if the CA had approved the request for re-examination only partially and the complainant would have attacked only the complaining claims which were not approved by the CA, and the other case would be if the CA rejects the request for re-examination in its entirety.

However, it is worth emphasizing that it is a well-known fact for all parties in the procedure that this case was handled once by PRBO with No. 2023/0843 and as such is considered enforceable for all parties in the procedure as long as the same is not appealed to the competent courts, therefore in accordance with article 105, paragraph 2, subsection 2.16 of the LPP, cites: "In repeated cases with the same appeal claims, when the object of the dispute and the parties are the same, for cases that have been examined before, the chairman of the review panel must treat it as a "res judicata" case.

Therefore, it is the responsibility of the CA to establish each criterion in the Tender File, based on article 24, paragraph 2 of the LPP, the contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in compliance with complete with this law. Likewise, according to article 51, paragraph 3 of the LPP, CA, all selection criteria, as well as the required documents and information that have been established and described in this article, must be directly relevant and proportional in relation to the subject of the respective contract.

The Review Panel has decided in accordance with the legal powers in the sense of Article 104 paragraph 1 in relation to Article 103, Article 105 and Article 117 of the LPP for the implementation of the procurement review procedure in a fast, fair, non-discriminatory manner, in order to legal and effective resolution of the case. Therefore, the Review Panel based its findings on the relevant provisions of the LPP, which foresee and regulate such situations, which may appear during a procurement activity.



**President of the Review Panel**

Mr. Vedat Poterqoi

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**Legal advice:**

An appeal is not allowed against this decision,  
but the dissatisfied party can appeal to the Commercial Court,  
within 30 days from the date of acceptance of this decision.

Decision to be submitted to:

- 1x1 CA – **MUNICIPAL ASSEMBLY OF PRISHTINA;**
- 1x1 EO – **SRAHEP SH.P.K;**
- 1x1 Archive of the PRB;
- 1x1 For publication on the website of the PRB.