



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

Psh. No.0260/25

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 Batisha Ibrahim –President, Vedat Poterqoi –member and Kimete Gashi Brajshori – member, deciding upon the complaint of the Economic Operator (EO) “Petrol Comapny - SH..P.K, against the Contract Notice or tender documents related to the procurement activity “Supply of fuel - Pellets” with procurement number: 615-25-1234-1-1-1, initiated by the contracting authority (CA) - Municipality of Podujeva, on the 12/06/2025, has issued this:

DECISION

1. Approved, as partly grounded the complaint of EO “Petrol Comapny - SH..P.K, with no. 2025/0260, dated 11/04/2025, regarding the procurement activity “Supply of fuel - Pellets” with procurement number: 615-25-1234-1-1-1, initiated by the contracting authority (CA) - Municipality of Podujeva, while the CA should make improvements to the tender dossier and extend the deadline for bidding.
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. 3. Since the complaint of the complaining EO is approved as partially grounded, 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 26.02.2025, the Municipality of Podujevo in the capacity of the Contracting Authority has published Contract Notice B05 regarding the procurement activity “Supply of fuel - Pelet” with procurement number 615-25-1234-1-1-1.

On the 01.04.2025, EO “Petrol Comapny - SH..P.K.” has submitted a request for reviewing against the Contract Notice. On 02.04.2025, the Contracting Authority has rejected as unfounded the request for reviewing.

On the 11.04.2025, the PRB has accepted the complaint from EO “Petrol Comapny - SH..P.K..” with no.2025/0260 regarding the procurement activity “Supply of fuel - Pellets” with procurement number 615-25-1234-1-1-1.

-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 “Petrol Company” SH.P.K. are presented as follows:

On 26.03.2025, we received the standard explanatory letter from the Municipality of Podujeva, addressed to all economic operators, on the characteristics of beech wood pellets and their advantages.

Therefore, we are against this clarification and against the Contracting Authority, which has defined the requirement for only one type of pellet, taking into account that other types of pellets also meet these characteristics, just like beech wood pellets.

We believe that the following violations have been committed:

1. Possible discrimination of economic operators:

The requirement to use only beech wood pellets may create a barrier for other economic operators who can offer quality pellets from different woods (e.g. pine, spruce), which are also certified according to international standards such as ENplus A1 and have similar performance.

2. Principle of equal competition:

The Law on Public Procurement in Kosovo and the relevant acts stipulate that tenders must ensure equal opportunities for all economic operators. The requirement to use only beech wood

pellets may create prejudice against some operators, limiting them to offering a product that may be beyond their technical or financial capabilities.

3. Unreasonable and unjustifiable requirement:

There is no clear justification in the tender documents why it is necessary for the pellets to be made only from beech wood, while other types of wood offer similar heating efficiency and meet all specified technical requirements.

4. Violation of the principle of transparency:

Such a requirement may create a lack of transparency and limit the opportunities for fair competition, especially when the tender criteria favor some operators and prevent the participation of others.

According to Law No. 04/L-042 on Public Procurement in Kosovo, Article 6 on the principles of transparency and equal treatment of economic operators, each procurement procedure must contain clear criteria that ensure fair competition and proper qualification of bidders.

In this case, we have noticed that the tender documentation does not contain adequate criteria regarding the technical and professional capabilities of economic operators, which are essential for ensuring the quality and capacities for the implementation of the contract.

The lack of clear technical and professional criteria enables the participation of operators without the necessary experience and capacities, which increases the risk of providing low-quality products or non-fulfillment of the contract.

5. Possibility of misuse:

This lack of criteria allows for subjective interpretation by the contracting authority in the evaluation of bids, increasing the risk of irregularities or favoritism.

6. Compliance with good procurement practices:

In most tenders for similar products (e.g., supply of pellets), clear criteria are usually included on:

- Technical capacity (quality certificates such as ENplus A1/A2)
- Logistical capacity (adequate storage and transport)

Our requests:

Based on the above arguments, we request the contracting authority to:

- Review the requirement to use only beech wood pellets and enable the offering of alternatives, including softwood pellets and other wood materials that are acceptable according to international standards.
- Complete the tender dossier with adequate criteria regarding the technical and professional capabilities of economic operators.

- Ensure transparency and equal treatment of bidders, based on public procurement standards.

Provide an official response to this complaint within the legal deadlines.

Response of the Contracting Authority to the request for review:

The Responsible Procurement Officer in the Municipality of Podujeva, after reviewing the claims submitted by the complaining EOs, considers that the requests for review are unfounded.

Both operators have objected to the request for the product material - beech wood pellets.

However, according to the LPP, the request for a certain material does not conflict with the principles of public procurement, as long as the manufacturer is not specified and the purpose is to guarantee the quality of the product.

In accordance with Article 28 of the LPP, the Contracting Authority has the right to determine the technical specifications in order to be in harmony with the purpose of the procurement and the relevant standards. The request for beech wood pellets is in accordance with:

Paragraph 4 of Article 28 of the LPP,

Article 70 of the LPP, which gives the CA the right to apply specific standards to ensure quality.

Conclusion: The complaint is rejected as unfounded.

Based on Article 111 paragraph 5 in conjunction with Articles 113 and 114 of the LPP, the PRB on 11/04/2025 authorized the expert to conduct the initial review of the file and claims according to the complaint with no. 0260/2025, while on 25/04/2025 the expert report with no. 2025/0260 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 partially approved as grounded, the CA make improvements to the tender dossier and extend the deadline for bidding.

The expertise report has been duly accepted by all procedural parties, the Contracting Authority has agreed on the report of the reviewing expert, while the EO has not provided a response regarding the report of the review expert.

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 reviewing 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 contracting authority's letters and documents, the relevant documents related to the procurement activity, as well as all evidence proposed by the procedural parties.

Regarding the claims of EO “Petrol Company - Sh..P.K.” the review expert through report no. 2025/0260 has assessed as follows:

The Contracting Authority-Municipality of Podujevo during this procurement activity has implemented an open procedure, the type of contract is public framework contract. The estimated value is 315,000.00 €, where for 2025 the value is estimated at 95,000.00 €, for 2026 the value is estimated at 110,000.00 € and for 2027 the value is estimated at 110,000.00 €.

Whereas, the contract award criterion is “Responsible Tender with the Lowest Price”.

Introductory clarification: After the administration and review of the case files against the complaint claims, we clarify that the complaining economic operator claims that the CA has acted in violation of Articles 1, 7, 27 and 28 of the LPP. The complaint claims are related to the contract notice (criteria). The complaint claims raised by the complaining economic operator have been reviewed by the expert based on the case files, and provides the following answers.

The complaining EO emphasizes that on 26.03.2025 they received the standard explanatory letter from the CA for all economic operators on the characteristics of Beech wood pellets and its advantages, while the complaining EO Petrol Company SH.P.K. is against this clarification and the request of the CA that has defined the request with only one type of pellet, where we also take into account other types of pellets that meet these characteristics, such as beech wood pellets.

Furthermore, the complaining EO emphasizes that the request for the use of only beech wood pellets may create a barrier for other economic operators who can offer high quality pellets from other wood (e.g. pine, fir) which are also equipped with internationally recognized standards such as ENplus A1 and which have similar performance.

The principle of competition and other relevant acts of the LPP stipulate that tenders must ensure equal opportunities for all EOs, the requirement to use only beech wood may create a prejudice against some economic operators, limiting them to offering a product that may be beyond their technical or financial capabilities. Unreasonable and unjustifiable requirements as to why it is necessary for the pellet to be only from beech wood while other types of wood offer a similar level of efficiency for heating and can meet all specified technical requirements.

Also in the complaint, the complaining EO emphasizes that the tender dossier does not contain any adequate criteria related to the technical and professional capabilities of the economic operators that are essential for ensuring the quality and capacities for the execution of the contract. In most tenders for similar products (such as pellet supplies) clear criteria on:

Technical capacity (quality certificates such as ENplus A1/A2)

Logistical capacity (adequate storage and transport)

Response to the complaint claim: The main complaint claims are against the contract notice (criteria), specifically against the requirement in Annex 1 Mandatory technical specifications where it is requested: "Pellet for ignition - heating, first class (pellet must be made of 100% beech wood)" After administering and reviewing the case files, the review expert clarifies that

the CA-Municipality of Podujevo, has published the contract notice on 27.02.2025, at point 16.1 of the tender dossier, the CA has set the date for clarification of the tender until 17.03.2025. The Contracting Authority-Municipality of Podujevo on 26.03.2025 through the Standard Letter Regarding the clarification of the tender for economic operators, the following clarification was provided.

Regarding the complaining claim of the complaining EO regarding the change of this request as mentioned above, the review expert assesses that the CA on 26.03.2025, through the standard letter for clarification of the tender for economic operators, has provided detailed explanations why pellets composed of 100% beech wood have important advantages. Also, based on the nature of this procurement activity, I consider that this request of the CA does not reduce or eliminate competition between economic operators or discriminate to the detriment or benefit of one or more economic operators according to Article 6 and 7 of the LPP, but is a request that ensures the contracting authority regarding the highest quality supply because the advantages of the pellet product from 100% beech wood are better quality, i.e. it has more burning power or is more caloric, where the CA considers and has assessed that this type has higher efficiency for the contracting authority and those institutions that benefit from heating with pellets. Therefore, the complaining claim of the complaining EO is unfounded.

Regarding the claim of the complaining EO that the tender dossier does not contain any adequate criteria related to the technical and professional capabilities of economic operators, which are essential for ensuring quality and capacities for the implementation of the contract.

Response to the complaining claim: The review expert, based on the tender dossier and the contract notice, considers that the CA should request documentary evidence regarding the content of the product through a certificate or declaration of the manufacturer, which includes the content or ingredients of the pellet product, as requested by the CA "pellets from 100% Beech wood". Also, the CA should specify in the tender dossier the method of transport or transfer. If the CA requests the EO declared the winner to carry out the transport, then the CA should specify the address or locations where the acceptance and delivery will take place. Therefore, the claim of the complaining EO is grounded.

- Findings of the Review Panel -

The Review Panel assesses that the Review Expert Report, drafted at the request of the PRB related to 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 complaining 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 complaining 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 overall context of the case files, the alleged facts and any 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 not acted in accordance with the legal provisions on public procurement and the requirements of the Tender Dossier regarding the procurement activity “Supply of fuel - Pellets” with procurement number 615-25-1234-1-1-1.

The review panel, after administering and evaluating the evidence, fully ascertaining the factual situation, relying on the LPP as the applicable material law, after reviewing the complaint claims, taking into account all the case files and the recommendations of the review expert, has found that the complaint of the Economic Operator “Petrol Comapny - SH..P.K.” is approved as partially grounded.

Consequently, the Review Panel has decided to support the report of the review expert where the CA, according to the electronic e-procurement platform, has agreed regarding the findings and conclusions, regarding the procurement activity entitled “Supply of fuel - Pellets” with procurement number: 615-25-1234-1-1-1, that the CA make improvements to the tender dossier and extend the deadline for bidding according to the provisions of the LPP.

The Review Panel has decided in accordance with the legal powers in terms of Article 104, paragraph 1 in connection 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 was decided based on Article 117 of the LPP in conjunction with Article 29 of the PRB's Rules of Procedure.

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

Point III of the decision was decided based on Article 31 paragraph 4 and paragraph 6 of the PRB's 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

Mrs. Batisha Ibrahim

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 – **MUNICIPALITY OF PODUJEVA;**

1x1EO–“ **Petrol Comapny - SH..P.K;**

1x1 Archive of the PRB;