



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

Psh. No.484/23

The Procurement Review Body through the Review Panel composed of Vjosa Gradinaj Mexhuani- President, Vedat Poterqoi - Referent and Agon Ramadani - Member deciding on the economic operator's complaint “Runway” S.H.P.K. with no.484/23 of the 12.07.2023 as well the complaint of the economic operator “Solid” SH.P.K with no.486/23 of the 13.07.2023 against the Notice on the Decision dated 23.06.2023 of the Contracting Authority – Ministry of Defence related to the procurement activity with title “Re-tender - Supply of military boots for the needs of the KSF” with procurement no.217-22-7705-1-1-1, on the basis of article 105 in relation to article 106 and article 117 of the LPP, after holding the public session for the main review session on the 30.08.2023 with the presence of the parties and the review expert, on the 15.09.2023 has issued this:

DECISION

- 1. Approved** as partly grounded the complaint of the economic operator “Runway” S.H.P.K. with no.484/23 of the 12.07.2023 as well the complaint of the economic operator “Solid” SH.P.K with no.486/23 of the 13.07.2023, and it is Cancelled the Decision of the CA dated 23.06.2023 for contract award related to the procurement activity “Re-tender - Supply of military boots for the needs of the KSF” with procurement number 217-22-7705-1-1-1, and the subject returns to Re-evaluation.
2. Within 10 days, the CA must inform the PRB about all the actions taken regarding this procurement activity. Otherwise, for non-compliance with the decision, the PRB has the right to take measures against the CA, as provided by the provisions of Article 131 of the Law on Public Procurement of Kosova (consolidated version).
3. It is allowed the return of the funds deposited in the name of the complaint’s fee, while the complainants have the right to submit a request for the return of the funds within the period of sixty (60) days after the acceptance of this decision, otherwise the funds are confiscated and transferred to the budget of the Republic of Kosova, in accordance with article 31 paragraph 6 of the Rules of Procedure of the PRB.
4. The review panel within the PRB will initiate procedures in the Public Procurement Regulatory Commission (PPRC) for taking measures against the responsible procurement

official for the implementation of this tendering procedure in violation of the legal provisions of Article 1, 7, 59, 60 and Article 25, paragraph 9 of the LPP.

REASONING

- Procedural facts and circumstances -

The Ministry of Defence in the capacity of the Contracting Authority dated 01.08.2022 has published the Notice for Contract B05 related to the procurement activity with title: "Re-tender - Supply of military boots for the needs of the KSF" with procurement number 217-22-7705-1-1-1.

This procurement activity was developed through an open procedure with the type of contract for supply and with an estimated contract value of 2,000,000.00 €.

On the 28.10.2022, the Contracting Authority opened the offers, while on the 27.01.2023 it published the Notice on the Decision for contract award to the Group of Economic Operators "Furkan Rada & Ozkan Kundura ve lastik Imalat Sanayi ve Ticaret Anonim Sirketi".

On the 01.02.2023 the economic operator "Runway" Sh.P.K submitted a request for reconsideration against the Notice on the Decision dated 27.01.2023, while on the 03.02.2023 the Contracting Authority made a decision through which it rejected this request as ungrounded. Furthermore, on the 01.02.2023, the economic operator "Solid" Sh.P.K. submitted a request for reconsideration against the Notice on the Decision dated 27.01.2023, while on the 03.02.2023 the Contracting Authority made a decision through which it rejected the request as ungrounded.

On the 13.02.2023, the economic operator "Runway" Sh.P.K. submitted to the PRB the complaint no. 80/23 against the aforementioned decision of the Contracting Authority. Simultaneously, on the 13.02.2023, the economic operator "Solid" Sh.P.K. submitted to the PRB the complaint no. 84/23 also against the aforementioned decision of the Contracting Authority.

On the 02.05.2023 PRB has published the decision no. 80-84/23 through which the complaint of the economic operator "Runway" Sh.P.K. was dismissed as unauthorized. while it approved as grounded the complaint of the economic operator "Solid" Sh.P.K. so that he ordered the cancellation of the decision of 27.01.2023 for contract award, while he turned the procurement activity into a reassessment.

On the 13.06.2023 after the revaluation procedure, the Contracting Authority has published the Notice on the Decision through which it has again awarded with the contract the Group of Economic Operators "Furkan Rada & Ozkan Kundura ve lastik Imalat Sanayi ve Ticaret Anonim Sirketi".

On the 27.06.2023, the economic operator "Runway" Sh.P.K. submitted a request for reconsideration against the Notice on the Decision dated 13.06.2023. On the 04.07.2023, the Contracting Authority made a decision through which it rejected the request for reconsideration as unfounded. Furthermore, on the 28.06.2023, the economic operator "Solid" Sh.P.K. submitted a request for reconsideration against the Notice on the Decision dated 13.06.2023. On the

04.07.2023, the Contracting Authority made a decision through which it rejected the request for reconsideration as ungrounded.

On the 12.07.2023, the complaining economic operator "Runway" Sh.P.K. submitted to the PRB the complaint no. 484/23, while on 13.07.2023 the complaining economic operator "Solid" Sh.P.K. submitted to the PRB the complaint no. 486/23.

During the preliminary review of the complaints, the Review Panel found that both complaints contain all the elements defined through Article 111 of the LPP and as such were 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 economic operators who are interested parties according to Article 4 paragraph 1 subsection 26 of the LPP. In this way, the Review Panel has concluded that it is competent to review these complaints according to Article 105 of the LPP and there is no procedural obstacle to proceed with reviewing the complaints in a meritorious manner.

The Review Panel has also concluded that there are no circumstances of conflict of interest in the sense of Article 11 of Regulation no. 01/2020 of the Work of the Procurement Review Body related to article 4 paragraph 1 subparagraph 75 of the LPP.

Taking into account the fact that both complaints are related to the same procurement activity, respectively with the notification on the same decision of the Contracting Authority related to this procurement activity, it has been decided that complaint no. 484/23 and complaint no. 486/23 to be joined and treated as a unified case in the sense of Article 16 paragraph 1 of Regulation no. 01/2020 of the Work of the Procurement Review Body.

Claims of the complaining economic operator "Runway" Sh.P.K. are presented as follows:

- The first claim (I): "In the technical specification of annex no. 1 for summer boots, it is requested that the boot have -Fast lacing system for wearing and movement-. The boots of the recommended economic operator do not have this system of laces, they have the system with holes for laces and not a quick system for wearing and moving according to needs.
- The second claim (II): "The samples offered by the economic operator, the sample boots do not contain the manufacturer's labels according to the authorization presented in the offer, they also do not contain the notes for the standard required in the technical specification EN ISO 20344:2021 and as such is contrary to the request of the tender dossier and the technical specification.
- Third claim (III): The recommended economic operator has not proven that he meets the requirement of the mandatory technical specification since the sample presented has no proof and note that it is of the EN ISO 20347:2021 standard and as such is in violation of the technical specification and the presented catalog as well as the notes of the certificates. Likewise, the economic operator has not provided evidence according to the request that we requested in Annex 1 at point 7.1 and at point 3.1 for the declaration of fulfillment of the technical specification, as we have also mentioned in the complaint claims presented earlier that the Contracting Authority has not implemented as should LPP Article 59 since the same has

requested clarifications regarding the non-fulfillment of this point - the statement of technical specifications. Also, CA has acted contrary to the interpretation of PPRC where it has stated that if the statement of technical specifications was requested and the EO was not brought, it should be eliminated".

- The fourth claim (IV): "The recommended economic operator has not submitted the certificates at all, therefore the evaluation commission has violated Article 59 and the criteria required in the tender file as well as the PRB decision by recommending the irresponsible economic operator".
- The fifth claim (V): "The economic operator Solid ShPC has presented the Certificates for shoes contrary to the request requested by you as CA as well as the clarifications given by you on 28.09.2023, these certificate reports were made in the Laboratory MAK-CONTROL in North Macedonia. Given your request that the laboratory must be accredited for each product required in the technical specification and have the values in the report of the certificates, the economic operator has presented the reports of the certificates without these values required according to the standards as above, as well as has presented the laboratory which does not have accreditation for EN ISO required according to the products mentioned above and as a result of this the same one had to, according to the criteria of annex no. 1 of the DT and based on article 59 of the LPP to be eliminated as not responsible".
- The sixth claim (VI): "The boots offered by the economic operator (Solid ShPK) are contrary to the technical specification as well as to the certificates and catalog, since the cut boots are very clearly observed to contain placement of a significant amount of iron and does not have elasticity as requested, does not help the return of the boot to its normal state and does not support comfortable walking and running, the same also presents a risk that during practical exercises they will tear and create contact with the leg that will cause excessive damage as and other dangerous contacts in nature such as electricity (etc.), the boot is not made of rubber but has metal parts. It is also requested that the seal be made with the direct injection system, and not be held with glue as the sample was presented".

Referring to the claims as above, the complaining economic operator "Runway" Sh.P.K. considers that the Contracting Authority has acted in violation of Article 7, 10, 28, 59, 60, 70 and 72 of the LPP as well as Article 38 of the RRPP. The complaining economic operator has asked the PRB Review Panel to approve the complaint so that the procurement activity is reassessed.

Claims of the complaining economic operator "Solid" Sh.P.K. are presented as follows:

- The first claim (I): "The request of the CA specified in TDS article 8.1 & 8.2 - Requirements on the economic and financial situation, the GOE recommended for the contract has not fulfilled this point because the EO representative of the group from Turkey has submitted banking circulation certifications in violation of Article 13 of the LPP by providing them in non-official languages according to this law while the CA accepted them for granted, add here the fact that the CA did not even provide evidence that during the reassessment it engaged any legal translator to verify or clarify these documents whether they meet the requirements of the TD or not".

- The second claim (II): "CA's request specified in the FDT - Requests on technical and/or professional opportunities - Request no. 09 - The GOE recommended for the contract has not completed this point, because it has only provided a photo of the product presented as Summer Boots and Winter Boots. So it is very clear that it is contrary to the request of the CA, add here the fact that the document provided by the GOE recommended for the contract does not resemble a catalog, but is a description based on the technical specifications of the CA without providing any other evidence such as Ateteset. Likewise, the decision of PRBO with no. 80-84/23 dated 02.05.23 contested this point and deemed it contrary to Article 59 of the LPP".
- The third claim (III): "The requirements of the CA specified in the clarifying questions dated 28.09.2022 regarding product certificates from Accredited Laboratories and according to ISO Standards, have not been fulfilled at all by the GOE recommended for the contract because the same have not has offered certificates at all for the products offered, let alone from accredited laboratories. We also note that even in the revaluation report, the CA did not respect the requirements regarding the certificates from the accredited laboratories, and at no point did it mention that it requested additional clarifications or additional documents from the GOE recommended for the contract to clarify this request, but acted the same as the first time. Likewise, the decision of PRB with no. 80-84/23 dated 02.05.23 disputed this point and described it as an action not in harmony with the legal provisions of the LPP and requested the CA to take into consideration the explanations given during the reassessment, otherwise the PRB has the full authority and powers to initiate the procedure for undertaking the relevant measures".
- The fourth claim (IV): "CA in the technical specifications for summer boots, has requested that they be made of ventilation materials and meet GoreTex or Equivalent specifications. During the checking of the samples provided by the GOE recommended for the contract, it has been proven that the EO has provided simple materials, which has nothing to do with the request of the CA because the material is a simple textile with holes. In a point of clarification for which the CA requested from the GOE recommended for the contract, the GOE cites that the material is Equivalent - GoTe Tex and the CA took this clarification for granted, without even doing an analysis or testing. As a local manufacturer, we guarantee that the material (Equivalent - GoTe Tex) does not exist at all in the field of clothing".
- The fifth claim (V): "CA in the technical specification has requested that the boots have a quick lacing system for wearing and movement. The GOE recommended for the contract in the samples provided proves that it does not possess this quick connector system, which means that the samples provided do not meet the requirement of the CA, where even in this case the GOE had to be eliminated from further competition. You can also see very clearly the way of connections that such a system of connections has nothing to do with the fast system according to the request of the CA".
- Sixth claim (VI): "In the technical specification, CA has requested that the mouth of the boots be 5mm with a density of 70PU foam, while based on the control of the GOE sample recommended for the contract, the sample does not have a mouth of 5mm with a density of 70PU foam, this can be observed very easily and if measured".

- Claim seven (VII): "CA in the technical specification has requested that the laces of the boots be POLYESTER or POLYAMIDE. During the checking of the GOE samples recommended for the contract, we have proven that they have provided simple laces for the offered boots, which is contrary to the request of the CA".
- Eighth claim (VIII): "CA in the technical specification has requested that the thickness of the skin be at least 2.0mm, while during the control of the GOE samples recommended for contracts, it is observed that the thickness of the skin does not coincide with the thickness greater than 1.6-1.8mm (measured with classical tools in the presence of the CA and with the tools provided by the CA)".
- Claim nine (IX): "CA in the technical specification has requested that the material for the tongue of the boot must conform to the ISO standard with 3-4 layers, while during the control of the sample of the recommended GOE it is confirmed that the product offered is with Syngjer simple".
- The tenth claim (X): "CA in the TD and the technical specification has requested that the soles of the boots be resistant to oils, diesel, etc. During the control of the samples of the GOE recommended for the contract, as well as the technical specification provided, it does not describe anywhere that the boots provided are according to the request of the CA, also the GOE recommended for the contract did not provide any certificates as evidence or attestations from the laboratories of certified that the products offered meet this point. CA has requested that the leather of the boots be durable and have high resistance to scratches. During the check of the recommended GOE samples as well as the technical specification provided does not describe that the offered products meet this criterion. During the sample check, it can be seen that the presented boots have fractures in the leather without being used yet and are easily scratched".
- The eleventh claim (XI): "CA in the DT and the technical specification has requested that for winter boots the insoles must be shaped, orthopedic and non-sweating and that they can be replaced. During the inspection of the samples provided by the GOE recommended for contracts, it is seen that the mattress offered is flat, thin, creates sweat and slippage of the foot, and has nothing to do with orthopedic forms and does not possess the properties required by the CA".

Referring to the claims as above, the complaining economic operator "SOLID" Sh.P.K. considers that the Contracting Authority acted in violation of Article 1, 6, 7, 13, 27, 28, 59, 60, 64, 66, 67, 69 and 71 of the LPP as well as Article 39.8 of the RRPP. The economic operator has asked the Review Panel to approve the complaint so that the procurement activity is reassessed.

Based on article 111 par. 5 related to articles 113 and 114 of the LPP, the Review Panel dated 17.07.2023 authorized the review expert for the initial review of the dossier and claims according to complaint no. 484/23. Also, on 17.07.2023, the Review Panel authorized the review expert for the initial review of the dossier and claims according to complaint no. 486/23.

Regarding complaint no. 484/23 dated 30.07.2023, the review expert's report with no. 2023/0484 with the following recommendations: "Based on the above clarifications, the experts propose to the review panel that the complaint of the complaining EO be approved as partially based, the

contract award notice be canceled and the matter returned to re-evaluation. Specifically, the CA should be requested to consider the explanations given in Decision no. 80/23 and 84/23 dated 02.05.2023. For the fair and impartial evaluation of the offers of this procurement activity, it is recommended that the CA send the samples submitted by the EOs to an internationally accredited laboratory, to verify that they meet the technical requirements of the TD".

Regarding complaint no. 486/23 dated 18.07.2023, the review expert's report with no. 2023/0486 with the following recommendations: "Based on the above clarifications, the experts propose to the review panel that the complaint of the complaining EO be approved as well-founded, the contract award notice be canceled and the matter returned to re-evaluation. Specifically, the CA should be requested to consider the explanations given in Decision no. 80/23 and 84/23 dated 02.05.2023. For the fair and impartial evaluation of the offers of this procurement activity, it is recommended that the CA send the samples submitted by the EOs to an internationally accredited laboratory, to verify that they meet the technical requirements of the TD".

The expertise's report has been duly accepted by all procedural parties. The Contracting Authority has stated that it does not agree with the review expert's recommendations, while the complaining economic operators "Runway" Sh.P.K. and "Solid" Sh.P.K. have declared that they agree with the recommendations in the review expert's report.

-Administration and evaluation of evidence -

In order to fully verify the factual situation, the review panel administered as evidence the expert reports, the opinions of the parties related to the expert reports, the submissions and documents of the complainants, the letters and documents of the contracting authority, the relevant documents related to the procurement activity, the statements of the parties during the main review session as well as all the evidence proposed by the procedural parties.

On the 30.08.2023, the main review session related to this case was held, where the representatives of the complaining parties and the representative of the contracting authority were present.

The representative of the complaining party "Runway" Sh.P.K. during the main review, he stated that he fully supports the complaint claims presented with the complaint and confirmed that he fully agrees with the recommendations of the review/technical experts, further affirming that "The samples provided by the recommended economic operator, the sample boots do not contain the manufacturer's labels according to the authorization presented in the offer, they also do not contain the notes for the standard required in the technical specification EN ISO 20344:2021 and as such is contrary to the request of the tender file and the technical specification as well the recommended person is also irresponsible for the fact that he did not complete the "Declaration for technical specifications" for this activity. As for the "SOLID" bidder, taking into account your request that the laboratory must be accredited for each product required in the technical specification, as well as having the values in relation to the certificates, the economic operator has presented the certificate reports without these required values according to the standards as

above, as well as presented the laboratory which does not have accreditation for EN ISO required according to the products mentioned above and as a result of this the same one had to, according to the criteria of annex no. 1 of the TD and based on article 59 of the LPP to be eliminated as not responsive.

The representative of the complaining party "Solid" Sh.P.K. during the main hearing stated that he fully supports the complaining claims presented with the complaint and also confirmed that he fully agrees with the recommendations according to the review expert's report. He further added that "finally, we emphasize that it is unfortunate how the Contracting Authority in the response to our request for reconsideration for the lack of A-tests answers quote <<refer to point 2 we as CA do not have a material testing laboratory>> . This means that the Contracting Authority has made the evaluation in the template. It should also be noted that all these remarks are evidenced and confirmed in the decision of PRB dated 02.05.2023 with no. 80-84/23, but despite this, the Contracting Authority did not consider any of these findings, acting contrary to the cited decision, but also in complete contradiction to the LPP, it re-announced EO "Furkan" as the winner. We quote a paragraph of the decision 80-84/2023 for this record <<...therefore the product in the present case objectively determines this procurement process because the same has to do with the main and significant criterion implying the fact that this product presents the basic criterion of procurement, the main weight of the DT, specifications, etc., which according to the panel has not been proven from the documents of this subject that the recommended EO fulfills...>>. As for the claims of the economic operator Runway Sh.P.K. against the economic operator Solid Sh.P.K., we declare with full conviction that these statements do not hold and you can prove that these are only empty recommendations since none of the points of complaint have any basis legal and argumentative. Mak-kontroll Laboratory in Macedonia is internationally licensed and meets all required standards. We have a few years of cooperation with the same. Therefore, for details, please refer to the A-test certificate in which all the ISO standards required in this tender file for testing the quality of the boots are specified. In addition, I also recommend that you personally verify our claims. , and the address and contact details of the laboratory can be found in the quality certificate. It is worth noting that the appellant Runway Sh.P.K. who complained in this particular case also complained about another tender, where the winner was Solid Sh.P.K. and precisely his basic complaint was that the Mak-kontroll laboratory in Macedonia does not meet the required ISO standards. However, in the request for clarification from the Contracting Authority - Correctional Service of Kosova, all clarifications were given with evidence that Mak-control with headquarters in Macedonia meets the required standards. Please refer to the procurement officer of the SCK for details".

During the main hearing, the representative of the Contracting Authority stated that he stands by the announcement on the decision to award the contract related to the procurement activity. He further added that: "After being accepted as an evaluation committee, all offers were treated equally and impartially." We have had a problem for years with the supply of boots precisely because of complaints and delays in procedures. We have recommended for the contract the responsible economic operator with the lowest price. We do not have a local laboratory to test the specifications required for standards in the tender file, but we can send them to the laboratory

at the expense of the company after the contract is concluded to verify that they are in accordance with the requirements".

The Chairperson of the Review Panel has asked the representative of the contracting authority on what basis you have assessed that the recommended economic operator has offered the products in accordance with the requirements/technical specification with the required international standards. He also emphasized that according to the notification of the Review Panel through the electronic mail (email) dated 28.08.2023, the representative of the contracting authority was requested to bring to the session all the evidence related to the A-tests from the accredited laboratory of the recommended economic operator for contract. The representative of the contracting authority responded as follows: "During the evaluation, we were based only on the table provided by the CA in the tender file, where the results and the testing method were mentioned, while as evidence we took the table provided by the EO. The manufacturers of clothing have the manufacturer's declarations regarding the specifications of their products on which we as a commission are oriented and we did not know nor did we ask for clarifications from the recommended EO because we can comply with the request of the technical specification. if we find it necessary, as we mentioned above, we send the same to you at the expense of the recommended EO for testing to verify the data provided by the manufacturer after signing the contract". Furthermore, regarding this question, the representative of the complaining party Solid Sh.P.K. who affirms that "the recommended economic operator has not provided a catalog at all but has provided a sketch made with technical specifications of the tender file, as mentioned earlier, the economic operator does not have a statement of technical specifications, but the same was requested at the stage of revaluation, which means that the contracting authority completed the documentation at a stage when it is prohibited according to the LPP and RRPP. Also, in the absence of the Certificate, the contracting authority did not request the testing of the product during the evaluation, which it allows and should according to the LPP".

The Review Panel has also administered the reports of the review expert in order to evaluate and evaluate freely the evidence and statements of the parties, each one separately and all of them together.

Regarding the claims of the complaining economic operator "Runway" SH.P.K, the review expert through report no. 2023/0484 assessed as follows:

- Regarding the first claim (I) - "The complaining EO has not provided sufficient evidence to confirm this claim." The claim is unfounded."
- Regarding the second claim (II) - "CA in its response has confirmed that the samples provided by all EOs contained the ticket and accompanying documentation as the manufacturer's informant specifying the data of the boots. The claim is unfounded."
- Regarding the third claim (III) - "Regarding this point and regarding this economic operator, there is also a decision from the PSH. PRBO with no. 80-84/23 dated 02.06.2023, which has announced its offer as non-responsible, emphasizing: According to the Panel, it has not been proven that the recommended economic operator meets this criterion. Consequently, this claim is well-founded."

- Regarding the fourth claim (IV) - "This wording was understood by the complaining EOs as a new obligation to submit together with their offers the certificates from internationally accredited laboratories and they contain the results of the physical testing of the boots that are offered with this tender. So, the clarifications provided by the CA have created additional obligations for the interested parties. They have been transformed into additional criteria, which were not originally part of the tender file and therefore had to be respected by the Tender Evaluation Committee in order to ensure equal treatment of bidders. As it was emphasized above, such a request was requested by the CA with the PRB Decision mentioned above, but not even the revaluation Commission did not take this into account. Consequently, this claim is grounded".
- Regarding the fifth claim (V) - "The complaining claim is unfounded as the complaining EO has not presented the certificates that it assumes are in conflict with the technical specification".
- Regarding the sixth claim (VI) - "From the samples presented, the impression can be created that they have deviations from the technical specification. However, additional laboratory testing would be necessary to fully confirm the claim of the complaining EO. This claim can be considered as partially founded".

Regarding the claims of the complaining economic operator "Solid" SH.P.K, the examining expert through report no. 2023/0486 assessed as follows:

- Regarding the first claim (I) - "According to Article 13 paragraph 4 of the LPP, it is determined that an economic operator can submit a tender, a request for participation or any other document required or allowed to be completed during the procurement activity, in Albanian, Serbian or English. Therefore, this claim is grounded".
- Regarding the second claim (II) - "As it was examined in the above-mentioned PRB Decision, the CA's reasoning that "the mixing of photos is clearly a technical error" is not sustainable. Consequently, the PRB Panel considered that the CA did not act in harmony with the provision of Article 59 of the LPP, therefore this claim is well-founded".
- Regarding the third claim (III) - "This wording was understood by the complaining EOs as a new obligation to submit together with their offers the Certificates from internationally accredited laboratories and that they contain the results of the physical testing of the boots that are offered with this tender. So, the clarifications provided by the CA have created additional obligations for the interested parties. They have been transformed into additional criteria, which were not originally part of the tender file and therefore had to be respected by the Tender Evaluation Committee in order to ensure equal treatment of bidders. As it was emphasized above, such a request was requested by the CA with the PRB Decision mentioned above, but the revaluation Commission did not take this into account. The claim is grounded."
- Regarding the fourth claim (IV) - "CA had to request information from the winning EO about the type of material equivalent to its technical description. Only Equivalent - GoTe Tex pau verified or tested by an accredited laboratory cannot be accepted as an answer. This claim is considered to be partially based".

- Regarding the fifth claim (V) - "The complaining EO has not provided sufficient evidence to confirm this claim." The claim is unfounded.
- Regarding the sixth claim (VI) - "The complaining EO has made an assumption but has not provided measurable and sufficient facts on his claim. The claim is unfounded.
- Regarding the seventh claim (VII) - "The complaining EO has made an assumption but has not provided measurable and sufficient facts on his claim. The claim is unfounded.
- Regarding the eighth claim (VIII) - "The complaining EO has made an assumption but has not provided measurable and sufficient facts on his claim. The claim is ungrounded.
- Regarding the ninth claim (IX) - "The layers of the material according to the technical specification are polymer materials and that the complaining EO in the photo sent as evidence has emphasized that it is a spongy material, which in the request for reconsideration the CA has not denied for the type of the material. The claim is grounded."
- Regarding the tenth claim (X) - "In the photo presented by the complaining EO, fractures in the leather of the boot can be seen easily. However, in the absence of certificates, the claim of the complaining EO cannot be fully confirmed. For this it would be necessary to do additional laboratory tests. The claim is partially grounded".
- Regarding the eleventh claim (XI) - "From the facts presented by the complaining EO, it is easy to see that the beds offered are flat layers. The claim is grounded."

-Findings of the Review Panel-

The Review Panel has also taken into consideration the fact that related to this procurement activity dated 02.05.2023 PRB has also taken decision 80-84/2023. In this decision, among other things, it was established that the tests for the product 'boots' were not a request of the tender dossier, but the same were requested during the course of the activity by the Contracting Authority through the clarifications dated 28.09.2022, that is before bidding to economic operators and the same were transformed into criteria and/or requirements of the contracting authority regarding the product and/or its qualities in the sense of Article 53 of the LPP and RRPP. As an example in the reasoning of the decision 80-84/2023, the responses of the contracting authority to the economic operators were cited as follows:

the evidence required by us as CA must be from an accredited laboratory. What the testing must contain is specified..." "Do the required tests must be from internationally accredited laboratories according to the EN ISO standard required as a whole as a final product";

- "...in each case, it must be proved with A laboratory test that the offered boots have been tested in their entirety and have passed A tests conforming to EN ISO 2047: 2021";
- "...as long as the certificate comes from an accredited laboratory and is valid and meets the requirements of quality evidence, it is allowed";
- "each product that has been certified by world-renowned laboratories with ISO standards will be part of the evaluation";

- "Tests or certificates issued only for visual inspection and/or that do not have the relevant accreditation will not be acceptable for evaluation".

The Review Panel in the preliminary decision cited above also found that the course of the procurement process was not done in accordance with Article 60 paragraph 2 of the LPP, which states that "If the contracting authority has determined in the tender file that the public contract will be awarded to the economic operator that submits the economically most favorable responsible tender, the award of this contract will be made only on the basis of the criteria and their respective weight defined in the tender file in accordance with paragraphs 2. and 3. of Article 52 of this the law". Further, through Article 52 of the LPP, it is determined that "the contracting authority must specify each criterion in an objective and quantitative manner and must express the weight given to them and that only the measurable criteria and which are previously determined in the TD can be used for evaluation".

The product (boots) in the specific case you had objectively determined this procurement process because it was related to the main and significant criterion implying the fact that this product presented: the basic procurement criterion, the main weight of the TD, the specifications, other, of which of the documents of this subject, for which, according to the Panel, it was not proven that the recommended EO had completed them. Therefore, from the explanations given above and in the general context of the administration of evidence, it can be observed that the above-cited Decision published by the PRB regarding this procurement activity (Protocol No. 80-84/2023), does not was respected by the CA, which in this case, according to the independent judgment of this panel, had not acted with due professional care because during the reassessment procedure, contrary to the cited decision, by not presenting any additional evidence and/or evidence for the parties in procedure that will actually be able to support the legal reasoning according to the CA which has reflected and/or determined the final result of the decision of the CA dated 13.06.2023, recommending the same winner for this activity, with the claim that the offer of the recommended EO was in harmony with the requirements of the CA despite the decision of the PRB.

The Review Panel does not support the reasoning given by the representatives of the CA in the session for the main review where it is stated that "...the CA has reserved the right if there are any doubts about non-compliance of the "boots" samples with the specifications required in the TD, it may be the financial resources of the winning EO were addressed to the internationally accredited laboratory for verification after signing the contract...". This is because precisely the Contracting Authority in the answer given to the economic operators had asserted "Are the tests or certificates issued only for visual inspection and/or that do not have the relevant accreditation will not be acceptable for evaluation...". And in the hearing I declare as follows "...we made the assessment based on the table provided by the CA in the tender file where the results and the testing method are mentioned, while as evidence they took the table provided by the EO...". Adding further that the manufacturers of clothing have the statements of the manufacturers in their offers regarding the specifics of the products, on which the commission was oriented and also the quote "... we as a commission did not know that we should nor did we ask for clarifications from EO recommended for contract" According to the independent judgment of the

panel, it is noted that the Contracting Authority has evaluated the offer of the recommended economic operator only on the basis of the evidence provided and named as "catalogue" in the offer of the recommended.

The Review Panel also emphasizes that a "declaration on the fulfillment of the technical specification" was also requested in the tender file. In this regard, it should be clarified that the recommended EO had not presented this statement in its offer, however the CA had requested clarifications from the now "recommended" bidder during the re-evaluation phase which actions according to this panel are in violation of Article 72 of LPP related to article 38 RRPP, also referring to the interpretation of PPRC dated 01.06.2021 quoted "...Whenever the Declaration for technical specifications is required in the TDS of TD, it must be submitted together with the tender documents. ..." because this activity was initiated on 01.08.2022.

Based on the above, the panel concludes as follows:

The EO recommended for the contract in its offer did not present the A-tests at all, but only a "catalog" which contains test results, but did not provide any evidence that the same were done by an accredited laboratory.

CA in the re-evaluation procedure according to PRB decision 80/84-2023, had not requested/proved and had not provided any convincing evidence/argument for the review panel and the parties in the procedure, that the recommended one has offered in accordance with all the requirements of the specification technical, moreover, the statement of the CA, in the session for the main review, that it reserves the right that after signing the contract I can verify if eventually doubts about the product offered.." according to the panel, this approach of the CA, consists directly in violation of article 7 of the LPP paragraph 1 quoted "... The contracting authority will treat economic operators equally and non-discriminatory and will act in a transparent manner further paragraph 2. quoted "... The contracting authority will not execute any aspect of the procurement activity in a way that reduces or eliminates competition between economic operators or that discriminates against one or more economic operators. During the course of this procedure, referring to the revaluation procedure, the CA also did not respect the article 60 of the LPP, paragraph 1 cited". low and paragraph 2. If the contracting authority has determined in the tender file that the public contract will be awarded to the economic operator that submits the economically most favorable responsible tender, the award of this contract will be made only on the basis of the criteria and their respective weight defined in the tender file in accordance with paragraphs 2. and 3. of Article 52 of this law..". The panel assesses that an action and/or right of the CA reserved by its capacity as CA in the "technical specifications", as stated above, refers to the execution and/or fulfillment of the contract in accordance with the contractual obligations and in in accordance with the TD, even in the assessment phase because the CA would have to act with due professional care based on article 1 and 59 of the LPP.

The CA also did not act according to the PRB's Request, which obliges to bring to the main hearing the evidence/evidence and arguments that will convince the review panel and the parties in the procedure why the preliminary decision of the PRB was not respected by the CA. in terms of article 116 paragraph 3 cited: "...Before taking a final decision on a case, the PRB may ask the

contracting authority and/or the complainant to provide additional information and/or explanations. Similarly, the PRB has the right to require any person, enterprise or public authority to provide evidence that the review panel reasonably believes are relevant to the relevant matter...”

The recommended person has not presented in his/her offer the "declaration for technical specifications" which was expressly requested in TD 19.1 (h) "...Written declaration for the technical specification of the supplies/works/services offered which match those mentioned in Annex 1 of the TD..”

Regarding the requirements set in point 19.1 in the Tender dossier, which are different and separate for the technical specifications, they consist of the following:

1. The EO is obliged to make the completion, signing, and sealing of annex 1 of the technical specification mandatory, and failure to complete annex 1 according to the requirements will eliminate it from further evaluation...” which the recommended EO had completed. And the EO would also have to fulfill the following request,

2. Written declaration for technical specifications" but the recommended EO had not completed the written declaration, therefore the review panel clarifies that the recommended on the basis of the above and in consistency with the previous decisions of PRB, 392, 485/23-511 /23 is also considered irresponsible for this activity also regarding this point.

Regarding the other two bidders, the Review Panel took into account the fact that regarding this procurement activity dated 02.05.2023 it had taken decision 80/23-84/23 supporting the report of review/technical experts. Therefore, in this case too, in the re-evaluation procedure, the CA is OBLIGATED to take as a basis the findings from this decision as well as the preliminary decision related to this procurement activity. It should also be noted that the Review Panel supports and forwards to the Contracting Authority the review expert's recommendation as follows "For the fair and impartial evaluation of the offers of this procurement activity, it is recommended that the CA send the samples submitted by the EO to an accredited laboratory, to verify whether or not they meet the technical requirements of TD".

-Conclusion-

The review panel also independently and objectively, conscientiously and professionally evaluated all the evidence of the case. In this way, it was found that the Contracting Authority acted in violation of Article 7 in relation to 59 and 60, 72 of the LPP in relation to Article 29 paragraph 3 and 33 of the Work Regulations of the Procurement Review Body.

The review panel after the administration and assessment of the evidence, the complete ascertainment of the factual situation, relying on the LPP as applicable material law, after reviewing the appeal claims, taking into account all the documents of the case and the recommendations of the review expert, has found that the complaints of the Economic Operators must be approved as partially founded. Consequently, the Review Panel has decided to cancel the Notice on the Decision of the Contracting Authority, Ministry of Defence dated 23.06.2023 regarding the procurement activity entitled "Re-tender - Supply of military boots for the needs of

the KSF” with procurement number 217-22 -7705-1-1-1, while the procurement activity is returned to Revaluation.

The panel also decided as follows:

With the Decision dated 02.05.2023, the PRB requested that the CA re-evaluate the procurement activity in terms of the circumstances explained in this decision (without the need to repeat them). In this case, it is indisputable that the CA did not act in harmony with the cited Decision, which in the sense of the legislation means the administrative act of a competent body, with binding effects for all parties since it originates from the mandatory norms of the LPP and the powers of PRB, from its quality as a second-level state administration body. The panel considers (without any prejudice) that the consideration of the cited Decision would effectively avoid any dilemma in relation to the aforementioned criteria.

Therefore, from this point of view, the Review Panel considers that the responsible procurement official in this particular case has not proved that he meets the basic qualification conditions according to Article 23 of the LPP. This is for reasons related to the management of the relevant procurement activity, which has proven a marked lack of professionalism in the field of public procurement. For this reason, it was also decided according to point IV of the provision in this decision. Therefore, the PRB will ask the PPRC to take disciplinary measures against the responsible procurement official based on Article 25 paragraph 9 of the LPP.

Finally, the PRB Review Panel requests from the CA that in the process of re-evaluating the procurement activity, to avoid the violations cited above, to re-evaluate the offers of economic operators in accordance with articles 1, 7, 27, 59, 60, 69 and 72 of the LPP, to ensure that public funds will be used in the most economical way, simultaneously taking into consideration the purpose and subject of the procurement as provided in the relevant paragraphs of Article 1 of the LPP as well as to act in harmony with the findings of this decision.

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.

For points I and II of the decision, it was decided based on article 117 related to article 131 of the LPP related to article 29 and paragraph 31 of the PRB Work Regulations.

For point III of the decision, it was decided based on article 31, paragraph 4 and paragraph 6 of the Rules of Procedure of the PRB in relation to article 118 of the LPP.

For point IV of the decision, it was decided based on article 25 paragraph 9 in relation to article 105 and 116 paragraph 3 of the LPP.

From what was said above, it was decided as in the provision of this decision.

President of the Review Panel

Mrs. Vjosa Gradinaj

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 – **MINISTRY OF DEFENCE**;
1x1 EO – **RUNWAY SH.P.K., Solid SH.P.K.**;
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.



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

Psh. No.573/23
582/23

The Review Panel, appointed by the President of the Public Procurement Review Body (PRB), based on Article 105 and Article 106, Article 117 of the Law on Public Procurement of Kosovo (Law No. 04/L-042), supplemented and amended with Law 04/L-237, Law 05/L-068, and Law 05/L-092, as well as Article 50 of the Law on General Administrative Procedure Law no. 05/L-031, related to the procurement activity with title: "Regulation of the water supply network in the Municipality of Fushë Kosova in the neighborhood 28.29, Bardh i Madhë and Sllatinë e Madhe" with procurement no.: 212-23-2115-5-1-1, initiated by the Contracting Authority (CA) -Ministry of Local Government Administration MLGA, on the 14/11/2023, has issued this:

CONCLUSION

Is amended/supplemented decision with protocol no. 2023/0573 and 2023/582, dated 14.11.2023, from the first page of this decision, specifically in point 1 and 3, of the provision:

1. Refused as ungrounded the complaints of economic operators: "Alfa.I" dated 11. 08. 2023 with No.573 as well as the complaint of EO "K-Ing" SFI. P.K dated 14. 08. 2023, No. 582/23, for the procurement activity with title: "Regulation of the water supply network in the Municipality of Fushë Kosova in the neighborhood 28.29, Bardh i Madhë and Sllatinë e Madhe" with procurement no.: 212-23-2115-5-1-1, initiated by the Contracting Authority (CA) -Ministry of Local Government Administration MLGA.

Since the complaint of the complaining GOE was rejected as ungrounded, the same fee that he paid when submitting the complaint is confiscated in accordance with Article 31 paragraph 5 of the Rules of Procedure of the PRB and these funds go to the RKS Budget.

Amended/completed with the following sentence:

1. The complaints of the economic operators: "Alfa.I" dated 11. 08. 2023 with No. 573/23 as well as the complaint of EO "K-Ing" SH. P.K dated 14. 08. 2023, No. 582/23, for the

procurement activity entitled: "Regulation of the water supply network in the Municipality of Fushe Kosova in the neighborhood 28.29, Bardh i Madhë and Sllatinë e Madhe" with no. of procurement: 212-23-2115-5-1-1, initiated by the Contracting Authority (CA) - Ministry of Local Government Administration MLGA.

2. The decision of the Contracting Authority remains in force.

3. The return of the deposited amount is allowed when the complaint is submitted, and the complaining economic operator is obliged to, in accordance with article 31 point 6 of the PRB work regulations, within a period of sixty (60) days, make a request for the return of the insurance complaint, otherwise the deposit will be consolidated and these funds will go to the Budget of the Republic of Kosova.

REASONING

On the occasion of the compilation of Decision PSH. no. 2023/0573 and 2023/582, dated 14.11.2023, a technical error was issued on the first page, and in this case the appropriate additions are made according to this Conclusion.

According to this, the final result has not changed, the CA's decision to award with the contract remains in force.

The President of the review panel, after being notified that there are technical omissions in the aforementioned decision, in accordance with Article 50 of the Law on Administrative Procedure, Law No. 05/L -031, through this conclusion corrects the omission by deciding as in the provision of this conclusion.

The President of the review panel in accordance with Article 50 of Law No. 05/L -031, as well as based on the clarifications given above decided as in the provision of this conclusion.

President of the Review Panel

Mr. Vedat Poterqoi
