



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

Psh. No.605/23
612/23

The Procurement Review Body through the Review Panel composed of Vedat Poterqoi - President, Vjosa Gradinaj Mexhuanj – çember, Isa Hasani- as a member, deciding on the complaint of the economic operator "DOCTOR EXTERMINATOR DDD" SHPK, with No. 605/23 dated 22.08.2023 as well as the complaint of the economic operator "S.V.Veterina" with No. 612/23 dated 24.08.2023 against the Decision on the cancellation of the procurement procedure of the Contracting Authority - KOSOVA POLICE in connection with the procurement activity “Disinfection, Disinsection and Extermination Services in Police facilities” with procurement number 214-22-5200-2-1-1, based on Article 105 related to Article 106 and Article 117 of the LPP, on the 01.12.2023 has issued this:

DECISION

1. Approved as partly grounded the complaint of the EO “DOCTOR EXTERMINATOR DDD SHPK, with no. 605/23 dated 22.08.2023 Decision on the cancellation of the procurement procedure of the Contracting Authority - KOSOVA POLICE for the procurement activity with title: “Disinfection, Disinsection and Extermination Services in Police facilities” with procurement number 214-22-5200-2-1-1, is cancelled, as the procurement activity returns to Re-evaluation.
2. Approved as partly grounded the complaint of the Economic operator “S.V.Veterina, with no. 612/23 dated 24.08.2023 Decision on the cancellation of the procurement procedure of the Contracting Authority - KOSOVA POLICE for the procurement activity with title: “Disinfection, Disinsection and Extermination Services in Police facilities” with procurement number 214-22-5200-2-1-1, is cancelled, as the procurement activity returns to Re-evaluation.
3. It is allowed the return of the deposited amount when the complaint is submitted, and the complaining economic operator is obliged, in accordance with Article 31 point 6 of the PRB's Work Regulations, within a period of sixty (60) days to make a request for the return of the complaint insurance, 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 10.06.2023, the Kosova Police in the capacity of the Contracting Authority has published the Contract Notice B05 related to the procurement activity with title: "Disinfection, Disinsection and Extermination Services in Police facilities" with procurement number 214-22-5200-2-1-1. While on the 10.08.2023 it published the Notice on Decision B58 through which it canceled the procurement activity.

This procurement activity was developed through an open procedure with the type of service contract and with an estimated contract value of 379,614.27 €.

On the 11.08.2023, EO "DOCTOR EXTERMINATOR DDD" SHPK submitted a request for reconsideration against the Notice on Decision B58 of the Contracting Authority. On the 15.08.2023, EO "S.V. Veterina" also submitted a request for reconsideration against the Notice on Decision B58 of the Contracting Authority.

On the 15.08.2023, the Contracting Authority has published rejected requests for reconsideration of the complaining economic operators as unfounded.

On the 22.08.2023, EO DOCTOR EXTERMINATOR DDD SH.P.K. submitted to the PRB the complaint no. 605/23, while dated 24.08.2023 EO "S.V. Veterina" submitted to the PRB the complaint no. 612/23.

-On the stage of preliminary review-

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 sub-paragraph 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.

Taking into account the fact that both complaints are related to the same procurement activity, respectively to the notification on the same decision of the Contracting Authority related to this procurement activity, it has been decided that complaint NO. 605/23 and complaint NO. 612/23 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.

The claims of the complaining economic operator "DOCTOR EXTERMINATOR DDD SH.P.K.", are presented as follows:

The complainant claims that "We, as the complaining EO, have had permission to use sulphide with 28%, until the date 21.06.2023, issued by MMPHI, where we were declared the winner of

this tender, as well as the reasoning of the CA, contradicting the reasoning of PRB's decision, because PRB says that sulfur is prohibited, while CA says that sulfur with 28% is prohibited, which both CA and PRB are wrong, because throughout at this time we, as the complaining EO, have the permit for sulphur, namely the repellent product with sulfur composition, and for this reason the import of the product was made (Decision on import permit from MESP. No. 22/2940/-1- ZSP/411 /22 Date 15.06.2022), it is worth noting that based on this decision for import permit, the product with which we won the tender was imported, while the import permit was valid until 21.06.2023, while the tender was won within the validity period of the import permit (dt. 27.04.2023 we are declared the winner), Also, the CA initially wanted to attach the official document of communication with the relevant ministry, as well as the Winning EO, the Contracting Authority we sent you an email dated 10.08.2023, to request written evidence from the relevant ministry that sulfur was not can be used in the field of DDD, but until the day of submitting the complaint, we have no answer regarding our request, that is, CA. According to the data, which are very easily verifiable, also based on the fact that ECHA (European Chemicals Agency), has never banned the use of sulfur due to DDD, but even in Kosovo, such a thing has not been banned. it is best ascertained by the document "Material Safety Data Sheet" that the complaining EO now possesses even with the continuation of the sulfur use permit, which is registered by us, before the CA and PRB take a decision. which means that sulfur has never been prohibited, nor its amount, which is now 10% according to the new permit. Further based on article 52 paragraph 1.4 of the Law on General Administrative Procedure, it is determined that the administrative act is illegal if: "it is issued in violation of the provisions that regulate the form or mandatory elements of the administrative act", which the decision of dt. 15.08.2023, in accordance with these provisions, is completely illegal, since there is no circumstance or evidence that proves that sulfur is a prohibited product, on the contrary, there is evidence that this product is actually allowed, and this fact has not been proven by the CA.

Referring to the claims as above, the Complainant "DOCTOR EXTERMINATOR DDD SH.P.K.", considers that the Contracting Authority has acted in violation of Article 1, 4, 6, 7, 9, 10, 13 of the LPP as well as Article 47 and 48 of the Law for the General Administrative Procedure, requesting from the Review Panel at the PRB that the complaint be approved as grounded and the procurement activity returned to re-evaluation.

The claims of the complaining economic operator "S.V, Veterina" are presented as follows:

The complainant claims that "CA on 24.07.2023 has accepted the Decision of PRB no. 2023/0283 where our complaint was accepted as well-founded and the CA was obliged to ask us for clarifications in accordance with Article 72 of the LPP, and from that date when the CA accepted the decision of the PRB in question, we were not addressed with official letters asked us for clarifications as required by the decision of the PRB, violating the decision in question and discriminating against us, not treating us as an interested party in this AP, even though we tendered with the cheapest price and met all the criteria of selection, as well as we have tendered in full compliance with Article 28 of the LPP, specifically Annex 1 of the FDT, by tendering and presenting the catalog of products with which the DDD will be executed in accordance with the environmental characteristics, European standards (in accordance with the European technical

approval) and in full compliance with international standards, as well as in accordance with the standards of the Republic of Kosovo which are harmonized with EU Directives and licenses which are required for the import of preparations for DDD both by MESP and by MNPDR, which regulate the field of DDD in the Republic of Kosovo. CA has not respected PRB Decision no. 2023/0283 dated: 24.07.2023, due to the fact that this decision Obliges the CA during the Re-evaluation phase to conduct research on these preparations with active substances raised in the complaint claims of the complaining EO FLOMED SHPK, and after a finding of CORRECT, if these preparations are allowed, then I will start re-evaluating the offers, otherwise cancel the PA. CA has violated the decision of PRBO no. 2023/0283 dated 24.07.2023, due to the fact that the SP has obliged the CA to ask us for clarifications in accordance with article 72 of the LPP, but the CA acted contrary to the Decision in the sentence as it did not ask for clarification at all. This procurement activity has been canceled in violation of article 59 and 62 of the LPP, due to the fact that EO FLOMED LLC is a disinterested party according to article 4 par. 1.26 of the LPP, due to the fact that from the date of the contract notice: 10.06.2022 (when it was published on the e-procurement electronic platform), EO FLOMED LLC has never requested additional clarifications according to Article 53 of the LPP, as well as a Request for Reconsideration according to Article 108/A of the LPP (Evidence: Electronic Platform), but only after the tendering - the opening minutes, which is listed as the tenderer with ordinal number 6 (six) out of a total of 7 (seven) tenderers / bidder in this procurement activity, which means that initially the RP was put astray by the external TECHNICAL Expert. Based on the evidence and facts that were mentioned above, it results that the examination, evaluation and comparison of the tenders was not done in accordance with Article 59 of the LPP and at the same time the main criterion for awarding the contract, which was the tender, was not respected. responsible with a lower price according to article 60 paragraph 1.1 of the LPP. Also, article 7 of the LPP was not respected, because we were discriminated against by not being declared the winner even though we met all the requirements of the TDS and the contract notification”.

Referring to the claims as above, Complainant S.V. Veterina, considers that the Contracting Authority has acted in violation of article 1, 2, 6, 7, 24, 52, 59, 62, 66, 67 and 72 of the LPP and article 41 and 47 of ROGPP as well as articles 47 and 48 of the Law on General Administrative Procedure, requesting the Review Panel in PRB to approve the complaint as grounded and the procurement activity to be reassessed.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 01.09.2023 has authorized the review expert to conduct the initial review of the file and claims according to complaint no. 605/23, while on 29.08.2023 the Review Panel has authorized the review expert to conduct the initial review of the dossier and claims according to complaint no. 612/23.

Regarding complaint no. 605/23 dated 11.09.2023, the review expert's report with no. 2023/0605 with the following recommendations: "*the complaint of the complaining EO is rejected as unfounded and the decision of the CA remains in force*".

Regarding complaint no. 612/23 dated 11.09.2023, the review expert's report with No. 2023/0612 with the following recommendations: *“the complaint of the complaining EO is rejected as unfounded and the decision of the CA remains in force”*.

The expertise's report has been duly accepted by all procedural parties. CA agrees with the expert's recommendations. EO "DOCTOR EXTERMINATOR DDD" SH.P.K. has stated that he does not agree with the recommendations in the review expert's report, emphasizing "because the CA canceled the tender, perhaps because we have unlicensed biocidal products, while the review expert did not consider the complaint and the facts that these biocidal products are allowed, but it was taken with the terms of the permits for their use and their quantity, which is wrong, because the competent bodies have issued permits for these products and at the time of winning the tender there were permits for larger quantities as well of sulphur, and now retroactively, opinions are being given about their prohibition, which is wrong and seriously violates the principle of legal certainty". Even EO "S.V. Veterina, has stated that it agrees with the recommendations in the review expert's report, stressing that "ESH has not responded to our complaint claims, neither in the violated provisions nor in the detailed statement of facts and arguments. ESH accepts that the technical specification is in harmony with Article 28 of the LPP, while ESH completely ignores it because we have not submitted a "Safety Data Sheet" anywhere in the offer, but refers to the claims of EO, which has made claims in the complaint of where we have evidence and facts, some PRB Decisions that in these cases EOs are disinterested parties because in these cases EOs only aim to cancel the procurement procedures because they are disinterested parties according to Article 4 par. 1.26 of the LPP..."

Regarding the case 605/23 and 612/23, a session was held on 17.11.2023, where the review panel, the review expert and the representatives of the complaining EO were present.

The representative of the EO "DOCTOR EXTERMINATOR DDD SH.P.K.", through the submission among other things, has stated that "We as the complaining EO fully stand by the complaint submitted on the 22.08.2023, as we reiterate that the Decision dated 15.08.2023 by the CA-Kosova Police.

The Department of Procurement, which completely cancels the procurement process with no.: proc: 214-22-5200-2-1-1, no. internal 214/22/078/211, regarding the tender for "Services of Disinfection, Disinsection and Deratization in Police Facilities re-evaluation", is an irregular process because it was taken in violation of the legal provisions and Article 1 , 4, 6, 7, 9 and 10 of Law no. 04/L-042 for Public Procurement. As well as article 13, 47 par.3, 48 par.1 point 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, as well as par. 2 of Article 48 of Law No. 05/L -031 For the General Administrative Procedure. The complainant EO is right about the claims raised, that all these claims in a literal analysis of the evidence and the legal basis prove the violations committed by the CA and the necessity of canceling the CA's decision".

The representative of EO "S.V.Veterina" stated in other respects that "we stand by our complaint claims as in our complaint to PRB, where the CA has violated the legal provisions as we have pointed out in our complaint to Provisions violated by the CA, since the CA on 24.07.2023 has accepted the Decision of PRB no. 2023/0283 where our complaint was accepted as grounded and

the CA was obliged to ask us for clarifications in accordance with Article 72 of the LPP, and from that date when the CA accepted the decision of the PRB in question, no official letter was addressed to us asked us for clarifications as required by the decision of the PRB, violating the decision and discriminating against us, not treating us as an interested party in this PA, despite the fact that we tendered with the cheapest price and met all the selection criteria , and we tendered in full compliance with Article 28 of the LPP, specifically Annex 1 of the TDS, by tendering and presenting the catalog of products with which the DDD will be executed in accordance with the environmental characteristics, European standards (in accordance with the European technical approval) and in full compliance with international standards, as well as compliance with the standards of the Republic of of Kosova which are harmonized with EU Directives and licenses required for the import of DDD preparations from both the Ministry of Education and the Ministry of Education and Culture, which regulate the field of DDD in the Republic of Kosova.

The representative of the CA has stated "According to the decision of the PRB with number 2023/0283 dated 24/07/2023, the Kosovo Police CA for the procurement activity entitled "Disinfection, Disinsection and Extermination Services in Police Facilities" with procurement number 214-22-5200-2-1-1 & 214/22/078/211 has taken actions in accordance with this decision where initially after the creation of the re-evaluation commission we started communications with the responsible officials of the MESP where we held meeting and it was explained to us that the EU regulations on the use of preparations with primary substances sulfur have changed and with the new regulation sulfur is not allowed to be a primary substance but it can be the last component substance with a maximum of 10.0%, you can find these in the documents attached and on this basis CA has canceled the procurement activity since the products offered by the bidding companies had the primary substance sulfur and the re-evaluation was impossible since not all EOs would have been treated the same and as a result we would have had a violation of article 7 and 59 of the LPP. It is worth noting that all EO's import permits have expired in terms of product import permits and therefore no EO can import preparations with the primary substance Sulfur that they have offered. According to the EU standards, it is not allowed to use preparations with primary substance Sulfur as they are a risk to public health.

In this regard, the Review Panel directed the CA that the Tender dossier which they have announced contains any specifics that contradict the rules in force and European regulations, because the parties have stated in their complaints that the review panel in the preliminary decision has fell astray of the technical expert, the CA declared that the Tender File does not contain any specifics which are prohibited, this was also confirmed by other parties, in addition it was declared that even if it were re-announced, the same Tender File would be published . I will clarify this task after the CA with the preliminary decisions.

- 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 as and all the evidence that has been proposed by the procedural parties.

Regarding the claims of EO "DOCTOR EXTERMINATOR DDD" LLC, the review expert through report no. 2023/0605 assessed as follows:

The expert explained that for this procurement activity, EO Doctor Exterminator was declared the winner on 27.04.2023. After the complaint to the PRB of some participating EOs in the procurement activity, a decision was made by the PSH with no. 2023/283. The CA, after clarifications received from MESP, has canceled the procurement activity as a whole.

Regarding the claim of the complaining EO that has to do with the import of the sulfur product and the CA's decision to cancel the procurement activity, the reviewing expert clarifies that the request of the tender file is: Removal of reptiles - For the performance of this service to be used one type of these devices or just granules.

1 -Vibrating Reptile Repellents Battery Operated Ground Mounted.

- Surface 300 - 400 m² for the removal of Reptiles, resistant to moisture. OR

2 -Solar devices with vibration for the expulsion of reptiles that settle on the ground.

- Area 600 - 700 m² for removal of moisture-resistant Reptiles.

3 - Ecological repellent preparations such as granules for the removal of reptiles with optimal effectiveness.

For issues of their security in relation to the origin of the tender products and the permit for use in RK, they must also present the import permit of the products issued by the Ministry of Space Environment in RK.

As for the part of the claim of the complaining EO that has to do with the import of biocidal products and the clarification of whether the products are prohibited according to the list of MESP officials, the reviewing expert assesses that CA officials have clarified through official communication with MESP officials that the products according to the "Material Safety Data Sheet" with no. ID 875-25b have changed in the content of dangerous components and that the percentages allowed are now significantly lower than with the import permit that EO participating in the procurement activity have in their possession. The complaining EO in its offer has offered a product with a sulfur content of 28%, while with the rules explained above, this content has dropped to 10%.

It is worth noting that the contents of the products or the "Safety Data Sheet" for the products offered by the EO participating in the procurement activity were not requested in the tender file. The reviewing expert after the administration of the evidence, the tender dossier, the complaints of the EO since the initiation of the procurement activity, the decisions of the RP assesses that it is important to reveal the fact that this procurement activity was announced on 10.06.2022. Since this period, there have been changes in the regulations applied to the products used by EOs as part of the procurement activity. Taking into account the contents of the products and their danger to public health, the review expert highlights the fact that the EO participating in this

procurement activity has been required to possess a license for the import of these products. But, based on the fact that a relatively long time has passed and that the EO part of the procurement activity all have one or all expired licenses and the clarifications of the MESP official that the content of the biocidal products part of the license will change in accordance with the new regulations in force and that any licensing will be done with the rules that have changed, the reviewing expert estimates that the CA more correctly assessed that public health is expressed and that any re-evaluation of the offers at this stage will not be able to be done in accordance with the LPP - in Article 7 Ba a ia in aj im/J Di k imi i i i i, Article 59 k amini i i, le imi d K a a imi i en e e e, as well as RRPP 001/2022 Article 4 Administration general procurement procedures. The continuation of the import permit, which now changes significantly in content, contradicts article 59 paragraph 2 of the LPP- se Aut ite i o tra tu s u d t q e h m t e r o e n a n e t n er es e t e g

do n a a e tet e te d t t e t, n e e e q e t e h t e a n, er e i o e a a i i te d e e. n e n h m at al he a n e a e t i e erit n k d h t t e r o en ose o en n a tor eti o tra u s ose e o en n a e te erue. As well as the delivery of the continuation of the import permit from all the EO part of the procurement activity would conflict with article 72 paragraph 3 of the LPP. Providing missing information or providing information will be applied only to documents whose existence is fixed, before the deadline for submitting tenders and may be verified objectively. In conclusion, the review expert assesses that the claim of the complaining EO is not grounded.

According to the above, the expert handled in a professional and objective manner all the claims of the complaining economic operator DOCTOR EXTERMINATOR DDD SH.P.K. The argumentation in the review expert's report is quite detailed, understandable and fully based on the relevant documents that refer to the procurement activity. The findings in the review expert's report can be confirmed through the tender file as well as the documents with which the tenderers have offered. Moreover, the findings of the expert are also based on the relevant provisions of the LPP and RRPP. Consequently, the Review Panel regarding the claims of the complaining economic operator "DOCTOR EXTERMINATOR DDD SH.P.K.", has given full confidence to the expert's report. In this case, the Review Panel has also taken into consideration the responses of the complaining EO regarding the expert's report. In this way, it has been found that the claims of the complaining economic operator DOCTOR EXTERMINATOR DDD SH.P.K. are unfounded.

Regarding the claims of the complaining economic operator S.V. Veterina, the examining expert through report no. 2023/0612 estimated that:

Regarding the claim of the complaining EO that has to do with the clarifications that the CA is obliged to make for preparations with active substances and the decision of the PSH with no. 2023/0283, the reviewing expert clarifies that the request of the technical specification part of the tender file was: Removal of reptiles - To perform this service, one type of these devices or only granules should be used.

1 -Vibrating Reptile Repellents Battery Operated Ground Mounted.

- Surface 300 - 400 m² for the removal of Reptiles, resistant to moisture. OR

2 -Solar devices with vibration for the expulsion of reptiles that settle on the ground.

- Area 600 - 700 m2 for removal of moisture-resistant Reptiles.

3 - Ecological repellent preparations such as granules for the removal of reptiles with optimal effectiveness.

For issues of their security in relation to the origin of the tender products and the permit for use in RK, they must also present the import permit of the products issued by the Ministry of Space Environment in RK.

The claim of the complaining EO that the CA was obliged to seek clarifications from the EO as part of the procurement activity is partially sustainable because the decision of the RP obliges it to conduct research on these preparations with active substances raised in the complaint 2023/0283 but not necessarily with the EO, part of the procedure which the CA has done with the officials for biocidal products at the MESP. As for the part of the claim where the complaining EO refers to Annex 1 of the tender dossier "An equivalent preparation with the same effect is also allowed for use", the reviewing expert explains that the part of the technical specification for "removal of reptiles" does not have the sentence that refers to the complaining EO. However, the same are based on LPP article 28 paragraph 7. Regarding the part of the claim that EO Flomed is a non-interested party according to Article 4 paragraph 1.26 of the LPP, the reviewing expert explains that this claim does not hold because before the complaint is accepted for review, an assessment is made as to whether the complaining EO is an interested party and then the complaint is examined. The fact that the EO's complaint was reviewed and decided by the SHP proves that the complaining party is an interested party according to article 4 paragraph 1.26 of the LPP. The claim of the complaining EO regarding the preparations submitted with its offer and the justification that the preparations it submitted are ecological based on the catalog of the complaining EO AND The function is only to keep reptiles (such as snakes) away from the treated area without being harmful to them, the environment and other animals." Based on the "Safety Data Sheet" of the product, the dangerousness of the product is classified as H317 and H412, which with regulation No. 1272/2008 of the European Parliament defines it as "harmful to aquatic organisms with permanent effects" Therefore this claim is partially based. It is worth noting that the contents of the products or the "Safety Data Sheet" for the products offered by the EO participating in the procurement activity were not requested in the tender file. As for the complaining claim of the complaining EO that is related to the part where it refers to the preparation of sulfur and the statement that the same is allowed up to 28%, it does not stand because this was clarified through the communication of the CA and the officials of the MESP where based on as a rule, sulfur content is not allowed with a higher percentage. It is worth noting that the complaining EO in his claim mentions "since we assure the CA that our preparations are as presented in the catalog, but also in the case of use, we can present the Safety Data Sheet and license for their import" The examining expert after the administration of the evidence, the tender file, the complaints of the EO since the initiation of the procurement activity, the decisions of the PSH assesses that it is important to disclose the fact that this procurement activity was announced on 10.06.2022. Since this period, there have been changes in the regulations applied to the products used by EOs as part of the procurement activity. The CA has sent you to the MESP with the request for clarification on the import of biocidal

products, which the official for biocidal products clarifies through the technical safety list, which also specifies the percentages allowed for import. It can be seen from the list that the percentages have changed and the allowed content is now significantly smaller than before. Taking into account the contents of the products and their risk to public health, the examining expert highlights the fact that the EO participating in this procurement activity has a license for the import of these products. But based on the fact that a relatively long time has passed and that the EO part of the procurement activity all have one or all expired licenses and the clarifications of the MESP official that the content of biocidal products part of the license will change in accordance with the new regulations in force and that any licensing will be done with amended rules as well as any completion of documents in the case of serial licensing of EOs at this stage of the procurement activity would be done in violation of Article 72 Additional documentation and information, paragraph 3 of the LPP, the reviewing expert assesses that the CA has more correctly assessed that public health comes into play and that any re-evaluation of the offers at this stage will not be possible in accordance with the LPP - in Article 7 Ba a ia në aj im/ J Di k imi i i, Neni 59 k amini i, le ë imi d e K a a imi i en e ë e, si dhe RRPP 001/2022 Article 4 General administration of procurement procedures.

- Findings of the Review Panel —

The panel concluded that there are no elements to prevent the conflict of interest, as required in the sense of Article 11 of the Regulation on the Work of the PRB, therefore it further analyzed all the documents of this matter, including all the acts and actions of the parties and considered that there it is necessary to schedule a public session with the parties held on 17.11.2023 as provided by paragraph 2, article 24 of the cited Regulation, in order to objectively and fairly examine the case. In this case (in application of the adversarial principle), the complaining claims, actions and acts of the CA have been analyzed, including the explanations of the examining expert, and all of them, in addition to the comprehensive administration of the evidence and those brought to the hearing by both parties, offer sufficient data to decide on the merits.

The Review Panel, analyzing the documents of this case and the actions taken by the parties, the statements of the parties in the process, considers that the findings of the review expert and his opinion are not acceptable on the part of this Panel, because the review expert has not does not meet the requirements of the Tender Dossier at all and has not reflected any evidence or consistent arguments about its findings.

The Review Panel considers that, based on the analysis of the facts/evidence documented in the e-procurement electronic platform, the flow and analysis of the procurement procedure, related to this procurement activity, regarding the complaint claim that has to do with the import of the product sulphide and the CA's decision to cancel the procurement activity, the Review Panel clarifies that the request of the tender file is: "Removal of reptiles - To perform this service, one type of these devices or only granules should be used. 1 - Vibrating devices for the expulsion of reptiles with batteries that are placed on the ground. - Surface 300 - 400 m2 for the removal of Reptiles, resistant to moisture. or 2 -Solar devices with vibration for the expulsion of reptiles that settle on the ground. - Area 600 - 700 m2 for the removal of moisture resistant Reptiles3 -

Ecological repellent preparations such as granules for the removal of reptiles with optimal effectiveness", referring to Annex 1 of the tender file "An equivalent preparation with the same effect is also allowed for use" the part of the technical specification for "removal of reptiles" the same are based on article 28 paragraph 7 of the LPP, as this was also established in the hearing session, where the CA, the parties in the complaint and the examining expert clarified that the technical specifications are in accordance with the legal provisions of article 28 of the LPP. It is also worth noting that the tender file did not request the content of the products or the "Safety Data Sheet" for the products offered by the EO participating in the procurement activity, taking into account the contents of the products and their risk to public health due to the fact that EO participating in this procurement activity is required to possess a license for the import of these products. For issues of their security in relation to the origin of tender products and permission for use in RKS, must also present the product import permit issued by the Ministry of Space Environment in the Republic of Kosovo. As for the part of the claim of the complaining EO that has to do with the import of biocidal products and the clarification of whether the products are prohibited according to the list of MESP officials, where the CA in the case of re-evaluation through official communication with the MESP officials of the products according to the "Material Safety Data Sheet" with no. ID 875-25b have changed in the content of dangerous components and that the percentages allowed are now significantly lower than with the import permit that the EO participating in the procurement activity have in their possession. The complaining EO "DOCTOR EXTERMINATOR DDD SH.P.K."- Prishtina in its offer has offered a product with a sulfur content of 28%, as according to the Decision for import permit from MMPHI No. 22/2940/-1-ZSP/411/22 Date 15.06 .2022), it is worth noting that based on this decision for import permit, the import of the product was made, and also from the e-mail of the MMPHI official, it is not stated that preparations with sulfur active substance are prohibited, MMPHI has also given permission to import EO therefore the claim of the complaining EO is partially based. Also, the CA must prove this correctly and argue the letter of MMPHI because even for the review panel there is a contradiction between the letter of MMPHI and the continuation of licenses by this institution itself. therefore, the AK - Police of Kosovo, in the case of the re-evaluation, is obliged to ascertain precisely through the appropriate evaluation commission whether these preparations are allowed to be used and whether these EOs are licensed by the competent institutions through permits for these products, since in this procurement activity it is requested that they possess a license for the import of these products.

The review panel related to the claim of the complaining EO "S.V. Veterina" in its offer did not offer products with sulfur content, this was clarified in the hearing before the review panel by the parties (contracting authority, review expert and complaining EO). It should be noted that in the tender file the content of the products or the "Safety Data Sheet" for the products offered by the EO participating in the procurement activity was not requested, as well as nowhere in the official letter with the officials of MESP is it established/argued that these products offered by this EO are not allowed to be used in the Republic of Kosovo, and it is also important to disclose the fact that this procurement activity was announced on 10.06.2022, and at the time of tendering by the EO participating in this procurement activity had licenses valid (with a valid term) and the economic operators during the hearing confirmed that they have continued the licenses from the competent institutions and as evidence they submitted via e-mail as material evidence for the

review panel(which were continued by the competent institutions from EO Safet Osmani BI (SV Veterina) - Permit for the performance of DDD services from the Department of Agricultural and Trade policies with no. 04.5-54/23 continued from 20.01.2023. License of MMPHI for import of biocidal products with No. 22/226/-1-ZSP continued from date: 17.07.2023), therefore the claim of the complaining EO is considered based on this point.

The Review Panel considers that the procurement activity in this case should be subject to the re-evaluation process in order to fulfill the primary goals of the LPP, as they are sanctioned by Article 1 of the cited Law, evaluating the circumstances and arguments presented by the parties, the panel failed to find full support in the review expert's report, therefore the Review Panel comes to the conclusion that the examination, evaluation and comparison of the tenders was not done in full compliance with the legal provisions of Article 59 of the LPP, and was canceled in violation of paragraphs of article 62 of the LPP, which states: 1. *The contracting authority must end that procurement activity which will not result in the award of the contract only for one of the reasons: 1.1. a violation of the current law has occurred or will occur in the procurement procedure, which cannot be regulated or prevented through a legal amendment of the procurement conditions, including cases where a provision of this law requires the cancellation of the procurement activity* ", also the CA did not act in accordance with Article 43.5 of Regulation no. 001/2022 for Public Procurement, I am quoting: - The procurement procedure after the opening of bids must be canceled for one of the following reasons: a. no tender was submitted within the specified deadline; b. none of the accepted tenders is responsive;" .

Also, the Review Panel considers that EO "S.V. Veterina" was eliminated on the grounds that it did not fulfill the request of the Ministry of Health, as regards the references which are not signed and not sealed and some contracts of the workers, the articles contain errors and are contradictory to each other. Regarding the fact that it was not a request of the Tender File that these references be signed and sealed. Based on the fact that any document that is issued by one party to the other party in physical form in order for that document to be acceptable must at least be signed by the party that issues it, this is not sustainable, but based on the fact that this procurement activity turns into a re-evaluation, then, from this point of view, the PSH gives the right to the complainant since the EO has the workers as workers of his company and the references are issued after a contract or activity carried out earlier, so that these completed works can be verified through additional clarifications and this should be done in the re-evaluation phase and in accordance with article 59.2 and 72 of the LPP, since these evidences and facts were also presented before the review panel by presenting the list of workers issued by EDI, the TAK declaration, which proves and argues that the workers presented in the list in the case of tendering in this procurement activity are workers for whom there is a declaration in TAK and are workers of the economic operator EO "S.V.Veterina".

In other words, the Review Panel considers that the CA has not properly re-evaluated, examined and compared the offers of the economic operators participating in this procurement activity, and has not respected Article 7 paragraph 2 of the LPP, I quote: "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 to the detriment or benefit of one or more

economic operators" as well as article 59 par. 4 of the LPP, I am quoting: "The contracting authority will consider a tender as responsible only if the tender in question is in compliance with all the requirements set forth in the contract notice and in the tender file", fully complying with the criteria legal issues related to the requirements of the contract notification and the tender file respecting the award criteria, the responsible tender with the lowest price, and at the same time Article 60 of the LPP was not respected. Therefore, the panel takes into account the sensitive nature of this activity and considers that this activity should be re-evaluated again since according to preliminary decision No. 2023/0283, 2023/292 of dt: 24.07.2023, no evaluation commission had been established at all, therefore, in order to confirm the right, the panel decided as in the provision of this decision.

The Review Panel clarifies that the contracting authorities are obliged to ensure that public funds and public resources are used in the most economical way, simultaneously taking into consideration the purpose and subject of the procurement, as provided in Article 6 of the LPP, the contracting authority this should also be considered in Article 1 of the LPP, since it is known that the purpose of this law is to ensure the most efficient, transparent and fair way of using public funds and resources.

The Review Panel asks the CA to be attentive during public procurement procedures in the future, strictly respecting the Law on Public Procurement and the applicable rules, and also orders them to act in harmony with the recommendations given in this decision, otherwise the Procurement Review Body from the framework of the Review Panels, has the right to request the undertaking of disciplinary measures against the responsible procurement officials.

After analyzing the above-mentioned documents which were available to the Review Panel, such as: Complaints of the complaining EOs, reports of the review expert, the decision of the PSH. No. 2023/0283, 2023/292 of dt: 24.07.2023, as well as taking as a basis the legal provisions of the LPP, it is well known that the decisions of the PRB are binding for the contracting authority and all parties in the procedure and that against decisions of the PRB, the parties can appeal to the competent court within the legal term with regular legal means, in accordance with the legal advice given in this decision. Also, it is worth noting that the CA did not clearly understand the preliminary decisions on this matter, because their explicit duty was to prove that the Dossier contains elements/specifications that are contrary to the regulations in force and EU regulations. Where in the held session they declared that the Tender dossier is in order. So for the review panel, this contradicts article 62 of the LPP.

- Conclusion -

The review panel considers that the complaining assertions are well-founded, as explained above, while the CA did not act in accordance with the provisions of Article 1, 6, 7, 59 and 62 of the LPP. The return of a procurement activity to re-evaluation, with disputed facts and evidence and/or legal basis, is in harmony with Article 1 of the LPP, according to which, the purpose of this Law is, among other things, cited: "...to ensure the integrity and responsibility of public officials, civil servants and other persons who perform or are involved in a procurement activity by requesting that the decisions of such individuals and the legal and factual basis for such

decisions are not influenced by personal interests, to be characterized by non-discrimination and a high degree of transparency and to be in accordance with the procedural and essential requirements of this law"

Therefore, from the above, the review panel in accordance with article 117 of the LPP decided as in the provision of this decision.

President of the Review Panel

Mr.Vedat Poterqoi

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 – **KOSOVA POLICE;**

1x1 EO – **“DOCTOR EXTERMINATOR DDD SH.P.K., S.V.,Veterina”;**

1x1 Archive of the PRB;

1x1 For publication on the website of the PRB.