



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

Psh. No.871/23

The Review Panel, appointed by the President of PRB, based on Article 105, 106, and 117 of the Law on Public Procurement of the Republic of Kosova (LPP) composed by Vedat Poterqoi - President, Isa Hasani – member, Vjosa Gradinaj Mexhuani – member, deciding according to the complaint of the Economic operator (EO) “Sabit Makiqi”, against the Decision on contract award of the KOSOVA POLICE in the capacity of the Contracting Authority (CA) related to the procurement activity “SUPPLY OF SHOES FOR THE KOSOVA POLICE – Re-tender” with procurement number 214-23-7137-1-1-1, on the 01/02/2024 has issued this:

DECISION

1. Refused, as ungrounded the complaint of EO “Sabit Makiqi” with no.2023/871 of the 06/11/2023, while the decision of CA- KOSOVA POLICE regarding with the procurement activity “SUPPLY OF SHOES FOR THE KOSOVA POLICE – Re-tender” with procurement number 214-23-7137-1-1-1 remains in force.
2. Within a period of 10 days, the CA must inform the PRB about all the actions taken regarding this procurement activity, otherwise, the PRB has the right to take measures against the CA for non-compliance with the decision as provided by the provisions of the article 131 of the LPP.
3. In accordance with Article 31 paragraph 5 of the Rules of Procedure of the PRB, the funds deposited in the name of the appeal fee are confiscated and the same are transferred to the Budget of the Republic of Kosova.

REASONING

- Procedural facts and circumstances -

KOSOVA POLICE, in the capacity of the contracting authority on the 20.07.2023, has published the Contract Notice related to the procurement activity entitled: “Supply of shoes for the Kosova

Police" with procurement number 214-23-7137-1-1 -1. While on the 17.10.2023 he published B58 Notice on the decision of the Contracting Authority.

The contracting authority has implemented an open procedure, the type of supply contract and the estimated value of the contract 1,240,860.00 €.

On the 23.10.2023, the complaining EO made a request for reconsideration of the aforementioned decision of the CA, while on the 26.10.2023 the KOSOVA POLICE rejected as unfounded the request for reconsideration of the Economic Operator.

On the 06.11.2023 PRB has received the complaint from EO Sabit Makiqi B.I, with protocol number 871/2023, regarding the procurement activity "Supply of shoes for the Kosova Police" with procurement number 23-7137-1-1-1.

-On the preliminary review stage-

The Review Panel has concluded that the complaint contains all the elements defined through Article 111 of the LPP and as such was submitted within the legal term in accordance with Article 109 paragraph 1 of the LPP after the preliminary procedure for choosing the dispute in the sense of Article 108/A of the LPP, from the economic operator who is an interested party according to article 4 paragraph 1 under paragraph 26 of the LPP. In this way, the Review Panel has concluded that it is competent to review this complaint according to Article 105 of the LPP and there is no procedural obstacle to proceed with review the complaint in a meritorious manner.

The claims of the complaining economic operator EO Sabit Makiqi B.I are presented as follows:

Claim The complainant claims that "As the first point of elimination according to the CA is that: EO has brought the list of contracts in the offer, which in content had other items besides the same or similar nature. On the 26.09.2023, we sent a Standard Letter where we asked you to provide us with clarifications according to the classification code. EO dated 02.10.2023 responded within the deadline but failed to provide sufficient evidence. The value offered by EO does not cover the value of contracts from the List of Contracts offered on the day of bidding. In the clarifications given on the 02.10.2023, the EO declares a certain value, which says from private sales, but that in the list of contracts on the day of bidding, they are not found and cannot be accepted because it would be considered a material change, and that from those the sale has no references, but only the bank's balance, which was not a criterion in the TD and Contract Notice, so it does not meet the criteria.; we clarify that these findings do not hold since similar references were requested in the Tender File: Requirement 5: The economic operator for Part 1 must provide evidence that it has successfully completed contracts of the same or similar nature for 3 (three) years the last (from the date of publication of the contract notice) in the minimum value of €1,500,000.00. Our company has provided a list of contracts and references for supplies related to uniforms, which is a similar supply to any authority that announces supplies of uniforms (uniform has a complete meaning, i.e. clothing) which fall under it. shoes, boots, helmets and gloves are similar supplies. In the list of references, we have proven to you that we have similar supplies of €3,516,702.80 where every tender that was announced by the CA of

Kosova, the shoes were announced with uniforms and we have all similar supplies as requested in the tender dossier over 3,516,702.80. so all the tenders are in uniforms, and Uniform means from the head to the shoes it is called uniform - clothing. See the list of references.

Also, we have proven to you in the clarification dated 28.09.2023 that 717.162.00 euros we have the same supplies of shoes with the Contracting Authority in all the Contracting Authorities of Kosova, while 1,200.000.00 € with private companies, all of this is proven by payment slips as proof and CA of the Kosovo Police, we have proved it with bank circulation. The Kosova Police CA should evaluate the references based on Article 59 of the LPP and Article 69, as similar references were requested in the tender file and we submitted similar references. As for the evaluation commission's information, we have 10 stores in all of Kosova with the supply of shoes, the CA of the Kosova Police knows this very well, but this is being done on purpose, you can visit all our shoe stores in the future.

The second claim (II): The complainant claims that "another point of elimination according to the CA that: It was requested that the front part of the shoe be 1.2 -1.5 cm, the EO has brought 1 cm the front part of the sole does not stand the finding of of the CA, of the evaluation committee after after in the presence of the procurement worker Mrs. Vatovci Mr. the procurement we measured the front of the sole, which according to the measurement we made is 1.2 cm, that is, it matches our measurements with the measurements that are in the laboratory test, 1.2 cm based on these measurements that we have made and that we are testifying to you with photos you can ascertain that our company "Sabit Makiqi B.I. A&V Collection NP" fulfills the technical specification of the tender dossier. Look at the picture: We have also addressed the manufacturer with this reason for elimination and the manufacturer has sent us the professional measurements with NONJUS. See the photo Page 9 of 15 Our company is asking the PRB expert and the PRB Board as it can be seen that our shoe meets the specifications based on the size of the shoe is 1.3 cm and the measurement is made with NONJUS and not with a meter like that was measured by the evaluation commission, then we ask the expert and the panel to send them for measurement to a licensed State Institute of measurements and not to eliminate those who have nothing to do with shoes, because such an elimination is an insult to the manufacturing company. Also, we can confirm that the evaluation commission and the procurement office, with such baseless justifications and in complete opposition to the procurement law and in opposition to the laboratory measurements, are trying to deliberately eliminate us from the competition and deliberately harm our company. to realize their goals with their own companies. The CA - Also in this claim, they were not realistic in rejecting the request for reconsideration, as you, as an expert, clearly notice that the threshold is 1.2-1.5, but this was done intentionally by the CA".

The third claim (III): The complainant claims that "another point of elimination according to the CA is that: The length of the shoe laces must be 80 to 100 cm, the EO brought it to 78 cm, therefore the EO is considered irresponsible, the finding of the CA does not stand - that of the evaluation committee in the presence of the procurement worker Ms. Vatovci Mr. procurement, we measured the length of Page 10 of 15 the connector is according to the specifications of the tender file 80 cm, see the attached photo, this is also proven by the laboratory certificate with number No. 107NA/31.08.2023 r. Look at the photo that we measured in the presence of EO.

Based on these findings, as a company, I can conclude that the evaluation commission and the procurement office acted in opposition to the laboratory first, but they are also contrary to Article 28 of the LPP_se since the standards are defined, which are already required in Article 28 of the LPP_se European standards or the standards of the goods that have been requested in the tender file and the manufacturer has made the laces according to the standards that were requested that we as a company have completed the length of the laces. Our claims for recommended EO for contracts. The CA even against the facts issued by the laboratory (the certificate that was attached to the offer) that we offered you in the request for reconsideration, the CA still remained close to the reasons for elimination without any justification for the finder of the it was done in the laboratory. We ask the PRB to send any laboratory to do the measurement or ask the laboratory".

Fourth Claim (IV): The Complainant Claims that "In the flyer of EO Solid shpk that is recommended for the contract, the flyer that we found in the shoe sample does not comply with the technical specification required in the tender dossier based on Page 11 of 15 of this, the evaluation commission is seen to have been subjective in evaluating the offers. Our company can conclude that the EO recommended for the contract, the sample it submitted contradicted itself and the technical specification of the tender dossier after writing in the maintenance leaflet and the shoe sample it submitted says the EN 347 standard, which does not have the EN 347 standard, but in the tender file, standard 20347 is requested, so in a word, it is self-contradiction and technical specifications. See the tender dossier: 1. The ENISO 20347 standard must be proven with an inspection sheet or a test report. See the chemical top standard in the photo of the leaflet. of the company Solid Shpk."

Fifth Claim (V): The Complainant Claims that "During approaches to the offers of EO Solid shpk, the shoelace that we measured in the presence of Mrs. Satovci is 101 cm long, while our company Sabit Makiqi B.I A&V Collection unfairly eliminates us by openly discriminating against us and in violation of the LPP as it is seen that we have an 80 cm lace according to the specifications of the tender file, while the recommended EO has 101 It's against the technical specifications and I don't eliminate it".

Sixth Claim (IV): The Complainant Claims that: "Also, we suspect that there is no supporting certificate submitted that was requested in the tender file as we were not given access to view the certificates, which is a violation of Article 10 of the LPP as the certificates cannot be considered a business secret because it is a technical specification that falls under Article 11, which says that only documents related to Article 68 and 69 can be considered a business secret. For this reason, we ask the evaluation committee or the expert who will examine the matter to look at the certificates for the connectors, because it was a criterion to have a certificate for waterproof connections! and this Laboratory on the official website No. LT004 of the laboratory does not have an accredited standard. Page 13 of 15 Based on the requirement of the technical specification for water-resistant shoes, the Laboratory in question does not have accreditation for the following tests; Resistant to water, not even to the ENISO 20347 standard. Where can you see on the official website of Loblaborit LT-004 Where this laboratory itself has very clearly documented that the Certificates it carried out for Leather and Shoes from serial number number

56 to page 92 are nowhere to be found. it does not appear that this librarian is not accredited for these standards. Standards against water and for the standard EN ISO 20347 is not accredited MAK-CONTROL. As requested in the specification of the DT, the main criteria of each one was: Shoes with laces Derby model with low level, with ventilation system and water resistant wrapped with TPU - PUR (Thermoplastic Polyurethane) layer or equivalent antistatic, black color. The length of the shoe laces must be 80 to 100 cm and be water resistant. We ask the re-evaluation commission or the review expert to see if he has submitted the certificates for the shoes, the laces as requested in the tender file, I see if the certification laboratory is accredited, according to the standards, does the laboratory have an accreditation certificate because we think it has manipulated the certificates and the certificates should be verified because we have doubts that the certificates were taken in North Macedonia and this laboratory does not meet the accredited water resistance standard and not Shoes must provide protection according to the accredited ENISO 20347 standard, evidence of Laboratory certificate No. LT-004. Look at the accreditation certificate of the Laboratory: MAKKONTROL evidence page 56- to 92 for Leather and shoes".

Seventh Claim (VII): The Complainant Claims that "As can be seen above, the CA has illegally recommended this procurement activity since we have met all the requirements of the CA established in the CN and TD, so we have offered with a tender responsible and with the lowest price. With this action, the CA has violated Article 1 of the LPP, which states that: the decisions of the CAs should not be influenced by personal interests, should be characterized by non-discrimination and a high degree of transparency, and should be compliance with the procedural and essential requirements of this law. The contracting authority in this procurement activity did not consider article 1 of the LPP, as it is known that the purpose of this law is to ensure the most efficient, transparent and fair way of using public funds, public resources as well as all funds and other resources of the contracting authorities in Kosova. It is also clearly seen that CA has violated Article 7 of the LPP, where in point 1 it is stated that: The contracting authority Page 14 of 15 will treat the economic operators equally and non-discriminatory and will act transparently. As in point 2 it is stated: 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. CA has not evaluated equally all EOs who have applied in this procurement activity. The CA for this procurement activity: the examination, evaluation and comparison of tenders did not comply with article 59 of the LPP and at the same time did not respect article 60 of the LPP, the main criterion for awarding the contract was: Responsible tender with The lowest price, where we have offered with the responsible tender and with the lowest price. So we have submitted a tender which is in compliance with all the requirements set forth in the notice for contracts and tender files and with the lowest price. We believe that we have elaborated more than necessary the violations of the CA in this procurement activity, therefore, we ask the CA to strictly respect the legal provisions that are in force and to respect its own requirements that it has set in the CN and TD Regarding this procurement and issue activity:".

Ninth Claim (VIII): The Complainant Claims that "We ask the re-evaluation commission to look at the offer of Solidi shpk to see if it has met the criteria of the tender file since we were not given

access to the entire offer: 1. We do not know if it has met the references that has been requested in the last three years of 1,000,000.00 € 2. Are the ISO 9001:2015 and ENISO 14001:2015 certificates valid? Page 15 of 15 3. The ENISO 20347 Laboratory certificate in our claims for The recommended EO Solid shpk has not responded at all, this clearly shows that they had personal interests with the recommended company even though there were many claims”.

Referring to the claims as above, EO "Sabit Makiqi" B.I considers that the Contracting Authority has acted contrary to article 6, 7, 10, 11, 59, 60 and 69 of the LPP by asking the Review Panel in PRB to approve complaint as grounded, cancel the notification on the CA's decision and return the procurement activity to re-evaluation.

Relying on article 111 paragraph 5 related to articles 113 and 114 of the LPP, the Review Panel dated 10/11/2023 has authorized the review expert to conduct the initial review of the file and claims according to complaint no. 871/23, while on 21/11/2023 the review expert's report with no. 2023/0871 with the following recommendations: "Based on the above-mentioned clarifications, the review expert proposes to the review panel that the complaining EO be approved as grounded, the contract award notice be canceled and recommends that the matter be reassessed”.

The expertise’s report has been duly accepted by all procedural parties. CA- KOSOVA POLICE, has stated that it does not agree with the opinion of the examining expert, stressing”

The contracting author KP does not agree with the opinion of the review expert 2023/871, since they did not handle the material according to the LPP and Regulation 01/2022. CA strongly opposes the expertise, the expert in his expertise is biased and unprofessional, on which the complaining EO has been eliminated.

None of the clarifications of the technical expert are valid since he did not assess according to the request of the CA according to the contract notice and the TDS. The complaining EO is irresponsible as it has not fulfilled the requirements in the TD and in the contract notice.

In the list of contracts of the complaining EO, there are no contracts realized according to the request in the TD and in the notification for contracts, since the references provided do not meet the required value. In the contracts executed by the complaining EO, there are contracts related to the supply of fire-resistant uniforms (including jackets, trousers, under hats, gloves and boots) and not shoes, since the code of the Public Procurement Dictionary is 19300000-9 related to shoes - Leather, leather products and shoes, including boots and other products related to leather. The uniform cannot be similar as the expert claims in his expertise.

The code of the procurement vocabulary that proves that the uniform cannot be similar to the contract that the complaining EO has with the Emergency Management Agency since these contracts have the procurement dictionary 18115100-9 firefighter uniforms. The reasons for the elimination of the complaining EO can be found below.

SabitMakiqiB.I., 9/A, MULLAIDRIZ GJILANI, -, PRISHTINA, Kosova Part 1

EO failed in: Requirements on technical and/or professional opportunities

Requirement 5: The economic operator for Part 1 must provide evidence that it has successfully completed contracts of the same or similar nature for the last 3 (three) years (from the date of publication of the contract notice) with a minimum value of 1,500,000.00 €.

Evidence 5: The Economic Operator must provide a list of contracts concluded during the last three years from the date of publication of the project, signed and sealed by the Economic Operator, evidenced by references or receipts in copies signed and stamped by the relevant public authority or private.

Remarks; No contract will be considered if there is not attached a positive reference for the performance of supplies or reports of receipts of supplies, when the supply is made for a public or private authority in Kosovo or in another country, receipts must be submitted for proof or references (in references the value of the supplies should be mentioned) issued by such authority.

EO has brought the list of contracts in the offer, which in content had other articles besides the same or similar nature.

On the 26.09.2023, we sent you a standard letter where we asked you to provide us with clarifications according to the classification code. EO dated 02.10.2023 was answered by Brenda. deadline but failed to provide sufficient evidence. The value offered by EO does not cover the value of contracts from the List of Contracts offered on the day of bidding. In the clarifications given on 02.10.2023, the EO declares a certain value, which it says is from private sales, but which is not found in the list of contracts on the day of bidding and cannot be accepted because it would be considered a material change, and from those the sale has no references, but only the bank's condition, which was not a criterion in the TD and Contract Notice, so it does not meet the criterion.

EO also failed on Annex 1 Technical Specifications

It was requested that the front part of the sole be 1.2-1.5 cm, OE has brought 1 cm of the front part of the sole

The length of shoe laces should be 80 to 100 cm, EO has brought 78 cm

Therefore, EO is considered irresponsible

We will present all these objections, also by e-mail to the PRB as well as in the final session which we request to be held and present all the facts, we will reflect all this with documents that the complaining EO has provided together with the financial offer”.

Meanwhile, EO Sabit Makiqi has stated that he agrees with the review expert's opinion.

The panel found 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 PRB, related to paragraph 1.75, Article 4 of the LPP and at the same time analyzed all the documents of this subject, including all the acts and actions of the parties and considered that there is no need to convene a hearing with the parties, as long as the submissions of the parties and their actions constitute a sufficient basis to decide on the merits as provided for in paragraph 1 of Article 24 of the Work Regulations of

PRB, and that there is no need to request the contracting authority and/or the complainant to provide additional information and/or explanations, in the sense of paragraph 3, article 116 of the LPP.

-Administration and evaluation of evidence -

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

Regarding the claims of EO Sabit Makiqi, the review expert through report no. 2023/0871 assessed as follows:

The first complaining claim (I) is based on the fact that: "The first complaining claim is about the reason for the elimination of the complaining EO, where according to the CA the same has failed to fulfill the required value of 1,500,000 € of the contract of a similar nature since according to the CA in the standard letter for elimination: "EO has brought the list of contracts in the offer, which in content had other items besides the same or similar nature." The complaining EO claims that it meets and exceeds the requirements of the tender file. We clarify that the decisive requirement in the tender file was as follows: "Requirement 5: The economic operator for Part 1 must provide evidence that it has successfully completed contracts of the same or similar nature for the last 3 (three) years (from the date of publication of the contract notice) in the minimum value of 1,500,000.00. €". After analyzing the offer of the complaining EO, we found that the same one from the list of contracts it offered where it listed 9 contracts, with only 3 contracts from this list meets and exceeds the request of the file for contracts of a similar nature. For these contracts, EO has provided positive references from the relevant authority. Evidence: reference worth €657,289.80 for "Supply of Work Uniforms and Shoes for Firefighters from the Emergency Management Agency." Proof: reference worth 1,134,364.00 euros for "Supply of Uniforms and Protective Helmets for Firefighters. Part (Lot) 1 Supply of Fire Protection Uniforms (Fire Resistant Jackets, Fire Resistant Boots, Fire Resistant Boots, Fire Resistant Hats, Fire Resistant Gloves), from the Emergency Management Agency. Evidence: reference 1.181.480 for "Supply of sports uniforms for the needs of the KSF divided into two parts - Lot 2"Supply of sports sneakers for the needs of the KSF [1]" from the MINISTRY OF DEFENSE. The expert's opinion is that only with these three contracts is the request of the CA fulfilled and exceeded. The CA's reasoning that "the EO brought the list of contracts to the offer, which contained other items besides the same or similar nature" is not in accordance with the terms of the tender, since in the tender dossier it is requested "contracts of the same OR SIMILAR nature". Based on what was mentioned above, we estimate that the appeal claim is well-founded and that the elimination of the CA at this point is contrary to the requirements of the tender dossier".

The second claim (II) is well-founded since "The other claim relates to the reason for elimination, where according to CA the complaining EO "the EO has also failed in Annex 1

Technical Specifications, it is requested that the front part of the sole be 1.2-1.5 cm, EO has added 1 cm to the front of the sole. The length of shoe laces should be 80 to 100 cm, EO has added 78 cm. Therefore, EO is considered irresponsible." First of all, we must point out that we are not informed by whom from the CA and in what way or in what laboratory they made the measurements. The complaining EO claims that this is a wrong finding of the CA and has provided evidence from the manufacturer as to how the measurement should be done, where according to the manufacturer's measurements the thickness is in accordance with the requirements of the file. In addition, the complaining EO in the offer has also presented the test report from the laboratory where it can be seen that the thickness is within the allowed parameters of 1.2-1.5cm. Evidence: Test report no. 107NA/31.08.203 Based on what was mentioned above, we estimate that the complaining claim is grounded".

The third claim (III) is grounded since the other claim concerns the reason for the elimination, where according to the CA the complaining EO also failed in Annex 1 Technical Specifications, it was requested that the front part of the sole be 1.2 -1.5 cm, EO has brought 1 cm to the front of the sole. The length of shoe laces should be 80 to 100 cm, EO has brought 78 cm. Therefore, EO is considered irresponsible." First of all, we must point out that we are not informed by whom from the CA and in what way or in what laboratory they made the measurements. The complaining EO claims that this is a wrong finding of the CA and has provided evidence from the approach/measurement of the samples. In addition, the complaining EO in the offer has also presented the test report from the laboratory where it can be seen that the thickness is within the allowed parameters of 80- 100 cm. Evidence: Test report no. 107NA/31.08.203 Based on what was mentioned above, we estimate that the complaining claim is grounded".

The fourth claim (IV) of the complaint is grounded on the fact that "The other claim is that the recommended EO has provided a "leaflet" in which the EN 347 standard is noted. The complaining EO claims that this standard is not what was requested, which is actually required ENISO 20347. Also according to EO this does not meet the requirement of the "test report" file. Since the complaining EO was not allowed access to these documents, we have analyzed the offer of the recommended EO for the contract and found that for this request the recommended EO has presented a test report, but we estimate that this report does not meet the soon the requirements of the CA. First of all, we emphasize that nowhere in this report does it state that the shoes were tested. Then it does not contain any standard/testing according to ENISO 20347 or other testing methods that are used to meet the requirements arising from this standard, such as comfort, durability, slip resistance, etc. From further analysis, it appears that this testing was done for leather and not for shoes, while the file request was that "the product offered is in accordance with the EN ISO 20347 standard. In this particular case, the product that is offered/procured is the shoe as a whole and not the skin. This is also defined through the tender dossier in technical specifications where it is decisively stated: "Shoes must provide protection according to the EN ISO 20347 standard (personal protective equipment)"

Based on what was mentioned above, we estimate that the complainant's claim in this point is grounded and that EO has failed to prove that the offered product is in accordance with the EN ISO 20347 standard.

The fifth claim (V) of the complaint is based on the fact that "the complaining EO claims that the recommended EO has not proven that the product offered is in accordance with the request of the file for water-resistant fasteners. Again, we must point out that the test report of the recommended EO does not even contain this data/testing, so we consider that the complaining claim is grounded".

The sixth claim (VI) of the complaint is based on the fact that "the complaining EO, in the absence of access to the EO's documents, claims that the recommended EO certainly does not meet the requirements of the review expert's report, regarding the complaint submitted by the EO "Sabit Makiqi B.I.", regarding with the procurement activity "SUPPLY OF SHOES FOR THE KOSOVA POLICE – re-tender" with procurement number: "214-23-7137-1-1-1, initiated by the Contracting Authority (CA) - KOSOVA POLICE meets the requests for references in the past three years and also raise doubts about the ISO standards of EO. After analyzing the offer of the recommended EO, we found that it meets these requirements. Perhaps it is worth mentioning that one of the ISO certificates was extended a day before the deadline for bidding, and with that certificate number we were not able to verify the certificate on the website of the issuer/certifier, however from the data in the certificate it seems to be valid".

The Review Panel has assessed that the conditions have been met to decide on this case without a hearing in the sense of Article 24 paragraph 1 of the Rules of Procedure of the PRB, taking into account that the claims of the parties and their submissions, the evidence as well as the review expert's report provide sufficient data to decide on the merits of the case.

Findings of the Review Panel -

The review panel independently and objectively, conscientiously and professionally evaluated all the evidence of the case. The review panel after the administration and evaluation of the evidence, the complete ascertainment of the factual situation, relying on the LPP as applicable material law, after examining the appeal claims, taking into account all the documents of the case, found that the appeal should be rejected as unfounded and the decision of the CA remains in force. Consequently, the Review Panel has decided to validate the Notice on the Decision of the Contracting Authority initiated by the Contracting Authority (KA) - KOSOVA POLICE regarding the procurement activity entitled "SHOES SUPPLY FOR KOSOVA POLICE - Retender" with procurement number: 214-23-7137-1-1-1. The Review Panel has assessed that the Contracting Authority has acted in accordance with the legal provisions of the LPP, since the CA has treated the participating EOs equally and non-discriminatoryly, based on the presented documentation and testimonials, and then recommended the EO with the cheapest responsive offer. The Review Panel assesses that the evaluation of the tender was carried out according to the requirements specified in the notice of the contract and the tender file. Therefore, the Review Panel assesses that the CA has rightly awarded the recommended EO as it has fulfilled all the requirements set forth in the tender dossier and was the most responsible tender with the lowest price.

Therefore, the review panel after reviewing the case documents, reviewing the complaining claims of the complaining EO, the findings, concrete analysis and recommendations of the

review expert, the declaration of the parties in the procedure, the discussions and the administration of the evidence as a whole, and the entire activity of the procurement of noted above, considers that the findings of the examining expert and their opinion are partially acceptable by this panel, due to the fact that in these reports it is considered that in many points they do not contain sufficient arguments, findings and facts, therefore the final decision-making has been reached so that the decision of the CA remains in force, therefore I will elaborate only the points of complaint which have not found full support, unlike the expert report:

The complainant has attacked the reason for his/her elimination, where according to the CA the same has failed to fulfill the required value of 1,500,000 € of contracts of a similar nature since according to the CA in the standard letter for elimination: "EO has bring the list of contracts in the offer, which in the content had other items besides the same or similar nature. Regarding this, the examining expert has stated that the Complainant has provided evidence and references that meet the value required by the CA, but does not provide any facts or arguments as to how he classifies them as similar. Therefore, the Review Panel classifies this claim as unfounded, adhering to the Opinion of PPRC No. 11 published on the 09.06.2023, that PPRC cannot exceed the authorizations given to it by law and determine which supplies, services or works are considered similar to the subject of the contract specified by the CA in the Tender File and in the Notice for the Contract and in this case as a good orientation for the determination of supplies, services or similar works the codes defined in the FPP where currently 8,323 FPP codes are published in the Public Procurement Electronic Platform, then the CA in the opinion of the expert's report stated that he does not agree with the expert's opinion because the point of orientation for the classification of these contracts was the FPP.

The Review Panel related to the complaining claim related to the reason for the elimination of the Complainant, where according to the CA the complaining EO "the EO has also failed in Annex 1 Technical Specifications, it is required that the front part of the sole be 1.2 -1.5 cm, EO he brought 1cm to the front of the sole. The length of the shoelaces should be 80 to 100 cm, OE brought 78cm, so OE is considered irresponsible. The expert declares that according to the manufacturer's measurements, the thickness is in accordance with the requirements of the file. In addition, the complaining EO in the offer has also presented the test report from the laboratory where it can be seen that the thickness is within the allowed parameters of 1.2-1.5cm. Evidence: Test report no. 107NA/31.08.203 Based on what was mentioned above, we estimate that the appeal claim is well-founded. Unlike the reviewing expert, the PS classifies this claim as partially based because the CA in response to the request for re-examination has also provided with photos the measurement of the samples which support the decision of the CA and for this responsibility the evaluation commission must bear of offers in accordance with article 59.1 of the LPP.

Regarding the complaint claims against the recommended EO for the contract, the Complainant claims that the recommended EO has provided a "leaflet" in which the EN 20347 standard is noted. The complaining EO claims that this standard is not what was requested, that EN ISO was actually requested 20347, as well as the complaining EO claims that the recommended EO did not prove that the product offered is in accordance with the request of the file for water resistant

fasteners. Also, according to EO, this does not meet the requirement of the dossier for "testing report. The review panel in this case does not understand the review expert regarding his finding that the EO recommended for the contract failed to prove that the product offered is in accordance with the EN ISO 20347 standard, and that the test report of the recommended EO it does not contain this data/test either, when in the offer of the recommended EO for the contract he has provided in his offer the copy of the certificate for skin testing and it contains the EN ISO 20347 standard and it contains water resistance. Also, it is worth emphasizing the fact that the request of the Tender dossier was "For part 1, the Economic Operator must bring a copy of the certificate or inspection sheet issued by a certified laboratory for skin testing inspections". Therefore, the complaining claim is unfounded.

Therefore, the Review Panel decides to give the right to the CA and to leave in force the decision of the CA, this decision which was issued by an evaluation commission which is supposed to be professional and also responsible according to article 59.1 cited all the members of the Commission Appraisers take full individual responsibility for the evaluation of the offer. The Review Panel emphasizes that each contracting authority (at the central and local level) enjoys autonomy in procurement planning (Article 8) and in determining the needs that must be met (Article 9), of course in accordance with the budget capacity and that the CA in the specific case has have the right to also decide on the EO recommended for the award of the contract based on article 24 paragraph 2 of the LPP quoted "The contracting authority is responsible for ensuring that all procurement activities of such contracting authority are executed in compliance with complete with this law".

The panel is forced to take into consideration the principle fact that the tender offered by the EO which has been recommended for the contract is for 241,200.00 €, cheaper, and that this fact could not be denied even by the CA. Apart from this, the CA must take into account the provisions of articles 1, 6 and 7, the content of which is a well-known fact for all CAs and EOs.

The return of a procurement activity without a contested legal basis for re-evaluation is not in harmony with Article 1 of the LPP, according to which, the purpose of this Law is, among others, quoted: "...to ensure the integrity and responsibility of public officials, civil servants and other persons who perform or are involved in a procurement activity, requesting that the decisions of such individuals and the legal and factual basis for such decisions are not influenced by personal interests, characterized by no -discrimination and with a high degree of transparency and to be in accordance with the procedural and essential requirements of this law".

Therefore, acting on the basis of the basic principles of the procurement review procedures, which, among other things, are specifically sanctioned by the provision of Article 104 of the LPP and at the same time analyzing the documents of this case in relation to the facts and circumstances of described as above, and especially paying due attention to the nature and purpose of the complaining claims, the Review Panel took into consideration all the statements of the complainant, the acts and actions taken by the CA, the review expert's report and analyzed them with take care of all the papers of this matter and considers that the complaining assertion of the complaining EO is unfounded and rejected, as given in the findings of the panel.

In making this decision, the review panel also took into consideration the requirements of Article 104, paragraph 4 of the LPP, according to the PRB, it must act as quickly as possible, act proportionally to the alleged violation or the matter for which the complaint is filed, and take as a basis the possible consequences of the actions or measures on all interests that may be harmed, including the public interest.

Therefore, acting in accordance with the powers cited above and Article 104 paragraph 4 in relation to paragraph 1, according to which the procurement review procedure will be implemented and carried out in a fast, fair and non-discriminatory manner, which has aimed at the legal and effective resolution of the case, as well as referring to article 117 of the LPP, and in the evidence presented above, the Review Panel 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 – **Sabit Makiqi B.I.**;
1x1 Archive of the PRB;
1x1 For publication on the website of the PRB.